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ACCESS VERSUS SHIELD: NAVIGATING INTERNATIONAL ORGANISATIONS' IMMUNITIES AND THE RIGHT OF ACCESS TO A COURT – A CASE IN HUNGARY

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This article examines how Hungary addresses the tension between the functional immunity of international organisations and the fundamental right of access to a court. While international organisations traditionally enjoy broad, often absolute, immunity grounded in functionality rather than sovereignty, recent constitutional court and ECtHR case law has introduced human-rights based limits, particularly in labour disputes. Focusing on Hungarian headquarters agreements, the study shows how international obligations interact with domestic constitutional requirements. The Constitutional Court of Hungary, following ECtHR jurisprudence (e.g. Waite and Kennedy; Beer and Regan), accepts functional immunity only where "reasonable alternative" dispute-settlement mechanisms exist, ensuring that access to justice is not illusory. Hungary has therefore systematically included clauses making immunity in labour disputes conditional on the availability of such procedures.

Keywords
access to court, ECtHR, headquarters agreements, immunity, International Investment Bank, international law, international organisations, labour disputes

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The immunity of international organisations is not a new concept in international law, yet it continues to be a topic of interest from time to time, either because an official has committed an act that violates the law, or because it has been suggested that this type of immunity is not necessarily consistent with certain human rights requirements, such as the right of access to a court. Although international law has not changed and continues to grant absolute immunity to international organisations, constitutional court decisions and cases pending before the European Court of Human Rights (hereinafter: ECtHR) have added nuance to the picture.

All of this raises the question of whether international law will change. Although it is currently not possible to answer this question satisfactorily, it is worth exploring how the Hungarian legal system treats the immunity of international organisations and how it seeks to harmonise international legal rules with the decisions of the Constitutional Court of Hungary (hereinafter: Constitutional Court) and the ECtHR. It is also instructive to consider how this framework can be enforced in practice, with particular regard to labour disputes; and under what constitutional rights restrictions – above all, the right of access to a court – these immunities can be maintained.

IMMUNITIES OF INTERNATIONAL ORGANISATIONS UNDER INTERNATIONAL LAW

The immunities enjoyed by international organisations rest on entirely different principles than the immunities of states or diplomats/state officials. While the fundamental principle underlying state immunity is sovereignty, i.e. that one sovereign cannot have jurisdiction over another, international organisations do not possess sovereignty, so conceptually, such a dogmatic foundation cannot exist. International organisations are relatively new in international relations – at least compared to states. Accordingly, the immunity of international organisations cannot be based on well-established customary law rules like state immunity. The immunity of international organisations rests on a so-called functional basis: its purpose is to ensure that the organisation can perform its tasks independently of the particular legal system operating in the host country, which might otherwise be jeopardised by unwarranted interference from the host state.[2] International law therefore approaches the immunity of international organisations on a functional basis,[3] i.e. it recognises such immunities as are necessary for the performance of the organisations' tasks. Therefore – with the increasing role of international organisations – international law establishes several types of immunity that may apply to international organisations, albeit on a different basis, but similar to that enjoyed by the diplomats of states.

[2] De Brabandere 2019: 328.

[3] This is likewise noted in Decision 3284/2020 (VII. 17.) of the Constitutional Court of Hungary, Reasoning [64].

There is no generally applicable multilateral convention governing the immunity of international organisations and their officials, such as the 1961 Vienna Convention[4] – which established the immunities of members of states' diplomatic missions. The concepts involved are also different: the status of international organisations does not involve sending state – receiving state relations, but rather international organisation – receiving state/host state relations. Furthermore, reciprocity, which is one of the fundamental principles of relations between states, does not apply here, since an international organisation logically cannot grant immunity itself.

As previously stated, there is no overarching international agreement pertaining to the immunity of international organisations. However, the UN Charter[5] is frequently cited as a relevant analogue on this matter. It stipulates that "the Organisation shall enjoy in the territory of each of its Members such privileges and immunities *as are necessary for the fulfilment of its purposes*".[6] However, it should be noted that this provision is applicable only to the UN, and not to all international organisations in general. Nevertheless, the emergence of functionality as a principle provides an important reference point.

Another pertinent reference point is the Convention on the Privileges and Immunities of the United Nations[7] (hereinafter: CPIUN), which also applies exclusively to UN bodies. This convention has a slightly different formulation from the UN Charter in that it grants immunity to the UN without qualification, i.e. without reference to the *purpose* for which it is intended. The CPIUN declares that the United Nations, including its assets and property, wherever they are located and whoever they are held by, shall enjoy immunity from all local jurisdiction, except where expressly waived in a specific case. However, it is important to note that the waiver of immunity does not extend to immunity from execution.[8]

In the absence of a generally applicable code establishing immunities, the immunity of international organisations in international relations is usually regulated in two ways: 1. in the international treaty establishing the international organisation; and 2. in so-called headquarters agreements concluded by the international organisation with the host state of the territory where, for example, it has its headquarters or representation.[9] The first binds the states parties to the international treaty, while the second regulates the state serving as host state. The headquarters agreement may not grant a degree of immunity that is more limited than that established by the member states in the founding treaty for the international organisation. Beyond that, it is up to the host state to decide how extensive the immunity granted to the

4 Vienna Convention on Diplomatic Relations, signed 18 April 1961. 500 UNTS 95.

5 Charter of the United Nations, signed 26 June 1945.

6 UN Charter, Article 105, para. 1 (highlighted by the author).

7 Convention on the Privileges and Immunities of the United Nations (CPIUN). Signed 13 February 1946. 1 UNTS 15; corrigendum 90 UNTS 327.

8 CPIUN Article II, Section 2. The CPIUN also stipulates that appropriate rules must be established for the settlement of private law disputes, which is why the United Nations Appeals Tribunal (UNAT) and the International Labour Organization Administrative Tribunal (ILOAT) were established. The ILOAT Statute has also been accepted by non-UN organisations and applies to them as well.

9 Van Alebeek – Nollkaemper 2012: 12.

organisation in question should be. In general, it can be stated that the immunity granted to international organisations resembles the privileges granted to members of the diplomatic corps between states, e.g. the immunity of officials of the organisation.

Thus, a host state typically defines the immunities of international organisations in a headquarters agreement (which is also an international treaty), with the host state deciding on the extent of the immunity granted – within the limits of the founding international treaty. In the case of UN bodies, the scope of the immunities granted cannot, of course, be narrower than that set out in the CPIUN, as this is already an existing international legal obligation for states.

As with diplomatic bodies between states, in the case of international organisations, a distinction is drawn between the immunity of the international organisation itself and the immunity of its officials. The issue of state immunity is covered by the Convention on Jurisdictional Immunities of States and Their Property (hereinafter: CJISTP).[10] Although the Convention is not yet in force,[11] certain parts of it reflect customary international law. On this basis, the immunity of states applies only with certain exceptions: for example, the immunity of states does not apply in labour disputes or in relation to commercial transactions. In Hungary, these rules were implemented by the Private International Law Act,[12] which essentially established the same exceptions.[13]

Given that there is no multilateral agreement on the immunity of international organisations, and that the CPIUN and the underlying customary international law only refer to state immunity, and that the founding documents of international treaties do not usually establish exceptions to immunity, in most cases, the immunity of international organisations does not recognise exceptions. In this respect, therefore, the immunity of international organisations is broader than that of states, while at the same time, as we shall see below, the immunity of officials of international organisations is, in principle, narrower than the immunity of diplomatic representatives in diplomatic relations between states.

The example of the cholera outbreak in Haiti starkly illustrates how immunity may be controversial when it comes to the responsibility of international organisations, even in cases of grave harm. In 2010 Nepalese peacekeepers serving in the United Nations Stabilization Mission in Haiti (MINUSTAH) [14] were widely considered to have introduced the disease, which led to the death of some 8,000 people and infected around 600,000 more.[15] However,

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10 United Nations Convention on Jurisdictional Immunities of States and Their Property, signed in New York, 2 December 2004.

11 Pursuant to Article 30 (1) of the CJISTP, it shall enter into force on the thirtieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. According to the UN website, as of October 2025, 25 States have expressed their consent to be bound by the CJISTP. Current data sheet on the UN website: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-13&chapter=3&clang=_en

12 Act XXVIII of 2017 on private international law. In English: https://njt.hu/jogszabaly/en/2017-28-00-00

13 Boreczki 2014: 79.

14 On 30 April 2004, acting on the recommendations of the Secretary-General, the Security Council adopted resolution 1542 of 30 April 2004, establishing the United Nations Stabilization Mission in Haiti (MINUSTAH), which took over the tasks from the MIF on 1 June 2004. See: https://docs.un.org/en/s/res/1542(2004)

15 Park 2019.

the claims brought on behalf of the victims were declared "not receivable" by the United Nations on the grounds that they raised political and policy issues, thereby excluding them from the UN's internal dispute-settlement mechanisms. Despite Article VIII, Section 29 of the CPIUN[16] the UN has been able to rely on its immunity and to reject requests for compensation without any legal consequences for the validity of that immunity. This has prompted sustained criticism in both scholarly circles and the wider public opinion, not only because it appears to leave victims without an effective remedy, but also because it exposes the tension between the UN's broad functional immunities and its professed commitment to human rights, accountability and the rule of law.[17]

COMPARATIVE ANALYSIS OF HEADQUARTERS AGREEMENTS CONCLUDED BY HUNGARY

One of the strategic goals of Hungarian foreign policy is to attract as many international organisations as possible to Hungary. This policy forms part of the Government's broader objective of enhancing Hungary's international visibility and playing an active role in international cooperation by supporting the country's development into a regional hub for the service offices (Global Service Centres) of institutions operating under the aegis of international organisations, in particular by hosting their administrative units.[18] Within this framework, a number of headquarters agreements have been concluded between Hungary and international organisations in recent years, which follow roughly the same pattern in terms of immunities. As it is also evident from the reasoning to the chapters of the 2025 Hungarian Budget, this objective continues to be pursued unwaveringly by the Hungarian government.[19]

An important distinction between international organisations is whether they are UN bodies, specialised agencies (WHO, ILO, FAO), institutionalised formations operating within the framework of the UN or associated with it (UNICEF, UNHCR, UNOCT, IOM), or other international organisations. In the case of the former, the CPIUN and the Multilateral Agreement on the Privileges and Immunities of the Specialized Agencies of the United Nations (hereinafter: CPISA) [20] impose conditions that are more favourable to UN bodies than to non-UN bodies. This dual framework – the general strategic goal of attracting

16 Section 29 of the CPIUN obliges the organisation to provide "appropriate modes of settlement" for certain disputes.

17 Shaw 2021: 1167–1168.

18 See the MFAT-UN 2025 (only in Hungarian).

19 T/9894. sz. törvényjavaslat Magyarország 2025. évi költségvetéséről [Reasoning of Draft Law No. T/9894 on Hungary's budget for 2025] 2024: 8. "Hungary, in addition to its national efforts, plays an active role in all relevant international organisations (the EU, the UN, the OSCE, the Council of Europe and NATO). Hungary remains committed to supporting the work of international organisations and enhancing their efficiency, and thus hosts the professional and service centres of several international organisations." (translated from Hungarian by the Author).

20 Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations. Signed in New York, 21 November 1947. 33 UNTS. 261.

international organisations and the specific treaty-based obligations under the CPIUN and CPISA – explains why Hungarian headquarters agreements tend to converge around a relatively uniform standard of privileges and immunities, while at the same time remaining sensitive to the specific institutional characteristics and legal status of the organisations concerned.

In Hungary, headquarters agreements usually provide comparable immunities to international organisations – this is how most states treat them, in order to ensure uniform treatment of international organisations in the host state. In order to ensure that no organisation is treated less favourably than others, many headquarters agreements stipulate that the scope of immunities granted to a given organisation cannot be narrower than that granted by the host state to other international organisations.[21] UN agencies are an exception because, due to the terms of the relevant UN conventions and the outstanding importance of the world organisation, host states tend to grant them somewhat broader exemptions – as is also the case in Hungary. One such additional exemption is the taxation of local employees. In the case of non-UN bodies, local employees are typically not exempt from the tax rules of the host state, while in the case of UN bodies, local employees do not pay tax either.

Non-UN international organisations therefore enjoy somewhat narrower immunities than UN bodies, but this is not always the case. An example is the International Council for Game and Wildlife Conservation (hereinafter: CIC), to whose institutions and senior officials the Hungarian Parliament has extended the privileges, exemptions, and facilities provided for in the aforementioned UN Convention.[22] In Hungary, therefore, the CIC enjoys the same privileges and immunities as UN bodies.[23]

With regard to the *officials* of most international organisations based in Hungary, there are no exceptions to their immunity from jurisdiction. With the exception of Hungarian citizens and residents, in order to perform their duties properly, officials of international organisations are exempt from arrest and detention, enjoy immunity from jurisdiction with respect to their statements made orally or in writing and all other acts performed in their

[21] See, for example, Article II, para. 1 of the Agreement between the Government of Hungary and the United Nations Children's Fund on the Establishment of the United Nations Children's Fund Global Service Center, promulgated by Act CXXII of 2015. "The Government assures UNICEF that the Center, as well as the UNICEF personnel assigned to it and all other UNICEF personnel, will enjoy treatment not less favourable than that accorded by the Government to any other intergovernmental or international organizations or other United Nations agencies, funds or programmes present in the Country and their respective personnel."

[22] Act LII of 2012 on the privileges and immunities of the United Nations in New York, extension of the privileges, immunities and facilities provided for in the international agreement dated 13 February 1946, to the institutions and senior officials of the International Council for Game and Wildlife Conservation operating in Hungary.

[23] Headquarters agreements are international treaties and must therefore, as a general rule, be promulgated by law. Promulgation by government decree is generally possible if the international treaty regulates a subject matter that does not fall within the scope of the Parliament's tasks and powers. However, headquarters agreements concluded with international organisations also provide for immunities for their officials. In accordance with Article I (3) of the Fundamental Law of Hungary, fundamental rights and obligations, and consequently exemptions from fundamental rights and obligations, may only be established by law. However, not all headquarters agreements in force are promulgated by law. An example of this is the headquarters agreement with the International Labour Organization (ILO) [promulgated by Government Decree 171/1993 (XII. 8.)] and the Food and Agriculture Organization of the United Nations (FAO) [promulgated by Government Decree 203/2007 (VII. 31.)].

official capacity, and this immunity continues after the termination of their employment. The phrase "with respect to their statements made orally or in writing and all other acts performed in their official capacity" suggests that the scope of immunity is not absolute, but merely functional. In practice, however, international organisations certify all questionable cases as acts performed in the course of official duties, and the host state has little opportunity to dispute this in practice. Thus, although the immunity of officials of international organisations is based on the proper performance of their duties, i.e. on functionality, in practice it is often difficult to distinguish between functional and complete immunity.

However, the headquarters agreements of the International Investment Bank (hereinafter: IIB)[24] and the European Institute of Innovation and Technology[25] contain an exception that is similar. The immunity of their staff from judicial and administrative proceedings does not extend to traffic offences or their civil liability in compensation proceedings arising from road accidents. Hungarian courts and authorities may therefore take action against officials of these two named organisations if a third party is entitled to compensation from them for a road accident.[26]

AN EXAMPLE: THE FRAMEWORK OF THE IIB'S HEADQUARTERS AGREEMENT

The relocation of the IIB to Hungary, the related national security concerns, and the scope of immunities granted to the IIB have previously been the focus of attention from a political rather than a legal perspective, particularly given that, despite the renewal of Hungary's membership of the IIB in 2015, the Government initiated the process of withdrawing from the organisation in 2023.[27]

As is usually the case with headquarters agreements, the Headquarters Agreement of the IIB (hereinafter: IIB Headquarters Agreement)[28] is based on the international treaty establishing

[24] The International Investment Bank (IIB) was founded on 10 July 1970, by the Council for Mutual Economic Assistance (CMEA) as a multilateral development bank with the aim of promoting economic development and cooperation among member states. Hungary deposited its instrument of ratification of the IIB Agreement on 19 January 1971, see Legislative Decree 7 of 1971 on its promulgation.

[25] Act CLXVI of 2010 on the promulgation of the Headquarters Agreement between the European Institute of Innovation and Technology and the Government of the Republic of Hungary.

[26] The European Institute of Innovation and Technology is a European Union body, so its situation is not entirely comparable to that of other non-EU international organisations.

[27] In the 1st point of Government Decision 1139/2023 (IV. 13.) on Hungary's representation in the Board of Governors of the International Investment Bank, the Government agreed that Hungary should resign from its membership of the IIB. Subsequently, in an emergency government decree, Government Decree 38/2023 (IV. 20.) on emergency measures relating to the headquarters of an international organisation, the Government provided for the suspension of exemptions and the implementation of measures necessary to change the headquarters in Budapest, in deviation from the IIC Charter.

[28] Agreement between the International Investment Bank and the Government of Hungary on the headquarters of the International Investment Bank in Hungary, signed in Budapest on 5 February 2019, promulgated by Act XI of 2019.

the international organisation, the Agreement on the Establishment of the International Investment Bank, signed in Moscow on 10 July 1970, and amended on 20 December 1990; and the attached IIB Statutes (hereinafter: IIB Agreement).[29] This international treaty already established certain immunities for the IIB and its officials. Hungary, as a signatory state, was therefore already obliged by this international treaty, concluded in 1970, to grant certain immunities to the IIB. It is always a matter of political choice, and thus political debate, whether it is beneficial for the host state to relocate/host an international organisation (or to terminate the agreement). However, as is clear from the above, in the case of the IIB, the headquarters agreement did not grant any extended privileges in this sense, apart from a few privileges and immunities enjoyed by all international organisations and their staff in Hungary.[30]

It is interesting to note that although the process of Hungary's withdrawal from the IIB has been initiated under domestic law, the legal completion of the withdrawal of the IIB Agreement is uncertain.[31]

IMMUNITIES GRANTED TO THE IIB AND THE POSITION OF THE CONSTITUTIONAL COURT

The Constitutional Court began proceedings based on a motion by members of parliament who claimed that the law promulgating the IIB Headquarters Agreement was unconstitutional. The motion contained several elements. On the one hand, it raised concerns primarily related to the bank's financial activities and its immunities: it objected that, according to the petitioners, the IIB enjoys financial institution rights that go far beyond its investment banking functions, that under the agreement the bank can provide a very wide range of financial services, and that it can carry out its activities without having to comply with Hungarian accounting standards. On the other hand, the motion objected that the exemptions granted to the Bank prevent the effective enforcement of claims against the IIB. In this analysis, I will examine the second set of issues, in particular the right to appeal to the courts and the related opinion of the Constitutional Court.

In the above case, the Constitutional Court, in its Decision 3284/2020 (VII. 17.) AB, considered the motion that the headquarters agreement was contrary to the right of access to a court and the right to legal remedy to be unfounded, contrary to the opinion of the

[29] Promulgated by Act XLI of 2015 on the establishment of the International Investment Bank, Moscow, signed on 10 July 1970, and amended on 20 December 1990, and the Articles of Agreement attached to the Agreement, as well as the Protocol amending them, and the promulgation of notifications issued to become a party to the Protocol.

[30] E.g. additional concessions for establishment, state assistance with visas (Article 13 of the IIB Headquarters Agreement), diplomatic license plates (Article 18 of the IIB Headquarters Agreement).

[31] This fact also has an impact on the diplomatic privileges and immunities granted to the IIB. In its decision of 13 April 2023, the Government agreed that Hungary should withdraw its membership in the IIB and revoked its previous authorisation to represent Hungary before the IIB bodies. See Government Decision 1139/2023 (IV. 13.) on Hungary's representation in the Board of Governors of the International Investment Bank.

petitioners, who claimed that "these [rights] are completely negated by the fact that the IIB does not provide an effective legal remedy for persons in a legal relationship with it".[32]

The IIB's immunities should also be examined in light of the above international and domestic regulatory framework. The IIB's immunities are (were) primarily governed by the IIB Agreement under which Hungary as a state party undertook to grant the immunities set out therein to IIB officials. This agreement therefore provided the minimum framework for the headquarters agreement: since it is a binding international agreement to which Hungary was already a party, more favourable conditions could be granted, but less favourable ones could not. The framework is therefore provided by the Fundamental Law of Hungary and its international legal obligations, which are interpreted and clarified by the relevant decisions of the Constitutional Court and the ECtHR. It is worth noting here that, as has been the case in many other instances, the decisions of the Constitutional Court and the ECtHR often examine an issue from a different perspective, namely that of fundamental rights, and their starting point is also different, which may result in them reaching a conclusion that is not entirely consistent with a particular international legal obligation. Thus, a state may face conflicting obligations: on the one hand, a constitutional court and/or ECtHR decision, and on the other hand, an international legal obligation.[33] Applying all this to the IIB, the following international frameworks are available:[34] the IIB Agreement and IIB Headquarters Agreement, the customary rules on the immunity of international organisations, the European Convention on Human Rights (hereinafter: ECHR), which serves as the basis for ECtHR decisions, and of course the Fundamental Law as the general framework.

In the IIB's headquarters agreement, the immunity rules basically grant the exemptions set out in the founding treaty, which mostly resemble the exemptions granted by Hungary to other international organisations.

The issue of the privileges and immunities of international organisations had already appeared in the case law of the Constitutional Court prior to the IIB case. In 2014, the Constitutional Court examined a case concerning the immunity of the Regional Environmental Center for Central and Eastern Europe (hereinafter: REC), which had been based in Hungary for nearly 20 years at that time. Decision 36/2014 (XII. 18.) of the Constitutional Court of Hungary was based on a legal dispute concerning the termination of the employment of a REC employee, in which the international organisation invoked immunity from the jurisdiction of Hungarian courts during the associated court proceedings. The Constitutional Court, relying on the practice of the ECtHR, stated that the internal autonomy of international organisations is a legitimate goal, and therefore the principle of functional immunity may apply in labour law cases. However, even in cases where such immunity applies, restrictions on fair proceedings must meet the requirements of necessity and proportionality and must

[32] Decision 3284/2020 (VII. 17.) of the Constitutional Court of Hungary, Reasoning [8].

[33] Typical examples of this are the ECtHR decisions on UN sanctions, in which the ECtHR considers certain binding UN sanctions to be contrary to the ECHR.

[34] Since the IIB is considered a special legal entity and is not covered by the CPIUN and CPISA, the rules relating to these conventions do not apply here.

not result in the employee being unable to enforce his or her labour law claims in any way. A forum for legal redress must therefore actually be available to the employee. The national courts would generally exclude jurisdiction, and in the absence of such a forum, this would mean, unacceptably, that the employee would have no right to legal protection at all. This decision therefore established a human rights condition for immunity. The obligation to respect human rights is also an obligation under international law. It follows, therefore, argued the Constitutional Court, that if the international organisation does not apply an alternative mechanism, the state must ensure access to the courts.[35]

While the Constitutional Court's decision in the REC case is in line with the human rights standards, it does not necessarily reflect existing international law, which interprets immunity in an absolute manner.[36] This conflict between the human rights aspect and the international law governing immunity has also been raised in other international and national forums.

On another occasion, the ECtHR reached a similar conclusion to the Constitutional Court of Hungary. In Beer and Regan and Waite and Kennedy, the Court examined whether the German courts' recognition of the European Space Agency's (ESA) jurisdictional immunity violated Article 6 para. (1) of the ECHR (right of access to a court). In both cases, employees or contractors linked to ESA operations in Germany had been blocked from suing in its own courts because of the ESA's treaty-based immunity. The Court accepted that granting international organisations immunity pursues the legitimate aim of safeguarding their independent and effective functioning. It articulated a common proportionality standard: restrictions on access to national courts are compatible with Article 6 if they do not impair the very essence of the right and if "reasonable alternative means" exist to protect the applicants' civil claims. Because ESA provided an independent internal dispute-resolution system (Appeals Board/Administrative Tribunal) with a genuine capacity to afford redress, the applicants retained sufficient procedural protection. Consequently, in both cases, no violation was found. Together, the judgments established a leading test for reconciling international organisation immunity with access to justice.[37]

This raises the question of the relationship between the functional immunities of international organisations and the jurisdictional regime in civil and commercial matters under the Brussels Ia Regulation.[38] In his comprehensive analysis of C-186/19 *Supreme Site Services* judgments,[39] Nemessányi confirmed that the Court did not question the existence of immunity under public international law, but argued that an international organisation's reliance on jurisdictional or enforcement immunity does not, as such, exclude the application of the Brussels Ia Regulation. National courts must first determine, on a prima facie basis, whether

35 Decision 36/2014 (XII. 18.) of the Constitutional Court of Hungary, Reasoning [51]–[52].

36 De Brabandere 2019: 7.

37 See Waite and Kennedy v. Germany [ECtHR (GC) 26083/94, February 18, 1999] and Beer and Regan v. Germany [ECtHR (GC) 28934/95, February 18, 1999].

38 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

39 ECLI:EU:C: 2020:638.

the dispute falls within the notion of "civil and commercial matters" and only in a second step can they examine whether, in the concrete case, the organisation may successfully invoke immunity so as to bar the exercise of jurisdiction or the adoption of enforcement measures. In Nemessányi's view, this two-step approach confirms the functional character of the immunities of international organisations and accommodates them within a framework that is sensitive to access-to-court considerations, aligning the Court of Justice's case law more closely to the human-rights-oriented reasoning developed by the ECtHR and by constitutional courts.[40]

At the same time, comparative practice shows that, unlike the restrictive trend in state immunity under the CJISTP, many national courts have long recognised a broad immunity of international organisations precisely in employment disputes. French and Italian courts, early on (Lamborot, Profili case),[41] denied jurisdiction even without explicit treaty clauses, and more recent U.S. and German case law (e.g. Broadbent, Mendaro)[42] has likewise upheld organisational immunity vis-à-vis claims by their staff. Only a few decisions (such as X v. International Centre for Superior Mediterranean Agricultural Studies[43] or the Margot Rendall Speranza case[44]) have cautiously departed from this line, signalling judicial impatience but no consistent restrictive doctrine.[45] Dutch courts, in contrast, have reached a mixed conclusion: the Dutch Court of Appeal ruled that Article 6 of the ECHR overrides the immunity of the UN, a decision that was overturned by the Dutch Supreme Court, which ruled that the immunity of the UN is absolute.[46] The criticism of the Court of Appeal's finding aligns with the Supreme Court's finding that immunity is absolute and that the result of the ECtHR's decision is that the state is torn between two conflicting obligations.[47]

In any event, after the adoption of the Hungarian Constitutional Court's decision on REC, a provision[48] was included in all headquarters agreements concluded by Hungary, stating

[40] Nemessányi 2021.

[41] *Lamborot, Conseil d'Etat*, 1928; Recueil des Arrêts du Conseil d'Etat and *International Institute of Agriculture v. Profili*, Corte di Cassazione, 1931, cited by Amerasinghe 2005: 232.

[42] Cited by Amerasinghe 2005: 71, note 14.

[43] *X v. International Centre for Superior Mediterranean Agricultural Studies*, Greek Court of First Instance, decision cited in Reinisch 2000: 191, note 3.

[44] Margot Rendall Speranza v. International Finance Corporation, [U.S. Federal Court], 942 Federal Supplement p. 621 (DDC 1996) and 932 Federal Supplement p. 19 (DDC 1996).

[45] For a detailed discussion, see Amerasinghe 2005: 322–328.

[46] Appeal Court of The Hague 2010: para. 4.3.5.

[47] Van Alebeek – Nollkaemper 2012: 26.

[48] See Article 10 (5) of the Agreement between the Government of Hungary and the International Federation of Red Cross and Red Crescent Societies (IFRC) on the legal status of the International Federation's Budapest Regional Office and Global Service Center, promulgated by Act VIII of 2017; Article 14 of the Headquarters Agreement between the Government of Hungary and the Secretariat of the Cooperation Council of Turkic-speaking States on the Representative Office of the Cooperation Council of Turkic-speaking States in Hungary, promulgated by Act XCIII of 2019. However, there are agreements that were not included even after 2014, for example: Act VII of 2016 on the promulgation of the agreement between the Government of Hungary and the Global Green Growth Institute on the privileges and immunities of the Global Green Growth Institute.

that the immunity of the international organisation in labour disputes can only be enforced if an alternative form of dispute resolution is available.[49]

This was also the case with the IIB headquarters agreement. Article 12 (2) of the IIB Headquarters Agreement stated that

> "[i]n the event of a dispute between the Bank and a member of the Staff concerning a labour claim, the Bank shall ensure that an appropriate procedure is available for the settlement of the dispute with the Staff member concerned. In the absence of such a procedure, disputes shall be settled in accordance with the applicable Hungarian laws and regulations".

The motion submitted to the Constitutional Court, in contrast, did not consider the right to a fair trial, or more precisely, access to justice, to be guaranteed in the case of the IIB Headquarters Agreement.

WHERE ARE WE HEADED?

In the absence of a general international convention, the immunity of international organisations is based on fundamental principles, customary international law, international conventions, and the discretionary powers of the host states. There is no general treaty obligation in international law to grant immunity to international organisations and their officials, but the UN Charter provides a kind of benchmark in that it sets out the principle of functionality. In many cases, the international agreement establishing the international organisation itself determines the immunity to be granted to the organisation and its officials, which sets a minimum obligation for the member states of the international organisation. A member state may grant more favourable conditions, but not less favourable ones than those set out in the founding agreement. It is often considered (albeit not mandatorily, but for reasons of courtesy and fairness) that the host state should grant similar immunities to all the international organisations operating on its territory. The UN institutions are usually exempt from this, however, as they are granted special immunities under the CPIUN and the CPISA. The case of the International Investment Bank was no exception: under international law, the headquarters agreement did not go beyond the mandatory and customary framework.

When examining certain fundamental aspects of headquarters agreements, some national courts, constitutional courts, and the ECtHR came to similar conclusions: the right of access to courts cannot be restricted by a headquarters agreement. At the same time, international law continues to regard the absolute immunity of international organisations as the norm – yet several international organisations have concluded headquarters agreements which

[49] It can be considered fortunate that the relevant international organisations accepted this. They might have objected to the limitation of immunity based on international law, such as customary law and the treaties establishing them. If so, their objections could have been justified in an international forum.

include the above restriction. Whether this will have an impact on the general framework of international law remains to be seen.

Given that similar decisions have been made in several countries, it will be interesting to see whether international law, and thus the founding treaties of new international organisations, will follow this restriction of the degree of immunity granted them from a human rights perspective, or whether they will continue to uphold full immunity. On the one hand, it should be noted that limiting immunity to ensure access to courts is a completely legitimate human rights requirement, which does not impose impossible conditions on international organisations. Several international organisations have joined the ILO, for example, which can provide an effective alternative means of dispute resolution.

At the same time, in case of founding treaties and headquarters agreements that have already been concluded, it would be difficult to retrospectively justify the restriction of immunity on the basis of international law, given the principle of *pacta sunt servanda*. If international law does not follow the growing case law and insists on full immunity, states will be forced to manoeuvre between conflicting international legal obligations, which obviously does not serve legal certainty.

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Gábor Máthé

ESTABLISHING A MORE DIFFERENTIATED SYSTEM OF POWER-SHARING

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This study assesses the significance of Zoltán Magyary's work and confirms his place in the history of science. As a key figure in public administration in Hungary, he combined the study of public administration and administrative law into a single, uniform discipline. The study also presents an historiographical overview of his work and examines the impacts of his rich oeuvre on contemporary practice, touching upon various issues of the European Union and the global world order as well as on the future of nation states, which are the embodiments of sovereignty.

Keywords
Zoltán Magyary, public administration, administrative law

> "In order to make public administration more effective, it is not the executive that must be strengthened, but the influence of politics on professional administration must be reduced, regardless of whether this influence is threatened by the legislature or the executive" (István Bibó citing Zoltán Magyary in Bibó 2013: 2.)

THE ACADEMIC SIGNIFICANCE OF ZOLTÁN MAGYARY

The academic literature is unanimous in its assertion that the theoretical foundations of the history of the executive branch in Hungary in the first half of the 20th century can be grouped into three categories. These are public administration, administrative law and the uniform discipline of the science of public administration.

At the outset, it is necessary to draw attention to the fact that Zoltán Magyary's significance as one of the leading scholars in the history of Hungarian public administration is primarily

due to the fact that he combined the two main strands of public administration since 1850, administrative law and administrative policy, with public administration, which had not previously been represented in university education. Backed by the research results of rationalisation, he formed this into a single synthesis, Hungarian public administration.

In the foreword to his classic synthesis, a monograph summarising his life's work, Magyary declared: "This work is an attempt to create a new synthesis of the science of public administration, encompassing both administrative law and public administration."[1] He also stressed that there are periods in the history of nations in which the ideas and institutions which are involved in the general development of nations themselves undergo a particular transformation.

> "Whether we like it or not, there is every indication that the fundamental concepts which have been the basis of our legal institutions in the past are being dismantled and replaced by others, (and) that the legal system on which the life of our modern society has hitherto rested is being dissolved and a new system is being built on the basis of entirely new ideas."[2]

Public administration and administrative law

Although it would be beyond the scope of this article to mention all the eminent scholars of Hungarian public administration, it is definitely worth highlighting the work of Gyula Kautz in the fields of national economics and finance as well as Professor Győző Concha, with his encyclopaedic knowledge, who made a lasting contribution with his analysis of the real structure and performance of public administration. Perhaps the most noteworthy contributor to the field of legal doctrine was Móric Tomcsányi, who advanced the study of administrative law in three key areas: the public law of Hungary, the basic institutions of Hungarian administrative law, and Hungarian administrative and financial law, also known as the special – specialised – administrative part.[3] Moreover, the theory of the legal relationship between public administration and private law has been fundamental in the legalisation of the functioning of public administration.

The premise that public bodies must also be required to comply with the law, and that legal decisions of administrative bodies may be subject to judicial review, confirmed the validity of extending the powers of the Administrative Court, underlined the fundamental principle of the rule of law, and was crucial for the organisational development of this judicial forum.

1 Magyary 1942: VI.
2 Magyary 1942: V.
3 Tomcsányi 1940; cf. Tomcsányi 1933.

Public administration – science

In the period between the two world wars in Hungary, from the 1930s onwards, the aspects of legality in its public administration were undermined by the economic crisis, and the impact of this crisis, mostly of foreign origin, brought into focus the aspects of utility and efficiency, while the increasing demands placed on public administration and the quantitative and qualitative growth of tasks made it clear that these challenges could no longer be met by legal means alone. The recognition of this situation and its resolution – as we alluded to in the introduction – is linked to Professor Magyary, Head of the Science Policy Division of the Ministry of Culture and Government Commissioner for Rationalisation, who held the post of Government Commissioner from 1931 (until March 1933) at the request of the Prime Minister.

It is worth briefly quoting from Magyary's socio-political assessment of the situation in his lecture advocating the rapid introduction of scientific management in Hungary, which he gave in 1936 as part of the regular Public Administration Training Course. Magyary pinpointed the root of the problem in the late recognition by the 19th century state organisation of the needs of the post-Industrial Revolution state. This crisis of the state was also a crisis of public administration.

> "The growth of public administration over the last 100 years has led to a huge shift in the functions of the state. The liberal state has subordinated the separation of the legislature, judiciary and public administration, (divided) according to the three main functions, to the supremacy of the legislature. However, its development since then has been almost exclusively the development of the public administrative function. Thus, there has been a major shift in favour of public administration, with the result that the separation of the main functions is forced and even unsustainable. Evidence of this is the increasingly broad regulation-making powers the legislature is giving to the government in each state. The state apparatus of the early nineteenth century therefore had to take into account the enormous economic development, the Industrial Revolution and the social transformation. The old administrative apparatus is not able to deal with the tasks of today, even though the country has a responsibility to deal with them. The legal aspect is absolutely necessary, because no system can do without it, but its exclusivity does not guarantee economic efficiency and effectiveness."[4]

It should be noted, however, that Magyary's application of the legal approach in the unification ought to be understood from an administrative and scientific perspective; it was descriptive,

[4] Magyary 1936.

and completely lacked the legal dogmatic methodology applied earlier. Professor Lajos Lőrincz, who played a decisive role in shaping public administration in Hungary, this peculiarity:

> "However, it is clear to our eyes today, even in our country: the science of public administration denotes the research trend that Magyary calls public administration, so it is not necessary to include the approach that jurisprudence applies, therefore, contrary to the whims of his time, we can rightly and without reservation call Zoltán Magyary a classic of Hungarian public administration science."[5]

Magyary's work and intellectual legacy are also decisive because he clearly saw that to meet the needs of the times, the reform of public administration is an empirically verifiable methodological issue, not a matter of establishing eternal dogmas, but a reasonable procedure that can always be changed, using the available qualified personnel and material means to ensure the security of justice and to serve the public.

As an expert on the development of the Hungarian public administration, he noted that its history is partly a history of failed and incomplete reforms. The Hungarian public administration system of the last century was founded on two principles of the 19th century liberal state. It was based on a system of government that is accountable to parliament and a peculiar system of territorial–local government. The former was gradually eroded, as has been pointed out, by the inexorable expansion of public administration and what remained a dual administrative model, with the "constitutional protection" function of local government, which also gave rise to the specific principles of the organisation and operation of the civil state. He was therefore convinced that reforms could only be carried out by means of inductive methods, accurate data collection, fact-finding and the involvement of experienced professionals with theoretical rigour. Rationalisation, as he rightly put it, does not equate to a reduction in staff. He warned against the dilettantism of the very simple-minded man: against the model of a state with few bodies, few officials, and which is therefore efficient, and what is more, cheap – against *sancta simplicitas*.

Public administration institute – The Magyary school

The special value of Magyary's work lies in the fact that he not only assessed the problems of public administration realistically, but was also an excellent diagnostician, and was always able to prescribe the appropriate therapy.

A professor of great character, he not only taught, but also produced, in later years from among his students, very successful colleagues. He considered proper training to be a fundamental issue, constantly stressing that good administration can only be based on scientific foundations. His conviction that an academic institute should be organised 'from

[5] Lőrincz 2010: 45.

the outside' is proof of his objectivity and real politics, but in the case of the Hungarian Institute of Public Administration, founded in 1931, he advocated that it function within the framework of university autonomy, with the special Hungarian reason of ensuring that its operation should be free from government influence. Moreover, the research priorities of the Hungarian Institute of Public Administration were also able to serve as the basic principles of the operation of the National Institute of Public Administration as it was reorganised in the present day, thus:

- the cultivation of a multidisciplinary public administration science in order to create a national scientific management team
- to ensure meaningful cooperation between theory and practice
- adaptively taking into account the results of legal developments abroad.

Furthermore, these goals, as István Kiss, one of the outstanding researchers of the Magyary Working Group aptly put it, were pursued through "a threefold approach: by examining public administration from above, from below and from within".[6] Particular attention should be paid in this context to the issues of public administration and leadership, public service pragmatics, material needs, and the relationship between public administration and the people. The conclusions of these studies are quite telling. For example: public administration is not a matter of argument, but of will and action. In matters of government the will comes first, followed by the development of an organisation that will make that will happen. The organisation is a combination of will, initiative and responsibility. Vigour and initiative do not mean that reason can be sidelined by power, but that wisdom prevails over "the communication gaggle". Public administration is therefore for the community: for the parish, the town, the county, the whole nation. Public administration must therefore always be geared towards the completion of tasks.

A well-known anecdote in Hungarian academia tells how Ereky wrote of Győző Concha that he wanted to be the Lőrinc Stein (Lorenz von Stein) of the Hungarian administration. Concha, a leading figure in the study of Hungarian public administration, dismissed this, arguing that Lőrinc Stein's ostensible lack of stature was no different from that of an ordinary man – in other words, Stein's ideas were too grandiose for average men. The undisputed leader of Hungarian public administration science of the 20th century thereby proclaimed in this spirit and grounded in research and practical experience that the practice of specialised administrations requires separate specialists. Accordingly, the activities of his research organisation were directed towards the creation and integration of such a team.

The Magyary School, which was an effective, practical, highly experienced and theoretically demanding body of professionals, comprising nearly 100 people and directly linked to the Hungarian Institute of Public Administration, must therefore be regarded as an institution of exceptional effectiveness. The working group thus laid the foundations for a comprehensive administrative discipline through numerous participatory studies and a considerable body of

[6] Máthé 2011: 47.

empirical research by eminent experts in each field. This workshop produced such achievements as the draft law on administrative procedure, the organisation, functioning and legal regulation of municipalities, the attempt to settle the farm question, and the methodological tools and models for achieving efficiency and economy, among many other new results. A particular focus of the school was the legality of public administration. This centred on three dominant elements: the system of legislation in force, the administrative procedure and, in turn, the administrative judiciary. The latter is particularly relevant today, as Magyary considered the independent Administrative Court to be the most important guarantee of legality, calling for a further extension of its powers and, eventually, for the establishment of a two-tier system. This is a subject that deserves special attention, because the contemporary world was not receptive to the establishment of an independent Administrative Court. In the present day, administrative adjudication has been incorporated into the ordinary court system, breaking with the historical Austro–German legislative method, and seeking to impose the Anglo-Saxon model on our legal system, even though it has a completely different legal philosophy. This dominant institution of the rule of law is the only guarantee of the substantive rule of law, i.e. the 'full' legal binding of the operation of state bodies.

To take this idea further, it is necessary to follow the still valid "catechism" of the Magyary School on legality and effectiveness, enshrined in the thesis that effectiveness and legality are not alternatives to each other but are instead symbiotic. Moreover, efficiency and professionalism go hand in hand when decisions are taken with specialised expertise and empathy, following a legal and rapid procedure. If the administrative authority acts in a different way, the decision of the Administrative Court may also constitute a precedent that would be binding in further proceedings.

Another key element of Zoltán Magyary's professional legacy is the need to reform the constitution in order to bring our public administration up to the standards of the times. These constitutional reforms have two components, according to Magyary: a vertical and a horizontal one.

> "There are epochs that involve broad sections of humanity. In the same way, there are international solutions to ubiquitous needs that are invented in one place and used elsewhere. These include parliamentarianism, the cabinet system, and the emancipation of serfs, all of which we did not invent but adopted from the West. Similar effects were the earlier adoption of the professional army, the professional public service, and even earlier the adoption of Christianity and the institution of kingship. This is the horizontal factor. And the vertical development is the role of national assimilation and constitutional continuity in the adoption of the prevailing norms and their incorporation into the historical constitution. Such progress is needed now, and to be aware of it is part of the knowledge of Hungarian public administration."[7]

[7] Magyary 1942.

THE IMPACT OF MAGYARY'S OEUVRE ON THE PRESENT

The public administration development programme

Is it really a state-of-the-art question to ask what kind of progress is needed now in the 21st century?

It is well known that Zoltán Magyary's intellectual heritage was the basis for the public administration development programme of 2011, the preamble of which states its aims for the complete reorganisation of the Hungarian state and the Hungarian public administration. This process includes, in particular, the adaptation to the new fundamental law (constitution), the application of international experience and, last but not least, the regular, multifaceted training of public administration officials.[8]

The institutional system for the implementation of the programme was set up with the Ministry of Public Administration and Justice at its centre, as provided for in the Statute. In this spirit of coherence, the National Institute of Public Administration, the Ludovika University of Public Service, the ECOSTAT Centre for Government Impact Assessment and the Institute for Public Policy Research were also established. As the Minister responsible for implementing these developments stressed, this structure was a model to be followed "in line with Magyary's legacy. He drew on a wide range of experiences at home and abroad, which he sought to apply to the practical workings of governance. His main aim was to grasp and depict complex issues and complex systems in an accessible way."[9]

Economic and scholarly approaches

Apart from outlining the programme itself, we will focus on one aspect, namely the analysis of the foreign trends in the development of public administration. At the turn of the millennium, a change of approach in Hungary – driven by a series of financial crises – led to the adoption of a neo-Weberian concept of the state and a strengthening of state involvement. This trend was all the more marked given that globalisation has dismantled welfare state governance through increased competition. In a similar vein, the post-industrial state abandoned the "night watchman" conception of the state by expanding its role in the economy during the 1929–1933 crisis.

Despite these parallels, they do not imply the dismantling of the state itself, as Professor Béla Kádár, for example, made it clear in his academic inaugural address:

> "Despite its role in the neoliberal global doctrine, the state's average share of gross domestic product concentrated in the budgets of the European Union member states increased from 33% to 40% between 1978 and 2000. At the same time, it went from 27% to 28% in

[8] Magyary Zoltán Public Administration Development Programme, version 11.0 (MP 11.0); see also Magyary Zoltán Public Administration Development Programme, version 12.0 (MP 12.0).

[9] Navracsics 2011.

> the United States and from 21% to 28% in Japan. Far from disappearing, the economic role of the state, which is integrating into international and regional organisations and has relinquished part of its former role, has been transformed from a welfare function to a training and education function."[10]

Finally, he points out that in countries with a high level of development and a knowledge-intensive development path, the complexity and interconnectedness of the various socio-economic processes entail such a wide range of stimulating and coordinating tasks that they can only be performed at the level of state organisation.

The same line of thought is exemplified by another academic, Tamás Szentes, who emphasises the responsibility of the government. In his view, our global age (our "postmodern world") is only the beginning of the transformation of the world economy into an organic system (reproduction of factors of production, consumption, information flows, financial and monetary processes) of transnationalism. By denying the policy of delinking, it advocates a more symmetrical interdependence between countries, a more targeted localisation of local advantages (with the aim of becoming the home of transnational corporations or the home base of multinationals established elsewhere), and the creation of competitive advantages as priorities for national economic policy. It recommends the development of human capital as a key instrument to achieve this.

> "Investment in the development of intellectual capital and human capital has perhaps never been more productive, and in the longer term and from the point of view of the national economy, more productive and more profitable than it is today, on the threshold of the 21st century."[11]

As well as justifying the strengthening of the role of the state and highlighting its priority tasks, this financial forecast is also significant in the context of public administration development. Sándor (Alexandre) Lámfalussy, a noted European economist, compared the European and American financial systems, highlighting the dominant role of banks in Europe. In simple terms, he argued that European financial structures have remained 'bank-centric', while the United States has moved towards the implementation of a 'market-centric' system. Lámfalussy predicted that the new structure will be three-tiered. They will be "geographically (i.e. between countries of the global world) between markets (e.g. between bond and equity markets) and between different segments of the financial sector, and will lead to the creation of a highly competitive environment across national borders between groups of financial intermediaries".[12] Thus, if international regrouping becomes a reality, megabanks covering the full range of financial services could be created in Europe, which could then compete with the "big league" U.S. investment banks. At the other pole, there could be local banks to meet

[10] Kádár 2005.
[11] Szentes 2000.
[12] Lámfalussy 2000: 6.

the service needs of households, while regional banks could emerge to meet real needs that remain difficult to define. The impact of this process on public administration, particularly with the expansion of 'remote' banking, is highly problematic, as it leads to a reduction of the traditional branch network and new interbank arrangements, not to mention an expanded scope for banking and financial services supervision within the Euro area. A development that could also cause extreme difficulties for the Hungarian banking system and financial sector is the need to meet "relevant Western standards, (which are) moving targets", and the fact that regroupings and new mergers cannot be avoided, as some of the large owners of Hungarian banks will have merged with each other by then, Lámfalussy noted. As he astutely observed: in the present and in the coming decades, "this is in fact the universal challenge facing the Hungarian economy: to integrate itself into a European economy which, with all its parts and aspects of its functioning, has embarked on a radical structural change".[13]

Rechtsstaat – The Rule of Law

According to Lámfalussy's vision sovereignty is not only a term imbued with the Enlightenment and its belief in reason, but a concept that links the state, law, identity and politics into a functioning whole. When considering the relationship between the democratic rule of law, state intervention and the militarised state, it becomes clear that we continually move between law and war. Contemporary global experience likewise confirms that the categories of the sacred and the victim cannot be abandoned. The first decades of the new century further confirm that the world of sovereignty is not about to disappear, despite renewed attempts to advance new projects of power.

In jurisprudence, it is an axiom that a state is considered lawful when its powers and activities are grounded in law. In the ideal of the *Rechtsstaat,* all activities are legally expressible. The rule of law seeks to achieve its ends through comprehensive and all-embracing regulation, erecting the guarantees it seeks to protect by enforcing its rules. *Hic et nunc,* it is worth noting the version of the rule of law that prevails beyond the Continent. The central idea of the Anglo-American ideal is justiciability, institutionalised so that any question with legal relevance can be referred to a judicial forum for a binding decision. The two systems also reflect two distinct legal cultures. Law which is based on the rule of law is underpinned by historicity, German dogmatics, codification and rabbinic procedural law, and embodies the classical doctrine of the separation of powers.

The Anglo-American model of the Rule of Law, in contrast to the continental approach, emphasises case law (precedent) by redefining principles in order to find a just solution to a given dispute. "Here, then, the general does not dominate the particular, yet the particular is not chaotic either. The particular gains its general formulation in relation to the various generalisations."[14]

[13] Lámfalussy 2000: 12.

[14] For a detailed analysis of the issue see Varga 1993: 941–950.

The two systems also differ in the way they deal with the division of power. The rule of law implements the traditional division of power, favouring a model based on parliamentary supremacy, while the American founding fathers were influenced by Montesquieu, who prioritised a different element in his seminal work on the theory of power, *The Spirit of Laws*. He stressed that the executive must have the means to stop, or limit, the legislature. The aim, therefore, is to ensure a socially desirable equilibrium. Ergo: the principle here is the organisational and personal separation of government bodies. Professor János Sári presented this difference between the two systems with crystal clear reasoning as an outstanding expert on the subject. It is worth paying attention to discussions on this topic, because in the EU's practice and communication there is an increasing call to follow the U.S. example. While it is true that the U.S. Constitution provides for the separation of bodies performing state functions, it does not, however, provide for state functions in this way, but in the opposite way. Contrary to popular belief, the founders did not build a system of government based on a separation of powers, but instead created separate institutions that share in each other's power. Without a mutual organisational sharing of functions, power-sharing cannot achieve its goal. To summarise the professor's basic monograph,

> "the U.S. Constitution did not create a system of checks and balances, but a system of checks and balances in government. […] Checks and balances as a constitutional arrangement differs from separation of powers in that it includes the element that political power must and can be checked by political power."[15]

The concept of the rule of law and the means to achieve its goals

In Europe, in 1813, Carl Theodor Welcker described the rule of law as "the Reason state leading to the highest stage of development of the advancing Enlightenment". The nation states of the 19th century were thus intended to be expressions of the rule of law in which free, democratic law and statecraft are requirements. Moreover, the constitutional constitutions that emerged sought to ensure legal certainty by guaranteeing liberty and property, human–civil rights. It became clear that these constitutions were worth "as much as the administration whose strength and honesty they guarantee", as the admonition of the time had it. It is no coincidence that the establishment of judicial control of a *contra legem* administration became the ultimate goal of the rule of law. In the words of Otto Mayer: "The rule of law is a state of well-organised administrative law."

While it would be extremely instructive to trace the history of the concept of the rule of law up to the present day, a summary of its status today would also be a good starting point and comparison for assessing the much-touted "rule of law".

[15] Sári 1995.

The rule of law as it is generally understood today is a state whose guiding principle is certainty of law and in which law is therefore the measure of the functioning of the state.

Thus, the rule of law is:

- a constitutional state which regulates the legislative process
- a legal state, which regulates the behaviour of individuals, setting up state bodies and prescribing their structure and competence
- a state that protects the law, ensuring compliance with the constitution and with the law through appropriate institutions

As Professor Werner Ogris wittily and astutely put it:

> "The elements and instruments that achieve these ends do not constitute a closed canon, they are not *numerus clausus,* but their absence results in the emptying out of the rule of law. The decisive elements are: separation of powers, the linking of the legislature to the constitution; the linking of the executive and the judiciary to the law; fundamental rights, the guarantee of legal protection by independent (public) courts; the responsibility of public bodies for the observance of the law, the prohibition of retroactivity, the prohibition of disproportionality, the protection of legitimate expectations, the clarity of the drafting and promulgation of legal provisions."[16]

The emerging legal space – The need for a new legal doctrinal system

The integration of the nation states has created an eclectic and very extensive body of EU law, based on the national legal systems of the Member States, which has been significantly supplemented and then modified, but whose theory is arguably still undeveloped.

The law of the entity that integrates the Member States, which becomes a sui generis legal entity, is therefore defined in relation to national law. Importantly, the reference to the rule of law can only ever concern the Member States.

The Union can also be regarded as a system linked to allied Member States, organised along the lines of international law, combining the competences conferred by the Member States on certain elements of their sovereignty with the competences they have been granted. A legal system has been created which is integrated into the legal system of the Member States and essentially functions as a federal state, where the democratic deficit is complemented by a constitutional deficit. This is coupled with the aforementioned fiscal treaty, which, by introducing supranational control, may call into question one of the attributes of the rule of law – the power of the national parliament to approve the budget and to authorise appropriations. These phenomena have convinced many experts in this field that the European Union needs

[16] Ogris 2010; see also Kis–Máthé 2024.

a new legal doctrinal framework. In addition to new constitutional concepts, it is essential to foster a new spirit to guide the demarcation of parallel competences.

It was therefore particularly welcome that Professor Armin von Bogdandy, called for the construction of a new dogmatic system in his work *National Legal Scholarship in the European Legal Area – A Manifesto.*

He defined the European legal area, as it already exists, as an area delineated into national legal systems, but also stressed that supranational norms already strongly influence national legal systems. Accordingly, EU membership is becoming an essential feature of the statehood of the participating states, and their previously self-contained legal systems are becoming part of a wider legal framework.[17] The initiative is certainly a welcome one – particularly given the EU's institutional turmoil – but now the legal system of thought needs to be applied to this new context in a different way, and new concepts and meanings must be introduced that go beyond the previous nation-state, rule-of-law model.

An elegant motto for the development of a common European legal area is also included in the call for scholarship in von Bogdandy's "manifesto":

> "The law of another Member State, although part of the shared European legal area, is a different part thereof and the result of a dissimilar path taken […]. The diversity within the European legal area, in general, requires accepting foreign law as foreign and counteracting the tendency to interpret these other legal systems purely through the prism of one's own system. […] It is necessary to study the basic structure of other European legal systems, but also to respect their decisive historical experiences, stages of development, and their legal as well as their scholarly styles in the perspective of the forming European legal area, and to then develop one's specific tradition in that light."[18]

This methodology aligns with the fact that Europe is a multicultural entity. The coexistence and flourishing of cultural identities are widely recognised as the key to Europe's prosperity. If the economy, whose absolute priority is growth, cannot guarantee this, then this culture and civilisation are doomed.

GLOBAL ORDER – SOVEREIGNTY

American scholar Jeremy Rabkin, albeit in the face of criticism, has argued convincingly that "the global order in the 21st century must be based on the sovereignty of states", as the only international factor that (at least potentially) combines democratic legitimacy with the ability to enforce law. In his view, international cooperation is a legitimate goal and activity, but it

[17] Cf. Tamás 2009.

[18] Von Bogdandy 2012: 622.

can only take place under conditions where there is a precise and limited transfer of power to an international territory and where states ultimately retain control.[19]

The permanence of sovereignty is important because it is the only guarantee of the conditions for democratic legitimacy, of which the promotion of good governance is an essential element. This makes it possible to create institutions that can better maintain the balance between the requirements of legitimacy and effectiveness.

A differentiated system of power-sharing

The sovereign-state and rule-of-law formula of the past nearly two and a half centuries is a model that should continue to be followed in the 21st century, but it is necessary to develop a more differentiated system of power sharing – making good use of the lessons of the post-industrial era, including the work of Magyary – in a world that is experiencing constant crises of the global order.

Sovereignty and the rule of law are complementary categories. Indeed, the existence of the rule of law is a prerequisite for civilisation. Following the logical sequence of interactions, it is clear that civilisation constitutes the defining feature of world order and that the leading states within a civilisation are the wellsprings of that order.

According to the prophecy of Carroll Quigley, who produced the most useful periodisation of the evolution of historical civilisations, "civilisations begin to decline when they no longer innovate. In modern terminology, the rate of investment: declines."[20] Experience shows that the economy must follow culture. A cultural community is a prerequisite for meaningful economic integration, which can give rise to new structures and institutions, provided that the states concerned share sufficient cultural homogeneity. It cannot be overlooked that in the past, in the classical sovereign state model, patterns of international trade were fundamentally determined by cultural patterns. Two things necessarily follow from this. First, viable regional organisations will only emerge if a cultural community exists that can sustain them; economic cooperation is rooted in common cultural traits. Second, and more seriously: without sufficient cultural cohesion, the coherence of the country itself may be at risk.[21]

Administrative efficiency and legality of implementation

The aspiration to develop a more differentiated system of power-sharing is by no means a new one. In his work, Magyary condemned the imbalance in the post-industrial state, arguing that the principle cannot be restored because of the changes in the legislative–executive functions and the proportions and the requirements of professionalism. In the early decades of the liberal

[19] Rabkin 2004; cf. Fukuyama 2006.
[20] Huntington 1996.
[21] Huntington 1996: 209–214.

era, it was sufficient to deepen the spirit of service and objectivity. By the 20th century, however, a duality had emerged: the rule of law had achieved results, and the requirement to extend the legality of enforcement to the greatest extent possible was becoming a requirement that rivalled the need for public administration to be effective. Bibó's axiom is an eloquent description of the situation: "Legality is one of the most essential factors of service, professionalism and reliability."[22] He also stressed that the pursuit of legality cannot be a never-ending process, because alongside the assumption of new tasks, "new inventions must be made to ensure that new forms of power are placed under the guarantees of justice". This is because the relationship between the two branches of power is also primarily a matter of defining and managing the different ways in which the two branches of power are perceived in terms of their social value-bearing role. In other words, administrative effectiveness is only of value as long as it is itself subject to value considerations. According to Bibó, the parliament representing the people is not suitable for judging this, and therefore the existence of a value-regulating apparatus that sets guidelines is necessary. In the modern age, the invention of such an instrument is a precondition, unlike in the Christian Middle Ages, when there was already a body for value preservation and value regulation: the ecclesiastical order.

As a parallel, it is instructive to note Magyary's statement that "in order to make public administration more effective, it is not the executive that must be strengthened, but the influence of politics on professional administration must be reduced, regardless of whether this influence is threatened by the legislature or the executive".[23]

Likewise, Bibó's 1944 statement in *Jogszerű közigazgatás* [Legitimate Public Administration], "the internal needs of modern state development […] point towards new forms of the division of state power", can be read as a programme or recommendation for today. Parallel to the extension of the sphere of effective public administration is the growing need for guarantees of legality, and parallel to the increasing scope for the executive to exercise its powers is the tendency to enhance the bodies of public opinion and to subordinate the executive to the values represented by these bodies.[24]

In his rationalisation programme, Zoltán Magyary mentioned among the tasks of academia the "constant monitoring" of international legal developments and the provision of information to the public and professional circles on the "state of progress" in the field, as there are many areas of our public administration which are difficult to compare. This warning is particularly true in our time.

Balance: Legitimacy versus competition

Francis Fukuyama, in his recently published book *America at the Crossroads. Democracy, Power, and the Neoconservative Legacy,* attempts to develop a multilateral agenda for the United States

[22] Bibó 1986.
[23] Bibó 2013: 2.; Mártonffy 1940: 280–291.
[24] Bibó 1986.

that is more realistic than pre-emptive war, and to develop a differential relationship with the global world. By rethinking the institutions of the new world order, he argues that there are not enough international institutions today to afford legitimacy to collective action. This is because, horizontally, there is a lack of accountable institutions that meet the needs of states.

The effectiveness of the formal traditional treaty-based structures (UN, World Bank, NATO) is questionable, according to Fukuyama. The author argues that informal, flexible, rapid but weakly legitimised and unaccountable forms of international cooperation can be built to overcome this, in the framework of the legitimacy versus effectiveness model. It is true that the new formations are uncertain in terms of legitimacy, accountability and transparency, and that a balance between legitimacy and effective competition has not yet been achieved, although the latter is a precondition of globalisation.

The problem is that the contradiction cannot be resolved by theoretical arguments, while military interventions are particularly difficult to justify.

At the same time, the situation is clearer for the EU core countries, which previously rejected the European Constitution with a 'no' vote, in favour of looser alliances based on national sovereignty and diversity.

However, examining the Rabkinian position on sovereignty, it can be concluded that if a sovereign state with the capacity to uphold democratic legitimacy and to enforce the law voluntarily cedes certain competences to a body which is also accepted by another sovereign, this does not violate its legitimacy, provided it retains the right of substantive control. Thus, for example, in the EU relationship, economic regions, regional centres and areas of reciprocity within and across borders can be created between individual sovereigns by a unanimous decision of will. Structures born from the use of the full range of sovereignty can correspond to the economic integration promoted by the cultural communities mentioned above. The aim of this, the so-called "integration of the social and economic MacDougall report", is to redistribute more income from richer regions to poorer ones in order to develop them.

This seems to us to be the only experimental model that can be used, unlike those proposed by Fukuyama and other observers, who prefer shared sovereignty, for example, in cases where one state offers longer-term government and other forms of assistance to another in exchange for certain uncontrollable services.

However, the current final assessment of alternative proposals for solutions is reassuring, with the eminent researcher arguing that "there is no legitimate expropriation system at present, and to have one, one must be devised."[25]

It is clear from our review that national administrations face extraordinary challenges in the global world order. New approaches from political science are needed, and this requires thorough and systematic institutional research, and at least the kind of professional cooperation that Zoltán Magyary and his team have developed. After all, the "temptations of this world" are great, and it is perhaps no coincidence that the Italian Professor Francesco Galgano is

[25] Fukuyama 2006.

of the opinion that the administration organised on the basis of the nation state is no more than a historical relic.[26]

The historiography of Hungarian public administration – the achievements of contemporary public administrators and of domestic and foreign theoreticians and practitioners – should suffice to belie this negative opinion.

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[26] Galgano 2005.

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PROTECTING NATIONAL SOVEREIGNTY AND CONSTITUTIONAL IDENTITY – TWO SIDES OF THE SAME COIN?

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The protection of sovereignty and constitutional identity as factors in the relationship between the European Union and its Member States has recently become a topical issue. The constitutional courts of the Member States have developed their case law concerning European integration essentially with reference to these two concepts. However, a number of unresolved questions have also arisen in relation to constitutional identity and national sovereignty. On the one hand, the specific elements of constitutional identity vary from one Member State to another. On the other hand, sovereignty has acquired a somewhat new meaning precisely in the process of European integration. The aim of the following paper is to explore two concepts, i.e. the protection of sovereignty and identity control, by analysing the relationship between them. In addition to presenting the relevant legal literature, this holistic review will also explore the relevant case law of the constitutional courts of the Member States, as certain constitutional courts have examined the relationship between national sovereignty and identity control in depth.

Keywords:
national sovereignty, constitutional identity, primacy of EU law, transfer of competencies, case law of the constitutional courts of the Member States

INTRODUCTION

The relationship between the European Union and the Member States is one of the most researched fields in current constitutional law literature. Upon their accession to the European Union (hereinafter: EU), Member States transfer certain competencies to the Union in order to achieve some common objectives. These common objectives – enshrined in Article 2 of the Treaty on the European Union (hereinafter: TEU) – include the promotion of peace, offering

an area of freedom, security and justice, combating social exclusion and discrimination, and facilitating the internal market. Moreover, the Member States also undertook to respect the primacy of EU law over contrary domestic law provisions. Nevertheless, this delegation of powers and the primacy of EU law must not lead to an abdication of national sovereignty. According to some scholars, the transfer of competencies to the EU "is neither a full transfer of sovereignty, nor can it be, as it would lead to the dissolution of the statehood of those who compose the Union, and the latter would turn into a federal state, which is not the reality, nor an explicit wish of the (majority) of the states".[1]

For this reason, the constitutional courts of the Member States have developed a number of control mechanisms over the last few decades to protect those national competencies which are of particular importance to them and to safeguard the supremacy of their national constitutions. While these constitutional courts, in their case law, highlight the importance of EU integration and taking the interpretation of national constitutions that is favourable to the EU is the main rule, they also underline that some regulatory areas are so important for the Member States that, given their cultural, social, historical or even economic specificities, the EU cannot interfere in their regulation.

The three main control mechanisms[2] developed are fundamental rights control, *ultra vires* control, and identity control.[3] The first of these three mechanisms to emerge was fundamental rights control, which appeared in the practice of the Federal Constitutional Court of Germany (which can be generally considered as being at the forefront of the development of these control mechanisms), following the *Solange I*[4] and *Solange II*[5] judgments. Later *ultra vires* and identity control also emerged. In addition to these three control mechanisms, the constitutional courts of the Member States have also invoked the protection of national sovereignty to a significant extent in nearly all cases where they have dealt with European integration. However, the relationship between the protection of national sovereignty and identity control needs to be explored and analysed in more depth, since, on the one hand, these two concepts (and identity control in particular[6]) have been widely used by the constitutional courts of the Member States in recent years and, on the other hand – as will be seen below – the two concepts share a number of similarities.

After a brief overview of the evolution of the protection of national sovereignty in the context of European integration and identity control, this paper will focus on the relationship between them. In making this comparison, it is essential to include the relevant case law of the constitutional courts of the Member States, in addition to considering some of the most prominent views from the legal literature. Although the case law varies from one Member

1 Varga 2019: 453. A similar conclusion was reached by the Constitutional Court of Hungary in Decision 22/2016 (XII. 5.) AB.

2 Other mechanisms were also created, such as the *controlimiti* doctrine developed by the Constitutional Court of Italy.

3 Blutman 2017: 7–9.

4 BVerfGE 37, 271 Judgment of the Federal Constitutional Court of Germany.

5 BVerfGE 73, 339 Judgment of the Federal Constitutional Court of Germany.

6 Blutman 2017: 9.

State to another (especially in the context of the protection of constitutional identity, where the content of the constitutional identity of each Member State differs to some extent), some trends that highlight common features can also be discerned.

THE EMERGENCE OF THE PROTECTION OF NATIONAL SOVEREIGNTY AND IDENTITY CONTROL

The foundations of the modern concept of national sovereignty were laid down in the Peace of Westphalia[7] and essentially entailed a prohibition of interference by others in the internal affairs of a state.[8] In the current understanding of sovereignty, it is necessary to distinguish between its internal and external dimensions.[9] The internal dimension is equivalent to the supreme power of the state, i.e. the right of a state to regulate all matters within its territory with respect to all persons. The external dimension refers to the independence of states and the equality between them.

In today's globalised world, this approach to sovereignty (as a result of the transfer of national competencies to international organisations) has come under criticism. It is worth noting, however, that by acceding to the EU, Member States have merely transferred certain sovereign competencies to the EU, rather than surrendering their sovereignty.[10] A transfer of national competencies is not equivalent to a transfer of sovereignty.[11]

The protection of national sovereignty appeared most visibly in the practice of the Federal Constitutional Court of Germany, notably in the *Maastricht*[12] and *Lisbon*[13] judgments. In this context, it is worth mentioning that according to Article 23 (1) of the Basic Law of the Federal Republic of Germany, with the consent of the Bundesrat, Germany can transfer sovereign powers by law to the EU. However, the establishment of the EU or any changes in its treaties that amend the Basic Law shall respect the eternity clause contained in Article 79 (3).

In its *Lisbon* judgment, the Federal Constitutional Court emphasised in relation to sovereignty that "[t]he Basic Law abandons a self-serving and self-glorifying concept of sovereign statehood and returns to a view of the state authority of the individual state which regards sovereignty as 'freedom that is organized by international law and committed to it'".[14]

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7 Moreover, "[u]nder the Westphalian paradigm which emerged in Europe with the formation of territorial states in the 17th century, and was spread by Europe around the world in the ensuing centuries, two separated body of laws governed action by states – constitutional law, regulating the exercise of public power within sovereigns; and international law, prescribing rules of conduct among sovereigns." Fabbrini 2013: 9.

8 Czubik 2022: 98.

9 Jakab 2016: 98; Czubik 2022: 101; von Bogdandy 2004: 887.

10 Thus, for example, the term "sovereign powers" used by the Federal Constitutional Court of Germany is appropriate, as it precisely separates national competencies from sovereignty as a whole.

11 Czubik 2022: 106. Moreover, one of the most important characteristics of sovereignty is its indivisibility. See Florea 2023: 171.

12 BVerfGE 89, 155 Judgment of the Federal Constitutional Court of Germany.

13 BVerfGE 123, 267 Judgment of the Federal Constitutional Court of Germany.

14 BVerfGE 123, 267 Judgment of the Federal Constitutional Court of Germany, Reasoning 223.

At the same time, in relation to the sovereignty challenges of EU integration, the court pointed out that

> "[t]he Basic Law does not grant powers to bodies acting on behalf of Germany to abandon the right to self-determination of the German people in the form of Germany's sovereignty under international law by joining a federal state. Due to the irrevocable transfer of sovereignty to a new subject of legitimation that goes with it, this step is reserved to the directly declared will of the German people alone."[15]

Moreover, the Federal Constitutional Court also emphasised that the principle of democracy sets further content-related limits on the transfer of sovereign powers.[16] Based on all these arguments, as a partial conclusion the reasoning of the judgment stated that "[i]t follows from the continuing sovereignty of the people […] and from the circumstance that the states remain the masters of the Treaties, that […] the member states may not be deprived of the right to review compliance with the integration programme".[17]

In connection with identity control, it is particularly important to address the concept of constitutional identity itself. As there is no generally accepted definition of the concept, existing approaches to constitutional identity take as their starting point the findings of the literature and the case law of the constitutional courts of the Member States and the Court of Justice of the European Union.[18] Based on all these findings, constitutional identity can be summarised as a set of values by which a state identifies itself and distinguishes itself from other states. The main source of the elements of a nation's constitutional identity is its constitution itself. However, in addition to constitutions, a number of other factors also influence constitutional identity, such as the social structure of the given state, its culture, or its history.[19] For this reason, the sources of the elements of constitutional identity are classified in the relevant legal literature as "constitutional norms or meta-norms".[20] Nevertheless, as some scholars have pointed out in the legal literature, it is not the constitutions themselves that have an identity, but the society they stem from, whose identity is merely reflected in a given constitution.[21] The constitutional identity of a state enjoys both internal and external protection.[22] Whilst internally, constitutional identity has to be protected against future constitutional amendments, the most explicit manifestation of its external protection is identity control.

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15 BVerfGE 123, 267, Reasoning 228.
16 BVerfGE 123, 267, Reasoning 247.
17 BVerfGE 123, 267, Reasoning 334.
18 Syryt 2023: 51.
19 The impact of historical experience on constitutional identity was already noted by one of the fathers of the concept, Michel Rosenfeld. See Rosenfeld 1995: 1063.
20 Syryt 2023: 52.
21 Csink 2015: 135.
22 Orbán 2020: 25–26.

The basis for identity control was also laid down by the Federal Constitutional Court of Germany in its *Lisbon* judgment.[23] Nonetheless, the *European Arrest Warrant* judgment[24] and the *OMT* judgment[25] are much more relevant in the context of this control mechanism. On the one hand, in its *European Arrest Warrant* judgment, the Federal Constitutional Court underlined that "the scope of precedence of application of European Union Law is mainly limited by the Basic Law's constitutional identity".[26] However, in this judgment the Federal Constitutional Court of Germany, after having established these limits on primacy, adopted a non-confrontational stance, noting that the protection of human dignity is, under certain conditions, compatible with the European Arrest Warrant. Moreover, according to some scholars, the dialogue between the two courts in this case ended with a positive outcome.[27]

On the other hand, in the *OMT* judgment, the German constitutional court emphasised that

> "[t]he fundamental elements of the principle of democracy enshrined in Art. 20 secs. 1 and 2 GG are part of the constitutional identity of the Basic Law, which has been declared to be beyond the reach of constitutional amendment and of European integration".[28]

Based on these observations two conclusions can be deduced. Firstly, the main limit of the primacy of EU law is the protection of constitutional identity. Secondly, the values that provide the content of the German constitutional identity cannot be undermined in the process of European integration. Interestingly, in the context of identity control, the Federal Constitutional Court has not addressed either the principle of openness to EU law or the issue of whether it can refer for a preliminary ruling to the Court of Justice of the European Union while also practicing identity control or not.[29]

With regard to identity control, it is salient to underline that the protection of the identity[30] of the Member States is also provided for in Article 4 (2) of the TEU,[31] which states that "[t]he

23 Callies 2020: 171.

24 2 BvR 2735/14 Order of the Second Senate of 15 December 2015 of the Federal Constitutional Court of Germany.

25 BVerfGE 142, 123 Judgment of the Federal Constitutional Court of Germany.

26 BVerfGE 142, 123 Judgment of the Federal Constitutional Court of Germany, Reasoning 41.

27 Dragoş–Laurenţiu 2022: 96.

28 BVerfGE 142, 123 Judgment of the Federal Constitutional Court of Germany, Reasoning 121.

29 Callies 2020: 171.

30 Nevertheless, it is important to note that while national constitutional courts refer to constitutional identity, the TEU provides for the protection of national identity. The relationship between the two terms has been extensively examined in the legal literature. See for example Drinóczi 2020: 105–130. Even though some scholars consider that national identity and constitutional identity are in an "antecedent-consequence" relationship (Drinóczi 2020: 118), I would suggest that in the relationship under scrutiny in this paper, the two concepts refer to the same content and to the same set of core values. For a different opinion see Téglási–Boros 2022: 424–425.

31 It is worth pointing out that the protection of the Member States' identity at EU level goes back to the Maastricht Treaty, Article F of which stated that "[t]he Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy". Moreover, an interpretation of this provision in line with the Treaty as a whole also reflects that the identity of the Member States is shaped by ethnic, linguistic, cultural, and religious factors. Article 4 (2) TEU, by contrast, focuses much more on the constitutional elements of identity. See Lupu 2022: 295–297.

Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government". Some scholars have argued that this provision implies that "Member States can define their own fundamental political and constitutional structures and principles".[32] Moreover, according to another opinion expressed in the legal literature, Article 4 (2) means "that the process of constitutional integration within the EU is limited precisely by the fundamental political and constitutional structures of the Member States".[33] At the same time, it is also important to bear in mind Article 2 (3) of the TEU, which provides that the EU "shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced".

The protection of the identity of Member States is likewise reflected in the case law of the Court of Justice of the European Union. In this context, it is worth highlighting the *Sayn-Wittgenstein* judgment,[34] in which the Court of Justice held that – taking into account the historical specificities of Austria – the Law on the abolition of the nobility is an element of Austrian national identity.[35] Another relevant issue concerning the protection of the identity of the Member States arose in the so-called *Runevic-Vardyn* case.[36] In its judgment on that case, the Court of Justice emphasised that the official national language of a Member State is an inherent part of its identity and thus it has to be protected.[37] A similar conclusion was reached by the Court of Justice in the *Anton Las* judgment.[38]

At the same time, one has to take into account that the Court of Justice "is not in the position to determine what is and what is not part of the constitutional identity of a Member State".[39] The content of the constitutional identity of each Member State has to be determined by the state's own Constitutional Court, as "[c]onstitutional courts are best placed to be familiar with national evolutions when analysing complex issues arising in the relationship between national and EU law".[40] Meanwhile, national constitutional courts must work in close cooperation with the Court of Justice, as it is the latter Court's competence to examine the compatibility of EU law with the constitutional identity as established by national constitutional courts.[41] Thus, the relationship between the constitutional courts of the Member States and the Court of Justice must be based on mutual trust and loyal cooperation.

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32 Motoc 2022: 324.

33 Veress 2023: 345.

34 Judgment of the Court of 22 December 2010 in Case C-208/09 Ilonka Sayn-Wittgenstein v. Landeshauptmann von Wien.

35 Judgment of the Court of 22 December 2010 in Case C-208/09 Ilonka Sayn-Wittgenstein v. Landeshauptmann von Wien, Reasoning 80.

36 Judgment of the Court of 12 May 2011 in Case C-391/09 Małgorzata Runevic-Vardyn and Lukasz Pawel Wardyn v. Vilniaus miesto savivaldybes administracija and Others.

37 Judgment of the Court of 12 May 2011 in Case C-391/09 Małgorzata Runevic-Vardyn and Lukasz Pawel Wardyn v. Vilniaus miesto savivaldybes administracija and Others, Reasoning 86.

38 Judgment of the Court of 16 April 2013 in Case C-202/11 Anton Las v. PSA Antwerp NV, Reasoning 26.

39 Besselink 2010: 45.

40 Teodoroiu–Enache–Safta 2019: 45–46.

41 Besselink 2010: 45.

THE RELATIONSHIP BETWEEN THE PROTECTION OF NATIONAL SOVEREIGNTY AND IDENTITY CONTROL

The relationship between the protection of national sovereignty and identity control has been the subject of much attention in recent years, both in the legal literature and in the case law of the constitutional courts of the Member States. However, a number of – often slightly divergent – views on this relationship have emerged.

Anita Schnettger argues that constitutional identity is not equivalent to the sovereignty or the autonomy of the Member States.[42] Nevertheless, she acknowledges that "national constitutional identity and sovereignty are two connected concepts located on different levels of abstraction and discussion".[43] Schnettger concludes, however, that the protection of the identity of the Member States is essentially a practical implementation of the shared sovereignty between the EU and the Member States.[44] Moreover, in this sense, "[b]y transferring sovereign rights to the EU, the Member States confer sovereign power upon the EU".[45]

This approach raises some objections, however. If the existence and operation of an actor (an international organisation) are entirely dependent on the decision of other actors (Member States), it does not have its own sovereignty.[46] This is also the case for the EU: its existence, the conditions for its functioning, and the level of integration all depend on the decisions and will of the Member States.[47] On the other hand, as already mentioned above, one of the main characteristics of sovereignty is its indivisibility. For these reasons, *inter alia,* it is problematic to derive from this supposed shared sovereignty between the EU and the Member States the link between the protection of national sovereignty and identity control.

This relationship has also been examined in the case law of the constitutional courts of the Member States in a number of instances. As early on as in its Lisbon judgment, the Federal Constitutional Court of Germany held that

> "[t]he Basic Law strives to integrate Germany into the legal community of peaceful and free states, but does not waive the sovereignty contained in the last instance in the German constitution as a right of the people to take constitutive decisions concerning fundamental questions as its own identity".[48]

42 Schnettger 2020: 24.
43 Schnettger 2020: 24.
44 Schnettger 2020: 24.
45 Callies–Schnettger 2020: 353.
46 Czubik 2022: 109.
47 This was explicitly highlighted by the Constitutional Tribunal of Spain as well in Declaration 1/2004, in which it stated that "the primacy operates with regard to the competences transferred to the Union by sovereign will of the State and also sovereignly recoverable by means of the procedure of 'voluntary withdrawal'". For details see Declaration 1/2004 of the Constitutional Tribunal of Spain, available in English at: https://www.tribunalconstitucional.es/ResolucionesTraducidas/Declaration%201-2004.pdf
48 BVerfGE 123, 267 Judgment of the Federal Constitutional Court of Germany, Point 340.

On the basis of this reasoning, it can be concluded that the integration of Germany into the EU cannot infringe its constitutionally enshrined sovereignty, nor upon the right of the people to decide on important issues. The Federal Constitutional Court regarded the reservation of this right to make decisions on fundamental issues as an inherent part of the identity of Germany. The link between the protection of sovereignty and identity is neatly illustrated by this line of interpretation. Nonetheless, in the reasoning put forward by the Federal Constitutional Court, it is identity that is at issue, not constitutional identity as such.

The Constitutional Tribunal of Poland is another strong advocate of both the protection of national sovereignty and of identity control. For example, in a press release issued in connection with case P 7/20 the Constitutional Tribunal stated that "the principle of the Nation's sovereignty rules out any possibility of subjecting the fundamental norms making up the constitutional identity to the decisions and determinations of such bodies whose members are not elected and overseen by Polish citizens".[49] Thus, the elements of constitutional identity can only be regulated by bodies that are elected and supervised by the people. Based on this observation, it is precisely the sovereignty of a Member State that makes it necessary to protect its constitutional identity.

Moreover, in its Lisbon judgment, the Constitutional Tribunal highlighted that, based on the provisions of the Constitution of Poland, "the sovereignty of the Republic of Poland is expressed in the inalienable competences of the organs of the state, constituting the constitutional identity of the state".[50] Accordingly, the manifestation of the sovereignty of the State is in the very same inalienable powers that are elements of its constitutional identity. In summarising the relevant findings of the Constitutional Tribunal of Poland, Aleksander Stepkowski concluded that "[t]he concept of the protection of constitutional identity is rooted in the protection of the national sovereignty, which is considered a fundamental constitutional value".[51] The Constitutional Tribunal of Poland attaches particular importance to the close relationship between the protection of national sovereignty and identity control. The basis of this close relationship lies precisely in the fact that the protection of the Polish constitutional identity is based on the sovereignty of Poland. At the same time, it is salient to underline that the Constitutional Tribunal does not equate the two concepts.

The most extensive and multi-layered examination of the relationship between the protection of national sovereignty and identity control has been carried out in the case law of the Constitutional Court of Hungary. In a decision issued in 2016, the Constitutional Court ruled that the joint exercise of competencies with the EU has two limits: "[o]n the one hand the joint exercise of a competence shall not violate Hungary's sovereignty (sovereignty control), and on

[49] Press release of the Constitutional Tribunal of Poland after the hearing in Case P 7/20. Available in English at: https://trybunal.gov.pl/en/news/press-releases/after-the-hearing/art/11588-obowiazek-panstwa-czlonkowskiego-ue-polegajacy-na-wykonywaniu-srodkow-tymczasowych-odnoszacych-sie-do-ksztaltu-ustroju-i-funkcjonowania-konstytucyjnych-organow-wladzy-sadowniczej-tego-panstwa

[50] Judgment of 24 November 2010 Ref. No. K 32/09 of the Constitutional Tribunal of Poland, Reasoning 2.1.

[51] Stepkowski 2023: 245.

the other hand it shall not lead to the violation of constitutional identity (identity control)."[52] Thus, the Constitutional Court interpreted both the protection of national sovereignty and identity control primarily in the context of the delegation and joint exercise of competencies.

It is also noteworthy that, in the Constitutional Court's understanding, Hungary has not waived its constitutional identity by joining an international organisation, "Hungary can only be deprived of its constitutional identity through the final termination of its sovereignty, its independent statehood".[53] In this way, the Constitutional Court, in a sense, associated the need to protect constitutional identity with the sovereignty of a state. Moreover, it explicitly stated that "sovereignty and constitutional identity have several common points".[54] This finding of the Constitutional Court of Hungary was criticised by some commentators on the grounds that although the decision declares the existence of common points between sovereignty and constitutional identity, it does not interpret them in more depth, nor does it provide a precise distinction between the two concepts.[55]

Finally, a detailed analysis of the relationship between the protection of national sovereignty and identity control was made by the Constitutional Court of Hungary in Decision 32/2021 (XII. 20.) AB (therefore the above criticism of the legal literature has, in my opinion, since been rendered obsolete). In its Decision, the Constitutional Court emphasised that "constitutional identity and sovereignty are not complementary concepts, but are interrelated in several aspects".[56] This finding was based on four observations, which can be summarised as follows.

- 1st observation: "the safeguarding of Hungary's constitutional identity, also as a Member State within the European Union, is fundamentally made possible by its sovereignty."[57] This finding is based on the fact that the sovereignty of a Member State enables it to safeguard its constitutional identity. Moreover, even before the first decision of the Constitutional Court (from 2016), some Hungarian scholars had already formulated the position that in order to protect constitutional identity, the preservation of sovereignty needs to be taken as a basis, or as a starting point.[58] A similar conclusion was reached by the Constitutional Tribunal of Poland in its case law cited above. Based on this observation of the Constitutional Court "the protection of constitutional identity is primarily a matter of protection of sovereignty".[59]
- 2nd observation: "constitutional identity manifests itself primarily through a sovereign act, adopting the constitution."[60] Indeed, one of the main sources of a state's constitutional identity is its Constitution, which – by virtue of the specific competence of the *pouvoir constituent* – is itself a manifestation of sovereignty. Nonetheless, "constitutional

52 Decision 22/2016 (XII. 5.) AB of the Constitutional Court of Hungary, Reasoning [54].
53 Decision 22/2016 (XII. 5.) AB of the Constitutional Court of Hungary, Reasoning [67].
54 Decision 22/2016 (XII. 5.) AB of the Constitutional Court of Hungary, Reasoning [67].
55 Kéri–Pozsár–Szentmiklósy 2017: 12.
56 Decision 32/2021 (XII. 20.) AB of the Constitutional Court of Hungary, Reasoning [99].
57 Decision 32/2021 (XII. 20.) AB of the Constitutional Court of Hungary, Reasoning [99].
58 Varga Zs. 2016: 11.
59 Orbán–Szabó 2022: 109.
60 Varga Zs. 2016: 11.

identity does not require a written constitution but constitutional norms".[61] Moreover, some "pre-, supra- or extra-constitutional factors" also shape constitutional identity.[62] Hence, it goes without saying that while the primary manifestation of constitutional identity is expressed in the form of national constitutions, other forms must also be taken into account.[63]

– 3rd observation: "taking into account Hungary's historical struggles, the aspiration to safeguard the country's sovereign decision-making powers is itself part of the country's national identity and, through the recognition by the Fundamental Law, of its constitutional identity as well".[64] Several observations should be made in relation to this finding of the Constitutional Court. First, the Constitutional Court interpreted Hungary's power to make sovereign decisions as part of its constitutional identity. Second, the Constitutional Court specifically highlighted the importance that the safeguarding of this sovereign decision-making power has had throughout the history of Hungary. In this way, the Constitutional Court took a historical approach, through which it interpreted not only constitutional identity but also the sovereignty of Hungary. Third, it is noteworthy that the Constitutional Court somehow distinguished national identity from constitutional identity, emphasising that sovereign decision-making power – as part of Hungary's national identity – became part of the constitutional identity of Hungary when it was incorporated into the Fundamental Law. A similar "antecedent-consequence" relationship between national and constitutional identity has been noted by several scholars.[65]
– 4th observation: "the main features of State sovereignty recognized in international law are closely linked to Hungary's constitutional identity due to the historical characteristics of our country."[66] As already mentioned above, the contemporary concept of sovereignty can be divided into two main elements, external and internal sovereignty. If one seeks a more precise definition of these elements, it could be stated that internal sovereignty refers to the "state's exclusive power over its own territory and its own citizens, including the internal freedom of shaping economic relations" whilst external sovereignty includes "the external activity of the state – entering into alliances, establishing diplomatic relations, creating external economic ties, etc.".[67] In making this fourth observation, the Constitutional Court emphasised that all these features of state sovereignty are linked to the constitutional identity of Hungary. Thus, the exclusive right of Hungary to legislate on its own territory for all persons and in all

61 Syryt 2023: 52.
62 Dumbravă 2024: 66.
63 This aspect was pointed out by the Constitutional Court of Hungary itself when it defined the achievements (*acquis*) of the historical constitution as one of the main sources of the constitutional identity of Hungary.
64 Decision 32/2021 (XII. 20.) AB of the Constitutional Court of Hungary, Reasoning [99].
65 Drinóczi 2020: 118.
66 Decision 32/2021 (XII. 20.) AB of the Constitutional Court of Hungary, Reasoning [99].
67 Czubik 2022: 100.

matters, and Hungary's international independence and equality, are closely linked to its constitutional identity.

Based on these four observations of the Constitutional Court, some scholars have argued that constitutional identity and sovereignty are in a part-to-whole relationship, and the core of sovereignty is part of constitutional identity.[68] These authors conclude that "identity should be understood as the right to self-determination in relation to the most fundamental questions of sovereignty and the basic functions of the state".[69]

Last, but not least, at the end of 2024,[70] the Constitutional Court of Hungary once again issued a Decision in which the relationship between sovereignty and constitutional identity was analysed. In the said Decision, the Constitutional Court underlined that both constitutional identity and sovereignty are fundamental values that are "not created by the Fundamental Law but merely recognised by it".[71] At the same time, the Court also emphasised that – due to the fact that sovereignty lies with the people – any body entitled to exercise power or take decisions must have democratic legitimacy as a consequence of the rule of law clause, which is at the core of constitutional identity.[72] This Decision of the Constitutional Court suggests that the relationship examined in this study will be subject to further interpretation in the near future.

CONCLUSION

The concept of constitutional identity has become a central feature of the discourse on multilevel constitutionalism, and – within it – the discussion of the relationship between the EU and national legislation. The constitutional courts of the Member States are increasingly invoking the protection of constitutional identity in relation to the absolute primacy of EU law and the exercise of certain EU competencies. Thus, identity control has become one of the most widely used constitutional mechanisms. At the same time, the concept itself is not free of dogmatic debate, as both its precise definition and its content are subject to controversy.

On the other hand, the concept of sovereignty has a lengthy and eventful history and, thanks to its internal and external dimensions, its fundamental elements are widely accepted. However, globalisation has brought new challenges to the traditional approach to sovereignty.[73] Hence, the aim of this paper was to explore two concepts that are topical today, by analysing

68 Orbán–Szabó 2022: 109.
69 Orbán–Szabó 2022: 109.
70 Decision 20/2024 (XI. 28.) AB of the Constitutional Court of Hungary. In connection to this Decision, one has to highlight the relevance of the parallel reasonings of judge András Patyi and judge Zoltán Márki.
71 Decision 20/2024 (XI. 28.) AB of the Constitutional Court of Hungary, Reasoning [49].
72 Decision 20/2024 (XI. 28.) AB of the Constitutional Court of Hungary, Reasoning [125].
73 Fabbrini 2013: 5, 9.

the relationship between them (i.e. between the protection of national sovereignty and identity control).

With regard to the relationship between the protection of national sovereignty and identity control, both the relevant legal literature and the case law of the constitutional courts agree that while the two concepts are not identical and cannot be equated, they are interconnected at several points. From the above discussion, it can be concluded that the most pivotal link between them concerns their relation to the transfer of national competencies to the EU. According to the findings of various constitutional courts, it is not possible to transfer sovereign powers to the EU that would infringe the constitutional identity of the Member States. Member States are determined to retain the right to regulate the meaning and content of values linked to their constitutional identity. Moreover, the protection of a Member State's constitutional identity is fundamentally made possible by the sovereignty of the given State. As the Constitutional Court of Hungary highlighted in its case law: a Member State "can only be deprived of its constitutional identity through the final termination of its sovereignty".[74] Thus, it is also pivotal to clearly differentiate between the transfer of competencies and the transfer of sovereignty.

In addition to this interconnection, there are several other links between the two concepts, as highlighted by a Decision of the Constitutional Court of Hungary. Exploring these links between the protection of national sovereignty and identity control can contribute not only to a deeper understanding of the two concepts but also to a clearer picture of the relationship between the EU and the Member States and to creating a balance between the interests of further integration and of the protection of the sovereignty of the Member States.

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PUBLIC LAW DEREGULATION AND DECENTRALISATION IN THE LEGAL REGULATION OF THE PUBLIC SERVICE[1]

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Act CXXV of 2018 on Government Administration (hereinafter: Kit.) brought about a paradigm shift in Hungarian public service law. It has facilitated significant public law deregulation and decentralisation. Although it deliberately dismantled the former career ladder, it has been slow to set up new career paths in its place. Employers have been entrusted with the task of re-regulating their personnel-related activities. Thus, the main criticism of the law is levelled at what it omits. The transformation of the career framework ought to take place in a spirit which is consistent with the legislative objectives of the Kit. To this end, the practice of Anglo-Saxon countries is most worth taking into consideration, so we examined in detail the approaches taken by these countries to manage the risks posed by decentralisation. On the basis of this survey, we have drafted a public service HRM development framework of a longer-term nature which ensures the success of the process. Thus, bodies can benefit from the flexibility resulting from the recent decentralisation and deregulation while also being prepared to manage the related risks. Both these results will ensure high organisational efficiency.

Keywords:
public service law, public service reform, Anglo-Saxon model, selection, remuneration, excellence model

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INTRODUCTION

Act CXXV of 2018 on Government Administration (hereinafter: Kit.) has brought about a paradigm shift in Hungarian public service law.[2] It has allowed significant public law *deregulation* and *decentralisation* of personnel (in terms of regulations and competence). It has terminated the career-based system – abolishing seniority, classification and merit-based promotion – but it has not established a new personnel system in its place. In accordance with international trends, it would have seemed logical for the legislator to replace the career-based system with a job-scope-based personnel system but it opted not to take that road. It ignored the job-scope-based system to such extent that the Kit. does not even use the term "job scope".[3] At the same time, however, position is the basis of all its pragmatic elements. Job scope is the smallest building block of an organisation, so a lack of job scope reduces the efficiency of organisational functioning.

Kit. is in fact an unfinished law. Although it has consciously dismantled the existing career system, it has been slow to set up a new personnel system in its place. For the lack of anything better, employers were entrusted with the re-regulation of their personnel activities. Thus, the main criticism which can be levelled at the law concerns what was left out of it.

Deficient legislation is creating a civil service landscape in which *local status rules* with different content are being drawn up by different bodies, legal guarantees are being weakened and, at the same time, the power of employers is being strengthened. As a result, the disadvantages of the transformed system will be experienced first and foremost, while only a few of its benefits in terms of greater flexibility and rapid adaptability will be noticeable. Without modification, the law is likely to be counterproductive and therefore its original objectives will not be achieved. To avoid this, the transformation process started by the Kit. must be completed in a spirit that is consistent with the legislative objectives of the Kit.

THE PARADIGM SHIFT OF THE KIT.

The main aim of the paradigm shift of the Kit. was to abolish the career-based model in public service in Hungary, and to bring about far-reaching public law deregulation and regulatory decentralisation.[4] It ended legislative level regulation in several areas and referred the necessary decisions and the creation of rules to the employer's competence. Regarding its specific *pragmatic elements,* this has led to the following more substantial changes.

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2 In our study, civil service law is governed by Act XXIII of 1992 on the Legal Status of Civil Servants (Ktv.), as well as the legal status laws that will replace them later, and their implementing legislation.

3 It appears in the Kit. just between the rules of its extension to a new governmental administrative body (Section 1/A), the rules of the change of legal relationship (Section 114), and the transitional provisions (such as Section 283).

4 For an organisational legal approach to decentralisation, see e.g. Hegyesi 2024: 1456–1457.

a) Due to deregulation and decentralisation, the regulation competence of employers has increased, which allows for *local characteristics*. In their public service policy, the government administration bodies have created internal rules on nine subject areas (including the procedure for the establishment, amendment, termination and dissolution of government employment relationship; the prohibition of co-employment and conflicts of interest for government officials; and working time, rest time and leave).[5] In the changed legal environment, organisations are developing their own human resource management (hereinafter: HRM) processes (such as for recruitment, selection, promotion, remuneration, appraisal, development, etc.) autonomously. This is not only an opportunity, but also a constraint, since in the absence of the previous legal standards, human resource management would remain unregulated.

The policy is one of *self-regulation* on the part of the employer, which generates rights and duties. By accepting an appointment, the provisions of the public service policy are incorporated "automatically" into the content of the legal relationship between the employer and the government official, hence it is important that the policy meets the requirements of good faith and fair dealing and that guarantees of these are provided. In labour law, an internal policy "(like GTC) can be considered 'unfair' if it causes disproportionate harm to the employee(s)".[6]

b) Decentralisation leads to different rules being established for each body. However, deregulation and decentralisation are *not values in themselves* but merely opportunities to increase organisational performance through greater flexibility. To achieve this improvement, human resource management should be adapted to the changed regulatory paradigm.

The *old paradigm* centred around rules of law that regulated the status of government officials and the conditions of their employment, i.e. certain HRM processes were developed by organisations within a single legal framework, with the main management expectation regarding the activities of personnel being the implementation of the legal provisions while taking employer measures in accordance with the law. In contrast, the *new paradigm* is based on applying the relations of the competitive sphere of the market. The human resource management of organisations is expected to fall within the general framework established by the legal standards, but specific individual rules are defined by internal regulations – *guidelines* – or by an organisation's own *code of conduct*.[7] In terms of their legal effect, these can also be held accountable, and an employee may even be dismissed for violating them, or a legal dispute may be initiated against the employer. However, internal regulations *lack stability and predictability* since the employer can change them at any time. If a certain stability and predictability does exist, this is due to the fact that it is in the interest of both the employee and the employer to maintain employment in the long term. This is, nevertheless, not a legal but an economic constraint, which is not applicable in public administration.

5 Section 19 of Government Decree 88/2019 (IV. 23.).
6 Gyulavári–Kun 2013: 15.
7 Kiss 2019a: 19.

The main *disadvantage* of a decentralised regulatory system is that it lacks a unified government personnel policy, as each body independently formulates its own policies on recruitment and selection, remuneration, development, etc. Planning of manpower needs is also done by each body independently. The absence of a centralised personnel policy makes it impossible to prevent the system from becoming atomised. Thus, so-called economies of scale cannot be converted into efficiency gains.

Drawing comparisons in the *international arena,* it can be seen that countries following the Anglo-Saxon model (i.e. the approach typically taken in English-speaking countries) also face similar problems, thus it is worth examining public service regulation in these countries in detail to identify system-specific solutions to these problems. We do not hide the fact that our intention is to learn from these examples to complete the system left unfinished by the Kit., with the proviso that solutions which were developed in different social, political, public administration environments cannot, naturally, be adopted uncritically or automatically. At the same time, it should not be overlooked either that the objectives of Kit. in many ways resemble those of the Anglo-Saxon model.

REGULATION PRINCIPLES OF PUBLIC SERVICE IN "ANGLO-SAXON" COUNTRIES

In the countries which followed what we will refer to as the *Anglo-Saxon model* the disadvantages of decentralised functioning became apparent early on, including the prevalence of favouritism in public administration, unfair and disproportionate remuneration and strong organisational fragmentation. The followers of this model therefore not only shared characteristics, but also experienced similar problems.[8] In order to address these individual problems, various proposals were made and government measures were taken. The following section will examine how such measures were intended to redress dysfunctions and to what extent they were compatible with the principles of the system.

a) It should be emphasised that in the Anglo-Saxon model, HRM processes (recruitment and selection, employee replacement policy, career management, performance appraisal, remuneration and incentives) form a single, integrated system based on job evaluation and competency management (the *Civil Service Competency Framework*).[9]

Traditionally, political neutrality and the primacy of merit have been of great significance in the *selection* of British civil servants. In order to eliminate favouritism, the *Civil Service Commission* was set up in 1854 as an independent body, one of the main tasks of which was the selection of civil servants on the basis of open competition examinations.[10] Today its role is to define the principles of the *procedures* for governing the selection of civil servants,

[8] Hazafi 2019: 77.
[9] Paksi-Petró 2020: 270–301; Paksi-Petró 2023: 9–32.
[10] Hazafi 2019: 77.

and to *govern* the operation of the selection system.[11] In 2018 the *Civil Service Commission* formulated the rules of the selection process which were published as *guidelines* governing all ministries and agencies.[12]

The members of the Public Service Commission are called *Civil Service Commissioners* who are appointed by the monarch on the recommendation of the Minister of Public Service (i.e. the Prime Minister). Public service commissioners must meet a number of requirements. These requirements are defined in the *Code of Practice for Staff*. The regulation imbues the previously mentioned four core values (integrity, fairness, objectivity and impartiality) with special content. At the same time, the regulations regulate the accountability and responsibility issues of the Commission, according to which the Minister of Public Service is ultimately responsible for the independent and efficient operation of the Commission before the Parliament. Members are subject to conflict-of-interest rules, and the rules also address the requirements of integrity and transparency.[13] The Anglo-Saxon understanding of the importance of selection has been aptly characterised by Lajos Lőrincz, as the belief that "an unprepared or ill-prepared civil servant is unable to handle even simple matters, he needs constant help, his mistakes also delay the work of others".[14]

The crucial role of selection is also shown by the fact that it is directly regulated by law and involves a legal relationship.[15] The law defines the principles of selection, among other matters.[16] Pursuant to the provisions of law, selection shall be based on *merits* and shall take place on the basis of *fair* and *open* competition.[17] The guidelines of the Commission stipulate that *merit* means that the candidate appointed to a position must meet the published requirements, be able to perform accordingly in the role , and be the best among the applicants.[18] According to the principle of *fairness*, the selection procedure must be unbiased, objective, impartial and consistent.[19] *Open* competition entails the public advertising of the vacancy on the basis of equal rights, in the framework of which the information necessary to fill the vacancy and the requirements of the tender procedure must be disclosed.[20]

The individual public administration bodies are responsible for developing and managing their *selection procedures*. The procedures may differ from each other in accordance with the characteristics of the specific vacancy to be filled and if necessary, they must differ significantly. However, common principles and procedural rules should be followed in all cases. Complying with the common rules and assessing the suitability of the candidates is the responsibility

11 György 2019.
12 Civil Service Commission 2018.
13 Civil Service Commission 2010.
14 Lőrincz 2010: 379.
15 See Constitutional Reform and Governance Act 2010.
16 See Constitutional Reform and Governance Act, Section 10–11.
17 Civil Service Commission 2018: Point 3.
18 Civil Service Commission 2018: Point 4.
19 Civil Service Commission 2018: Point 5.
20 Civil Service Commission 2018: Point 6.

of the individual *selection panels*.[21] A *selection panel* consists of at least two persons, and is headed by a civil servant or, in the selection of the highest level civil servants, by one of the civil service commissioners.[22] The panel must ensure the impartial (objective and unbiased) assessment of the candidates (i.e. his/her compliance with the conditions of the tender), and the panel must make a decision on the selection of the most suitable candidate.[23] The members of the panel must comply with the rules of conflict of interest,[24] which also strengthen the requirement of impartiality.

In the *recruitment process,* public administration bodies must publish all relevant information on the nature and level of the position to be filled, the conditions of employment, the selection procedure to be followed and the details of remuneration.[25] The bodies must apply the same procedure to all applicants (unless particular life circumstances require a different procedure). The invitation for applications must be published on a platform and for a period of time that ensures equal access for all applicants.[26]

During the *selection process* the candidates must be assessed on the basis of their merits, and their personal (friendly, family) contacts must not influence the decision-making.[27] Candidates must comply with the requirements of integrity, fairness, objectivity and impartiality laid down in the Civil Service Code.[28]

The selection procedure is not limited exclusively to the examination of the facts, and usually also involves *competitive examinations*. The competition may last several days. In the written part, candidates are expected to analyse statistical tables and draw up advice on how to solve a government problem. In the oral part, the candidates have to demonstrate their skills in verbal expression to the required level.[29]

Taking all the facts into account, the selection panel *ranks* the candidates on the basis of their merits, then according to this it may *propose* the appointment of the first-ranked candidate.

b) As mentioned earlier, there have been a number of problems and injustices in the public administration *salary system*. Before reviewing these problems and the responses that have been proposed to them, a brief description of the system of remuneration is necessary.

Due to the particularities of the British civil service system, as indicated above, i.e. the fact that there are not always sources of law that precisely regulate certain aspects of the public service relationship, there are likewise no detailed statutory rules on the salary system.[30] The Civil Service Management Code summarises the most important framework rules, the

21 Civil Service Commission 2018: Points 7–8.
22 Civil Service Commission 2018: Points 9–10.
23 Civil Service Commission 2018: Point 11.
24 Civil Service Commission 2018: Point 12.
25 Civil Service Commission 2018: Point 16.
26 Civil Service Commission 2018: Points 17–19.
27 Civil Service Commission 2018: Point 27.
28 Civil Service Commission 2018: Point 28.
29 György 2019.
30 György 2019.

detailed elaboration of which is delegated to the individual public administration bodies.[31] The Management Code discusses the most important rules under the heading "pay and allowances". The Code calls on organisations to publish their own regulations, typically in the form of a *Handbook,* and to make them available to all civil servants.[32] It is an important guarantee rule, although the Cabinet Office supervises the drafting and content etc. of the employer-level rules.[33] At the same time, while the organisations are drafting the regulation, the opinion of the *Cabinet Office* and pre-existing best practices must be taken into account.[34]

Regarding the establishment of pay systems, the Management Code defines the following *principles:* while creating its own pay system, each public administration body must comply with the requirement to make *rational use of public funds,* while exercising appropriate *financial control,* maintaining the *flexibility of the remuneration system,* and must ensure that there is a close and effective relationship between the performance of civil servants and their remuneration.[35] If a body makes major changes to its pay system, the rules of the latter are to be sent to the Cabinet Office, which must conduct a *restructuring business case*.[36]

To avoid unjustified income disparities between particular bodies, jobs and civil servants, directives and guidelines are applied for protection. The provisions on equal remuneration of the Equal Opportunities Commission have to be complied with, which are set out in the *Code of Practice on Equal Pay* of the Commission.[37] The individual bodies are obliged to maintain continuous communication regarding their pay system with the cabinet Office and to provide all the relevant data.[38]

Moreover, the pay system is in a sense also connected to the *promotion* system. The order of promotion can also be shaped by the bodies. Only general provisions are laid down for them in the Management Code.[39] For example, it stipulates that in connection with promotion and mobility, the employer's decision can only be based on the *merits* of the civil servant. Special attention should be paid to the suitability of the civil servant to carry out the duties altered in this way. It is also a guiding rule for promotion and mobility that when bodies are designing and developing such schemes, they should follow the rules laid down by the Cabinet Office and act on what has been said in the consultations. The Management Code also requires bodies to have a staff handbook on promotion and mobility. A further requirement is that promotion must take place in line with the selection principles. Experience shows that instead of pay tables, *pay ranges* and *pay bands* are used with minimum and maximum levels.[40] In central

31 Paksi-Petró 2020: 281.
32 Paksi-Petró 2020: 282. Cf. Civil Service Management Code, Introduction, Point 5.
33 Paksi-Petró 2020: 282. Cf. Introduction 7.
34 Paksi-Petró 2020: 283.
35 Cf. Civil Service Management Code, 7 Pay and allowances – 7.1 Remuneration of Staff – Conditions 7.1.2 points a–d.
36 Civil Service Management Code, 7 Pay and allowances – 7.1 Remuneration of Staff – Conditions 7.1.3.
37 Civil Service Management Code, 7 Pay and allowances – 7.1 Remuneration of Staff – Conditions 7.1.4.
38 Civil Service Management Code, 7 Pay and allowances – 7.1 Remuneration of Staff – Conditions 7.1.5.
39 See Civil Service Management Code, 6.4 Promotion and Lateral Transfers.
40 Paksi-Petró 2020: 284.

public administration, five different classifications are most commonly used, within which several job scopes can be distinguished.[41] Remuneration usually takes into consideration the classification system, so in higher categories and in the job scopes within them the pay is correspondingly higher.[42]

It might be no coincidence that the *Code of Practice on Equal Pay* contains important guarantee rules to *promote equal opportunities.* As already mentioned, in many cases guidelines and handbooks help to ensure that the rules comply with the legal requirements. *Will Hutton*'s report of 2011, which made various proposals on how public administration bodies could develop a more just remuneration system, can be seen as one such handbook or guideline.

One of the highlights of the report is a proposal to create a so-called *Fair Pay Code.* According to Hutton, a *fair pay system* must meet three overarching requirements. Firstly, it should consist of fair and appropriate levels of pay; secondly, when determining salary, employers should establish and follow fair procedures; and thirdly, it should ensure that the requirements of accountability and transparency are met.

The *first requirement* means that the pay of a senior civil servant must proportionately reflect the contribution of his work to meeting the organisational objectives. The pay should be in line with the characteristics (importance and difficulty) of the post held and the performance of the civil servant. The Code sets out a number of criteria to accurately assess the characteristics of a position. The document includes complexity, which can be assessed in terms of participation in decision-making, the degree of cooperation and interaction involved and the complexity of the task performed. It also mentions the impact of the role on specific resources (such as financial and human resources) and on society (such as public services). Tasks and competences such as decision-making powers, the degree of autonomy in decision-making, and the organisational level of the provision of tasks play an important role. Finally, it addresses the skills and competences of the manager and the knowledge required to perform his tasks. In the context of job performance, the Code states that managers' salaries must reflect their individual performance. The performance-related elements of managers' salaries should be clearly linked to performance, based on the long-term objectives and core functions of the bodies they are employed by. All managers must reach a certain level of performance to be eligible for the full salary. If a manager's performance exceeds the required standard, they may be granted an additional bonus calculated as a percentage of their basic salary. Seniority should be taken into account when differentiating the level of performance-related pay. A variable pay system for managers should be based on thorough performance appraisals.

The *second requirement* is for pay to be set within a stable framework of criteria, and that decisions on pay grades be based on factual assessment rather than subjective criteria. The pay must be in harmony with the role of the body within public administration and the extent of the pay differential between the senior-level and lower-level officials has to be taken into

[41] Grade Structures of the Civil Service. Institute for Government.

[42] György 2019.

account. Accordingly, each body should have a *formal promotion and pay system* that provides predictability for its officials working at all levels of the organisation.

The point of the *third requirement* is that salaries must also be transparent for citizens. Although Hutton describes these requirements with regard to senior-level staff, in our opinion several partial requirements of these could also be applied equally to the *employment relationships of the lower-level staff.*[43]

c) Performance appraisals are used to assess the performance of civil servants. A comparative study by EUPAN listed the *pragmatic elements* that can be linked to performance appraisal.[44] The research examined in detail four of the most frequently encountered elements in performance appraisals: career development, legal instruments linked to poor performance, development, training and remuneration. An interesting question is whether individual Member States prefer to apply these separately or in combination. As it transpires, ten Member States combine the legal instrument under examination with all the areas mentioned. The research shows that in post-/job-based systems it is not common practice to link appraisal to career progression (which is somewhat logical, since in these public service systems there is no real classical notion of career progression). However, it is also interesting to note – although it may seem to follow logically – that in career-based systems it is not common practice to link appraisal to remuneration.

Where appraisal is the basis for *promotion,* it is worth noting that in most cases it is not taken into account exclusively, but it is one element alongside other factors based upon the merits of the civil servant, which together determine the conditions for progression through the promotion grades.

With regard to *poor performance,* a large majority of Member States simply apply some form of dismissal or termination of employment in case of poor performance (although the research highlights that the experience of Member States is that in most cases employers do not choose this method of dismissing poorly performing staff). There are also Member States where (disciplinary) sanctions follow poor performance. It is very rare, according to the research, for the focus to be on improvement rather than punishment.[45]

Interestingly, the research barely addresses the relationship between performance appraisals and *development* in the Member States surveyed, which certainly suggests that there is a generalised lack of focus on individual development in European public service systems at present, although the research has underlined its importance. All that emerges from the authors' study is which Member States use the assessment results for the development of civil servants and which Member States identify (for development purposes) the strengths and weaknesses of civil servants' performance. Concerning the former, a large majority of

[43] Hutton Review of Fair Pay in the Public Sector 2011: 85–92.

[44] Staroňová 2017.

[45] Ireland is an example to follow on this issue. See Guidelines for the Management of Underperformance.

responding Member States use the information from the evaluation in some way to plan training, while regarding the latter, the response was roughly half in favour and half against.

However, the research shows that more and more Member States are applying *performance-related pay* systems. The study investigates the ways in which the two legal instruments are linked. These can be direct links with salary, in the form of a performance-related salary component or a salary increase (cumulative in nature; variable according to merit; leading to progression between steps or a lump sum) or indirect (leading to progression between promotion/grading steps). In rare cases, not only positive but also negative salary changes can occur in the practice of some Member States (in addition to the Hungarian civil service, nine other Member States use the result of a performance assessment to change salaries in a "punitive" way). Various approaches have been taken to setting the level of bonus or performance-related pay in the civil services of the different Member States. Bonuses of up to 10 percent of basic salary can be awarded in six of the seventeen Member States responding, bonuses of up to 20 percent in three of them, up to 50 percent in four countries and even bonuses of up to 100 percent (!) in five states.

Of course, as with any comparison, it is *difficult to compare* the systems exactly. For example, some rules on bonuses cover all employees and some cover only a narrower range of positions. The research also highlights that when analysing the Member States, there are great disparities when it comes to who is responsible for setting the performance-related pay component. In some cases, this is subject to some form of supervisory or higher management control, but it is not uncommon for the appraising manager (who is the immediate superior and usually also the exerciser of the employer's authority) to set the amount. According to the research, a pay-for-performance arrangement entails both fiscal risks (i.e. there may not be enough money in the public purse to pay higher salaries) and the danger that performance may become a subordinate factor, with bonuses or pay elements set in this way becoming a permanent part of the salary/base salary, thus losing their motivational and incentive role over time.[46]

d) No matter which of the legal institutions and systems outlined above is taken as a basis, it is clear that, in addition to principle-level regulation, a major role is assigned to the various *commissions* and independent central *advisory bodies*. Their function is primarily to smooth out the differences arising from decentralisation, to provide a form of coordination, to ensure transparency between the various administrative bodies and to promote uniform jurisprudence in accordance with statutory rules. These are not only the characteristics of the civil service in Britain, but are also found in other public service systems following the Anglo-Saxon model. For example, an institution similar to the British Civil Service Commission was established in the United States of America to abolish the political spoils system. In Australia and New Zealand, similar institutions were also set up (1902, 1912). Canada also followed this pattern, with the establishment of the Canadian Civil Service Commission in 1908.[47] However, it is

[46] The authors cite Bulgaria and Slovakia as examples.

[47] Hazafi 2019: 76.

not only in the Anglo-Saxon legal and administrative culture that such institutions are to be found. An example is the Slovak Civil Service Act, which regulates the status of the Civil Service Council[48] (and not the Civil Service Office!). The status of the Council is defined by the Slovak legislator as an autonomous administrative body with independent, coordinating and controlling functions and powers. The Council is therefore not an operational executive agency, but a supervisory authority established to ensure uniformity in the practice of the law, to enforce the principles of the civil service and to enforce the standards of the Code of Ethics for Civil Servants.[49]

MISSING ELEMENTS IN THE SYSTEM INTRODUCED BY KIT.

a) From the practice in the Anglo-Saxon countries, *selection* and *remuneration* were highlighted, as these two pragmatic elements play a key role in HRM processes. In addition, it is precisely in these two processes that the regulation deficiencies of Kit. are most evident. Before going into these two processes in detail, it should be emphasised that one of the major deficiencies of the law is that these areas (i.e. recruitment and selection, employee replacement policy, career management, performance appraisal, remuneration and incentives) are not treated as a single integrated system based on job scope evaluation and competence management. The law's failure to do so is mainly because, as noted above, it does not define the concept of job scope and, with that, job scope competences. This is the basis of all HRM processes, without which no integrated system can be developed.

b) Regarding *selection conditions,* the Kit merely states that – apart from the general statutory requirements – the person exercising the employer's right shall determine the professional conditions for filling the position and to this end he shall take into account the provisions of the government decree.[50] The regulation adds that the requirements of a post must be determined on the basis of the professional composition of the government administration body, the nature of the tasks to be performed by the post holder and in the light of the situation of the local labour market in such a way as to ensure the professional and efficient performance of the tasks to be performed.[51]

The employer is free to decide on their *method* of selection. A restricted or competitive procedure may be applied. In the case of an open recruitment procedure, an appointment may only be made to a person who applied for the publicly advertised position and who met the conditions originally stipulated.[52] The process of establishing a government employment

48 Act No. 55/2017 Coll. on the Civil Service, Article 12.
49 OECD 2015: 113.
50 Kit. Section 58 (2)–(3).
51 Section 20 of Government Decree 88/2019 (IV. 23.).
52 Kit. Section 83 (1).

relationship and the rules of the selection procedure – within the government administration body – must be laid down in the public service regulations.[53]

The above legislation shows that the bodies have been *authorised* to determine the selection criteria and the selection process. However, it is not possible to define selection criteria in the absence of job scope descriptions. Indeed, if there are no job-scope-specific professional criteria, selection cannot be based on merits, fairness and competition either.

In order to meet the above *triple requirement system,* it is also necessary to define, centrally, the essential conditions for a merit-based, fair and competitive selection. For example, it would be important to define uniformly which selection methods and techniques satisfy the requirement that the selection process be professionally credible.[54] The individual processes must, in turn, be designed to ensure that the principles of equal opportunities, non-discrimination, professional achievement, fairness and performance are properly enforced.

Although, on the basis of the legislation currently in force, it is also possible for the Personnel Centre to carry out a *fair* selection procedure at the request of the bodies,[55] this separates the process from the bodies on the one hand, and on the other hand it means that the bodies are not bound by the results of the procedure.[56] This rule fundamentally calls into question the credibility of a procedure thus conducted, as a person may be appointed who is not the most suitable on the basis of the results of the procedure.

c) The *salary determination rules* of Kit. raise concerns in several areas. As already mentioned, Kit. dismantled the former fixed rules on classification, promotion and remuneration, and granted wide-ranging authorisation to employers instead. The dismantling of some elements of the career system in itself is not objectionable, as several examples can be found internationally of uniform, fixed career rules being replaced by differentiated remuneration, with the new principles mostly being based on job scope competences and performance requirements. The Anglo-Saxon model already described is also characterised by such an approach. The worry is that statutory rules have been dismantled, only to be replaced by ad hoc employer's decisions that carry the inherent risk of arbitrary "discretion".

Determining salaries is a long process and it has several pitfalls. First of all, the Government, upon the minister's proposal in a resolution, defines the posts belonging to the basic staff.[57] Neither the law, nor the related government decree defines the criteria for the preparation of this classification, nor the conditions for the decision itself.[58] Thus, the classification structure of the posts is left to the discretion of the employer. The classification categories determine the salary bands to be applied for each post.[59] This is what actually makes post classification

[53] Section 19 point a) of Government Decree 88/2019 (IV. 23.).
[54] For instance: Hazafi–Kajtár 2021: 255–256.
[55] Section 12–24 of Government Decree 716/2021 (XII. 20.).
[56] Section 21 (1) of Government Decree 716/2021 (XII. 20.).
[57] Kit. Section 51 (1)–(3).
[58] The Kit. lists the professional conditions for filling the position as an example [Section 58 (2)]. Government Decree 88/2019 (VI. 23.) lists the content elements of the minister's proposal [Section 3 (2)].
[59] Kit. Section 134 (1).

crucial. The *classification of posts has a significant impact* on *individual salaries,* as the salary band belonging to each category cannot be exceeded. In other words, the classification of posts draws a distinction between government officials, but this distinction is not related to the nature, quality or quantity of the work performed, the working conditions of the post holder, the necessary qualifications, physical or mental effort required, or the staff member's experience and level of responsibility, nor does it take into account labour market conditions.[60] The situation would be different if posts, or rather job scopes, had to be classified with regard to the task to be performed and the qualifications and competences required to fill them. Currently, however, the employer has to make a decision on these when the Government has already made a decision on determining the basic number of staff and the classification of posts.

Following the decision of the Government, the professional criteria for filling the posts shall be defined. To this end, the professional composition of the government administration body, the nature of the tasks to be performed and the local labour market must be taken into account and it shall be ensured that the tasks to be performed in the post are carried out professionally and efficiently.[61] This provision is quite difficult to interpret for law enforcers since it has *logical* and *content-related* flaws. It is not clear what kind of relationships the legislator envisaged between professional composition, the local labour market situation and professional requirements. When enforcing the law, law enforcers are obliged to apply their discretion with regard to certain content elements of the provision.[62] For example, they must deduce creatively how the professional composition of the body and the local labour market situation are related to the professional requirements of a job. Basically, they need to ascertain what the legislator might have had in mind when he defined these aspects. For example, if there is a shortage of a particular professional qualification among an organisation's staff and the local labour market also has a shortage of them, it is necessary to determine what other qualifications could be used as substitutes.

A further issue arises as to what qualifications can be considered by the employer to be equivalent to each other, so they can serve as alternatives. This basically leads to a situation where employers can shape and change professional requirements *at their own discretion* – even without any rational reasons. In essence, there is only one limit on the arbitrariness of decisions: the employer's common sense. If this is lacking, the legal regulations may even "include" the condition that a high school diploma is required for the highest management positions, while several university degrees may be necessary for the lowest-level positions. This would obviously not be a rational decision, but it would not conflict with the law. Moreover, it could lead to unjustified differences not only between organisations but also within them.

Having designed the classification structure of the posts, the employer must then determine the individual salaries *within the salary bands* belonging to the classification categories. The only exception to this rule is when a position held by a *permanently absent government official* is filled on the basis of a fixed-term legal relationship. In this case a salary in the salary band

60 Cf. Act I of 2012 on the Labour Code Section 12 (3).
61 Section 20 of Government Decree 88/2019 (IV. 23.).
62 Kántás 2001.

for a classification category that is one lower or one higher than the classification category of the post can also be paid.[63]

However, this provision also *raises serious concerns,* as it violates the prohibition of discrimination. It discriminates against both permanently absent government officials, and government officials appointed for a fixed term to replace them. In effect, it makes an unjustified distinction between government officials doing the same job on the sole ground of whether they have a fixed-term or indefinite appointment. Under Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities ("the Equal Treatment Act"), direct discrimination is constituted by a provision which results in a person or group being treated less favourably than another person or group in a comparable situation is, has been or would be treated because his/her actual or perceived employment relationship is *fixed term*.[64]

The exerciser of the employer's authority shall determine the salary of a government official on the basis of their professional abilities, qualifications, practice and performance.[65] This provision has logical and content-related flaws, similarly to the definition of professional criteria for filling the posts. The regulation lacks any explanation of *how* professional skills, qualifications, practice and performance assessment shall be taken into account and what procedures should be followed when determining salaries.

On the basis of regulatory principles of the *Anglo-Saxon model,* this deficiency can be redressed. A *fair salary system* is one that establishes fair and adequate salary grades, where the employer follows a fair procedure while determining the salary, and where accountability and transparency prevail. Due to deficient regulation, the Kit. does not meet any of these conditions. The amount of salary is fair and adequate if it reflects the proportionate contribution of the job scope to the organisational objectives, the characteristics of the position filled (size and weighting), and individual work performance. Fair procedure means that the salary is determined in a stable framework criteria system, and any decision on salary is based on factual rather than subjective criteria. Finally, accountability and transparency are achieved when the system is both transparent and understandable by citizens.

d) Knowing how government officials feel about seniority, legal guarantees, flexibility and their labour market preferences is important for the planning of the salary system. A *recent study* we conducted looked at these issues, among other related matters.[66] We sought to answer

[63] Kit. Section 134 (1a).

[64] The Equal Treatment Act Section 8, point r).

[65] Kit. Section 65 (3).

[66] The Ministry of the Interior and the Ministry of Public Administration and Regional Development invited the Ludovika University of Public Service to conduct a study on the ageing challenges of public administration and to present the results of the research at the European Public Administration Network (EUPAN) working group meeting and the Director General's meeting. A questionnaire was prepared in cooperation with experts from the Ministry of the Interior, asking government officials and managers working in government administration about their views on public administration, career, values, labour market preferences etc. Statistical data from

the question: does seniority continue to exist in a latent way in the bodies covered by the Kit. in terms of remuneration and "grading"?

One of the most significant changes introduced by the Kit. is the abolition of seniority-based *grading and salary.* At the same time, the Hungarian civil service has been strongly linked to a seniority-based career system, following the Prussian-Austrian model since the 19th century. We were therefore curious to see to what extent the culture of the Hungarian civil service is characterised by the need for financial recognition of experience associated with seniority. To this end, we examined whether a correlation between age and salaries could be detected.

As only the salary data for ministries were available, the analysis was carried out only of *ministries.* The individuals included in the sample were those who were employed in government service, worked full-time, had a tertiary education and spoke at least one foreign language.

The *correlation* was also examined overall by ministry and by classification category (Table 1).

Table 1: Correlation by ministries

	Correlation
Total	**0.21101876**
Ministries	**Correlation**
Ministry of Agriculture	**0.237234478**
Ministry of the Interior	**0.259531766**
Ministry of Energy	**0.206311117**
Ministry of Construction and Transport	**0.194280174**
Ministry of European Union Affairs	**0.361338988**
Ministry of Defence	**0.410810965**
Ministry of Justice	**0.284424507**
Ministry of Public Administration and Regional Development	**0.227295059**
Ministry of Culture and Innovation	**0.193437586**
Ministry of Foreign Affairs and Trade	**0.108446016**
Cabinet Office of the Prime Minister	**0.154050194**
Prime Minister's Office	**0.386821497**
Ministry for National Economy	**0.302157038**
Ministry of Finance	**0.326154131**

Source: the calculations of the authors based on KSZDR data

the Government Personnel Decision Support System (KSZDR) were used to understand the characteristics of government administration and to show the interrelationships between them.

Table 2: Correlation by classification categories

Classification category	Correlation
Head of Department	**0.026251852**
Chief Government Adviser	**0.165550139**
Government Adviser	**–0.168078639**
Head of Unit	**0.047355637**
Chief Senior Government Adviser	**0.10624099**
Senior Government Adviser	**0.139425081**

Source: the calculations of the authors based on KSZDR data

The average results for the ministries show that there is a *stable but weak* link between salaries and the ages of government officials. When looking at ministries individually, the results are more nuanced. For the *Ministry of Defence,* the *correlation is medium* and the relationship is *significant.* This may be related to the fact that promotion according to military rank is strongly embedded in the organisational culture, and its effect extends even to "civilian" staff. At the same time, the results of the other 'uniformed' ministry, the Ministry of the Interior, are barely above average, i.e. the 'rank approach' has no impact at all on the status of government officials. This is probably due to the fact that the Ministry of the Interior is not a purely law enforcement ministry but also has significant 'civilian' policy areas in its tasks and responsibilities. The correlation is *significantly above average* for the *Prime Minister's Office* and for the *Ministry of European Union Affairs.*

Overall, it can be concluded that the *ministries* on average show a stable but weak correlation, i.e. there is a discernible link between age and salaries, but it has little influence on the size of salaries. This does not exclude the possibility that in some ministries the correlation is much clearer and more decisive. This could also lead to the conclusion that the Kit. has not only formally abolished seniority in a few years, but has also significantly reduced its impact in the organisational culture, except in one or two portfolios where the link between age and remuneration is more strongly present. At the same time, the pre-Kit. legislation did not rigidly address seniority-based promotion and remuneration, but made salary more flexible through salary supplements, allowances, basic salary compensation, and title awards. In essence, the need for differentiation has been evident since the early 1990s. This means that for decades the organisational culture has been open to differentiation based on employer discretion, to reduce the rigidity that comes from strictly observing seniority. However, it seems – and this is confirmed by the results of our questionnaire survey – that the pendulum has swung too far the other way with the entry into force of the Kit. and the resulting abolition of seniority, and that the demand for a career guaranteed by the law is growing among staff.

Within the *classification categories* the relationship is weak, and indeed it is almost negligible. This means that when employers set salaries across the bands, they are essentially ignoring age.

We asked respondents what they thought about some of the *features of public administration* and how true they thought they were. Answers were given on a scale of 1 to 6, where 1 meant that the respondents agreed 'not at all' and 6 when they agreed 'totally'. The highest scores

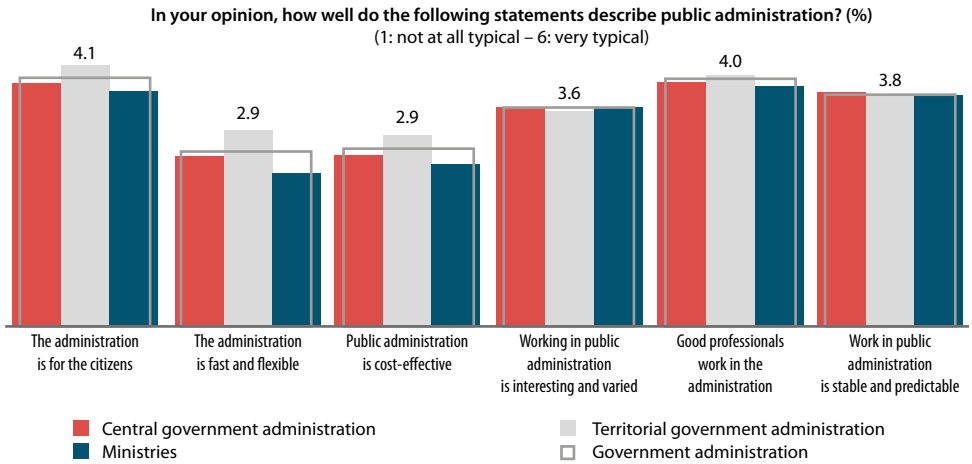

Figure 1: Opinions on public administration I
Source: EUPAN survey data

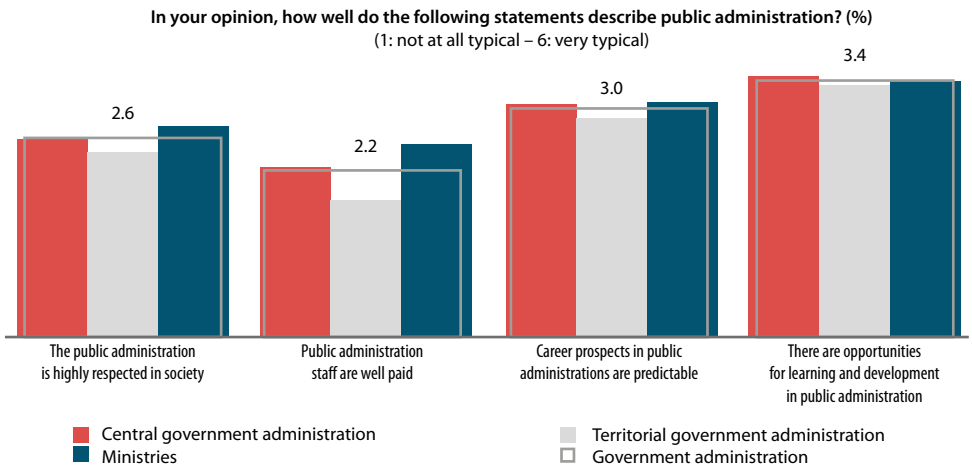

Figure 2: Opinions on public administration II
Source: EUPAN survey data

were given to the characteristics related to *professionalism*. The respondents largely agreed with the assertion that "Public administration is for citizens", with a result of 4.1, while "Good professionals work in public administration" scored 4, and "Work in public administration is stable and predictable" had an average score of 3.8. Also scoring above the medium was the professionalism-related statement that "Work in public administration is interesting and varied" (Figure 1).

The lowest ratings were given to statements connected to the *material and social prestige* of public administration employees (Figure 2).

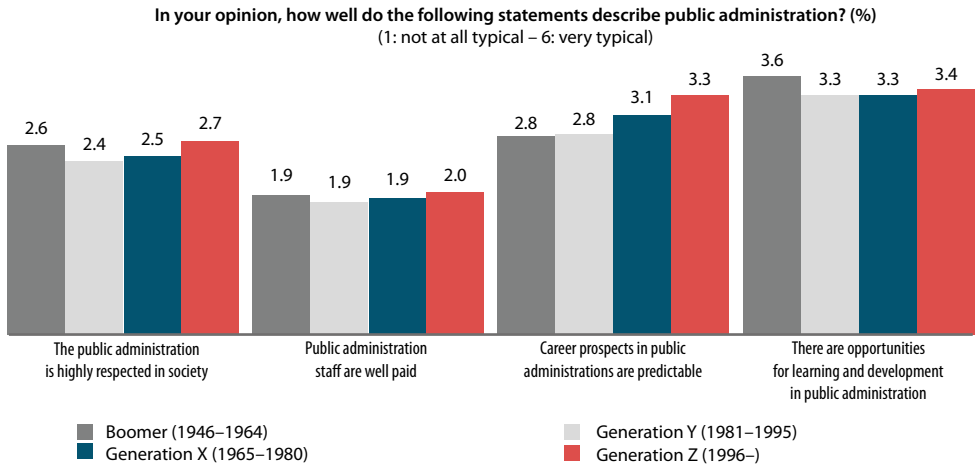

Figure 3: Opinions on public administration III
Source: EUPAN survey data

While there was no significant difference in the values of positive opinions between the different types of bodies, *the "severity" of negative opinions varies greatly* between the central and territorial levels. While in the county government offices, the speed and cost-effectiveness of public administration are rated significantly more favourably than at the central level, the social and material remuneration of public administration is rated much lower in provincial offices. This difference is due to the fact that speed, flexibility and cost-effectiveness are mainly measured in the context of the public services[67] provided to citizens at the local (territorial) level. At the same time, the lower average salaries in county government offices may lead them to perceive the social and material prestige at the central level as less favourable.

Data by age group also reveal other correlations. Respondents born between 1946 and 1964 (so-called baby boomers) rated the *stability and predictability of public administration* and predictable career prospects lowest. This is probably due to the fact that as the oldest age group they have experienced the most organisational restructuring, downsizing and existential vulnerability. However, Generation Z is the most positive about these same characteristics, which is understandable as they have the least first-hand experience and therefore tend to form their opinions based on hearsay information (Figure 3).

[67] See Iván 2023: 76–81.

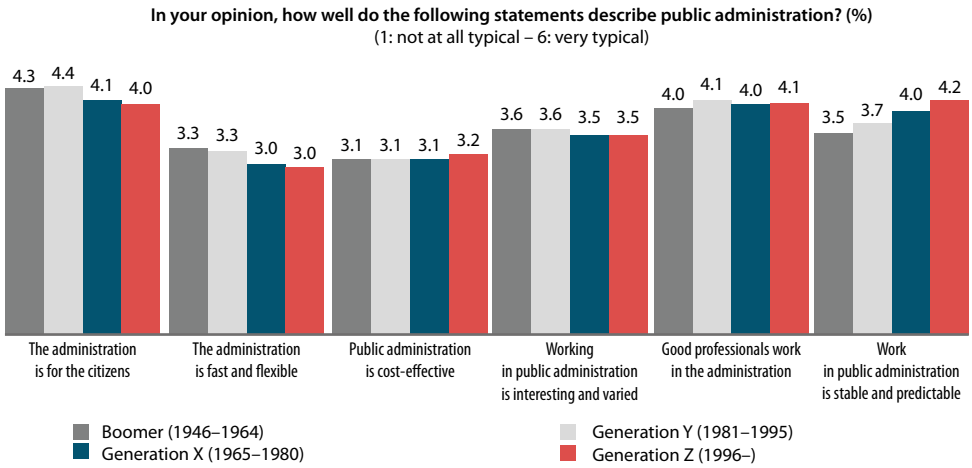

Figure 4: Opinions on public administration IV
Source: EUPAN survey data

e) Labour costs account for the largest share of public administration *operating costs,* so increasing the headcount entails a significant budgetary burden, and conversely, reducing the staffing level can release considerable budgetary sources to support economic growth. This would imply that the optimum headcount for the civil service is an issue which can be approached rationally. However, in practice this is not the case. The optimum headcount of the public service is decided much more by considering political criteria than as a result of rational headcount management. It depends to a much greater degree on what needs governments have and what role the state is expected to play in providing public services. The original question should therefore not be about determining the optimal number of staff, but rather about influencing it in the optimal direction.[68]

Recognising the headcount problem, the Kit. introduced a position-based, fixed system of *headcount management.* This means that the Government has direct control over the staffing levels of public administration bodies. Only the Government is authorised to decide to increase the number of positions in the public service sector or to change the classification of positions. At this point the decentralisation advocated by the Kit. therefore fails. This raises the question of whether the efficiency-enhancing effect of decentralised personnel activities can be achieved within a centralised headcount management framework. Whatever the answer may be, it is certain that effective headcount management cannot be achieved without long-term workforce planning. At present, there is no strategic workforce planning in the Hungarian public administration.

[68] Hazafi–Szekér 2021: 1340.

THE PUBLIC SERVICE HRM DEVELOPMENT FRAMEWORK

a) The deficiencies described above must be redressed, otherwise the law becomes really counterproductive, and the objectives that were set originally will not be achieved. However, it has to be emphasised that redressing deficiencies cannot be limited to legislation. On the contrary, legislation is merely a means to an end, whose content is given by well-defined personnel developments, the elaboration and implementation of which can only take place over a period of several years. The means for this programmed development is the *Framework for the Development of HRM in the Public Service* (hereinafter: Framework).

The Framework *aims* to provide HRM development services that will lead to the development of a competitive, professional staff with a sufficient headcount and proper composition and a personnel system that can be managed effectively in the government administration. The Framework will ensure that the increased flexibility resulting from the recent processes of decentralisation and deregulation is exploited by departments and that greater organisational efficiency is achieved. The Framework ensures that the bodies take advantage of the greater flexibility offered by the recent decentralisation and deregulation and thereby achieve greater organisational efficiency.

b) The internal regulation of the HRM processes missing from the system and the uniform requirements should be defined by so-called *soft* regulation tools. The HRM *Excellence Model* (hereinafter: Excellence Model), which is based on the principles of quality management systems and which describes the general operating model of a single integrated system of HRM processes, serves this aim well. By using it, the efficiency and effectiveness of personnel activities are increased and the organisation is made more transparent, with clear lines of responsibilities and well-defined powers. The Excellence Model is process-oriented and therefore allows for improvement. Its application ensures both flexible design of local processes and the uniform enforcement of quality requirements. If it is complemented with an accreditation system, it allows processes to be monitored and excellence to be certified for citizens as users of public services.

The Excellence Model is in fact a *quality assurance standard* that aims to provide a framework for the optimal design and continuous improvement of HRM processes based on quality standards. The quality requirements defined during the HRM processes ensure that the personnel system which is decentralised to the individual bodies is nevertheless designed and continuously improved on the basis of *uniform government demands*. The Excellence Model also provides the basis for the benchmarking of national and international personnel practices.

The introduction of the Excellence Model can be made mandatory, but it can also be optional with the use of incentives, such as the Excellence Award. Qualification also requires the existence of an independent accreditation organisation, whose members are appointed and dismissed by the Minister responsible for public service personnel policy. Counselling and training are needed to prepare for certification. The conditions for the latter can be provided by the Ludovika University of Public Service.

c) The basis of HRM in the public service sector is *strategic planning,* which requires that the public bodies (or the government) have the data and information necessary to make personnel policy decisions. Strategic workforce planning is the basis for modelling the demographic (headcount and age composition) evolution of staff and its impact, as well as assessing the possibilities of outsourcing (PPP, contracting out, etc.), supporting vertical and horizontal staff mobility (i.e. temporary employment other than fixed appointments), and for exploring efficiency reserves (e.g. e-public service opportunities, new technologies, work opportunities, etc.).

The *Government Decision Support System for Personnel* (hereinafter: KSZDR) provides a data asset that can be used to support the development of long-term personnel policy strategies in an efficient and comprehensive manner. Moreover, it not only can provide statistical data for governmental personnel decision-making, but it can also support governmental administration bodies in the design, reorganisation and development of their own organisations. The system not only provides answers to the reasons why certain HRM processes have occurred in the past, but also predicts the future consequences of specific decisions. All these functions are intended to supply scientific, research and methodological solutions that are otherwise not available in government administration bodies.

d) To enable rational government decisions to be taken on public service (public service personnel policy), it would be advisable to establish a Public Service Council working alongside the Government which would have the right to counsel, deliver opinions, make proposals and coordinate activities. Its members, on the proposal of the minister responsible for public service personnel policy, would be appointed by the Prime Minister from among the most acclaimed and knowledgeable theoretical experts and practitioners in public service. The Council would, *inter alia*

- deliver its opinion on draft legislation affecting the public administration and its staff: analyse the enactment of legislation and draw up proposals for improving the legislation
- develop professional and methodological recommendations for the selection, qualification (assessment), training and upskilling of employees working in public service
- on the basis of the KSZDR, analyse and evaluate the development of the headcount of public bodies, the required qualifications and salary relationships, and provide the reasons for such changes

It is worth noting finally that the Ktv. provided for a council of similar legal standing, but it was never established. The time has come to redress this deficiency.

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Csaba Fási

RETHINKING THE S PILLAR OF ESG: CORPORATE SOCIAL RESPONSIBILITY IN A CORPORATE AND EU CONTEXT

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This study examines the role of corporate social responsibility (CSR) within the ESG (Environmental, Social, Governance) framework, with a special focus on the social ("S") dimension and its regulatory context in the EU. The central question of the research is how the social aspect of the ESG approach can become an integral part of corporate strategy and what regulatory instruments are best suited for encouraging socially responsible operations in the EU. While the environmental dimension has seen more development to date, the social dimension is becoming more prominent, in particular through Directive 2014/95/EU and the CSRD. This study aims to explore the mechanisms through which CSR can be integrated into the day-to-day operations of companies and how these practices affect their market position and social acceptance. The study uses qualitative methods, applying legal and literature analysis, which highlights the importance of employee welfare, community relations and transparent reporting. The results suggest that the inclusion of social considerations in mandatory reporting is not only an ethical but also an economic imperative. Corporate social performance affects credit risk, investor decisions and social trust. The study will allow a deeper understanding of the relationship between CSR and the ESG framework and thus contribute to the promotion of a sustainable and inclusive economy.

Keywords:
ESG, corporate social responsibility, corporate citizenship, social dimension, European Union, social dimension

INTRODUCTION

In recent years, a new, complex approach to evaluating the performance of companies has gained ground: the ESG framework, i.e. evaluation which takes into account environmental (Environmental), social (Social) and governance (Governance) perspectives. While the analysis of environmental and governance factors in business has made significant technical and regulatory progress, the social dimension remains underrepresented. Yet this is precisely the area that has the most direct impact on the internal functioning of companies, the wellbeing of their employees and their relations with local communities. This raises the question of why the 'S' component is lagging behind the other pillars, and how this may be changing in the light of the EU's increasing regulatory activity.

The existing research shows that CSR tends to become a strategic tool in developed countries, while in developing regions it tends to be less visible. At the same time, concepts such as Corporate Social Responsibility (CSR) or corporate citizenship have evolved into integrated organisational strategies, especially within the ESG framework. The European Union has been a particularly active player in this transformation: regulatory instruments such as the Non-Financial Reporting Directive (hereinafter: NFRD) and the Corporate Sustainability Reporting Directive (hereinafter: CSRD) have made it mandatory to measure and disclose social impacts, thus encouraging social transparency and responsible corporate behaviour.

The focus of this study is on the EU framework governing the social pillar of the ESG: how are regulatory trends and business practices shaping the integration of social responsibility into corporate operations? The paper will explore how mandatory ESG reporting affects corporate social performance, and the role EU regulation plays in this.

The first part of the study describes the emergence and evolution of the concept of ESG, followed by an outline of the theoretical foundations of the social dimension and the EU regulatory environment. It then presents the relationship between ESG performance and the competitiveness of companies, the linkages between CSR and corporate citizenship and the ESG system, as well as the main CSR practices adopted by companies. The paper ends with a presentation and discussion of the empirical research findings before offering conclusions and recommendations to further strengthen the social dimension of ESG in corporate practice.

THE SOCIAL DIMENSION OF THE ESG AND ITS EU DIMENSION

ESG is no longer merely a slogan. It shapes corporate strategies, influences investment decisions and has a measurable impact on the global economy. It reflects the shared values of businesses, their customers and their communities. Meanwhile, many are adopting a comprehensive view of ESG that goes beyond environmental sustainability.

The "S" in ESG stands for the social or societal pillar. Recent research on CSR has highlighted how introducing regulations on climate change and environmental risk exposure in finance has fostered much greater development of the environmental dimension (the E of ESG)

than of the social dimension (the S of ESG).[1] It is also worth emphasising that initiatives to promote social responsibility are more typical of industrialised countries than of poorer or developing countries.

According to Matos, social factors should capture the relational dimension of the company with both internal stakeholders (employees) and external stakeholders (actors in the local community in which the company operates) and its impact on improving the multidimensional wellbeing of employees (quality of work, health and safety at work, training and development) and in terms of promoting local sustainable development.[2]

Some aspects of this approach have already been explained above, but it is also important to stress that this pillar must be integrated into the various strategies in the European Union, as in the 2018 European Pillar of Social Rights and its related action plan. The 2018 document is structured around three chapters, which are summarised under the headings 1. Equal opportunities and the right to work; 2. Fair working conditions; and 3. Social protection and inclusion.[3] The latter document, the Action Plan, was adopted in 2021.[4]

The first definition of the social dimension in the EU's regulation appears in the EC Directive 95 of 2014 on non-financial reporting (NFRD),[5] which stresses that equal attention should be paid to both the environmental and social dimensions. The Directive states that the social dimension should be considered both internally (as it affects employees) and externally (in the company's relations with the local community/consumers), while bearing in mind the human rights dimension, which primarily (but not only) concerns relations with suppliers. In addition, the non-financial reporting guidelines,[6] which set out which issues from the social dimension should be included in non-financial reporting, are also emphasised. These include concrete information on respect for the core International Labour Organisation (ILO) conventions, discrimination and diversity issues, occupational issues and respect for employee participation, trade union relations, human capital value enhancement, occupational safety and health and the impact on consumers and the most vulnerable, research capacity and responsible markets, and finally, support for local community relations and local community development. In addition, of course, the directive prescribes respect for human rights, devoting a specific chapter to this in the directive and the guidelines, while human rights are also naturally fully included in the social dimension.[7]

The social dimension of the ESG, as one of the three pillars alongside environmental and governance factors, addresses labour rights, workforce diversity, community engagement and corporate practices related to the overall social impact of companies' policies and actions. In the European Union, this dimension is increasingly coming to the fore through both voluntary initiatives and mandatory requirements. Empirical research shows that the EU is an arena

1 Matos 2020.
2 Matos 2020.
3 Tóth 2018.
4 European Commission 2021b.
5 Directive 2014/95/EU.
6 European Union 2017; Boros et al. 2022.
7 Becchetti et al. 2022.

where CSR is being proactively incorporated into the ESG framework not only as an ethical commitment but also as a strategic business tool to influence investment and lending decisions.[8]

EU policies have played a key role in shaping how companies report and manage social issues. For example, NFRD and its subsequent versions, leading finally to the Corporate Sustainability Reporting Directive (CSRD) require large companies to disclose information on their social practices. These requirements oblige companies to provide qualitative and quantitative data on indicators such as freedom of association, child labour practices and measures to ensure diverse and inclusive workplaces.[9] As a result, European financial institutions today often incorporate these social performance indicators into their risk and credit assessments, thus linking the quality of a company's social disclosure to its cost of debt and overall market valuation.[10]

Strict EU regulation aims to ensure that the social aspects of the ESG model are not merely voluntary add-ons, but constitute an essential element of corporate reporting. Mandatory reporting rules can be characterised as a qualitative tool that reinforces corporate social responsibility (CSR) by holding companies accountable for their labour practices and community contributions. The publication of the detailed social information obtained in this way aims to reduce information asymmetry between companies and stakeholders, which promotes greater transparency and stakeholder trust.[11] In many cases, these practices also lead to a convergence of social standards across CEE countries as companies seek to meet international and European benchmarks for social performance.[12]

Recent research also indicates that the EU regulatory framework is constantly evolving in response to changing societal expectations. Zhao notes that the EU has successively introduced several key regulations, including the NFRD and the CSRD, which together address issues that go beyond mere environmental impacts. These measures explicitly recognise that the social performance of companies contributes to the wider picture of sustainable development by ensuring that companies care for the wellbeing and livelihoods of their employees and affected communities. By setting standardised social criteria within ESG reports, the EU promotes sustainable consumption and production and helps to attract investment which is geared towards socially responsible practices.[13]

Taken together, the evolving EU regulatory environment and the strategic incorporation of social performance measures underline the dual role of the social dimension in the ESG approach: as both an ethical imperative and as a driver of corporate competitiveness. By requiring a high level of social disclosure, the EU encourages companies to internalise CSR as an integral part of their operational and strategic framework, with the ultimate aim of promoting a more inclusive and sustainable economy.[14]

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8 Markowski et al. 2023; Zhao 2024.
9 Pieńkowski–Skýpalová 2024; Ottenstein et al. 2021; Lippai-Makra et al. 2022.
10 Markowski et al. 2023; Zhao 2024; Tőzsér et al. 2024.
11 Pieńkowski–Skýpalová 2024; Ottenstein et al. 2021.
12 Markowski et al. 2023; Lippai-Makra et al. 2022.
13 Zhao 2024.
14 Markowski et al. 2023; Pieńkowski–Skýpalová 2024; Ottenstein et al. 2021.

Historical overview of the ESG milestones and regulations

The environmental, social and governance (ESG) framework has made significant strides and is now an essential part of investing and corporate accountability in Europe and beyond.[15]

The ESG approach can also be understood in the complex context of sustainability, focusing on three main areas: environment, social and governance. The environmental dimension includes, for example, energy and resource use, waste management, climate change and air pollution management. The social aspects, in contrast, involve the relationship between the company and its employees, working conditions, health and safety, and cooperation with suppliers, customers and communities. Corporate governance aspects cover issues such as executive pay, internal control systems, ensuring shareholder rights, gender equality and reducing corruption.[16]

Sustainability has become a central issue in recent years, after it was first introduced into international thinking in 1972 with the report *The Limits to Growth,* which highlighted the harmful consequences of accelerating population growth, excessive industrial development and environmental pollution and called for a change in attitudes. The next important step came in 1987 with the Brundtland report, known as *Our Common Future.* The central idea of the report, that development can only be sustainable if it ensures that meeting the needs of the present does not jeopardise the opportunities of future generations, still shapes the debate on the subject.[17] As a result, corporate responsibility and ethical and environmentally responsible behaviour have become increasingly prominent.

Although the foundations of the ESG framework were already emerging in the 1990s, the term itself only became widely used in the early 2000s. A significant milestone was the 1992 UN Earth Summit, held in Rio de Janeiro, which elevated environmental issues to the global level.[18] During the subsequent decade, a number of international initiatives were launched, including the Global Reporting Initiative (GRI), which provided guidelines for sustainability reporting.[19]

The concept of ESG was first officially introduced in 2004 in the UN publication *Who Cares Wins,* a report produced in collaboration with 18 financial institutions from nine countries. The aim was to develop practical recommendations to enable actors of the financial sector to integrate environmental, social and governance considerations more deeply into their practice. A year later, the UNEP's financial initiative, the Freshfields Report, further reinforced the importance of these considerations in financial decision-making.[20]

15 Liu et al. 2024.
16 Szalay 2021; Dúl et al. 2025.
17 Fási 2023.
18 United Nations 1992.
19 Thompson 2023.
20 United Nations 2005.

Figure 1: Milestones in the development of the ESG framework and regulations
Source: compiled by the author based on data from Szendrey–Dombi *2024*

The 2015 Paris Climate Agreement was a historic breakthrough, as all the countries of the world agreed to take joint action to combat climate change.[21] Two years later, in 2017, at the World Economic Forum in Davos, nearly 140 business leaders signed the Compact for Responsive and Responsible Leadership, committing their firms to aligning their business goals with the UN Sustainable Development Goals. They recognised that promoting social wellbeing is in the long-term interests of business.[22] In particular, the Covid–19 pandemic highlighted the importance of workers' rights and workplace safety. Employers have come under increasing pressure to take responsibility for the wellbeing of their workers and to ensure that they can work safely.

The European Union has developed an extremely ambitious set of laws with respect to environmental, social and governance (ESG) reporting and 2025 was a pivotal year for its general implementation. Laws that will link how companies will report on sustainability impacts, better manage ESG risks, and avoid being accused of merely cosmetic 'greenwashing' measures are being consolidated into a smaller number of major laws.

The key law is the Corporate Sustainability Reporting Directive[23] (CSRD), which replaces the former Non-Financial Reporting Directive. The significant difference is that the CSRD dramatically expands the number of commercial entities which are obliged to report on sustainability. Approximately 50,000 companies will report on this area, including large companies operating in the EU and some very large and medium-sized companies outside the EU but with significant operations in the EU, which will now have to submit audited sustainability reports as part of their annual filings. In order to ensure some comparability amongst reported sustainability impacts, the CSRD references the European Sustainability Reporting Standards (ESRS), which are guidelines developed by EFRAG to align EU rules and frameworks with other international frameworks.

In addition to the CSRD, the EU has enacted the Sustainable Finance Disclosure Regulation[24] (SFDR). The SFDR mainly applies to participants in the financial market, and its purpose is to establish a mandatory disclosure framework to guide fund managers and other investors on how to incorporate ESG risks into their investment decisions. This disclosure requirement is intended to enhance transparency in the ESG market and to minimise the opportunity for firms to make misleading claims regarding ESG and sustainability.

The new EU Corporate Sustainability Due Diligence Directive[25] (CSDDD) is another important piece of legislation, as it imposes a requirement on companies to determine and respond to human rights and environmental risks in the value chain. The Taxonomy Regulation[26] is also a significant development, as it establishes a common classification system

21 Szendrey–Dombi 2024.
22 World Economic Forum 2016.
23 Directive (EU) 2022/2464.
24 Regulation (EU) 2019/2088.
25 Directive (EU) 2024/1760.
26 Regulation (EU) 2020/852.

that defines sustainable economic activities. At the very least, companies cannot present misleading representations of being green.

As well as the above legislation, the EU is developing other policies to align economic activity with climate goals. The 'Fit for 55' package[27] establishes a framework for reducing greenhouse gas emissions by 55% by 2030. Meanwhile, the Carbon Border Adjustment Mechanism[28] (CBAM) addresses the economic disincentives faced by EU producers that incur carbon penalties, even though the products that they are importing are not subject to them. The new EU CBAM thus means that carbon costs cannot be offshored to gain a price advantage based on foreign laws.

The EU will also rely more heavily on policies from the European Banking Authority, which means that banks need to identify and manage ESG risks, regardless of materiality, by no later than mid-2025. At the same time, the EU appears to be willing to penalise companies for misleading claims regarding sustainability, meaning that companies will be scrutinised. In late 2024, EU leaders also initiated an 'omnibus regulation' to try to rationalise some of the requirements, specifically the CSRD, the Taxonomy Regulation and the CSDDD to issue more integrated reports.

Overall, what is happening in the EU, when considered as a whole, is leading to a situation where sustainability reporting will not be a voluntary exercise; it is now a legal obligation with standards, enforcement, and material consequences. For any companies operating in or with the EU, 2025 will be the year that ESG reporting will become just another event in the business year, an integrated report that reflects the companies' strategy, risk management and information for stakeholders.

The concept of corporate social responsibility

Corporate Social Responsibility (CSR), broadly defined, is a voluntary commitment by companies to generate positive social and environmental impacts that go beyond making a profit or complying with legal requirements.[29] Over the past few decades, CSR has evolved from isolated philanthropic gestures to an integrated strategic framework that encompasses environmental stewardship, social engagement, ethical governance and community development.[30] This transformation reflects the growing recognition among academics and practitioners alike that sound CSR practices create lasting value for both companies and stakeholders.

Empirical research shows that CSR plays a multifaceted role in enhancing corporate performance and gaining a competitive advantage. In particular, studies have shown that companies with well-developed CSR programmes tend to enjoy stronger brand loyalty,

[27] European Commission 2021a.
[28] Regulation (EU) 2023/956.
[29] Lee–Rhee 2023.
[30] Burbano et al. 2023; Katsamakas – Sánchez-Cartas 2023.

improved reputation and greater resilience to risk, even in times of crisis.[31] Research in the tourism sector, for example, shows that proactive CSR initiatives can mitigate the adverse effects of negative social media events, thereby stabilising corporate reputations in turbulent times.[32] Similarly, integrating CSR into corporate strategy is associated with improved consumer brand choice, as companies that demonstrate strong ESG practices tend to enjoy higher levels of consumer trust and experience long-term profitability.[33]

In recent years, considerable attention has been paid to the internal mechanisms through which CSR becomes embedded in corporate culture. Board composition and leadership characteristics have been identified as critical determinants of CSR effectiveness; for example, evidence indicates that companies with greater board diversity, including a higher proportion of female board members, have more comprehensive CSR disclosure, reflecting increased attention to social issues.[34] In parallel, the emergence of digital technologies and advanced management control systems has enabled companies to better integrate CSR into their day-to-day operations and strategic decision-making.[35] These systems facilitate the collection, monitoring and dissemination of non-financial performance data, thereby reducing the information asymmetry between companies and stakeholders – a key challenge in the CSR landscape.

CSR implementation varies significantly across regions and cultures. In some contexts, CSR initiatives often harmonise with local cultural values, such as community solidarity and family ethics, which enrich the way in which companies interpret and implement socially responsible practices.[36] Furthermore, within the financial services sector, CSR disclosure is associated with improved transparency and stakeholder confidence, as recent studies of environmental and social disclosures by banks within the Euro area have shown.[37] These regional adaptations underline that CSR is not a one-size-fits-all approach, but rather a dynamic construct that needs to be adapted to the specific socio-cultural and regulatory context in which companies operate.

The impact of ESG performance on the competitiveness of companies

ESG performance affects companies' competitiveness through various mechanisms.[38] With healthy ESG activities, firms may improve their operational efficiency, enhance brand value, be better positioned to manage risk, have greater access to capital and enjoy enhanced flexibility in financial matters.[39] However, a number of studies have revealed that this relationship is

31 Lee–Rhee 2023; Cherkasova et al. 2023.
32 Wut et al. 2023.
33 Lee–Rhee 2023.
34 Gurol–Lagasio 2023.
35 Cahyono 2023.
36 Hermawan–Handoyo 2025.
37 Gambacorta et al. 2023.
38 Wang 2025.
39 Ni et al. 2024.

complex, with contradictions or nuances depending on firm size, industry characteristics, and external conditions.[40]

One of the key benefits that can be derived from ESG performance is operational efficiency. By employing sustainable practices – waste reduction, better resource conservation, lower costs – firms can create lasting performance improvements.[41] For example, organisations like the Hisense Group have begun extensively investing in energy-saving technology and reducing their carbon emissions, which has led to performance efficiencies and cost savings while improving productivity. Companies that have introduced cleaner technologies (e.g. sonochemical mordanting in textile dyeing), which are also ESG-driven innovations, have even managed to streamline their processes for dyeing fabrics.[42] In addition to various operational efficiencies, strong ESG practices enhance corporate reputation and brand value, which helps to build the trust and loyalty of customers, employees and investors, more of whom are considering environmental and social responsibility when making decisions.[43] Moreover, positive media coverage of firms that are considered ESG-friendly may even establish or reinforce a firm's positive reputation on the market.[44]

ESG is very much linked to risk and risk management. Companies may mitigate the risks of operational breakdowns, reputational issues and financial malpractice by being proactive in preventing detrimental environmental outcomes, socially irresponsible and unethical behaviour and governance orchestrated crime.[45] In addition, firms with positive ESG marks enjoy better access to capital as some investors in the financial markets are incorporating ESG into their investment decisions.[46] Green finance policies reinforce this behaviour by incentivising financial institutions to support more sustainable firms through offering tangible financial benefits, often in the form of a lower cost of debt.[47]

Moreover, ESG performance fosters innovation and technological collaboration enhancing competitiveness by developing sustainable products and processes.[48] Firms that engage in ESG activities more often than firms that do not prioritise them invest more in R&D and collaborate with partners to accelerate green innovation.[49] Stakeholder relationships also benefit, as meeting investor, customer and local community expectations can develop a sense of ownership and reinforce the company's social license to operate.[50]

Nonetheless, the relationship between ESG and competitiveness can be controversial. Some firms that engage in ESG activities do so for image management purposes, and do not commit

40 Wang–Zhu 2024.
41 Peng 2025.
42 Zhang et al. 2022.
43 Lin 2024.
44 Zhang–Lai 2024.
45 Liu–Jin 2023.
46 Zhang–Zhang 2024.
47 Li et al. 2024.
48 Qian 2024.
49 Tojeiro-Rivero – Moreno 2019.
50 Zhang–Lai 2024.

to substantive change, which creates a 'window-dressing effect'.[51] Moreover, the impact of ESG measures is context-sensitive, where firm size, financing conveniences, geographic location and industrial sensitivity to ESG are all factors that contribute to whether a firm is impacted.[52] The implementation of an ESG framework can come with added costs and trade-offs, especially in resource-intensive or sensitive industries.

The role of investors is also highly relevant here, as more exposure to the market means that companies must adopt higher ESG standards, reinforcing trust in investors[53] – which is impactful in companies with greater market presence. Similarly, good ESG leads to better financial leverage, enabling firms to address external disturbances and adopt long-term sustainable approaches.[54]

Disclosure is also important for adopting an ESG framework. Transparent reporting processes and the provision of information describing environmental and social strategies enhances accountability, as it illustrates a firm's commitment to sustainability and demonstrates transformations relating to economic, environmental, and social strategies.[55] Firms' governance and their ownership structures also have an impact on ESG, for example in the case of State-Owned Enterprises (SOEs). Market-driven structural reforms affording more accountability than past ownership along with open markets encourage market-oriented perspectives to enhance stakeholders' views of resource allocation and ESG levels.[56] This can also be driven by leadership styles and experiences, as most notably the experiences of CEOs with sustainability agendas, formal training, and with previous political engagements tend to yield higher ESG outcomes for companies.[57]

Similarly, when firms use strategic approaches to leverage ESG through planning, for instance, this involves reinforcing sustainability and related philosophies through the company's planning processes and associating sustainability principles with all levels and objectives of the organisation, while frameworks like the Balanced Scorecard (BSC) create a concerted approach to sustainable planning.[58] Additionally, strategic enhancements of ESG performance for firms in more volatile industries, such as energy, can ultimately enable firms to mitigate the risks associated with the volatility of the crude oil market, especially when also accounting for improved performance resulting from peer effects in their markets.[59]

51 Wanyan–Zhao 2024.
52 Naeem et al. 2022.
53 Lu et al. 2025.
54 Fang et al. 2025.
55 Alsayegh et al. 2020.
56 Liu et al. 2023.
57 Sang et al. 2024.
58 Michalski 2024.
59 Zhang et al. 2024.

The concept of corporate citizenship

Corporate citizenship[60] is broadly defined as a company's commitment to operating in a way that has a positive impact on society and the environment, going beyond minimal legal compliance to include the active adoption of ethical, social and sustainable practices. This concept is often used interchangeably with CSR, but is distinguished by its focus on strategically integrating social values into internal operations and external stakeholder relationships.[61] In essence, corporate citizenship involves a company's efforts to balance its economic, legal, ethical and discretionary responsibilities while maintaining beneficial relationships with its employees, communities and other stakeholders.[62]

Corporate citizenship has evolved from traditional *ad hoc* philanthropic activities to a comprehensive framework that integrates sustainability measures across the organisation. For example, the internal dissemination of sustainability initiatives has been shown to improve employees' perceptions of corporate citizenship, thereby strengthening internal culture and enhancing the external reputation of the company.[63] This internal engagement is often influenced by the personal characteristics of entrepreneurs and business leaders. Studies have demonstrated that the social identity of entrepreneurs can significantly shape corporate citizenship practices, thus linking personal identity with wider CSR initiatives.[64] Such a perspective underscores the idea that corporate citizenship is not a mere afterthought, but forms an integral part of a company's strategic identity.

Despite its widespread acceptance, several obstacles remain on the road to the effective measurement and implementation of corporate citizenship. Several scholars have argued that, although corporate citizenship, CSR and corporate social performance are often used interchangeably, operationalising these constructs remains complex.[65] For example, a comprehensive literature review using text mining revealed considerable heterogeneity in the characterisation of corporate citizenship, which underlines the need for clear definitions and standardised metrics for academic research and practical evaluation.[66] Furthermore, research comparing customer citizenship with corporate citizenship has emphasised the need for a comprehensive understanding of stakeholder expectations, since behaviours indicative of responsible corporate action have a direct impact on brand image and competitive performance.[67]

From a strategic point of view, strong corporate citizenship behaviour can bring significant competitive advantages. Companies that actively disseminate sustainability knowledge both

[60] It represents a company's responsibility towards societies. The primary goals are definitely to maximise and improve the quality of life.
[61] Shukla et al. 2021; Park et al. 2023.
[62] Kasradze et al. 2023; Chen et al. 2021.
[63] Caldana et al. 2021.
[64] Chen et al. 2021.
[65] Shukla et al. 2021.
[66] Park et al. 2023.
[67] Chen et al. 2022.

internally and externally tend to experience better employee engagement, increased brand loyalty and stronger local community ties.[68] Furthermore, perceived corporate citizenship positively influences customer brand loyalty, which in turn translates into improved corporate reputation and long-term financial performance.[69] Thus, when corporate citizenship is effectively institutionalised, it serves as a multi-level mechanism that promotes both ethical accountability and business success.

Practices adopted by companies to promote corporate responsibility

A few decades ago, if they were asked what corporate responsibility meant, most people would have associated it with products, warranties and guarantees. Several concepts have sought to define the role and responsibility of companies, the most widely known and used of which is CSR:

> "The responsibility of an organisation for the impact of its decisions and activities on society and the environment, through transparent and ethical behaviour that contributes to sustainable development, including the health and wellbeing of society. It considers the expectations of stakeholders, complies with applicable laws, is consistent with international standards of conduct, and is embedded throughout the organisation and its relationships."[70]

Table 1: Levels of socially responsible HR practices

Individual level
• Focus on the physical and mental wellbeing of workers
• Fair career opportunities and a learning-centred organisational culture design
• Conscious and long-term support for employees' careers
Organisational level
• Organisation development with stakeholder involvement and strengthening of leadership engagement
• Build partnerships with business actors to promote responsible operations
• Active participation in society, for example through voluntary programmes
Institutional level
• System-wide embedding of core values into operation
• Respect for human rights and diversity
• Ensure employee participation in decision-making processes, and promote transparency

Source: compiled by the author

[68] Bravo et al. 2021.
[69] Hu et al. 2023.
[70] Farkas 2013.

Table 2: Differences between the organisational and institutional level

Test aspect/Level	Organisational level	Institutional level
Level of impact	Individual company	Industry, national or global level
Factors	Corporate culture, leadership, CSR objectives	Laws, social norms, regulatory frameworks
Character	Voluntary, tailored	Often mandatory or generally expected
Examples	Internal welfare programmes, DEI (equal opportunities) initiatives	Labour laws, ILO conventions, industry codes
Stakeholders	Employees, management, shareholders	Governments, NGOs, trade unions

Source: compiled by the author

Corporate Social Responsibility (CSR) is a central element of modern business thinking that emphasises the importance of ethical behaviour, social responsibility and sustainable development. Companies can adopt a variety of approaches to contribute to society in a responsible way – strategies that not only benefit the community but can also help strengthen a company's market position and improve its economic performance.

Promotion of health in the workplace is an area that is closely intertwined with CSR, as this relationship creates a positive interaction that requires committed leadership and clearly defined objectives within sustainability strategies.[71] CSR initiatives that target local communities are effective in supporting corporate efficiency gains, as employees are often willing to commit to an organisation that represents real values in return for less financial gain.[72] Socially conscious business practices have long-term benefits, contributing not only to the wellbeing of employees, but also to the development of the economy and the quality of life of the community. In recent years, there has been a surge of interest in researching the relationship between CSR and human resource management (HRM), with a particular focus on areas such as green management, stakeholder relations, employee engagement, building a competitive advantage, employee satisfaction, performance enhancement, sustainability and improving research methods. To ensure socially responsible operations, it is essential that companies integrate CSR and HRM within a sustainable business model.[73]

All this suggests that companies can become truly socially responsible if they focus their activities not only on material growth, but also on working together with people, local communities, consumers and business partners.[74]

71 Alonso-Nuez et al. 2022.
72 Newman et al. 2020.
73 Herrera – Heras-Rosas 2020.
74 Aleksić et al. 2020.

The CSR ethos can be achieved, for example, by integrating workplace health programmes and community-focused initiatives, aligning CSR and HR strategies, and consciously improving environmental performance. Strategic planning and the systematic use of credible ESG indicators are essential for the successful implementation of CSR and can become the cornerstones of sustainable business operations in the long term.

DISCUSSING THE RESULTS

This study has highlighted the growing importance of the social ('S') dimension within the ESG (Environmental, Social, Governance) framework, particularly in the European Union. The research has shown that while significant progress has already been made with regard to its environmental aspects, social aspects such as employee wellbeing, safety at work, support for local communities and respect for human rights are gradually being integrated into corporate strategies and reporting obligations.

The results show that the social dimension of the ESG is not only an ethical obligation, but also a strategic tool to enhance corporate competitiveness. Corporate Social Responsibility and citizenship are becoming increasingly institutionalised and implemented through systems that cover the whole organisation. Non-financial reporting obligations strengthen transparency and build trust among stakeholders.

Integrating corporate social responsibility into the ESG framework contributes to a more sustainable, inclusive and ethical business environment. Well-functioning CSR practices have a positive impact on brand equity, consumer trust and employee engagement, thereby enhancing companies' economic performance in the long term. At the same time, the EU's regulatory efforts provide an incentive to promote socially responsible behaviour.

The study has mainly examined the development of the social dimension in the EU context, so the results are of limited applicability to other geographical regions, especially to developing countries. Furthermore, although the study presents several qualitative examples, the quantitative analysis is limited, so the empirical evidence needs to be investigated further.

For future research, it is recommended to refine the quantitative measurement of the social dimension and to conduct comparative analyses with regions outside the EU.[75] In addition, it would be worthwhile mapping the impact of CSR and ESG at the level of specific industries and to investigate the links between CSR and corporate financial performance. It would also be useful to explore the long-term effects of ESG measures through longitudinal studies.

[75] Gaál–Nagy 2025.

Table 3: ESG performance scores of leading technology firms and automotive companies across major rating agencies

Company	Region	MSCI[76]	(LSEG) Refinitiv[77]	Sustainalytics[78]	ISS ESG[79]	S&P Global[80]
Apple Inc.	United States of America	BBB (Average)	71	18.9 (Low Risk)	B	36
Microsoft Corp.	United States of America	AA (Leader)	87	16.9 (Low Risk)	B	50
Alphabet Inc. (Google)	United States of America	BBB (Average)	81	25.5 (Medium Risk)	B–	42
General Motors Co.	United States of America	BBB (Average)	72	27.6 (Medium Risk)	C+	47
Volkswagen AG	Germany	B (Laggard)	84	29.5 (Medium Risk)	C+	47
Toyota Motor Corp.	Japan	BBB (Average)	79	28.2 (Medium Risk)	C	48

Source: compiled by the author based on data from the rating agencies

CONCLUSION

The central question this study addressed concerned why the development of the social dimension has lagged behind the environmental dimension in the ESG (Environmental, Social and Governance) framework and how the European Union is trying to promote the institutionalisation of CSR in the corporate sector through regulatory and strategic instruments.

The study shows that, although the ESG concept is based on three equal pillars, in practice the 'S' component – the social dimension – is often overshadowed in corporate practices and regulations. To address this, EU legislation, such as the non-financial reporting directives (NFRD, CSRD), aims to strengthen the social dimension by requiring large companies to disclose detailed and measurable data on employee wellbeing, human rights, community engagement and equal opportunities. The social dimension is thus not only an ethical obligation, but also a factor influencing competitiveness.

[76] Availability of ratings: https://knowesg.com/esg-ratings?q=&sector=
[77] Availability of ratings: https://www.lseg.com/en/data-analytics/sustainable-finance/esg-scores
[78] Availability of ratings: https://www.sustainalytics.com/esg-ratings
[79] Availability of ratings: https://www.issgovernance.com/sustainability/sustainability-gateway/
[80] Availability of ratings: https://bit.ly/4qVD6Kl

The main lesson of the study is that corporate social responsibility (CSR) and corporate citizenship are not only of moral but also of strategic importance. Firms can gain a competitive advantage by integrating CSR into their business model, especially when transparency, employee wellbeing, support for local communities and a commitment to diversity are also included. However, the success of CSR practices was also shown to be dependent on the corporate culture, the composition of the management and the local social and legal environment. The study also underlines that the integration of CSR and human resource management (HRM) is essential to ensure socially responsible operations.

Table 4: Putting the proposals into practice

Action level	Objective	Concrete actions
Strategic level – Management	Integration of CSR into corporate strategy	CSR – policies; ESG reporting
Operational level – HR and organisational operations	Developing socially responsible operations	Health programmes; CSR–HRM integration
Community level – Social relations	Community and stakeholder engagement	Community projects; responsible partnership
Monitoring and evaluation	Measurement and development of social impact	Development of performance indicators; feedback; international standards

Source: compiled by the author

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Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting

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LIMITED CAPACITIES OF LOCAL GOVERNMENTS TO IMPLEMENT NATIONAL CLIMATE POLICIES: EVIDENCE FROM GHANA'S NEW JUABEN SOUTH MUNICIPALITY[1]

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This paper highlights how secondary cities, often overlooked in climate governance literature, face distinct implementation challenges compared to capital cities, yet play a key role in Ghana's overall climate response. Utilising qualitative data in the form of interviews and document analysis it identifies significant barriers, including budgetary allocations, conflicting political priorities and weak organisational capacity at the municipal level.

The paper concludes that effective climate action in these municipalities depends on establishing robust systems for local climate data collection and analysis, which currently remain underdeveloped. Additionally, integrating climate action into core local government functions, rather than treating it as a standalone initiative, is essential for sustainable urban development in Ghana's rapidly growing urban centres.

Keywords:
barriers, climate policy, Ghana, municipalities, secondary cities, urbanisation

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INTRODUCTION

Research has emphasised the crucial role of cities in addressing the multifaceted impacts of climate change.[2] While numerous case studies have been conducted on large metropolitan areas and capital cities that are often considered key players in climate action, there is a noticeable lack of attention to secondary or rapidly urbanising cities.[3] The situation is worse in developing countries, where cities face several developmental challenges.[4] For instance, secondary cities, which typically have populations between 300,000 and 500,000, are particularly susceptible to the adverse effects of climate change.[5]

In regions such as Africa and Asia, smaller cities are experiencing rapid population growth but their infrastructure often remains limited, making effective climate governance a pressing concern.[6] Moreover, several scholars have pointed out that integrating climate change considerations into local government policies is often marginalised in many sub-Saharan African nations. This marginalisation stems primarily from a lack of financial resources, inadequate technical capacity, and insufficient political will to prioritise climate action. These barriers hinder local governments' ability to prioritise climate change effectively within their operational frameworks and strategic plans.[7]

The emergence of such a scenario highlights the critical need for more extensive research focusing on secondary city governments, particularly in Africa and other developing countries, that are often underrepresented in the literature. The current paper aims to bridge this gap by conducting a detailed case study on Ghana. Specifically, it examines the New Juaben South municipality, a representation of fast-urbanising local governments in Ghana that has received limited research attention despite significant demographic changes. Over the past few decades, Ghana has experienced consistent population growth in its urban areas, particularly in secondary cities.[8]

CLIMATE CHANGE RESPONSE AT DIFFERENT GOVERNANCE LEVELS IN GHANA

Ghana is particularly vulnerable to the adverse effects of climate change, as various sectors critical to its economy and well-being face significant threats. Over recent decades, the manifestations of climate change have increasingly impacted sectors such as agriculture, urban planning, water resources and energy.[9] As these impacts intensify, Ghana has adopted

2 Angelo–Wachsmuth 2020; Carter et al. 2018.
3 Araos et al. 2016; Hölscher et al. 2019; Olazabal – Ruiz De Gopegui 2021.
4 Wisner et al. 2015.
5 Fila et al. 2023.
6 Birkmann et al. 2016.
7 Adu-Boateng 2015; Musah-Surugu et al. 2019.
8 Ghana Statistical Service 2021.
9 Abunyewah et al. 2023; Poku-Boansi – Cobbinah 2018; Fitton et al. 2021.

a comprehensive and holistic approach in order to mitigate current challenges and prepare for future risks, as illustrated in Figure 1.

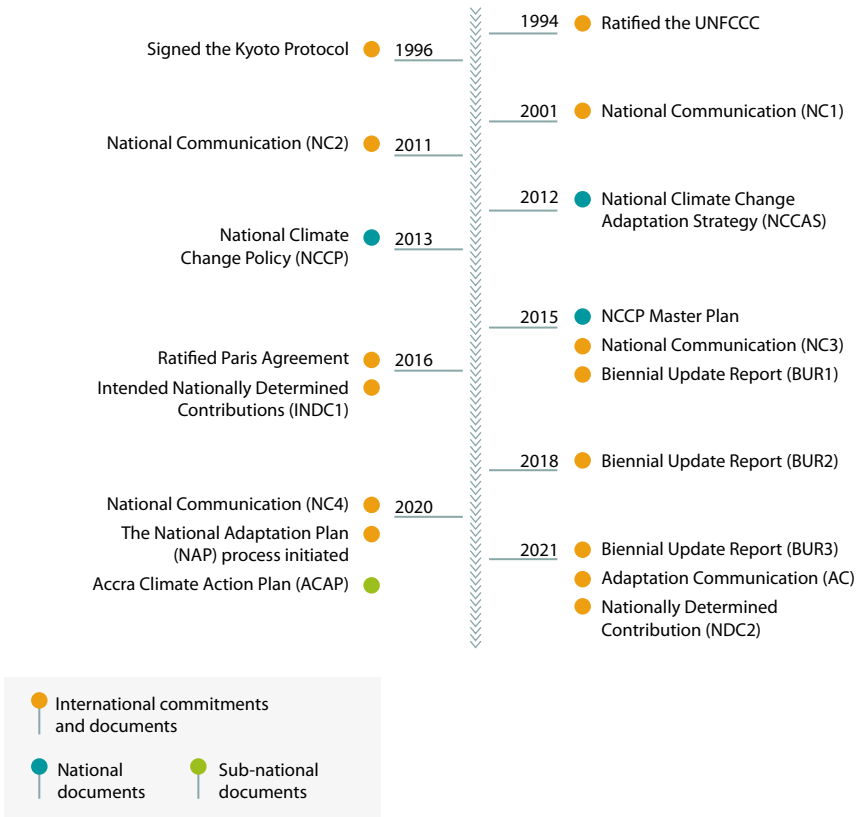

Figure 1: Ghana's climate policy milestones at different government levels
Source: compiled by the author

International commitments and frameworks

Since 1995, Ghana has been a committed participant in global efforts to combat climate change, having joined the United Nations Framework Convention for Climate Change (UNFCCC). This commitment is further reflected in its adherence to the Kyoto Protocol of 1997 and the Paris Agreement, which ratified it in 2016. Ghana has consistently updated and submitted various reporting obligations through these international agreements, highlighting its dedication to the climate action framework. Among the key reports it has submitted are the Biennial Update Reports (BURs), National Communications (NCs), Nationally Determined Contributions (NDCs), National Adaptation Plans (NAPs) and Adaptation Communication (AC).

The NCs, which outline the country's climate-related goals and strategies, have been submitted at various intervals: in 2001, 2011, 2015, and most recently in 2020. In conjunction with the NCs, Ghana has submitted three BURs, dated 2015, 2019 and 2021, which provided updates on national Greenhouse Gas (GHG) inventories and detailed the progress of various mitigation activities, including the need for additional support.[10] These reports illustrate Ghana's ongoing efforts to comprehensively assess, monitor and address its GHG emissions.

Additionally, Ghana's initial NDC was submitted in 2016, marking a significant step in enhancing the country's commitment to emission reductions as stipulated in the Paris Agreement. The NDC outlines the country's intention to reduce its greenhouse gas emissions and adapt to the realities of climate change. The updated NDC, released subsequently, details a robust plan consisting of 31 concrete action programmes. These programmes are categorised into 20 mitigation initiatives to reduce emissions and 11 adaptation strategies to bolster the country's resilience against climate impacts. The focus is on seven critical economic sectors for sustainable development, and it is set to be implemented within ten years, from 2020 to 2030.[11]

National policy framework

In response to the critical challenge posed by climate change and in alignment with the UNFCCC directives, Ghana has undertaken significant steps to integrate climate considerations into its national development planning. The country adopted the National Climate Change Adaptation Strategy (NCCAS) in 2012, followed closely by the National Climate Change Policy (NCCP) in 2013.[12]

The NCCP serves a vital purpose in addressing the multifaceted impacts of climate change, mainly focusing on key sectors that are significantly affected, including infrastructure, natural resources, agriculture and food security. These areas have been identified through comprehensive studies highlighting the vulnerability of these fields to climate fluctuations, emphasising the urgent need for targeted strategies to enhance resilience. The policy prioritises enhancing preparedness and taking responsive measures for disaster management, recognising the increasing frequency and intensity of climate-related disasters, such as floods and droughts. By outlining concrete actions and frameworks, the NCCP aims to equip Ghana with the necessary tools to respond effectively to these challenges, fostering a holistic approach to climate resilience.

Conversely, the NCCAS is an overarching framework designed to fortify Ghana's resilience to climate impacts both in the present and the future. Its primary aim is to enhance the country's adaptive capacity by improving its infrastructure, bolstering its institutional capacity, and increasing public knowledge surrounding climate issues. The strategy was meticulously crafted to guide the prioritisation of adaptation programmes from 2010 to 2020. It operates

10 Republic of Ghana 2011; *Ghana's Fifth National Greenhouse Gas Inventory* 2022.
11 MESTI 2021.
12 MESTI 2012.

under the auspices of the UNFCCC guidelines while aligning with the Hyogo Framework for Action from 2005 to 2015, emphasising disaster risk reduction. Through the NCCAS, Ghana seeks to implement practical adaptation measures that can be integrated into existing development policies, thereby fostering a more resilient society that is capable of withstanding the effects of climate change.

The NCCP and NCCAS represent a comprehensive response to the climate crisis, addressing both immediate needs and long-term sustainability goals. They set a strategic direction for Ghana to manage its vulnerabilities and leverage opportunities from climate adaptation efforts, ultimately contributing to inclusive and sustainable national development.

The sub-national level

In the context of sub-national governance and decentralised urban planning, the Ghana Shared Growth and Development Agenda (GSGDA) serves as an overarching national policy framework designed to guide the formulation of medium-term development plans.[13] These plans are vital for metropolitan, municipal, and district assemblies (MMDAs) across Ghana. A key expectation of local governments within this framework is to formulate and integrate strategies that address the multifaceted challenges posed by climate change into their development agendas.

Within this framework, the NCCP and NCCAS distribute the responsibilities of adaptation governance among various state institutions, highlighting the role of local governments as critical players in executing climate action strategies. However, the implementation of these policies exhibits a predominantly top-down structure. Ministries, departments and agencies (MDAs) at the national level hold substantial authority over the planning, monitoring and evaluation of adaptation initiatives.

Despite this imperative, the effectiveness of MMDAs in urban climate governance has been notably compromised by a significant lack of robust local and regional climate policies. The reliance on a centralised approach underscores the challenges which MMDAs face. These assemblies may struggle to engage effectively with the climate action agenda without sufficient autonomy or tailored policy frameworks to guide their efforts. The Accra Climate Action Plan remains the sole reference point at the sub-national level for climate change policymaking, emphasising the need to further develop localised policies to empower other municipalities in their climate governance efforts.[14] Analysis of this scenario reveals a crucial opportunity for enhancing local capacity and fostering a more cohesive and comprehensive approach to climate adaptation and resilience across Ghana's diverse regions.

[13] National Development Planning Commission 2014.
[14] Accra Climate Action Plan [s. a.].

MATERIALS AND METHODS

This paper adopted a case study research approach to comprehensively examine the constraints that secondary cities and local governments face in addressing the multifaceted challenges of climate change. Specifically, the New Juaben South municipality serves as the focal point of this research, providing a unique opportunity to investigate the dynamics and particularities of smaller urban areas. Unlike mega-cities, which often dominate the discourse and research on urbanisation and climate impacts, secondary cities like New Juaben South have historically been granted only limited attention. This gap in the research underscores the importance of exploring how local governments in these regions engage with climate action and the unique obstacles they encounter.

The research employed qualitative methods, mainly focus group discussions, to delve into the perspectives of various stakeholders, including local government officials, community leaders, civil society organisations and individuals from teacher's associations and religious groups. These discussions are crucial for understanding how climate change is perceived at the community level and how these perceptions influence local governance and policy-making processes.

Subsequent sections of the paper will systematically present the findings from these focus group discussions. Ultimately, the paper aims to contribute to a deeper understanding of the role of secondary cities in the broader landscape of climate change, highlighting the need for tailored interventions and support mechanisms to empower these municipalities in their climate adaptation and mitigation efforts.

Profile of the New Juaben South municipality

Considered one of the most rapidly urbanising cities in Ghana, the New Juaben South municipality is in the Eastern Region and covers a land area of 60 square kilometres. Koforidua is the administrative capital of the Municipality. The population of the Municipality, according to the 2021 population and housing census, stands at 232,776. The Municipality lies within the Semi-deciduous Forest Zone of Ghana, with a bi-modal rainy season of between 1,200 mm and 1,700 mm, reaching its maximum during the peak periods of May and June and September and October. The dry season in New Juaben typically occurs between November and February. Humidity and temperature are generally high, ranging between 20 °C and 32 °C. The land is gently undulating, at heights ranging between 152 meters and 198 meters above mean sea level. The highest area of the municipality is the mountain belt along the eastern boundary of the municipality. The municipality is drained mainly by the river Densu and its tributaries. Regarding vegetation, it falls within one of the country's three agro-climatic zones, namely the semi-deciduous rainforest. The flora and fauna of the district are diverse and include various types of economic and ornamental tree species with varying heights. The key sectors of the economy are the service sector and other socio-economic activities.

While most of its industrial establishments are in the municipality's central business area, agricultural production is in small settlements and peri-urban localities.[15]

Study population

The target population for this study comprised decentralised government and non-governmental stakeholders from the New Juaben South municipality, specifically those individuals and organisations whose work is closely linked to climate change and environmental management. Investigating the views of this population is critical for understanding the local context of climate initiatives and environmental policies, as these stakeholders are directly involved in implementing, evaluating, and advocating such efforts.

Purposive sampling was selected as the most appropriate technique to gather data. This technique is particularly beneficial when the aim is to conduct an in-depth investigation into specific phenomena, enabling the researcher to gather rich, detailed information from a select group of individuals who are most familiar with the subject.

Before the data collection phase, invitation letters were dispatched to various departments and agencies known for their expertise in and engagement with climate change and environmental management. These letters outlined the objectives of the study, the importance of the subjects' participation, and the impact their insights could have on the research outcomes. Each organisation was requested to nominate two representatives to participate in focus group discussions, which served as this study's primary data collection instrument. These discussions were designed to foster an interactive environment where participants could share perspectives, experiences and insights.

It was initially projected that heads of departments and programme officers would be the primary participants in these discussions, given their positions of authority and knowledge. However, in several instances, other staff members were nominated to participate, demonstrating a recognition of the value of diverse viewpoints within the organisations. This inclusion of various roles enriched the discussions. It provided a broader understanding of the challenges and opportunities stakeholders face in the realm of climate change and environmental management within the municipality.

Overall, the targeted approach to participant selection and data collection employed reflects a commitment to obtaining comprehensive and nuanced insights into the interconnectedness of climate initiatives and local governance, ultimately contributing to more informed decision-making and policy development in the region.

[15] Republic of Ghana 2017. Also see http://njsma.gov.gh/

Table 1: Sampled stakeholders

Type of stakeholders	Organisations	Number of participants
Local government	New Juaben South Municipality	3
Decentralised ministries, departments and agencies	EPA	2
	Regional and Municipal NADMO	2
	GMET	1
	Land Use and Spatial Planning Authority	1
	Forestry Commission	2
	Department of Gender	3
	Department of Children	3
	Water Resources Commission	1
	Information Services Dept	1
	Department of Rural Housing	1
	Ghana National Association of Teachers	1
Research and academia	Koforidua Technical University	1
Private sector organisation	Zoomlion Ghana Ltd.	2
Other	Religious Group Representative	1
	Ghana National Association of Teachers	2

Source: compiled by the author

FINDINGS AND DISCUSSIONS

Absence of local policies

The political landscape plays a significant role in shaping decisions related to climate change, particularly in the context of local governance. The National Climate Change Policy (NCCP) and the National Climate Change Adaptation Strategy (NCCAS) are frameworks which aim to localise climate actions across various sectors. These initiatives target critical areas such as waste management, flood and disaster resilience, climate change education and sustainable agricultural practices tailored for smallholder farmers. However, insights from our focus group discussions revealed a critical challenge. Despite the stated intent of these frameworks to decentralise decision-making, local governments often find themselves constrained by a top-down approach dictated by higher levels of government. Participants in the discussions highlighted a recurring theme: "Local governments have very little power to make climate decisions, especially since we have no current policies and action plans" (Municipal Planning Officer).

This sentiment reflects a significant barrier to effective local governance in climate action. While local governments may be mandated to localise national climate policies, their

dependence on national directives often undermines their autonomy. This relationship creates a bottleneck where local concerns and experiences, particularly from communities directly impacted by climate change, are underrepresented or ignored in the decision-making process.

Research in other contexts corroborates these findings, suggesting that local governments typically operate with limited autonomy regarding climate decision-making. The prevailing top-down approach creates a disconnect between national strategies and regional realities.[16]

As such, the actual needs and insights of the communities most affected by climate change are frequently sidelined in favour of higher government-level priorities. This lack of inclusivity hampers the effectiveness of climate actions tailored to specific local contexts and needs.

In Ghana, where efforts to combat climate change have been ongoing for several years, there remains a pressing need to accelerate the decentralisation of climate policy implementation. The process of mainstreaming climate change at the local level in developing countries, including Ghana, is still relatively nascent.[17]

Various studies have highlighted that local climate change decision-making is not adequately encouraged due to the complex dynamics between national and local governments. This disconnect emphasises the necessity for a more collaborative and empowering approach that genuinely integrates local voices into the national climate narrative.

Financial constraints

The issue of implementing climate actions in the New Juaben municipalities is deeply intertwined with the availability of financial resources and incentives from national governments, as highlighted by the research participants. Our discussions with them revealed that the effectiveness of climate initiatives is significantly hindered by the inadequacy of financial support, particularly from the district assembly common fund, which is supposed to facilitate various development projects. Participants concurred that there is an urgent need to make further funds available to support climate change initiatives better, as current allocations often prioritise other pressing developmental needs over climate action.

Furthermore, accessibility to external funding sources, especially from development partners, emerged as a critical concern among various focus groups. Participants pointed out that local governments frequently struggle to secure these additional financial resources, which are vital for the effective implementation of climate change programmes. It was also noted that a lack of skills and knowledge among staff at the local level impedes their ability to mobilise international funding. Many local government departments and agencies struggle to navigate the complex landscape of donor funding, leading to missed opportunities for collaboration and for receiving support to mainstream climate change considerations into local governance.

[16] Measham et al. 2011.
[17] Adu-Boateng 2015.

It is worth stressing that decentralised organisations, such as the Environmental Protection Agency (EPA) and the National Disaster Management Organisation (NADMO), are pivotal in facilitating communication with the national government to mobilise external funding. However, this process lacks coordination and urgency, further complicating efforts to attract and secure funding for climate-related projects.

Participants also expressed concern regarding the current funding mechanisms from the national government. One respondent pointed out: "At the municipal level, funds from the national government are meant for development projects which do not mostly include climate change; hence, we do not focus on such interventions." This sentiment reflects a more significant systemic issue where climate considerations are often sidelined in favour of immediate developmental outcomes.

Another group of participants raised the issue of mismanagement and misappropriation of public funds, which only compounds these challenges. This concern is particularly frustrating for local governments that already face resource constraints. A respondent from NADMO indicated that substantial funds intended for adaptation support services at the district level often come from district assemblies, which already need to juggle competing priorities for limited resources. The perception that financial mismanagement is occurring creates distrust and discourages potential donors or partners from contributing to climate initiatives, further exacerbating the funding crisis.

Organisational constraints

The focus group discussions revealed a complex landscape regarding the response to climate change impacts within the municipality, highlighting the varied reactions of different stakeholders shaped by their respective organisational structures. A significant portion of the research participants expressed frustration towards the national government, attributing the difficulties they had faced to the decentralised nature of governmental organisations. While some decentralised entities, such as the Environmental Protection Agency (EPA), the NADMO, and the Forestry Commission are actively engaged in addressing climate change at the local level, participants noted that these efforts are often hampered by the overarching framework set by the Ministry of Environment, Science, Technology, and Innovation (MESTI). This ministry, despite being the principal entity accountable for the formulation and execution of national climate policies, operates primarily from the national capital and lacks a direct representative presence within the municipality.

This disconnect was particularly troubling for research participants, who pointed out that the limited organisational capacity within the municipality poses a substantial barrier to the effective integration of climate change initiatives into local activities. The fragmentation of responsibilities further complicates the situation; without a cohesive strategy or dedicated department focused specifically on climate change, local entities struggle to implement meaningful actions that reflect the urgency of the climate crisis. Participants strongly advocated

establishing a specialised climate change department at the municipality level with the necessary expertise and resources to lead the city's climate-related agendas.

Moreover, stakeholders from various focus group discussions emphasised the need for a structured approach to climate change that could be effectively mainstreamed within their work programmes. A common sentiment expressed in the discussions was that most government departments and agencies operate predominantly in accordance with the directives they receive from their headquarters in the capital, leaving local authorities disadvantaged in pursuing climate initiatives. One participant articulated that climate change is primarily perceived as a central government issue, which has resulted in a lack of local institutional arrangements for addressing these pressing challenges. This perception often leads to neglect regarding the roles that local authorities could and should play in climate action.

In contrast to the absence of climate-specific structures, some positive steps have been taken in other areas, such as the mainstreaming of gender in the governance of the municipality. For instance, a gender desk has been established at the municipal assembly and in some decentralised departments, such as the Ghana Education Service. These structures aim to support the integration of gender considerations in the municipality's initiatives. However, participants lamented the contrast between progress in this area and that in connection to climate change, noting that there are no equivalent structures to facilitate coordinated responses to climate-related issues. The gap in leadership and institutional support further reinforces the pressing need for introducing dedicated climate action mechanisms within the municipality.

Limited technical capacity

The ability of the New Juaben South municipality to effectively address climate change is significantly hindered by its limited technical capacity, a challenge that goes beyond mere financial constraints. During discussions with stakeholders, it became evident that officials lack the technical skills and expertise to plan and implement comprehensive climate change policies and programmes properly. This lack of capacity results in inefficient capacity-building efforts that fail to leverage the existing knowledge base effectively.

One key concern identified in the focus group discussions was the lack of understanding among stakeholders regarding current and future climate risks. This shortfall in knowledge impacts the formulation and execution of appropriate adaptation and mitigation strategies, ultimately undermining the municipality's climate response efforts. Several participants confirmed that enhancing technical capacities is a significant challenge for local governments.

Research participants from all three study areas agreed that their staff needed more climate change policy design and implementation training. A development planner noted that insufficient technical capacity has historically led to poor strategic planning and the ineffective execution of national climate policies. Additionally, another officer pointed out that municipalities are hampered in developing and instituting suitable adaptation and mitigation strategies without a solid grounding in mapping current and anticipated climate

variability. This limited understanding of climate risks can create a vacuum that allows for political interference and distorts the perception of climate issues, often relegating them to the status of local concerns rather than emergency priorities.

An interviewee highlighted how elected officials' backgrounds and political affiliations shape their decision-making processes, particularly regarding training opportunities related to climate change. This politicisation can create biases that affect resource allocation for climate education and capacity building, resulting in inequitable knowledge distribution among stakeholders.

Moreover, focus group discussions revealed a concerning uniformity in the participants' grasp of climate change science, indicating significant gaps in understanding of this field across decentralised government departments and agencies. Many officers merely associated climate change with alterations in weather patterns, listing impacts such as floods, droughts, bushfires, and land degradation without a nuanced understanding of the broader implications of climate change.

While stakeholders acknowledged these severe impacts, most lacked knowledge about climate change policy frameworks and strategic planning. A noteworthy point raised was the specific context of municipal spatial planning in Ghana, which ideally should integrate climate change considerations due to its critical relevance. However, some interviewees voiced frustration at how climate change seemed disconnected from their respective work areas, suggesting a failure to integrate climate education into local governance effectively.

Inefficient stakeholder collaboration

This analysis of stakeholder collaboration within the New Juaben South municipality reveals significant inefficiencies, primarily due to the fragmented engagement between the various government and non-governmental organisations that are involved in climate change initiatives. Several key institutions have been identified as active players, including the Municipal Assembly, the Environmental Protection Agency (EPA), the NADMO, and the Ministry of Food and Agriculture (MOFA). Despite overlapping responsibilities of these bodies for climate change mitigation, there appears to be a lack of cohesive communication and collaboration among these entities.

A notable insight from local groups highlights this disconnect. One participant articulated a prevalent concern: "We are not mostly informed of the climate change initiatives implemented by the national government or even other decentralised agencies when it comes to mainstreaming climate change." This statement underscores the communication gaps and the need for enhanced dialogue regarding the strategies and actions being taken at the national and local levels. The 'silo' structure of local governance significantly contributes to this issue.

Decentralised government agencies often operate under directives from their head offices or sector ministries at the national level, which can create a top-down approach that stifles local input and engagement. Consequently, even when agencies such as the Department of Gender, the Information Services Department, and the Department of Children are present

within the municipality, their activities related to climate change are often minimal or are completely disconnected from wider climate action efforts. This absence of collaboration is at odds with the ethos of the national climate change policies, which advocate for a holistic and integrated approach to tackling cross-cutting issues.

This situation reflects the broader problem of organisational silos within local government structures, as highlighted by Adu-Boateng.[18] These silos create barriers to efficient governance and hinder the municipality's ability to respond effectively to climate-related challenges. The lack of cross-departmental cooperation ultimately diminishes the potential for comprehensive solutions that encompass the multifaceted nature of climate change.

Another crucial factor contributing to the inefficiencies in stakeholder collaboration is the differing motives of the organisations involved. Participants in the study noted that the mismatch in objectives between institutions raises obstacles to partnership. For instance, the private health sector primarily operates with a profit motive, focused on delivering healthcare services for financial gain. In contrast, the Ghana Health Service (GHS) is driven by a non-profit mandate for public health and community wellbeing. This fundamental difference in objectives creates an environment where collaboration becomes challenging. These entities struggle to align their efforts toward shared goals without a common ground or mutual interest.

Lack of local climate data

Findings from the focus group discussions have highlighted a significant gap in local climate data, particularly concerning the specific risks and vulnerabilities facing communities in the New Juaben South municipality. Participants in the research emphasised that the availability of comprehensive and up-to-date climate data is critical for effective planning and decision-making. However, they noted several factors that contribute to this deficiency.

One major issue was the discontinuity in information sharing, especially when officials in a government organisation were transferred to another office. This often leads to a loss of crucial institutional knowledge. As one participant put it: "Sometimes when staff are transferred, there is a lack of continuity and coherence in information sharing. Therefore, it makes it difficult to create long-term databases." This highlights an underlying systemic problem where knowledge retention strategies and data management practices are not sufficiently robust to ensure that vital climate data remains accessible over time.

Moreover, many participants echoed concerns that access to reliable and localised climate data remains a fundamental constraint on effective resource management. There is a specific need for detailed information regarding extreme weather events such as storms, floods, and rainfall patterns. Smallholder farmers rely heavily on this data because it directly impacts their livelihoods. Inaccurate or insufficient climatic information can lead to poor decision-making, risking crop yields and jeopardising food security. For instance, without precise

[18] Adu-Boateng 2015.

forecasts, farmers may plant crops which are ill-suited for the expected weather conditions or fail to take the necessary precautions against impending disasters.

These challenges are compounded by the absence of a centralised database that consolidates climate data and makes it accessible to decision-makers and the local community. The lack of a systematic approach to data collection and dissemination hampers the ability of local authorities to devise effective adaptive measures. This situation not only affects agricultural practices but also limits the ability of policymakers to implement long-term strategies that could mitigate climate-related risks in the municipality.

CONCLUSION AND RECOMMENDATIONS

This paper has examined the constraints faced by local governments in implementing national climate policies, taking the New Juaben South municipality in Ghana as a case study. The choice of this locality is significant given that secondary city governments have often received less scholarly attention than larger urban areas and megacities. The findings reveal that while Ghana is strongly committed to addressing climate change, especially at the international and national governance levels, a notable lag exists at the local government level. This discrepancy has crucial implications for effective climate action.

The implementation of national climate policies is structured through a decentralised system where local governments are pivotal stakeholders. However, the research participants from the New Juaben South municipality reported challenges impeding their ability to execute these policies effectively. Key barriers identified include:

- Political and organisational constraints: Local governments often operate within a framework that is influenced by fluctuating political priorities and a lack of organisational clarity. These factors can inhibit decisive action on climate-related issues.
- Limited technical capacities: Many local authorities lack sufficient expertise and knowledge regarding the technical aspects of climate change mitigation and adaptation strategies. This knowledge gap hinders their ability to develop and implement practical local climate actions.
- Inadequate funding: A critical limitation local governments face is the scarcity of financial resources for climate initiatives. Budget constraints often mean that local authorities cannot effectively implement the necessary projects or programmes to combat climate change.
- Weaker collaboration and coordination among stakeholders: The absence of robust collaboration mechanisms among various stakeholders, including governmental bodies, NGOs, and community organisations, creates silos that impede comprehensive climate action.
- Lack of local climate data: Decision-making is severely affected by an absence of localised data on climate change impacts, vulnerabilities, and risks. This data is essential for local governments to be able to effectively tailor their strategies and make informed decisions based on empirical evidence.

Structural arrangements and organisational resource sets also play key roles in determining local governments' effectiveness in addressing climate change. Ambiguity regarding delineating responsibilities and tasks can substantially limit local authorities' capacity to respond to climate challenges.

Given the accelerating climate crisis and its profound effects on cities, it is crucial to empower local governments to mobilise resources independently to address climate change effectively. Initiatives such as public-private partnerships could be instrumental in unlocking financial resources for use in local climate actions. These partnerships can enhance not only the availability of funding but also capacity-building opportunities, fostering innovation and the sharing of best practices.

Furthermore, local governments must engage in comprehensive educational programmes to deepen their understanding of climate change. This includes identifying and analysing their communities' specific risks and vulnerabilities. Local authorities can develop more relevant and targeted responses to the climate crisis by doing so. There is also a pressing need to collect and disseminate robust local information and data. Such data must be organised so that decision-makers can utilise it effectively to inform their climate action strategies. The literature supports the notion that exchanging resources and information among stakeholders is a valuable leveraging mechanism. This collaboration can significantly enhance the effectiveness and efficiency of local climate initiatives.

In summary, local governments in Ghana, particularly those in secondary or intermediate cities, need to play a meaningful role in addressing climate change. They require financial and technical support and a conducive political environment that fosters collaboration and innovation. Building local capacities and improving data availability will be foundational steps in translating national climate commitments into impactful local actions. A well-designed, budgeted and institutionalised capacity-building programme should be implemented as soon as possible with the help of existing local forces.

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ARTIFICIAL INTELLIGENCE IN THE SERVICE OF MINORITIES' LANGUAGE RIGHTS – OPPORTUNITIES, RISKS AND CHALLENGES[1]

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Artificial intelligence brings both benefits and risks concerning the realisation of linguistic rights for minority language communities. In this paper, I will examine what I perceive as the most evident benefits and challenges, primarily from a techno-optimistic perspective. Before doing so, however, I will first provide a brief overview of the relevant international and EU legal framework, with a particular focus on legal attempts to define artificial intelligence and the existing regulations on linguistic rights.

Keywords:
international law, EU law, minority rights, language rights, Artificial Intelligence

INTRODUCTION

Beyond doubt, the continuous development of artificial intelligence will soon impact the lives of everyone,[2] including those belonging to minority groups. Presumably, members of linguistic minorities will be no exception. In this article, I aim to examine some of the most significant challenges – involving both opportunities and risks – that they may face. More specifically, I will analyse the potential legal challenges and the consequences which AI may bring. After briefly reviewing both the 'fully' and 'semi-' international legislative efforts

[1] Project no. TKP2021-NKTA-51 has been implemented with the support provided by the Ministry of Innovation and Technology of Hungary from the National Research, Development and Innovation Fund, financed under the TKP2021-NKTA funding scheme.

[2] From the most recent pieces of literature on the effects of AI on everyday life see for instance Kissinger et al. 2021.

undertaken thus far to define artificial intelligence, I will provide a thorough examination of the current legal framework for protecting the rights and interests of linguistic minorities. The key question here is whether this framework is sufficiently equipped to address the challenges that AI may pose in the future. Following this analysis, I will assess the potential benefits and risks to the legal status of linguistic minorities that AI might introduce, particularly from the perspective of their right to use their native language in various aspects of everyday life.

Given the lack of extensive literature on this subject,[3] I will examine existing legal norms, both international and domestic, including draft legislation where relevant. My analysis will primarily be based on the interpretation of legal norms and relevant scholarly works, making this study a qualitative legal inquiry.

My initial research question concerns the potential role of artificial intelligence in enhancing the protection of linguistic minorities' language rights. I argue that it is essential to provide members of linguistic minorities with access to AI-driven tools that empower them and contribute to genuine legal equality and equal opportunities, regardless of their mother tongue. I further contend that, while states already have certain obligations in this regard under the current framework of international law, additional legal norms may be necessary to fully achieve these objectives.

LEGAL ATTEMPTS TO DEFINE ARTIFICIAL INTELLIGENCE[4]

European countries, along with their various cooperative frameworks, have played a pivotal role in defining and regulating issues related to artificial intelligence. The Council of Europe and the European Union are particularly noteworthy in this regard, as both had already established a common approach on the matter by the time this article was finalised. However, no universal or customary international legal framework had yet emerged at the time of writing. It is also important to note that certain States[5] may have developed their own legal approaches

[3] From the somewhat related literature see Gerken 2022; Rehm–Way 2023; Pym et al. 2022.

[4] On the issue of defining AI in detail see Hárs 2021: 320–344.

[5] Some states are also trying to find internal legal answers to the questions raised by artificial intelligence. In the United States, federal level regulation has not yet been enacted, but codification work has begun in some of the states. In some cases, this means that U.S. states (Alabama, Hawaii, New York) have created committees that are called upon to explore possible regulatory directions to address artificial intelligence. One state (California) has requested that the federal agencies set up such a commission. Utah has created a talent initiative in higher education, while Alabama and Delaware have recognised the important role artificial intelligence could play in the local economy and its potential to transform the lives of residents, while Texas is directly encouraging public agencies to use such technologies. Moreover, the state of Illinois has required employers inform the participants in advance if a job interview is recorded and subsequently subjected to artificial intelligence analysis, and to request their consent. In addition, there are many legislative proposals before the parliaments of the member states, the purpose of which, in addition to strengthening the economy, is generally to include data protection guarantees in the existing legal framework. In terms of the proportion of submitted proposals, the state of California is perhaps unsurprisingly in the lead, but taking everything into account, it is not yet possible to clearly identify common trends, as the regulations are still quite fragmented in the American member states. See https://www.ncsl.org/ncsl-search-results/topics/%20/t/1770995607613?searchtext=artificial%20intelligence%20. It is interesting to

to AI regulation over the years. Additionally, some international *soft law* instruments include attempts to define AI, although these lack legally binding force and cannot be enforced through formal legal mechanisms.

Referring back to successful international or "semi-international" legislative processes, the first legally adopted instrument establishing the concept of artificial intelligence – or more specifically, the notion of an 'AI system' – is the European Union's Artificial Intelligence Act.[6] According to Article 3 (1) of this regulation, an AI system is defined as:

> "A machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments."[7]

The Council of Europe's regulatory approach closely aligns with that of the European Union. The Framework Convention on Artificial Intelligence and Human Rights, Democracy, and the Rule of Law, adopted in late 2024, defines "artificial intelligence systems" in Article 2 as:

note that some large American cities (for example San Francisco or Boston) have banned city officials from using facial recognition software, and a similar bill is before the California and even federal legislatures. See, for example, "Facial Recognition and Biometrics Technology Moratorium Act of 2020", a federal bill introduced by Senator Ed Markey, a Democrat from Massachusetts, and his colleagues are commenting. https://www.congress.gov/116/bills/s4084/BILLS-116s4084is.pdf/ and https://www.markey.senate.gov/news/press-releases/senators-markey-merkley-lead-colleagues-on-legislation-to-ban-government-use-of-facial-recognition-other-biometric-technology/. The situation is similar in Canada, see details here: Shah et al. 2021. In the second half of 2022, the White House published a "Blueprint for an AI Bill of Rights" with the aim of protecting people from the potential harms caused by artificial intelligence https://data.aclum.org/storage/2025/01/OSTP_www_whitehouse_gov_ostp_ai-bill-of-rights.pdf. Of course, not only legislative bodies but also the legal literature has dealt with the definition and definability of AI. In this regard, see for example Hildebrandt 2020: 74–79; Carrillo 2020; Karljuk 2018, Surden 2019.

6 Even if there is no such legal source as an 'act' in the European Union, it is relatively common to give informal denominations like these to pieces of secondary EU legislation which are considered to have a significant regulatory relevance. Hence, I will use this denomination throughout this paper, although the official title of the regulation in question is the "Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)".

7 The definition of an AI system underwent significant changes throughout the codification process within the EU's legislative bodies before the final version was adopted. In the original draft presented by the European Commission approximately three years earlier, the definition was as follows:
"A software that is developed with one or more of the techniques and approaches listed in Annex I and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with."
Annex I of the draft regulation outlined the techniques and approaches that could be used to develop artificial intelligence systems. These included machine learning methods, logic- and knowledge-based approaches, as well as statistical techniques such as Bayesian estimation, search, and optimisation methods.

> "A machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that may influence physical or virtual environments. Different artificial intelligence systems vary in their levels of autonomy and adaptiveness after deployment."

While much will depend on the speed of the signing and ratification process,[8] as well as on the number of states ultimately bound by its provisions, it is reasonable to argue that a common European legal approach[9] to defining AI – particularly AI systems – is emerging.

THE CURRENT INTERNATIONAL LEGAL FRAMEWORK FOR THE LANGUAGE RIGHTS OF MINORITIES

The Universal Declaration of Human Rights (UDHR) of 1948 was one of the first international documents to recognise language as a potential ground for discrimination, and it explicitly prohibited such discrimination in the enjoyment of human rights under Article 2. Although the UDHR is not an international treaty, its provisions are now widely regarded as having become part of customary international law, thereby acquiring normative force. Furthermore, alongside the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – both adopted in 1966 under the auspices of the United Nations – the UDHR forms a cornerstone of what is commonly referred to as the International Bill of Human Rights.[10]

Each of the Covenants effectively reiterates the anti-discrimination clause[11] of the Universal Declaration of Human Rights. However, the International Covenant on Civil and Political Rights goes even further by explicitly recognising the right of individuals belonging to linguistic minorities to use their own language "in community with the other members of their group".[12] Another key instrument within the universal international framework for protecting linguistic minority rights is the 1960 Convention against Discrimination in Education, drafted under the auspices of the United Nations. Article 5 of this treaty recognises the right of members of national minorities to use or to be taught in their own language within educational systems, albeit with an important restriction. Specifically, this right must not be exercised in a way that "prevents the members of these minorities from understanding the

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8 As of March 1, no country had ratified the Framework Convention, despite it having been signed as early as 5 September 2024. See https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=225/

9 Moreover, it may not only be a European approach, as the convention (as is often the case with the CoE) may also have non-Council of Europe countries and the EU as parties. As of 1 March 2025, the signatories included Canada, Israel, the United States, Japan, and the European Union; however, none of them had ratified the treaty yet.

10 Buergenthal 1995.

11 See Article 2 para. 1 of the International Covenant on Civil and Political Rights as well as Article 2 para. 2 of the International Covenant on Economic, Social and Cultural Rights.

12 See Article 27 of the International Covenant on Civil and Political Rights.

culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty".[13]

This provision clearly reflects the interests of linguistic majorities within states by implicitly affirming a state's right to territorial integrity. This highlights a fundamental challenge in regulating linguistic minority rights at both the international and domestic levels: such rights are often perceived as potential threats to state sovereignty, despite them being an integral part of human rights. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992 Declaration), adopted by the UN General Assembly as a resolution in 1992,[14] was originally intended to serve as an optional protocol to the International Covenant on Civil and Political Rights, particularly to clarify the scope of Article 27.[15] The Declaration recognises certain language rights of persons belonging to minorities, whether linguistic or otherwise. However, this initiative was never implemented in practice, and the 1992 Declaration did not attain the status of a legally binding international treaty. It is debateable whether its provisions have since evolved into customary international law, similarly to the Universal Declaration of Human Rights. The 1992 Declaration explicitly affirms the right of persons belonging to minorities "to use their own language, in private and in public, freely and without interference or any form of discrimination".[16] Moreover, it asserts that states "should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to receive instruction in their mother tongue".[17]

The wording of the provisions just cited clearly reflects the interests of states, indicating that while the UN member states addressed by this Declaration are not strictly obliged to provide adequate education in minority languages, the use of such languages – both in private and public spaces – cannot be restricted or banned. In the same year, another significant international instrument was adopted – this time as a legally binding treaty – within the framework of the Council of Europe: the European Charter for Regional or Minority Languages, commonly referred to as the Language Charter. Unlike the International Covenant on Civil and Political Rights (1966) or the 1992 Declaration, the Language Charter applies only to Council of Europe member states. However, the Committee of Ministers may invite non-member states to ratify the treaty after its entry into force.[18]

At the time of writing, the only non-member state fulfilling this criterion is the Russian Federation, which had already been a party to the Language Charter before its expulsion from

13 Article 27 of the International Covenant on Civil and Political Rights.

14 United Nations 1993.

15 See in this regard paragraph 5 of the preamble of the Declaration: "Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious and linguistic minorities."

16 See Article 2 para. 1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

17 See Article 4 para. 3 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

18 See Article 20 para. 1 of the European Charter for Regional or Minority Languages.

the Council of Europe. Despite the termination of its membership, Russia's participation in the treaty has not ceased.[19] Currently, only about half of the European countries are parties to the treaty,[20] and the Committee of Ministers has not yet extended invitations to any non-member states beyond Russia. Notably, the Language Charter does not refer to "linguistic minorities" but rather to "regional or minority languages". According to the treaty, these are defined as:

> "Languages that are traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and different from the official language or languages of that State."[21]

This definition explicitly excludes dialects of official languages as well as the languages of migrants.[22] The Language Charter distinguishes between territorial and non-territorial languages, depending on whether they are linked to a specific geographic area or are used independently of any particular region.[23]

Similar to other international instruments – whether treaties or non-binding declarations – the Language Charter prioritises states' official languages over regional or minority languages. This preference is explicitly stated in the preamble, which affirms that "the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them".[24]

Moreover, neither the obligations that state parties must assume upon ratification nor the treaty's monitoring mechanism strongly favour regional and minority languages. Regarding the former, states are required to commit to at least thirty-five obligations from among the ninety-eight possible measures outlined in the Language Charter, in addition to those set forth in Part II.[25]

Moreover, individuals who are affected by potential infringements of the *Language Charter* have no right to appeal to the *European Court of Human Rights,* as the treaty lacks a judicial enforcement mechanism. Furthermore, its provisions cannot be directly invoked before national courts due to its *non-self-executing*[26] nature. It can be argued that the 1990s represented the "golden age" of international legislation in favour of linguistic minorities, which was probably influenced by the Yugoslav war and other major inter-ethnic conflicts of

19 See https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=148

20 See https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=148

21 See Article 1 point a) of the European Charter for Regional or Minority Languages.

22 Article 1 point a) of the European Charter for Regional or Minority Languages.

23 See Article 1 point b–c) of the European Charter for Regional or Minority Languages.

24 See para. 6 of the Preamble of the European Charter for Regional or Minority Languages.

25 See Article 2 paras. 1–2 of the European Charter for Regional or Minority Languages.

26 There is a difference between international treaties as regarding their direct applicability. The wording of self-executing treaties is such that they do not need any further domestic legislation to be applied. Non-self-executing treaties, in contrast, are unable to fulfil their goals without adopting additional domestic acts. As to self-executing vs. non-self-executing treaties see for instance Vázquez 1995 and Bradley 2008.

the decade. The majority of the existing international treaties on minority rights – whether universal, regional, or bilateral – were signed during this period. However, since the early 2000s, a gradual decline has been observed in activity of this type, both in the adoption of new legislative instruments and in the implementation of existing norms.

In 1995, the *Framework Convention for the Protection of National Minorities (Framework Convention)* was adopted by the Council of Europe. Like the *Language Charter,* its monitoring mechanism relies solely on periodic state reports submitted by the parties, without any effective judicial oversight. While the *Framework Convention* includes provisions emphasising the need to protect the language rights of minorities,[27] it ultimately reinforces the obligation for individuals belonging to minority groups to learn the official language of the state in which they reside. It explicitly states that the right to learn or be taught in a minority language "shall be implemented without prejudice to the learning of the official language or the teaching in this language".

A brief review of the key international instruments that are relevant to the protection of linguistic minority rights suggests that the existing legal framework tends to favour official languages over minority languages. This approach appears to be driven by two main considerations, reflecting concerns about the potential consequences of linguistic minorities failing to acquire proficiency in the official language. First, a lack of proficiency in the state language may hinder the integration of linguistic minorities into society. More significantly, however, states may fear 'losing control' over segments of the population who do not speak the official language, potentially fuelling separatist aspirations within minority communities. The latter concern, in particular, often serves as a covert justification for assimilation policies aimed at integrating speakers of minority languages into the linguistic majority. The possibilities of artificial intelligence, however, could offer a viable solution to this issue. By bridging the gap between the state's goal of integrating linguistic minorities and the need to preserve their linguistic identity, AI technologies could provide a means of achieving both objectives without forcing individuals to abandon their native language.

ARTIFICIAL INTELLIGENCE AND MINORITY LANGUAGE RIGHTS: BRIEFLY ABOUT THE POTENTIAL BENEFITS AND RISKS

Presumably, numerous aspects – perhaps not yet of great practical significance – could be examined in relation to artificial intelligence and language rights, considering both their potential benefits and risks. However, in this article, I will briefly address only two key issues.

First, it is conceivable that artificial intelligence will eventually enable real-time and highly accurate translation of any text or spoken language. Simply put, applications may soon be capable of perfectly bridging the 'Babel gap' between speakers of different languages. If this technological advancement becomes a reality, it could have profound implications for

[27] See Article 5 para. 1, Article 9 para. 1, Articles 10–11, Article 12 para. 1 and Article 14.

communities whose native languages differ from the official languages of their respective states. Currently, linguistic minorities often face significant pressures – perceived as burdensome obligations or strong expectations from authorities and the majority society – to learn the official language of the state. In the best-case scenario, this means acquiring a functional proficiency; in the worst case, it involves mandatory education in the state language, even of school subjects that are unrelated to language learning. States with less tolerance toward linguistic minority rights frequently justify these policies by arguing that without proficiency in the state language, minority speakers risk social marginalisation, loss of opportunities, or even exclusion from full participation in society.[28] However, the proliferation of AI-driven instant translation and interpretation programmes could fundamentally challenge this argument. If such technologies were to eliminate the language barrier between linguistic minority speakers and both the majority population and the state authorities, the true intentions behind state policies would become apparent.[29] It would then be possible to assess whether states genuinely seek to integrate linguistic minorities or whether their ultimate goal is linguistic homogenisation and even assimilation. At present, the technological conditions necessary to test this hypothesis do not yet exist.[30] Nevertheless, even imperfect AI-based translation tools could significantly facilitate everyday communication for linguistic minorities.[31] Furthermore, the rise of AI-driven language solutions may lead to a fundamental reinterpretation of the concept of the 'official language'. Of course, initially, such advanced translation and interpretation software is likely to be costly and may be accessible only to a privileged few. This leads to the second issue I intend to highlight: access to AI-based language solutions. In many cases, linguistic minorities tend to have more limited financial resources compared to majority populations. Consequently, there is a high probability that, at least in the early stages, AI technologies that 'eliminate' or significantly reduce language barriers will not be widely accessible to minority communities. For this reason, I argue that states will have a crucial responsibility to ensure equitable access to such AI-driven solutions for linguistic minorities. Under the principle of equality, states should facilitate access to these technologies to mitigate the disadvantages arising from minority status and to create conditions for genuine equal opportunities. This approach would promote the true social integration of linguistic minorities without requiring them to abandon their linguistic and cultural identity. Since the rights of linguistic minorities are recognised as human rights under existing international legal norms, and states are already required to allocate significant resources to ensure human rights protections, the provision of AI-based language solutions for minorities should not be dismissed solely on budgetary

[28] See for example Council of Europe 2017: 71.

[29] It is also true that there are some who disagree with the author's optimistic view. See e.g. Marsden 2024.

[30] Of course, nothing can rule out the fact that, over time, various language technology researches will look for and eventually find radically new ways compared to the current ones. This is not only suggested by my 'techno-optimism', but I think it is likely that market demands and aspects will eventually completely 'squeeze' human beings (professional interpreters and translators) out of the interpretation and translation process.

[31] It is easy to see that handling everyday matters does not necessarily require C1 or C2 level language proficiency; B1 or B2 may be sufficient for that.

grounds. Instead, it should be regarded as an essential element in upholding the rights and equal opportunities of linguistic minority communities.

FINAL REMARKS

Regarding the linguistic rights of minorities, artificial intelligence offers promising possibilities. The key question is whether, once real-time and highly accurate AI-based interpretation, translation, and information transfer have become a reality, this technological advancement will bring about significant changes in the legal status of affected minorities and their members.

I argue that states will have no choice but to recognise the right of persons belonging to minorities to access AI-based linguistic tools, as this obligation arises from the framework of human rights, particularly the principles of equality and non-discrimination. Moreover, beyond mere recognition, states must ensure broad access by members of linguistic minorities to such technologies. Doing so would not only substantially improve the situation of linguistic minorities but also enhance social cohesion in those countries. Put simply, in linguistically, ethnically, and culturally diverse societies, it would be a considerable social benefit if states, leveraging the achievements of the digital age, did not reinforce inequalities arising from linguistic differences but instead eradicated them with the help of artificial intelligence.

The drafters of existing legal frameworks aimed at protecting linguistic minority rights could not have foreseen the advent of artificial intelligence and the possibilities it has created. Consequently, no direct treaty provisions explicitly address the question of AI in the relevant international legal instruments. However, this does not mean that the current international legislation is entirely inadequate. On the contrary, key provisions – such as Article 27 of the International Covenant on Civil and Political Rights (ICCPR) and other universally applicable language rights norms – would be better served and more effectively implemented if they were supported by AI-driven linguistic capabilities, whether those already available or which are still in development. In other words, AI could be incorporated within the existing framework of relevant international norms.

For instance, Article 4 (2) of the Framework Convention for the Protection of National Minorities obliges state parties to adopt all necessary measures to promote full and effective equality between persons belonging to minorities and the majority population. AI could represent a major step forward in achieving this objective, which remains difficult to realise through conventional means. Additionally, from a practical perspective, AI-powered linguistic services could facilitate communication between linguistic minorities and state administrative bodies responsible for providing public services, as envisioned in Article 10 (3) of the Framework Convention. Similarly, many of the commitments codified in the Council of Europe's other key treaty on linguistic rights, the European Charter for Regional or Minority Languages, could probably be better fulfilled with AI-based technical support.

While the provisions of the existing treaties can be interpreted as requiring states to utilise the opportunities of AI for linguistic minorities, I would advocate for an explicit textual revision of contemporary international minority rights legislation to formally recognise

access to AI-driven linguistic tools both as a human right and as a special right that should be guaranteed to individuals belonging to minority groups.

Of course, like any technology, artificial intelligence can be misused in ways that do not align with the ideals of justice. AI-based systems are already capable of facial recognition, classification, and the categorisation of individuals, including those belonging to minority groups. This raises serious concerns about AI being used as a discriminatory tool, potentially even against the very minorities it could otherwise empower. States are not only morally but also legally obligated under existing international human rights norms to prevent and, if necessary, prohibit the development and deployment of AI applications that violate the principles of equality and non-discrimination.

Another potential concern is that AI might exacerbate existing inequalities between larger and smaller minority communities, as well as their members, by providing solutions only for the former, while companies and states may fail to develop the necessary linguistic support for the latter.

That said, despite these risks, one of the most significant advantages of AI in the context of linguistic rights is its potential to expose the true intent behind state policies on language and minority rights. By eliminating linguistic barriers, AI could ultimately remove the justification states often use to impose linguistic assimilation under the guise of integration – thus revealing whether their goal is genuine inclusion or merely linguistic homogenisation.

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Endre Sashalmi, Peter B. Brown, David Goldfrank, Lawrence N. Langer, Russell E. Martin, Donald Ostrowski, Carol B. Stevens, Eve Levin (ed.)

WHITHER INTELLECTUAL HISTORY?

A ROUNDTABLE ON ENDRE SASHALMI'S *RUSSIAN NOTIONS OF POWER AND STATE IN A EUROPEAN PERSPECTIVE, 1462–1725. ASSESSING THE SIGNIFICANCE OF PETER I'S REIGN*

Introduction by Professor Eve Levin

Endre Sashalmi's 2022 monograph *Russian Notions of Power and State* was the topic of a particularly vibrant roundtable discussion at the 2024 convention of the Association for Slavic, East European and Eurasian Studies in Boston, USA, on 24 November 2024. The book itself has received critical acclaim since its first appearance and was awarded the Marc Raeff prize of the Eighteenth-Century Russian Empire Studies Association in 2023. Despite the infelicitous scheduling of the panel on a Sunday morning, on the last half-day of the conference, it drew a large audience that actively participated in the discussion. The conversation continued after the formal close of the panel, both in the hallway and subsequently by email.

Professor Peter B. Brown of Rhode Island College organised the roundtable, and joined ex-officio the panellists of record: Professor Russell E. Martin of Westminster College, Professor Lawrence N. Langer of the University of Connecticut, Professor Carol B. Stevens of Colgate University, Professor David Goldfrank of Georgetown University, and Professor Donald Ostrowski of Harvard University, with Professor Eve Levin of the University of Kansas presiding as chair. Professor Sashalmi was also afforded the opportunity to reply during the session. All of the participants are senior scholars of Russia, Muscovy, and premodern Rus' who have grappled with the issues tackled in Sashalmi's book.

The panellists put their verbal remarks made at the convention into written form in light of the group discussions, again together with Professor Sashalmi's responses. All the participants recognise Sashalmi's monograph as a milestone in key scholarly debates dating back decades, even centuries. To what extent do Russian notions of political power resemble – or not – those of European countries? Do the commonly used terms, for example 'the state' or 'political theology' or 'the common good', accurately encapsulate Russian conceptions? How were Russian ideas expressed in the absence of the type of treatises typical of western European thought? How did Russian notions change over time, in response to new challenges? Did the reign of Peter the Great represent continuity with the past, mark a drastic change from it, or

was it some kind of mixture of the old and the new? What periodisation of Russian history best captures the crucial points of change? These and many more questions are explored by Sashalmi in his magnum opus, and he addresses them with remarkable nuance and clarity, marshalling evidence to back his claims. Yet, as all contributors to this published version of the forum note, Sashalmi's book is not the final word, but rather an impetus for scholars to continue discussions in this vein.

In the spirit of pursuing a 'common good' – sharing expert knowledge and insights with the entire community – we are making this forum available to *Pro Publico Bono – Public Administration*.

Eve Levin received her PhD from Indiana University (USA) in 1983. She is Professor Emerita at the University of Kansas (USA) and Editor Emerita of *The Russian Review.* Major publications include the monographs *Sex and Society in the World of the Orthodox Slavs, 900–1700* (1989) and *Двоеверие и народное религия в истории России* (2004). Her fields of scholarly interest concern gender, sexuality, religion and medicine in premodern Russia and Eastern Europe.

Professor Russell E. Martin

Paradigm Shifts and the Petrine Revolution

Keywords:
Petrine Divide, periodisation, Muscovite political culture, the Orthodox Church, paradigm shifts

The pendulum swings. Paradigms shift. The ideas we once held dear and have long held sway, unassailed, will inevitably, and often permanently, be replaced by new ones. Perhaps, we began to think seriously about pendulums and paradigms when Thomas Kuhn systematised the idea of paradigm shifts, applying the concept to turnabouts in science.[1] Kuhn described for us how paradigm shifts come at the end of a long process, when the simple weight of mounting evidence leaves no other option but to change one's view on something that had become a commonplace. We change our minds about fundamental things, often begrudgingly, because the old way of interpreting the evidence simply no longer allows us to see things as we have seen them before. That is true of science, as Kuhn showed for the Copernican Revolution.[2] It is true in the buffeted Social Sciences and Humanities, as well – as the definitions of the Enlightenment,[3] the Cognitive Revolution in Psychology[4] and the Laryngeal Revolution in Linguistics[5] (just to mention a few I know best) all show. Paradigm shifts happen in the field of history, too; including East Slavic history. We need not think any further than the Normanist/Anti-Normanist debates,[6] the volumes devoted to the role of the Mongols in Russian history,[7] or the now quaint-looking feuds over Feudalism in Kyivan or Appanage Rus'[8] – each of which pitted a dominant view that reigned supreme for a time against mounting new evidence that raised doubts and eventually ushered in a new paradigm.

Paradigm shifts are not grim moments, sapping us of our confidence that we can ever know anything. In fact, they are moments when the sciences or humanities lunge forward, and so are rightly welcomed. However, the entire neat and handy paradigm of paradigm shifts itself gets called into question when a book like Endre Sashalmi's appears.[9] His book comes after a paradigm shift was, many of us had thought, already well underway in Russian history – this

1 For the general model of how paradigm shifts work, see Kuhn 1962.
2 Kuhn 1957 is still very much a classic to be consulted.
3 See the brilliant treatment by Israel 2011.
4 Landmark works include Miller 1956 and Chomsky 1957.
5 The starting points are Saussure 1879 and Kuryłowicz 1927.
6 A still useful survey is Pritsak 1982.
7 Compare, e.g. Halperin 1987 and Ostrowski 1998.
8 Setting aside the Soviet works, which were largely politically slanted, the list of non-Marxist approaches to the question of feudalism in Russia is still impressively long (and still frustratingly problematic). For starters, see Vernadsky 1939; 1948; Pipes 1974: 48–57, 68, 100; Riasanovsky–Steinberg 2004: 42, 45, 106–108, 145, 169–172; and Halperin 2015.
9 Sashalmi 2022.

one about the nature and significance of Peter the Great's reign. The received, dominant view had been, since the time of Vasilii Tatishchev, that Peter was the great revolutionary, the founder of modern Russia – and not just modern Russia, but of Russia itself.[10] Perhaps the most recent advocate of this view has been James Cracraft, whose several monumental studies of the Petrine Revolution give us the most updated iteration of the familiar argument.[11] And that argument is powerful and convincing on many levels: Peter was a break in Russian history. There was before him, and then there was after him, and Russia was forever transformed by the indelible imprint of that one man and one reign. There is, of course, nuance in that traditional view. Evgenii Viktorovich Anisimov's essentially psychological approach to Peter's motivations and reforms come quickly to mind.[12] But even with all the variations on the theme, it is hard not to see the lengthy historiography on Peter as very much a paradigm.

But that paradigm, so perfectly reflected in Cracraft, has come under scrutiny in the past 30 or more years, as studies by Paul Bushkovitch, Ernest Zitser, Lindsey Hughes and Donald Ostrowski, for a start, all show.[13] The evidence for continuities running through Peter's reign – in religious and political culture, in the unbroken prominence of Russia's great families, and even in attitudes toward change itself – has mounted to the point that, today, the old notion of Peter as a revolutionary reformer, builder, and refashioner of Russia is, for some, in doubt. Indeed, some are in open revolt against it. The pendulum was swinging. The evidence was mounting.

Enter Endre Sashalmi. His book comes to us after a large part (but certainly not all) of the field has warmed up to and perhaps even accepted the paradigm shift, whereby the continuities are more important than the discontinuities: Peter was the accelerator of change, not a revolutionary. The historiographical trends are altering, if not in unison, then certainly in a direction different from before. It is not quite the Kuhnsian paradigm shift yet, but it is getting there. And now, Sashalmi has asked us to rethink the mounting evidence before we go too far.

I want to focus, on a conceptual level, on three themes that are linked to the broader argument about "notions of power in a European perspective" (to quote Sashalmi's title), which, I think, need to be considered if we are really going to step back and consider anew the Petrine paradigm. The first is that Sashalmi asks us to rethink the question of periodisation. It is not a stated goal of the book to readdress this seemingly stale, but actually quite important question. He does, however, put in the title of the book that his study goes from 1462 (the beginning of the reign of Ivan III) to 1725 (the death of Peter the Great). And he puts those dates alongside the subtitle: "Assessing the Significance of Peter's Reign". So, periodisation and the Petrine Revolution are given equal billing right on the cover of the book. Peter's reign is, for Sashalmi, the dividing point between one period of history (the early modern period) and another (the

[10] On Vasilii Tatishchev and Peter the Great, see Daniels 1973, Tolochko 2005 and Kiseleva 2017.

[11] The titles of James Cracraft's works (which often include the word "revolution") tell the tale: Cracraft 1988; 1997; 2003; 2004.

[12] Of Anisimov's many excellent works on Peter the Great, I have in mind especially Anisimov 1989.

[13] See Bushkovitch 2001; Zitser 2017, Hughes 1998; 2002 and Ostrowski 2022. I would also add my own thoughts on change and continuity in the reign of Peter the Great in Martin 2021: 189–240.

modern). This is entirely in line with the traditional paradigm: Peter's reign was a divide in Russian history. But it is precisely such new thinking about periodisation that has offered some of the best evidence that the old Petrine paradigm is wearing out. The question for the traditional paradigm on Peter has always been: If we accept that Peter's reign was a great divide, then we are saying that the modern period starts with his death in 1725. But what then do we do with the rest of the eighteenth century – from 1725 to, say, 1800? That year – 1800 – is the traditional endpoint of the "early modern" period in the European West, and a benchmark in Russia, too.[14] If, on the other hand, we think of Peter as a continuator and accelerator of processes that were already in motion and not the great divide we used to think he was, then we can take account of the rest of the eighteenth century and not leave it untethered. The year 1800 (generally) marks the transition to the modern period in Russia (as it does in the West). This is the argument that Ostrowski, Sergei Bogatyrev, and I (with commentary by Nancy Shields Kollmann) have made elsewhere.[15] Sashalmi returns us to the view that Peter was, indeed, an important inflection point in Russian history; that the discontinuities between Russia before and after Peter self-evidently outweigh whatever continuities there may have been; and, consequently, that we have not at all reached the tipping point of mounting evidence to suggest a paradigm shift on Peter the Great has happened. Sashalmi is telling us to put on the brakes, though this, of course, again leaves stranded the liminal eighteenth century. The years between the deaths of Peter I and Paul I remain the odd man out – neither early modern nor modern. They are simply aberrant. It would therefore have been interesting to see Sashalmi directly confront and resolve the conceptual consequences of the Petrine Divide for the eighteenth century, which would have been a better subject to end the book on than Putin's Russia today. The arc of the story Sashalmi wants to tell ends, I think, in 1801, not in 1725 (or 2022).

Second, in arguing that power – and notions of power – moved from "personalised" to "abstract" around 1700, and that the impetus for that change was Russia's increasing engagement with the West, Sashalmi understates, I think, the degree to which Muscovy was already being influenced by cross-cultural borrowing – from the Byzantines, the Mongols' successor states, and even the West – as far back as 1462 (and, indeed, earlier). It is here unfortunate, but perfectly understandable, that Edward Keenan's "Folkways" model was not considered, since it provides a practical, appreciative assessment of political culture in the early modern centuries, which was formulated on both indigenous and borrowed notions of power and political habits of mind that formed in response to local circumstances and needs.[16] There were weighty notions of power before Peter, although some cannot be observed directly, but – like some cosmological phenomena – only indirectly, as they influenced other celestial

[14] See Wiesner-Hanks 2021, and Ford 1970: 1–4. See also the excellent treatment of this question in Kollmann 2017, which marks out the boundaries of the early modern period in Russian history 1450–1801 better than any current study.

[15] See the forum "Divides and Ends: Periodizing the Early Modern in Russian History" in *Slavic Review,* consisting of Bogatyrev 2010; Martin 2010; Ostrowski 2010; and Kollmann 2010.

[16] Keenan 1986.

bodies. In short, was there a need in pre-modern Russia for "legal notions of sovereignty" or the "state" before the eighteenth century? Did the Muscovites have their own versions of these Western notions that worked just fine already? Are we being fair to Muscovy?

Finally, I think the Church plays more of a role here than the argument allows. It is, of course, a topic Sashalmi brings up – to be sure, he brings up well-nigh every relevant topic in this vast book. But Sashalmi is looking for "discourse", which I think may be the wrong thing to look for. As Ostrowski has shown in his important book on the "intellectual silence" of Rus', and as Lytvynenko and Shpakovskiy have shown in their work on Zinovii Otenskii, to name just two recent works I admire, the Orthodox Church, even more than the Byzantine Empire, provided a model not just for the cut of liturgical vestments or the placement of imitative diacritical marks in manuscripts.[17] It offered a model of how to think about power, broadly conceived, including shared power (between a monarch and his nobles, as Anthony Kaldellis has been showing about Byzantium or Roger Mettam showed about Louis XIV's France[18]). I think a model about notions of power that does not foreground the Orthodox Church is missing a big part of the picture, which is a critique I would also make (and have made) about Keenan's "Folkways", by the way.[19] How does our new understanding of Peter's own religiosity affect the traditional Petrine paradigm? Would not a comparative reading of Cracraft's *Church Reform of Peter the Great* and Zitser's *Transfigured Kingdom* not prompt us seriously to rethink the role of religion in Russia precisely in Peter's reign?[20]

Sashalmi's is a book to be taken seriously. It is erudite, based on a broad reading of sources in multiple languages, rooted in philosophical trends in politics that reach back to the late Middle Ages, and is important historiographically. It asks us to check our progress on paradigm shifts, which is always helpful and necessary. And it poses, even for those of us who see the big picture differently than he does, serious questions about how far a pendulum can swing.

I would like to thank Eve Levin for her comments on an early draft of this paper, and the other members of the 2024 ASEEES roundtable in Boston, at which a still earlier version of the paper was presented. I also thank Endre Sashalmi for his responses at the roundtable and invitation to publish this and the other papers presented in discussion of his important (and award winning) new book.

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17 Ostrowski 2018, and Lytvynenko–Shpakovskiy 2023.

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19 See, e.g. Martin 2006.

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Professor Lawrence N. Langer

Peter I and the Russian State: New Notions of Power and the State

Keywords:
intellectual history, Russian state, Peter I of Russia, Ivan III

Endre Sashalmi's book *Russian Notions of Power and State in a European Perspective, 1462–1725. Assessing the Significance of Peter's Reign* is a deeply learned study. As I am not as conversant with the original sources as other contributors to this forum, I thought it best to approach Sashalmi's study much as I would were this a graduate seminar, which in some ways is what this roundtable is. Sashalmi raises many important issues, but in my limited space here I can address only two or three concerns that I have.

The study presents itself as an exercise in – shall we call it – "intellectual" history, but one that eschews the formal analysis of the major texts of European political theory. This is not to say that the author is unfamiliar with the canonical texts. Indeed, we will find many references to some of the usual suspects: Aquinas, Augustine, Bodin, Bossuet, Grotius, Hobbes, Locke, Montesquieu, Pufendorf, Richelieu, etc., but Sashalmi is less interested in formal political thought than he is in the more informal attitudes towards power and rulership found in literature, visual images, rituals, buildings, and sacred space. He is more concerned with notions of power rather than the concrete realities of the state as a force or an institution. Bereft of any philosophical or legal abstractions concerning the state, the exercise of power, or any constitutional limitations of autocracy, Russians fell back on the centrality of the Bible and religious concepts of good and bad autocrats. To the Russians, the only true sovereign was God. The grand prince, later the tsar, was God's viceroy, whose commands reflected the will of God. He was chosen by God and, like an icon, he embodied the image of God on earth.

In Sashalmi's view, Muscovites had no concept of the state, whether religious or secular. The concept of a modern secular state in Europe, Sashalmi argues, began in the second half of the fifteenth century, whereas in Russia the idea of a secular state took hold only with Peter the Great, becoming more widespread and accepted in the second half of the eighteenth century. What Sashalmi offers for the pre-Petrine period are notions of power and governance that might better be termed a *mentalité,* a set of attitudes that may be held for centuries *(longue durée).* Sashalmi perhaps too easily dismisses the political theology associated with Iosif Volotskii, or with Metropolitan Makarii, or the *Book of Degrees (Stepennaia kniga).* Further, when the taxman arrived, or when conscription into the army occurred, or when Russians were summoned to court, Russians would have been cognisant of at least the power exercised by institutions one would associate with a state.

It is a pity that Sashalmi has little to say about concrete governance, whether political, social, religious, or economic. He makes it quite clear that the concrete state is not the subject of his book and one cannot fault him for not writing a different book. But there is an important issue that needs to be addressed: namely, the relationship between attitudes/notions, ideology,

mentalités and, let us call it, the concrete material world, that is, economy, social order, military, family life, etc. One does not have to be a Marxist to inquire whether change in one, such as a change in the notions concerning grand princely or tsarist power, reflects or is influenced by developments within the material world. Does the history of ideas function in a kind of vacuum, which is the impression one might take away from Sashalmi's study?

Tsars were traditionally seen as autocrats; the term *samoderzhets* first appears in the mid-fifteenth century but is not part of the ruler's titulature before the seventeenth century, not becoming legally accepted until the end of Peter's reign. Sashalmi duly takes note of the centrality of service that Russians were expected to perform until 1762, but Russians understood such service as obligations to God rather than to the state. Sashalmi is so insistent that Russian notions of the state are so separate from European secular political thought that he will not entertain the thought that Russia in any given time period may lie on a historical continuum of west to east. For example, does the western concept of the king's two bodies and the Byzantine concept of symphonia each function in a completely separate historical universe, or do they touch on a Christian historical continuum, such as the importance of a ruler's piety? He also has little to say about Edward L. Keenan's three cultures of Muscovy: peasant, monastic-ecclesiastical, and court-bureaucratic.[21] Was there a court culture that can be distinguished from the monastery, one that was more secular? What was the Russian state and how did it differ from the west? There is no easy answer because there were many different definitions of the state in Europe. One finds in the historical literature absolute monarchy, autocracy, composite monarchy, estates-based state, composite-dynastic state, fiscal-military state (which could apply either to an absolute monarchy or a republic), patrimonial state, steppe monarch in council, and the autocratic fiscal-military state. With so many possibilities (Sashalmi tends to favour autocratic fiscal-military state), in lesser hands one might run the risk of a kind of "definitional history".

Sashalmi's insistence that the concept of a secular state does not take hold until the reign of Peter raises again the old issue of the degree to which Peter marks a sharp break with Muscovy. While antecedents to Peter's reign may be found, such as new military regiments and some degree of Western culture in the court, the shift "from personalized power towards an abstract notion of power and state accelerated around 1700, when the modern concept of state and sovereignty came to influence Russian thought on power".[22] Sashalmi's study supports the argument that Peter was in fact a sharp break with Muscovy. This is not the place for an evaluation of Peter's reign, but I would like to note simply a few salient issues that would require further elucidation and which would seem to support Sashalmi's contention that by 1725 Peter had introduced a number of policies that in effect marked a sharp shift away from Muscovy.

It is only with Peter that the tsar is considered to be the first servant of the state whose reign – and the state itself – work for the common good. A distinction is drawn between

[21] Keenan 1986.
[22] Sashalmi 2022: 5.

the ruler *(gosudar')* and the state *(gosudarstvo).* Whereas in Muscovy the ruler legislates to repair or resolve issues within Muscovite traditions, Peter sought to break free and end Muscovite traditions such as certain religious rituals. There would be no return to Muscovite governmental practices. This raises the question of whether the shift from *prikaz* to *kollegii, duma* to the Senate, or the patriarchate to the Holy Synod was more than simply retaining the old boyar power structure in a new guise. An attempt was made to structure a new set of principles to undergird administrative practices: principles reflecting *polizei,* rationalism, utility, *reguliarnost'.* The imagery of divine grace would be drawn from ancient Rome, that is, from non-Orthodox traditions.

One of the most important breaks with Muscovy concerns the women of the court, who were brought out of the *terem* and seclusion. There is a decided emphasis on the cultivation and worship of the feminine, the models of Venus and Minerva, and on neo-Platonic love. Sashalmi intimates that there is a certain parallel between Peter and Ivan III. Because Moscow, according to Sashalmi, had no territorial or institutional antecedents with Kyivan Rus', Ivan had to create his own form of legitimacy, one that was based on the two pillars of Orthodoxy and autocracy, that is, the unlimited power of the ruler. Ivan III's reign was a fundamental turning point in Russian history; one that marked a break with appanage Rus' and grand princely rule. But Peter shifted governance away from one centred on dynasty and God to one centred on a secular state, a state that in theory could be non-Orthodox and which embodied secular principles, such as the common good. Both Ivan III and Peter declared their exclusive right to choose their successors, but there was a critical difference: Ivan's successor would be male and Orthodox, whereas Peter could nominate a woman, or anyone who was non-Orthodox, or indeed a person who had no blood ties to the ruling family. Peter's succession law of 1722 completely overturned Muscovite politics centred on marriage and clan since the ruler could marry outside of Russian society.

One could argue that the founding of St. Petersburg was the founding of a new political and social world. To be sure, Peter and through him, the state, would regulate public behaviour at least within the court, but Russians were no longer to be obedient slaves; both men and women would learn the fine arts of speaking, dancing, music, shaven beards and proper eating etiquette. St. Petersburg raises the interesting question of architecture and its impact (or not) on the psychology of behaviour.

There are a multitude of changes that Peter brought to bear on Russian society. Hegel says there is a relationship between quantity and quality, that is, a change in quantity (either reduced or increased) leads to corresponding changes in quality. If this is so, then given the many changes that Peter's era represents, even if some of the changes have their roots in Muscovy, Peter set in motion a sharp break, perhaps even a revolutionary break, with Muscovy. One of these sharp breaks was the emergence of a concept – a notion – of the secular state.

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Taking the Plunge

Keywords:
statehood, accelerated Westernisation, etymology, textual exegesis, comparative

Endre Sashalmi's encompassing and challenging monograph offers a plethora of information on the forging of the Russian service state/realm, which was to achieve its supposed apogee during Peter the Great's reign. Best used as an encyclopedic guide, *Russian Notions of Power and State* makes extensive comparisons to Western European state formations and political theorists, unreservedly tunnels into words' meanings, and in unhindered manner – even brashly – wields the essayist's brush. At the start of paragraphs, Sashalmi boldly charges in with pro-and-con opinions on other historians' pronouncements. Pertinent bullet-point lists[23] buttress his assertions and arrested this reviewer's attention. From start to finish, he tries to clarify as much as possible how abstraction was applied to practice, and connects "accelerated Westernization"[24] to this process. His findings support what we know already about the late seventeenth century and Peter's reign but with their own flair and emendations.

The author's death-grip fixation to leave no stone unturned, while laudable, does lead to perplexities, chiefly wordiness. Temperamentally, Sashalmi is an intellectual high-swinger. His wording at times rambles, an understandable result of his urge to outpour his thinking. His huge number of explanations do require tighter integration in order to better project a straightforward, rather than at times a meandering (some might claim), story line. A glossary, tables to make correspondences and a lengthy index with sub-entries galore would have been a boon. There are places requiring clarification. For instance, did he really mean that Russia became integrated into the 1648 Treaty of Westphalia system?[25]

On the other hand, Sashalmi's style is not a North American one. He expects the reader to plunge into this *tour de force* and welter of information, and wander as one will. His polycentricity will baffle some. What some might regard as extravagant digressions should be re-construed as microcosms, nuggets to be unlocked for intellectual probing and enrichment. He packs in more subjects than most historians do, and does not shy from elaborate exposition of supportive topics. This is his architechtonic structure. The *Weltanschauung* is there.

Sashalmi does not slouch when it comes to weaving his visual, allegorical, metaphorical, and literary jaunts into galvanising narrative. He tacitly reminds historians that it never hurts to immerse oneself in these venues. His extended forays into Ancient, Medieval and Early Modern theological and political thought, cartographic engravings pertaining to political power and the state, and the voluminous, parsable iterations of the above reward the reader.

[23] Sashalmi 2022: 94–95, 104–105, 219–220, 321, 342.
[24] Sashalmi 2022: 331.
[25] Sashalmi 2022: 145.

The list of those upon whom he performs textual exegesis and comparative thrusts is imposing: e.g. Aristotle, Ovid, Cardin Le Bret, Francis Bacon, Jacopo Amiconi, Thomas Hobbes, Hugo Grotius, Samuel Pufendorf, François de Callières, Johann Sadeler, Ivan Peresvetov, Grigorii Kotoshikhin, Simeon Polotskii, Petr Shafirov, Denis Fonvizin.

Sashalmi's myriad etymological and comparative expeditions into words both Russian and foreign are fruitful and engrossing, and range at length. Some of them are *samoderzhavets* (person "who rules on his own",[26] *potestas absoluta* (absolute power),[27] *spravedlivost'* (righteousness),[28] *Staatskunst* (the art of statescraft),[29] *tselost' gosudarstva* (integrity of the state),[30] *vol'nyi chelovek* (free man),[31] *kholop* (servant),[32] *Christianitas* and *respublica Christiana* (community conceived on religious grounds),[33] *politeia* (the motto),[34] *indigesta moles* (amorphous/shapeless mass),[35] *terminus technicus* (police state),[36] *rossiane* (subjects of Russia),[37] *imago divinitatis* (image of divinity),[38] *ex defectu tituli* (lack of title)[39], and many more. His forays into seventeenth-century Muscovite legal history, oaths, political crime and comparisons to France[40] make one sit up and take note.

To be sure, his is a state-driven narrative, focusing on leaders, ideas, laws and institutions which dominate overwhelmingly, but harmoniously gear with his work's interdisciplinary features. Highlighting all of this are eight criteria for Western and Central Europe from 1450 to 1700 that explain the emergence of the "modern state".[41] He argues for their appearance in sixteenth- and seventeenth-century Russia.

Ruminations on social history are sparse. Why not bring in, for example, serfdom, caste tensions, non-Russians within the Muscovite polity, and details on Muscovy's unique service-class system and its origin and procedures for recruitment, appointment and promotion? Much more needs to be said about the Muscovite chancellery system. These are essential topics when grappling with pre-Petrine Russia's place and the Petrine era.

I found intriguing his suggestion that advancing statistical knowledge (arithmetic data) helped develop political ideology or, on a more basic level, *gosudarstvennost'* (sense of the state).[42] His connecting Petrine interest in European treaty wording to its effect upon Russian

[26] Sashalmi 2022: 13.
[27] Sashalmi 2022: 16.
[28] Sashalmi 2022: 32.
[29] Sashalmi 2022: 38.
[30] Sashalmi 2022: 49.
[31] Sashalmi 2022: 74.
[32] Sashalmi 2022: 80.
[33] Sashalmi 2022: 141.
[34] Sashalmi 2022: 129.
[35] Sashalmi 2022: 130–131.
[36] Sashalmi 2022: 157.
[37] Sashalmi 2022: 169.
[38] Sashalmi 2022: 211.
[39] Sashalmi 2022: 212.
[40] Sashalmi 2022: 311–326.
[41] Sashalmi 2022: 6–9.
[42] Sashalmi 2022: 7.

diplomatic thinking,[43] his expression "the marks of statehood"[44] and his itemisation of the elements of Classical "emblematics" and their infusion into "early modern visual allegories of the state"[45] are riveting. There are numerous other such cases. Much appreciated are his baskets of block quotes enabling readers to better come to grips with his directions. Most publishers normally eschew this practice, but so what?

To sum up, Sashalmi's adventurous monograph should command both the specialist's and general reader's attention and respect. His encyclopaedic knowledge conjoined with Russian history is a worthy achievement.

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[43] Sashalmi 2022: 150.
[44] Sashalmi 2022: 8.
[45] Sashalmi 2022: 125.

Professor Carol B. Stevens

Reflections on Texts, Daily Life and Political Thought

Keywords:
early modern Russia, translation, mapping, imagery, early Russian political thought

Endre Sashalmi has involved us in a profound discussion of political thought in early modern Russia. His goal, admirably executed, is to trace the pathways and transformations through which Russia developed critical concepts of political thought in the early modern period. As the title indicates, he primarily identifies a distinction between Russian political thought in the pre-Petrine era and that of Peter's reign onward; it was a shift most markedly embodied in the work of Feofan Prokopovich, a Ukrainian-born Orthodox bishop (1681–1736) and prominent supporter of Peter I. At the same time, Sashalmi explores differences in the context and content of Russian and West European political thought as each developed. Profound dissimilarities in the intellectual and socio-political climates, he argues, were hugely important, indeed causal, in explaining the distinctiveness of Russian "notions" from those of their West European neighbours. He points out crucial differences between a relatively unchanging Russian religious framework of rulership and evolving West European ideas about divine monarchy. His discussion also explores comparatively the impact of that difference in thinking about natural law, changing characterisations of "the state", and how the ruler and the state were distinguished in the context of growing distinctions between secular and religious and between public and private.

Rather than debating these and other conclusions, I would like to use this forum to raise several issues for future conversation, beginning with a discussion of word usage and definitions. At the beginning of his book, Sashalmi talks about the Russians, before 1650 or so, as having rather vague "notions" about political thought;[46] as I understand this, Russians lacked specific concepts whose definitions had been discussed, debated, or agreed upon. Instead, the meanings of Russian words dealing with political thought prior to 1650–1725 were assumed, or rather it was assumed that there were commonly understood meanings for such words. It did not help to promote clarity and precision that Russian texts of the period (whether contributing to political thought or not) tended to be more than somewhat "laconic".[47] Even after the transitional period identified by Sashalmi as 1650 into and beyond the Petrine era, concepts in political thought in Russia could still be fluid and changeable, with a considerable reliance on what he and Richard Wortman refer to as "charismatic words".[48]

As the title suggests, *Russian Notions of Power* painstakingly orients the evolution of Russian political ideas on the spectrum of Western European thought. In Western Europe,

[46] Sashalmi 2022: 13–25, 222–224, 230.
[47] Sashalmi 2022: 17, 195.
[48] Sashalmi 2022: 37, 205, 339.

the (secular) state, its unity and limitations to its rulers' purviews gained definition through challenge and confrontation. On a European scale, there were disputes between divinely-appointed kings and the Catholic Church, whose power was territorially and symbolically far broader than the sway of individual monarchs. There were also encounters between monarchs and organised secular entities within their realms, among others with "estates", corporations, and craft guilds. These social and institutional confrontations impelled a more exact delineation of the prerogatives of kings and definitions of the state, among other things, and these more precise ideas were expressed in a context of law and legal understandings. All of this took place over a considerable period, substantially before Russian political thought discussed such ideas explicitly.

West European definitions of political concepts emerged from and were shaped by such debates and confrontations, Sashalmi argues, thanks in part to certain intellectual predispositions. These included traditions from Greco-Roman worlds transmitted to Europe through the Arab empires, scholasticism, the existence of universities and a developed legal profession. These were phenomena which did not exist in the Russian world: not in the 1450s, and indeed in many cases not even by 1725.

If not through the same mechanisms as western Europe, then what impelled the fundamental transition in Russian political thought, beginning perhaps in 1650, but significantly gathering importance with the reign of Peter I? Arguably, writings about political thought were key instruments of that transition; there were a few Russian texts – most particularly the work of Feofan Prokopovich. Also important were translations of European political thought imported through Ukraine or directly from western Europe, as well as new considerations about law embodied in Tsar Aleksei Mikhailovich's Law Code of 1649. Collectively these works launched the evolution of more explicit written discussions by Russians of political thought and of their understandings of (secular) power. The cultural background against which these changes took place, however, were dramatically different in Russia than in the west. The Russian background historically lacked any notion of limiting the Tsar/Emperor's divinely appointed power. Before 1650, it was rather the spiritual and political agreement between Church and Tsar that were insisted upon. Given these and other persistent dissimilarities in the framework of foreign political thought, the translation of political terms played a significant role in Russian rethinking of traditional "notions" from the period prior to 1650 into later, more formal and more explicitly defined concepts.

It is worth noting, as Sashalmi points out, that major changes in the Russian discourse about political thought in 1650–1700 and thereafter were not exclusively verbal or written – any more than they had been in western Europe. Indeed, as Nancy Kollmann, Valerie Kivelson and others have agreed,[49] imagery held a uniquely privileged place in early modern Russian culture. And certainly, such imagery could be complex and multi-dimensional in a way that texts might not have been; this is evident, for example, in the controversial complexities of the

[49] Among numerous others, Kollmann 2009 and Kivelson–Neuberger 2008.

mid-sixteenth century Church Militant Icon.[50] Nonetheless, prior to 1650, images explicitly depicting political power on earth were rudimentary and limited in number. By contrast, Simeon Ushakov's 1668 *Tree of the Muscovite State* icon offers an unusually complex visual explication of contemporary political thought. Notably, however, despite (or perhaps because of) the recent confrontations between Tsar Aleksei Mikhailovich and Patriarch Nikon, it presents Muscovite history as the development of church and state in harmony and mutual support.[51] Otherwise, until the Petrine era, complex and typically secular allegorical references, of a kind prevalent in western Europe, were nearly entirely absent in Russia. There were some exceptional early uses of images surrounding political power (the crown of Monomakh in the fourteenth and fifteenth centuries; the double-headed eagle in the Russian coat of arms after Ivan III; Ivan IV's seal of 1562), but these were primarily used in dealing with Western Europe until the appearance of the 1667 seal of state and contemporaneous changes to Aleksei Mikhailovich's title. Even the most ordinary political (one might argue secular) portraiture of rulers was practically non-existent. There were the rare portraits of Aleksei Mikhailovich and Sofiia and then, in a different environment, the numerous images of Peter I.

On a different note, the rather vague understandings of the territorial realm of pre-Petrine tsars are in some fashion reflected in seventeenth century maps. There, Russian boundaries – especially in Siberia – did not take the shape of sharp negotiated lines between political entities, but rather indicated widely distributed and uneven spheres of control, thus sidestepping any visual sense of the unity of the Russian realm. (Even though one could easily see this as portraying a real-existing condition in Russia, such conditions were not similarly portrayed in west European maps, even where they existed.) Petrine map-making, on the other hand, introduced Western European map-making with its sharp definitional lines.

In short, the absence of exact definition and secularisation in political thought prior to 1650 was not specifically limited to words and texts but was equally present in ritual and imagery, which chiefly impacted the elite, although in some cases it also affected those outside the court.

This brings me to two further issues warranting further research and discussion. Both are suggested by *Russian Notions of Power,* although they are certainly outside the scope of that already wide-ranging and erudite study.

Firstly, practical events may well have played a greater role than suggested by Sashalmi, in bringing forward political ideas that led to a separation of *gosudarstvo* (realm) from *gosudar'* (sovereign) as well as other important concepts in considering the secular state. Charles Halperin, as recently as the ASEEES conference of 2024, has warned us that it is nearly impossible to attribute changes in attitudes about the tsar to specific events.[52] That is, "Russians" – whoever they were and however they were described – no doubt had some vision of the tsar as the earthly embodiment of the divine. Nonetheless, they also had some life experience of the practical functioning of their ruler's government and its impact on their daily lives, most vividly in the sixteenth and seventeenth centuries. Such impacts might

[50] For example, Bogatyrev 2007; Rowland 2009.
[51] Waugh 2000; Sashalmi 2022: 77, 178, 180, 265, 277, 330.
[52] Halperin 2024.

include orders to muster military forces (noble cavalry; later musketeers and infantry); the collection of taxes and customs duties; the encouragement of foreign trade; local policing to deal with bandits; military reforms – one could elaborate.

Such practical activities were usually implemented and experienced at a regional level. Their execution thus did not frequently interact with or impinge upon the notions of political power assumed to be in circulation at court. Nonetheless, there were moments when local understandings of political power were acted out on a larger stage, sometimes in contradiction to notions prevailing at court. To suggest a few examples: the beginning of the *Oprichnina*; the decision by Nizhnii Novgorod in the fall of 1611 to tax itself and set up the administrative machinery for raising a militia to march on Moscow; the establishment of a *Zemskii sobor* in Iaroslavl'; and the *Zemskii sobor* that elected Mikhail Romanov. Perhaps most dramatic among such events are the 1648 riots in Moscow that led to the Law Code of 1649, which Sashalmi credits with launching more legal interpretations of the ruler's powers and by implication of the ruler's bureaucracy or "state". At such moments, local experience and local bureaucratic practice uncharacteristically confronted the vision of the ruler offered in words and images. Quite obviously, they were not the product of the immediate moment when they appeared on a "national" stage. Rather, they should be understood as expressing attitudes derived from extensive, if local, experience. Endre Sashalmi, who understandably specifies that his extensive study focuses on written expressions of political thought, excluding inchoate and difficult expressions of popular ideas, here leads us to another rich research question. That is, the appearance of local or popular actions on the "national" stage, which implicitly contradicted written interpretations, offers fertile ground for the further investigation of Russian political thought and its evolution, even if the ideas impelling them were not represented in texts or images. Indeed, if confrontations with political power were key to shaping such debates in western Europe, why not in Russia, albeit in a different form?

Secondly, Sashalmi's work suggests another quite different direction for further investigation. In his book, the absence of precise political definitions and discourses on political thought are linked, not only to a description of pre-Petrine political "notions" and their survival after 1700, but also to the absence of certain Western European structures and intellectual traditions. His discussion of how those traditions played out against Russian culture from the Petrine era onward is particularly precise and admirable. Rather than being posed as "negatives" or as failures of Russian culture to develop on the western European spectrum, they appear as absences. A quite different, implied, and perhaps unanswerable question posed by the book is: What benefits did the prolonged retention of the political "notions" of pre-Petrine Russia offer for the functioning of that developing, spatially-expansive realm?

Russian Notions of Power offers an intense and learned vision of political thought in early modern Russia. It not only offers us more precise understandings of Russian developments in this field; it also raises a myriad of questions that await our further investigation.

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Professor David Goldfrank

In Dialogue with *Russian Notions of Power and State*

Keywords:
early modern state, Iosif Volotskii, Aristotle's *Politics,* tyrannical kingship

Professor Endre Sashalmi's monograph is thoroughly thought out and researched, both from the European and Russian perspectives.[53] Its solidly elaborated main thesis is worthy of serious consideration by the regional and comparative historian. He propounds that the developing early modern European functions and organs of public administration and the concomitant notion of sovereignty as found in Jean Bodin, whereby governance could be separated from the person of the ruler, created what came to be called *il stato/l'état/der Staat/el estado/the state*. Sashalmi argues that the reign of Peter I and the theorising of Feofan Prokopovich were crucial for a similar Russian breakthrough. Due, however, to certain Russian peculiarities, the Russian sovereigns retained both in theory and via the prevailing political culture sufficient divinely assigned separate and superior power over their state to render to them and to the empire an essential difference from Europe's other great realms. For me one of the great aspects of Sashalmi's elaboration of his main thesis and other points is that he seems to be in dialogue with himself, aware that much of what he says represents not so much *le dernier mot* on a given issue as his latest thinking. Thus, his ideas should be envisioned as both forceful and *diskussionyi,* subject to modifications, including by him, in the light of the immense complexities of human societies and governance.

Stimulated by Sashalmi's book, I shall in the remainder of the brief space allotted to me indicate how some my own musing and inner dialogues on the problem of Russia's governance intersect with his ideas. First, as a prelude to Russia's acquisition and development of Western style political thinking – here specifically concerning Russia's late medieval notion of the public good – let me cite from a previous piece of mine concerning Iosif Volotskii, which is fully consistent with the religious framing of Muscovite political doctrines, including Iosif's, as underscored by Sashalmi:[54]

> "Even without an abstract, all-inclusive term, society at large, at least Russia's Orthodox Christian society, as well as Iosif's monastic community and office status, was central to the sense of mission and 'socially ratified personal identity' of this widely 'knowledgeable actor'. For Iosif what we term society could be 'all of us',[55] 'all people',[56] 'monks and

[53] Sashalmi 2022.
[54] Goldfrank 2017: 109–110; see especially sections 8.2–8.3 of Sashalmi 2022.
[55] Volotskii 1972: 11: 423 ("Сїа оубо всѧ благаа равнѣ *вси* прїахомъ").
[56] Volotskii 1959: 162 ("аще не искоренится ныне той вторый Июда предатель, […] во *вся человеки* внидет отступление").

> laymen and all',[57] 'the world, Christians',[58] 'Orthodox Christianity',[59] 'the entire land',[60] 'Rus'-land and all Orthodox Christianity',[61] 'all of Orthodox Christianity of the entire Rus'-land',[62] or, figuratively in a lamentation, 'all the Muscovite' or 'all the Rus' pathways'.[63] […] Iosif likewise grasped that at his time general security required solid principles shared among the governing and the governed. For 'if the testimony of truthful witnesses is not accepted, then all good order and well-being, which are in cities and in homes and in markets and on roads, will be abolished, and all [*places*] will be filled with disorder and rebellion and sedition and turbulence, theft and robbery and murders and anarchy'.[64]"

I would add here that according to the proceedings of the 12 January 1682 *Zemskii sobor,* which abolished *mestnichestvo,* Patriarch Ioakim, summing up some of what Tsar Feodor Alekseevich had purportedly said in his initial address, specifically referred to Feodor's "such wise words pertaining to the general good of Christendom".[65] In his 18 April 1688 charter to Kievo-Pecherskii monastery designating it as a joint tsarist-patriarchal "stauropigial" and the top ranking "archimandria" in the realm, Patriarch Ioakim referred specifically to where in God's creation "there is civil society (*or citizenry – D.G.*)".[66] So, in regard to general welfare, educated Russia by the late seventeenth century was prepared for more sophisticated political theory than was readily on hand.

What umbrella term shall we use for the pre- or extra-early modern European *apparati* of public power, in light of Sashalmi's *Hauptidee?* More than a few of us have used the term "the state". Indeed, Ivan IV himself might have recognised that concept when he excoriated what I have called, as if putting words in his mouth, his realm's "deep *zemshchina*" – the *dvorovye* and *prikaznye liudi*.[67] Here we have the nagging problem of the classification of Russia's structural peculiarities from a European standpoint – and from Sashalmi's perspective how dynastically owned Russian royal authority differed from the various incarnations of more law-bound, dynastically owned European royal authority, such as the France of Louis XIV. In discussing Richard Pipes's notion of patrimonialism as applied to Russia, I would be more

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57 Volotskii 1959: 162 ("ныне и в домех, и в путех, и в тръжищих *иноци и мирьсти и вси* сомнятся, *вси* о вере пытают").

58 Volotskii 1959: 139 ("Вы – господа, пастыреи, а мы – *мир, христьяне*").

59 Volotskii 1959: 178 ("*христианство православное* гинет от их ереси").

60 Volotskii 1959: 176 ("за государьское согрешение Бог *всю землю* казнит").

61 Volotskii 1959: 160 ("нынешняя великая беда, постигшиа *Рускую землю и все православное христианство*").

62 Volotskii 1959: 195–196 ("ино *всея Рускии земля* государем государь Бог устроил вседержитель […] и *всего православного християньства всея Руския земля* власть и попечние вручил ему").

63 Volotskii 1959: 157 ("не *вси* ли *московстии,* паче же рещи *всея Руси путие* восплакашася?").

64 Volotskii 1972: 14: 508.

65 *Polnoe sobranie zakonov* 1830: vol. 1, 373 (No. 905) ("таковые мудрые глаголы, ко *общему Христіанскому добру* надлежащіе").

66 *Polnoe sobranie zakonov* 1830: vol. 2, 921 (No. 1295) (Идеже […] содержится *гражданство*). A generation earlier, the 12 December synodal condemnation of Patriarch Nikon had accused him in general of "disturbing the peace and troubling society (гражданство)": *Polnoe sobranie zakonov* 1830: Vol. 1: 656 (No. 383).

67 Goldfrank 2020: 57.

critical than Sashalmi and rather than just to note George Weickhardt's work,[68] I would affirm that the latter, not Pipes, was absolutely correct concerning the prominent role of law in Muscovy.[69] From my own standpoint, Pipes, while claiming originality, actually clouds his dependence on Max Weber (the concept) and Karl August Wittfogel, the latter of whom surely overdid his polemical application of Aristotle's notion of total kingship *(πάντων κύριος)*.[70] Here Sashalmi is on the mark with his approval of Marshall Poe's preference for the notion "nominal universal proprietorship" over the more loaded and semantically less precise "despotism" to characterise Muscovy's undeveloped concepts of tsarist authority.[71] After all, what seems to have operated in this society which in theory demanded universal service of some kind was the notion that the servitors merited the means to perform their service. Regarding this phenomenon, I found a poignant observation in Angela Rustemeyer's *Dissens und Ehre. Majestätsverbrechen in Russland (1600–1800),*[72] and so wrote in my review of it that,

> "the Russian authorities, worried over the tax base and support of state service, were far more solicitous in directly compensating landowners' losses from popular uprisings than were the Habsburgs, in whose domains stronger and hence more hands-off notions of private property prevailed".[73]

Continuing in this vein, I turn to Aristotle's classifications of kingship, which I probed a quarter of a century back in search of a useful characterisation of Muscovy's regal structure. In this study, I discovered in his "tyrannical kingship" – an idea which I think is more or less consistent with Sashalmi's views (but maybe I am mistaken):[74]

> "Dynastic Russia, of course, was far more stable than the tyrannies which Aristotle analyzed. Here too, except for the excesses of Ivan IV, the positive, king-like means Aristotle noted for preserving such a regime[75] seem to apply to Muscovy: a general image of a steward, not a tyrant, and a grave appearance to produce awe; zeal in public piety; avoidance of sexual offenses or other personal vices; measures to keep the women of the ruling family above suspicion; outward concern that public funds be well deployed for public purposes; efforts to adorn the capital city; refraining from lavishing gifts on favorites with money wrung from subjects; cultivation of military qualities; personal distribution of honors while letting the courts and magistrates dole out the punishments; neither allowing any individual to amass too much power, nor disgracing anyone too

68 Weickhardt 1994.
69 Sashalmi 2022: 283, footnote 1, discussing Pipes 1974.
70 Aristotle 1944: *Politics*: III.x.2, 252–255 (1285b). I have no space, much less need here, to elaborate on Pipes, Weber and Wittfogel.
71 Sashalmi 2022: 292, discussing Poe 2000.
72 Rustemeyer 2006.
73 Goldfrank 2015: 110–111. Due to a technical mishap, this publication was delayed seven years.
74 Goldfrank 2001: 44–45. Though not in the title, this volume was a memorial festschrift for Hans-Joachim Torke.
75 Aristotle 1944: V.ix.2-9, 458–465 (1313a–1314a).

> fast; being careful with people of sensitive honor; making punishments appear as paternal discipline; and getting both the rich and the poor alike to think that the ruler secures their position – which we see in the naive monarchism of the urban revolts and the pretender phenomenon."

Then interpreting the implications of Aristotle's practical advice here to monarchs ruling societies where tyrannical kingship was the norm, I continued:[76]

> "It is important to note here that Aristotle's analysis, somewhat in contradiction with his famous stricture on 'foreigners' and 'Asians', assumes people with their own values, interests, ambitions, expectations from government – an implicit sense of social contract – and readiness to act – in other words, what Valerie Kivelson recently termed 'empowered subjects'[77] – not simply a passive, fatalistic bunch of slavish underlings. The self-interested activism which, for example, Professor Kivelson has observed among Russia's seventeenth-century provincial elites and argues is somewhat analogous to the English gentry,[78] in no way invalidates the classification of Muscovy within the rubric of Aristotle's intermediary, second type of kingship.[79] For sure Western monarchies at times also exhibited some of the vicious traits noted by Aristotle, but none, I believe, did so to the extent that Muscovy did – which is why Western visitors, starting with the late fifteenth century, almost uniformly saw Russia as a tyranny or despotism, with a servile people under a normally stable, dynastic system."

To conclude here, the "European Perspective" for any part of Russia's history stands as an unavoidable component of sound analysis. Sashalmi's mild, tweaking critique of Kivelson's alleged "Western-couched wording" regarding the provincial gentry's "political […] identification" with "the Muscovite polity"[80] confirms that the above-noted umbrella type, however so termed, is real enough for him too, if not quite yet a "state" separable from the ruler as understood in his *Russian Notions of Power and State*.

So, I thank you, Professor Sashalmi, for your stimulating, excellent book, your contributions to our understanding of Russia's structures and thinking over the centuries, as well as for prompting readers such as the author of these words – and I am certain many others – to revisit and rethink a host of historical issues. I also thank Russell Martin for his careful, critical reading of the initial draft, Eve Levin for her overall editorial efforts, all the other participants of our 24 November 2024 ASEEES roundtable, and especially Endre Sashalmi for his coming to Boston to join us as we mused over his remarkable book.

[76] Goldfrank 2001: 45.

[77] Kivelson 2002. A leitmotif of the article, but this specific formulation from an earlier draft is not preserved in the published version.

[78] Kivelson 1996: xv–xviii, 36–39, 286–289, 276–277.

[79] Aristotle 1944: III.ix.2, 254–255 (1285b). Added here: that is, intermediary between lawful and total kingship.

[80] Sashalmi 2022: 283–284, 295–296.

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Essay •

Professor Donald Ostrowski

Parameters of Change: Assessing the Significance of a Ruler's Reign in Early Modern Russia

Keywords:
periodisation, historical change, Russian rulers, parameters for evaluating significance

The subtitle of Endre Sashalmi's recent book promises an assessment of the reign of Peter I (r. 1682–1725).[81] In my previously published review,[82] I raised the question of how Sashalmi intended to assess the significance of Peter's reign between 1462 and 1725 when his reign ended in 1725. I wondered whether one should not be taking into consideration the impact of the reign after the reign was over. Sashalmi anticipated that question in his book and justifies the indicated date range in two ways. First, he says: "With the emphasis of the post-1700 years [i.e., 1700–1725] in the structure of the book, I intend to show the significance of the change that occurred in Russian thought on power both in texts and iconography in a short time, as well as highlight the problem of (the) reception of Western ideas."[83] Secondly, he points out that he attempts to take "a longue durée approach in understanding some aspects of Russian political thought and political vocabulary even as late as the twentieth and twenty-first centuries".[84]

In a recent book of mine (which came out the same year as Sashalmi's), I argued that in order to do a thorough assessment of any early modern Russian ruler's reign, one should analyse the accomplishments and achievements in comparison with the reign of other early modern Russian rulers.[85] One of the theses of my book was that the reign of Peter I should not be considered a "continental divide" of Russian history and that Peter, while introducing many changes, did not change the course of Russian history. In other words, Russia of the time of Peter I was well on its way to modernising in a European mode. My discussion of Peter's accomplishments places them in the context of where Russia was at the time and where it headed afterward.[86] I concluded: "If a historian wants to assert that a historical figure changed things, then that historian should not assume that just because a historical figure changed something, such a change would not have resulted anyway."[87] In addition, I provided "A Brief Survey of Achievements of Other Russian Rulers"[88]. Yet, I did not "crash" the two together; that is, I did not compare and contrast the changes that occurred during Peter's reign with the changes that occurred during the reigns of other early modern Russian rulers. I refrained

81 Sashalmi 2022.
82 Ostrowski 2023.
83 Sashalmi 2022: 24.
84 Sashalmi 2022: 48.
85 Ostrowski 2022a.
86 Ostrowski 2022a: 442–447.
87 Ostrowski 2022a: 447.
88 Ostrowski 2022a: 451–455.

from doing so in part because it was outside the scope of the book I was writing and in part because I did not have parameters for evaluating the significance one ruler's changes with that of another ruler's changes.

I would now like to propose those parameters. They are 1. duration; 2. depth; and 3. originality. No doubt there are other parameters that can be invoked to evaluate any particular ruler's significance. I hope that others will provide those other parameters if they think them necessary or even dispute the three parameters that I propose here.

By "duration" I mean how long a particular ruler's change lasted. It does not have to last to the present day, but it should have some lasting value that extends beyond that ruler's reign. For example, Ivan IV (r. 1533–1584) attempted at least twice to arrange for English craftsmen to build a fleet of ocean-going vessels.[89] We have no evidence whether any ships were eventually built, but the willingness of a Russian ruler to ask foreign shipwrights to construct a Russian navy could be seen as the intent that eventually led to the Russian navy we have today. The problem is one of duration – nothing, so far as we know, was built at the time and the intent was not revived until decades later. Likewise, Tsar Mikhail Fëdorovich set in motion the process to modernise the Russian army along European lines. The Treaty of Polianovka with the Polish–Lithuanian Commonwealth in 1634, however, ended the process for the time being. In contrast Ivan III (r. 1462–1505) invited Italian architects in to build the churches and walls of the Kremlin, which still stand. Among other buildings that were built in the early modern period that exist today are St. Basil's Cathedral in Red Square, which was built during the reign of Ivan IV; the two-story Winter Palace in St. Petersburg that we see today was designed by the architect Domenico Trezzini (1670–1734) and commissioned by Empress Anna Ioannovna (r. 1730–1740); and the Catherinian, Alexander, and Pavlovsk palaces were built during the reign of Catherine II (r. 1762–1796). Although the printing press was introduced into Russia in the 1560s apparently as the result of actions by Ivan IV and Metropolitan Makarii (r. 1542–1563) to establish a printing house, it was of short duration[90] and resumed only later.

By "depth" I mean the impact a ruler's change had on the Russian population and Russian culture in general. The introduction of ballet by Anna has duration to the present day, but during the early modern period it affected only a small percentage of the population (mostly the ruling elite and their serf performers on their estates). Since then, especially if one wants to include Tchaikovsky's *Nutcracker Suite,* it has reached a greater percentage of that general populace and of the world.[91] The requirement of courtiers to shave their beards off was not all that innovative since there is evidence of such practice at the court of Fëdor Alekseevich. The attempt to spread the fashion to the Russian populace with a decree establishing a tax on beards failed as that decree was rarely enforced, so elimination of facial hair (except for moustaches and eyebrows) gets a low score on the depth of its impact on society in general.

[89] Baron 1983: 110–114.

[90] Tikhomirov 1968. Tikhomirov states that printing in Moscow continued until the early seventeenth century; see the chapter "Nachalo knigopechataniia v Rossii".

[91] Cf. the remarks of Count Rostov in Towles 2016.

By "originality" I mean the innovativeness of the ruler's change not only in terms of his immediate predecessors but also in the context of the history of Eurasia (Europe and Asia combined) as a whole. One question to ask in this regard is whether what the ruler did would have occurred anyway without that ruler taking action. One could point to the *Ulozhenie of 1649* as an innovation. Although the *Sudebnik of 1497* had been promulgated under Ivan III and the *Sudebnik of 1550* had been promulgated under Ivan IV, these were judicial procedures and decisions. The *Ulozhenie* was a genuine law code not like any in effect in any other country at the time.

Let us go through some of the other changes that early modern Russian rulers instituted to see how they stack up when measured against these three parameters. The following survey is highly subjective and not intended to be comprehensive or even methodical. Nor do I discuss all early modern Russian rulers since to do so would be overly tedious in an essay of this kind. Its main intent is to show how a possible comparison of the significance of early modern Russian rulers might be done.

Ivan III used Morean Greek advisors to transform Muscovy from a khanate-type government and administration into a dynastic state-type government and administration.[92] The type of government that resulted lasted in Russia until the Revolutions of 1917 (although one could argue that already by 1905 Russia was being transformed into a constitutional monarchy). This change had a profound impact on all social groups in Russia. It was innovative in that the adoption of a khanate form of government by Muscovite rulers in the fourteenth century was the result of imitating their overlords, but Ivan III's innovation was not in imitation of any overlordship. It was a conscious decision to choose the most effective and appropriate form of government then available. Ivan also established *pomest'e* as a means of rewarding his military servitors. These military servitors *(pomeshchiki)* in turn administered the *pomest'e* for Ivan and passed on tax revenue. The *pomest'e* system also provided the *pomeshchiki* with a means of independent support, thus reducing the burden on the government treasury. This system, when combined with the *votchina* system in the seventeenth century, was the basis for the ruling class until the 1917 revolutions. It thus had duration as well as depth in that it affected all layers of society. One cannot, however, call it particularly innovative since it was in imitation of *iqta* in the Ulus of Jochi and its successor khanates. Ivan's bringing in of Italian architects and engineers, to design and build the Kremlin wall and churches, as well as construct canals and ramparts and to develop the manufacture of gunpowder had duration, depth, and was innovative in that such a practice was unknown in Muscovy before that time. It was not an uncommon practice, however, elsewhere among Eurasian polities.

Shortly after succeeding to the throne, Vasilii III (r. 1505–1533) had the Khazanian tsarevich, Kudai Kul, convert to Christianity as Peter Ibramovich. Tsarevich Peter married Vasilii's sister Evdokhiia and became, until his death in 1521, the second most powerful person in the land after the grand prince. Sigismund von Herberstein credits Vasilii with introducing the bride show for members of the ruling family to marry one of their own subjects rather

[92] Ostrowski 2006: 233.

than foreigners.[93] The result was a significant change in marriage politics for Muscovy, as well as providing "a story motif in literature, music and art", as Russell Martin pointed out.[94] Vasilii also worked unceasingly to take power away from his brothers, as his father also had done in relation to his own brothers. When Vasilii and his first wife did not produce a child, he divorced her, had her take the veil, and married Elena Glinskaia. Their son, Ivan, born in 1530, insured the succession would not pass to any of Vasilii's surviving brothers. While this change had duration, it lacked depth into Russian society as a whole. It was innovative to the degree that Vasilii's contemporary Henry VIII (r. 1509–1547) found himself in a similar situation but chose a different course of action.

Under Ivan IV, a new list of judicial rules, the *Sudebnik of 1550*, was issued, but it was more an expansion of the *Sudebnik of 1497*. The decisions of the *Stoglav* Church Council of 1551, over which both Metropolitan Makarii and Ivan IV presided, acted as an equivalent in the ecclesiastical realm by combining previous council decisions and decrees. Such a practice had ample precedence in the Orthodox Church although it had not yet occurred under any previous Rus' metropolitan. Its impact was profound as it provided a base line for the Old Believers to refer to from the seventeenth century on. Ivan founded the *strel'tsi*, an arquebus-toting infantry. Modifying the military to update against the latest enemies had occurred before when Rus' rulers adopted steppe-style weapons and tactics. Introducing arquebus infantry might not have been all that innovative. But this change was especially European and, it could be argued, represented the beginning of the modernisation of the Russian army along European lines. The *strel'tsi* regiments lasted well into the eighteenth century, despite the attempts of Peter I to strangle them, so the change also had duration. Since *strel'tsi* regiments were drawn from all layers of society, one could argue that this change also had depth. Under Ivan IV, Russia conquered Kazan' and Astrakhan' thus clearing the way for the taking over of control of the Volga River trade all the way to the Caspian Sea. As a result, Ivan declared himself *tsar'* (khan) of Kazan' and Astrakhan', which was innovative since at the time only Chingissids could declare themselves khans. But Ivan had also sought approval from the Byzantine patriarch for adopting the title *tsar'* in the sense of a basileus. His reign saw the beginning of the conquest of Siberia with the establishment of fortifications on the Tobol' river in 1574. That conquest, however, was interrupted by the Time of Troubles and was only resumed by Tsar Mikhail.

Boris Godunov (r. 1598–1604) oversaw building projects of churches and fortresses as well as administrative reforms, many of which projects and reforms he had begun as major-domo under Fëdor I.[95] The construction at Smolensk of the largest fortress in the world was begun in 1596, which had 6.5 km of walls, ranging from 5 meters to 5.2 meters in width. It was later captured by the Poles. Boris innovated by sending Russians abroad to get an education, but a large number of them did not return to Russia. An evaluation of his reign would have to

93 Herberstein 1851: I: 50.
94 Martin 2012: 240.
95 Rowland 2003.

acknowledge that his reign did not provide much depth or duration, and his originality was limited.

The reign of Mikhail Romanov (r. 1613–1645) saw the re-establishment of a stable Russian government after the Time of Troubles. Russian expeditions crossed to the Pacific Ocean, and Siberia (or at least parts of it) came under Russian rule. Mikhail started a comprehensive reform of the military on European lines. That reform was successful to the point that the Russian army could challenge the Polish stronghold at Smolensk. The siege failed and the Russian government had to agree not to import European officers or continue with the Europeanisation of the military. The conquest of Siberia had duration and depth as it was carried out mainly by non-elite and Cossack groups,[96] but it was not particularly innovative, being based on the Muscovite move into the northern Novgorodian provinces in the late sixteenth century. Moreover, the military reform lacked duration.

Aleksei Mikhailovich (r. 1645–1676) resumed the transformation of the Russian army into a European-style army. That transformation was well on its way by the time of the end of his reign. It affected every layer of society, since the highly skilled horse archers were replaced by common folk wielding firearms and pikes. Aleksei extensively revamped the *boiarstvo* allowing more members of the ruling class into the ruling elite.[97] Doing so effectively ended the boyar clan balance of power that hitherto had been in place. It also opened the way to the ending of two obsolete institutions – *mestnichestvo*, abolished under one of Aleksei's sons, Fëdor III (r. 1676–1682), in 1682, and the *terem*, abolished under another of Aleksei's sons, Peter, in 1718. Both institutions were artefacts of the boyar clan and marriage politics regime that was in effect when Aleksei came to power. That regime was replaced by a constellation of ruling elite families divided into two main factions – the Miloslavskiis and the Narsyshkins.[98] Perhaps Aleksei's single greatest accomplishment was the *Ulozhenie of 1649*, which served as the law code of the country until 1832 when it was superseded by Speranskii's *Code of Laws of the Russian Empire*. The *Ulozhenie* was the most advanced law code in effect in the world at the time. Its duration was 183 years, and it affected every layer of society. Moving to the arts, a European-style play was performed at court for the first time in 1672,[99] but Aleksei also banned *skomorokhi* performances. The former had duration, but it also found precedence of a sort in the latter. Given how the influence flows across Eurasia had been shifting since the mid-fifteenth century, no doubt European-style plays would eventually come to Russia, so Aleksei cannot be credited with originality for introducing them.

Many of the changes that ensued in the eighteenth century were derivative from and dependent on the changes that were already occurring during the seventeenth century. As I have argued this point extensively elsewhere,[100] I will spare the reader from an overly tiresome rehearsal of those arguments here. Instead, I will confine my remarks to a few saliencies.

96 Witzenrath 2007.
97 Poe 2004.
98 LeDonne 1987.
99 Martin 2010.
100 Ostrowski 2010.

The abolishing of the *terem* by Peter I was long overdue since it had long since served its political purpose. Already from the 1670s and 1680s the rules regarding seclusion of elite women at the court were being relaxed.[101] Outside the imperial court, the abolition had no effect since seclusion of women had never been practiced.[102] Peter replaced the *mestnichestvo* system that had been ended in 1682 with the Table of Ranks in 1722, for which there was no equivalent ordering of civil, military, and court ranks in Europe. Andrei I. Osterman, who put together the Table at Peter's behest, did gather materials from the regulations of various European countries, such as Denmark, Prussia, and Sweden, but otherwise it does seem to be an innovation. Perhaps Peter had heard about a similar system – the *Mansabdar* – in Mughal India from Russian merchants who returned from there.[103] In any case, the Table had duration but lacked depth in that it excluded the vast majority of the Russian population. Historians make much of Peter's building of St. Petersburg as the new capital of Russia and "window on the West". To be sure, the city had duration as well as societal depth in that tens of thousands of workers and serfs were pressed into service to build Peter's city on a swamp with untold numbers of them dying in the process. While building the city was not particularly innovative (the Russians had been building new towns in Siberia throughout the seventeenth century), the capital had not been moved from Moscow previously. However, the capital of Suzdal' land had been moved from Vladimir to Moscow in the fourteenth century.

During the ten-year reign of Anna Ioannovna (r. 1730–1740), the Academy of Sciences finally began to receive the financial support it lacked under Peter. She and her main foreign affairs advisor, Osterman, began the process of undoing Peter's disastrous Pruth Treaty with the Ottoman Empire. Osterman is also credited with introducing reforms in the judiciary and with improving Russia's credit by improving its financial condition. A Cadet Corps on the European model was a milestone in Russian education. At her court (besides European-style ballet) Italian chamber music, comedies, and operas were first performed in Russia. Anna approved and funded the second Kamchatka expedition which has been called "the world's greatest scientific expedition"[104]. Although each of these changes under Anna had duration, they affected only the ruling class and the serfs of their serf theatres, but not the general population or culture as a whole.

During the reign of Elizabeth Petrovna (r. 1741–1762), the infrastructure of Russia, especially the roads and postal system, was improved, if only to fulfill the Empress's desire for goods shipped from all over the world. It did improve travel throughout the country, but for most Russians, travel was of a limited nature. Under Elizabeth, the arts, both visual and performing, flourished as she was firmly committed to them. Again, none of these changes were original (in the sense I am using the term) and affected mostly the ruling class of the country.

Catherine II (r. 1762–1796) instituted reforms in administration, restored the Russian navy, secularised church and monastic lands, and abolished *slovo i delo Gosudarevo* (word and deed

[101] Hughes 2001: 19.
[102] Kollmann 1983.
[103] Ostrowski 2022a: 136–139.
[104] Bown 2017: subtitle of the book.

against the sovereign). She funded female education,[105] and Russia acquired vast tracts of land in Poland through diplomacy. Along with Potemkin, she opened up and developed "New Russia". She established codes for the behaviour of the nobility. Her support of the arts was unstinting. Catherine put down the most serious uprising against the state since the Time of Troubles in the Pugachev Rebellion. Taken as a whole, the changes in her reign had depth and duration, and some of them, especially female education, could be considered innovative.

The Law of Succession of Paul (r. 1796–1801) transformed the procedure by which the ruler was chosen. Changing the procedure for choosing the ruler of the land had ample precedent.[106] It lasted until 1917 and thus had duration but not originality or depth since it affected only those immediately connected with the tsar.

In a sense, any change that a ruler made that drew on what was already occurring in early modern Russia could be said to have "speeded up" the historical process. Such an evaluation, however, would depend on whether that particular process continued on after the end of the reign of that particular ruler. It would also depend on what one means by "historical process". If the historian means "Europeanisation" or "Westernisation", then the answer might be one way. But if one means improving the state of affairs of the country in general, then one might answer differently.

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[105] De Madariaga 1979.
[106] Ostrowski 2022b.

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Professor Endre Sashalmi

Answers to Comments

Keywords:
the king's two bodies, Petrine paradigm, integrity of the state, power discourse, political culture

The issues raised by the contributors commenting on my book vary as to their content and number, yet, as would be expected, quite a few of the themes they raise are mentioned by more than one of them. Therefore, in my response, while highlighting the particular remarks of each and every individual commentator, I combine this approach with thematic grouping to avoid unnecessary repetition.

I begin with the shortest commentary, the remarks of Professor Peter Brown, as the issues he raised do not require lengthy answers. His list of topics ("Why not bring in, for example, serfdom, caste tensions, non-Russians within the Muscovite polity, and details on Muscovy's unique service-class system and its origin and procedures for recruitment, appointment, and promotion?"), which are indeed missing from the book,[107] would provide material for more than one volume. However, I do not see how these themes could contribute to examining the nuances of the perception of power and the state, beyond, of course, underlining the importance of the principles of service and deference required from the society as a whole, issues which are treated in the book. Brown stated that in the book "there are places requiring clarification", but he provided only one example, concerning Russia's place in the European system of states, asking: "For instance did he [Sashalmi] really mean that Russia became integrated into the 1648 Treaty of Westphalia system?" Indeed, it would have been an error had I written that. My statement, however, referred not to the Westphalian but the Utrecht system. The sentences in question read: "By 1713 the European state system had become more integrated geographically and institutionally (permanent embassies on the basis of parity with professional staffs came into existence), and it began to function according to new principles. The legitimacy of the participants in this system was not deduced from tradition, which had been so important in Westphalia, but from reality: it rested on 'rationality and not traditionalism', which made possible Russia's integration into it."[108]

Regarding Professor Lawrence N. Langer's remarks, I shall refer, for the time being, only to his last point called "definitionalism", because, to a great extent, it contains in a nutshell the other issues he raised for discussion. I examined the various terms historians have proposed to describe state structures existing in Western Christendom between the fourteenth and the early eighteenth century in order to ponder the relevance of these terms, firstly with regard to Western Christendom. By implication, these terms (such as the "fiscal-military state",

[107] Except the topic of chancelleries – to which this remark was made: "Much more needs to be said about the Muscovite chancellery system" – an issue that will be commented on later in the text.

[108] Sashalmi 2022: 145.

"absolute monarchy", etc.) require definition so that we know what phenomena to associate with them – and this is all the more important when Russia is compared with the countries/states of Western Christendom in applying the terms in question. These comparisons, of course, also have to be self-reflective, and the very same approach applies to the comparison of intellectual concepts.

Let me begin this analysis by responding to Professor David Goldfrank, who proposed an alternative interpretation of the *common good* for most of the Muscovite era, identifying its core issues as the protection and preservation of the Orthodox faith, the punishment of evildoers, and safeguarding the general order of society. In his view "Russia's late medieval notion of the public good" was "fully consistent with the religious framing of Muscovite political doctrines, including Iosif's [Volotskii's]", in which a prominent role was attributed (to quote Iosif himself) to "all of Orthodox Christianity of the entire Rus'-land". In this sense the *common good,* in fact, comprised the duties the ruler was expected to fulfil. If I am not mistaken, in the Muscovite era these expectations were the very ideas subsumed in the term *pravda,* or the phrase *pravit' v pravdu.* But *pravda,* which, for want of a better alternative, is generally translated as *justice,* in most of the Muscovite era meant the harmonious order of the world created by God, rather than legal justice as such. Hence, it was, by and large, synonymous with *vera,* i.e. *faith*.[109] However, *the common good (bonum commune/bonum publicum),* on the contrary, was used in Western Christendom in a secular sense referring to the just government of a political community. To be sure, the *common good* was first conceived in a static sense, i.e. something to be preserved. From the late-fifteenth century onward, however, *common good* was something to be promoted: if government complied with human positive laws and natural law, it served the common good. Therefore, to apply the same term, the *common good,* to Muscovite ideology, at least before the late seventeenth century, would in effect obscure the major difference between contemporary Western and Muscovite Russian perceptions of governmental power, as the latter was deeply embedded in theology, and lacked a legal and philosophical underpinning. Peter I's use of *obshchee dobro/blago* in a secular sense, as a synonym of common good, which he rhetorically intended to serve and promote, reinforces my stand on this issue. With regard to the late seventeenth century, of course, there is no disagreement between us, similarly to the classification of Muscovy's political system, if we wish to classify it in Aristotelian terms. Or, alternatively, we can use the description of Professor Nancy Shields Kollmann (whom I quoted on this point): in which the ruler was a "stern but fair, merciful and forgiving" father who "provided justice and order", and who, above all, bestowed "providential blessing upon his people and his realm", as a good shepherd.[110] Concluding my response to Goldfrank's remarks, he is right in saying that (to some extent) my book is a dialogue with myself: indeed, it ponders the possible ways of interpreting Russian notions of power and the state using methods through which

[109] See Sashalmi 2022: 32–33, 205–207.

[110] Sashalmi 2022: 191, quoting Kollmann 1997.

similarities and differences can be measured and placed on the scales, and this dialogue also involves the interconnections between written and pictorial sources.

Following the thread of "definitionalism" within the realm of intellectual concepts, I must undertake a longer exposition with regard to Langer's query whether "the western concept of the king's two bodies and the Byzantine concept of symphonia […] touch on a Christian historical continuum, such as the importance of a ruler's piety", and his criticism that I "too easily dismiss[ed] political theology associated with Iosif Volotskii, or with Metropolitan Makarii, or the *Book of Degrees (Stepennaia kniga)*". It may be illuminative on this point to provide a critical assessment of Edward L. Keenan's posthumously published lecture, *The Tsar's Two Bodies*.[111] This lecture pertains to the heart of the argument I expounded in the book, i.e., the highly personal perception of ruling power and the state in Russia, or, to put it differently, the lack of or weakness of the distinction between the power of a given ruler and ruling power as such. In addition, it addresses the problem of whether or not "political theology" existed in Muscovite Russia. Let me summarise briefly Keenan's argument, inspired by Ernst H. Kantorowicz's book, *The King's Two Bodies. A Study in Medieval Political Theology,*[112] in which Kantorowicz traced the origins and development of the doctrine advocated by lawyers of the late Tudor period, who made a distinction between the person of the king, i.e., his "body natural" on the one hand, and the impersonal rights of government he exercised due to his office, his "body politic", on the other. In presenting Keenan's approach, to be as faithful to his argument as possible, I will quote extensively from his text.

> "One extension of this doctrine not extensively developed by Kantorowicz but inherent in the English version was that the Parliament and Courts of the crown and all of their agents were members of the king's body politic.[113] The necessity for such a conceptual extension of the king's body was of course most obvious when the king in body natural was indeed a child, an imbecile, or otherwise incapacitated, but it was a neat rationalization as well of the reality that in a developed state even the functions specifically reserved to the royal person, such as justice, could not be exercised by the king himself, and were carried out by his agents – the members of his body politic – in his name and hence, legally, by him… Now, by the middle of the 16th century Muscovy was such a state, and although I am unaware that such matters were discussed in the terms that were used in the west, one may perhaps speak of the two bodies of the grand prince *de facto*, one painfully infirm and the other – the king's courts and ministers – remarkably strong and vigorous."[114]

111 Keenan 2017: 3–28.

112 Kantorowicz 1957.

113 Quoting a short passage from the introduction of Kantorowicz's book, Keenan states that the "general acceptance" of the ideas encapsulated in the legal doctrine of the king's two bodies, "permitted Parliament, in 1642, to declare that 'the Court and Ministers are the King's body politic and must do their duty therein, although the King (meaning Charles I) opposes them". Keenan 2017: 18.

114 Keenan 2017: 19–20.

In the footnote pertaining to this statement Keenan raised the question: "if such was the case, how can it be that no articulation of any Muscovite version of the 'two bodies' theory seems to have survived – or existed?" And immediately added:

> "I can only plead, in defense of my admittedly evasive treatment of 'Muscovite ideology' that: 1) the provenance of most of the sources involved is still insufficiently established; 2) it is not clear what effects the notions traditionally associated with 'the school of Makarii [metropolitan of Moscow]' had upon the thinking of those who were in charge of the Muscovite state at the time; and 3) the whole matter of the 'Muscovite state theory' is too complex and problematic to be included in this brief presentation of what are matters of reality, not conceptualization, albeit presented with reference to Kantorowicz's scheme."[115]

While, as we can see, Keenan elegantly put aside a discussion of the nature of "Muscovite state ideology" – a phrase which I refrained from using in my book, precisely because the concept of state did not exist during most of Muscovite history, unless we use the term *state* with a very general meaning. This long paragraph of Keenan's eloquently shows the very heart of his approach, as well as the problems with it. Besides the missing discussion of "Muscovite notions of power" (to use my own phrase), he underlines, by his use of italics that he speaks of a *de facto* "body politic", a position he reinforces with the end of the last sentence quoted, namely, that he is dealing with "matters of reality, not conceptualization, albeit presented with reference to Kantorowicz's scheme". No doubt, many examples of *de facto* government by persons instead of by the legitimate ruler – due to the mental and/or physical incapacities of the ruler – could be cited from the histories of various countries from various ages, although this would not help very much to understand the differences of views on governmental power across ages and cultures. However, "Kantorowicz's scheme" is the discussion of the legal issue of relationship between the *individual* ruler and the *office* held by a ruler – an issue that is plainly apparent in the laconic statement by the parliamentary army, "We fight the king to protect the King", meaning their fight against *king Charles I as an individual* was intended to protect the *King of England, i.e. the office of kingship.*[116]

To conclude on this point: Keenan admitted that he shifted the focus of "Kantorowicz's scheme". The discussion of the peculiarities of the "king's two bodies", the "body natural" and the "body politic" ("the legal doctrine, particularly explicit in English law", as Keenan put it) as well as the relations between the two, were part of an *intellectual discourse* – they were both part of what is called *governance,* or *theory of government.* Keenan attributed great importance in the Muscovite context to the work done by the *duma secretaries (dumnye diaki)* – who represented continuity in and through the different stages of Ivan IV's life and even after his death, and as such were a crucial element of state administration, embodying immortality of a kind. However, when he extended the concept of the "body politic" to the

[115] Keenan 2017: 19, footnote 135.
[116] Kantorowicz 1957: 21–22.

field of *government in practice,* he veered into an interesting intellectual venture, which nonetheless *goes against the very essence of Kantorowicz's exposition.* For what Kantorowicz expounded in his magisterial book, substantiated by a legion of primary sources, was how the relationship between the *king* and the *concept of kingship* changed over time and developed from what he called "Christ-centred kingship" based in liturgy, into "Law-centred" and later "Polity-centred" kingship at the hands of lawyers trained in Canon Law and Roman Law. In other words, he traced how the legal idea of the crown *(corona regni),* the crown as a corporation, encompassing the totality of rights of governance detached and distinct from the person of the ruler, and even standing above individual interests, developed.[117] In doing so Kantorowicz showed how theological metaphors and allegories (e.g. Christ as the bridegroom of the Church and the Church as his bride) were used by lawyers to describe and elucidate secular relations between the king and the kingdom.[118] This is what he (and I, in his footsteps) meant by *political theology:* the use of theological concepts for secular purposes. Although other interpretations of the concept of political theology also exist, in the sense I employed this term there was no political theology in Muscovy. Therefore, on the basis of the reasoning expounded here, my final and overall conclusion concerning the usefulness of the "king's two bodies" and "political theology" in the Muscovite era is that they cannot plausibly be seen "on a Christian historical continuum, such as the importance of a ruler's piety".

Although it was unknown to me and therefore not used in the book, one small section of my work nevertheless shows a distant parallel with the issue Keenan raised in his lecture regarding his approach to the Muscovite "body politic": namely, whether a certain level of a government/state apparatus could have conceptual consequences. This is the theme of some pages in my book dealing with the missive sent by the monk Avraamii in 1696 to Peter I, which represents an interesting mixture of traditional and new ideas on the tsar's duties. The way Avraamii used the word *gosudarstvo* in his missive, that is, in a sense close to the meaning of *state,* is all the more interesting, as he had been an official in one of the biggest Muscovite chancelleries before he became a monk.[119] He reproached Peter in the following manner: "Having abandoned any kind of government of his state (*pokinuv vsiakoe pravlenie gosudarstva svoego*) he ordered that it be governed by a […] bribe-taker, who just wants to get rich."[120] In his missive he also complained about the growth in the number of officials in the chancelleries: in fact, the figure rose more than threefold between the 1640s and the

[117] What stood behind the doctrine of the King's Two Bodies was, quite simply, the concept of the crown, which had already developed in England and Hungary and elsewhere in Western Christendom by the early thirteenth century.

[118] Keenan himself wrote of Kantorowicz's work that it described "the efforts *within the secular law* to separate the *property rights of the crown as a corporation* from the *rights of the natural king*; […] the attempts of *lawyers and philosophers* and statesmen to justify the dynastic fictions required by the contradiction between the physical realities of death, minority and incapacity in royal families and the politically necessary fictions of charisma and continuity" Keenan 2017: 18. Emphasis added by E. S.

[119] This is one of the many themes dealing with chancelleries in the book. For a more characteristic example see the theme of petitions and the Petition Chancellery. Sashalmi 2022: 274–276.

[120] Sashalmi 2022: 334.

1690s.[121] I contended that there was a link between Avraamii's novel use of *gosudarstvo* and the bureaucratisation of the central government: the encounters with the state, in the sense of the state apparatus, became more tangible and the state became, so to speak, more visible. In this way the *practice of government* could have an effect on the *ideas of governance,* especially in the centre of administration. However, that would be only half of the story at best: the period of over a hundred years which separated Ivan IV's reign from Avraamii's missive is crucial, as the intellectual climate was changing in the second half of the seventeenth century. Employing Professor Daniel Rowland's formulation, I called the 1660s–1690s the "decades of fermentation".[122]

Avraamii's case also provides an illustrative example of what Professor Carol B. Stevens emphasised in her contribution, drawing attention to the impact of political events on Russian notions of power, or simply to those occasions when communities encountered the state directly and experienced its impact "on their daily lives" as well as "the practical functioning of their ruler's government" – an issue also raised by Langer, who formulated this problem laconically by noting that ideas on power did not exist in vacuum. With regard to Western Christendom, Stevens alone among the commentators discussed at length the interdependence of political ideas and what in hindsight can be called government practice, highlighting not only institutions but also the "challenges and confrontations" which took place over some centuries in the "West". She stated, and rightly so, that the "social and institutional confrontations impelled a more exact delineation of the prerogatives of kings and definitions of the state, among other things, and these more precise ideas were expressed in a context of law and legal understandings". Indeed, she neatly encapsulated the message of my argument in this sentence. Neither the timing of the publication of Bodin's (1576) nor Hobbes's work (1651) was a happenstance (just to mention the two landmarks of Early Modern state theory), the French Wars of Religion (1562–1598) and the Religious Wars of the British Isles (1640–1660) being the backgrounds, respectively. Following this thread, it was quite logical for her to ask: "If not through the same mechanisms as western Europe, then what impelled the fundamental transition in Russian political thought, beginning perhaps in 1650, but significantly gathering importance with the reign of Peter I?" By referring to "challenges and confrontations", her terminology aptly characterises the various examples she gives as factors contributing to changes in Russian notions of power. Certainly, I agree that the impact of the Time of Troubles (1598–1613) was great, which is why I took it into consideration in my book, among other events, in connection with the appearance of a distinction between *gosudar'* and *gosudarstvo*.[123] This phenomenon, as I have shown, was also reflected in the wording of the 1626 oath of loyalty to the tsar, which became a model for the rest of the century. Her other examples are, likewise, well-chosen, and would deserve further analysis. Without mentioning all of them, particularly notable are the Moscow revolt of 1648, which resulted

[121] See details in Sashalmi 2022: 334–338.

[122] Sashalmi 2022: 92, 327–339. Rowland used the phrase "ferment and innovation" for the years of 1645–1700; Rowland 2007: 273.

[123] Sashalmi 2022: 224–228.

in the 1649 Law Code called *Ulozhenie;* and the conflict between Tsar Alexis and Patriarch Nikon, which led to the appearance of the "two powers theory" in the debate, a doctrine which went against the idea of harmony inherent in the symphony between the tsar and the church and therefore signalled a break. I also dealt with this last issue in my book, although not in the framework of "challenges and confrontations" – a perspective which could be a fruitful venture if applied to the 17th century taken as a whole. Especially salient would be the addition of a further dimension she pinpointed, that of how local issues became countrywide issues, and how they eventually conflicted with established notions of rulership. The Law Code of 1649 is, in fact, a very good example of this. It suffices to mention the slight shift in the meaning of *pravda* towards *legal justice* in the *Ulozhenie* on the one hand, and the fact that many issues addressed in the Law Code originated from local initiative on the other. It is true that Muscovite society was not passive, yet mechanisms for the articulation of local interests were not institutionalised apart from the right of petitioning, as the *zemskii sobor* (which was not like the assemblies of estates in Western Christendom) was an occasion for gathering information or to calm unrest.

The major issue for several of the discussants is what can be called the "Petrine paradigm", to use Professor Russell E. Martin's phrase. This was practically the only theme of Professor Donald Ostrowski's study-length commentary (which can be regarded as an afterthought on his book, *Russia in the Early Modern World. The Continuity of Change*),[124] while others (Martin, Stevens, and Langer) also devoted considerable space to it. Martin pondered the "Petrine paradigm" from two angles: an assessment of Peter's reign within the flow of Russian history on the one hand, and the problems it entails for periodisation, concerning the use of the labels "early modern" and "modern" for Russia on the other. These two themes, but predominantly the first one, comprise the essence of Ostrowski's contribution to the present discussion. As a preliminary remark to Ostrowski's and Martin's contributions, I have to mention that I deliberately refrained from using the term "early modern Russia" in the book, nor did I use the phrase "modern Russia". This is not because I did not consider the "early modern" label to be applicable to Muscovite and Petrine Russia, but because it would have taken me on a tangent into another historiographical (and possibly book-length) problem. I have touched on some aspects of this question in an article which has been published in the journal *RussianStudiesHu*,[125] therefore I will not engage in this discussion here. Let me just mention that I would date "early modernity" in the context of Russian history beginning only from the 1650s – I accept 1801 as its end – and I ask readers to read my article to become acquainted with my arguments.

I would rather address here briefly the problem of continuity and discontinuity/change. A prefatory note may be in order here regarding Ostrowski's reference to the subtitle of my book, namely, his view that one should assess the impact of a ruler's reign only "after the reign was over", a point he also mentioned in his published review.[126] To put it very briefly, I

[124] Ostrowski 2022.
[125] Sashalmi 2025.
[126] Ostrowski 2023: 1063.

think that a relevant perspective of the assessment in the case of Peter I may not only address the post-Petrine era but also pre-1700 Muscovy, a perspective which, in fact, appears in both Stevens's and Langer's contributions.[127]

Regarding the assessment of a reign in terms of continuity and change, Ostrowski proposed three "parameters", namely, "1. duration; 2. depth; and 3. originality".[128] He started his well-documented commentary with the same time span I adopted, i.e. beginning with the reign of Ivan III (1462). Interestingly, none of the commentators who made remarks on chronology, including Ostrowski, mentioned Professor Paul Bushkovitch's book on Russian succession, which used almost the same chronological frame as mine (and even contains the label "early modern"), *Succession to the Throne in Early Modern Russia. The Transfer of Power 1450–1725.*[129] I quoted from Bushkovitch's book on many occasions, because he discussed the topic of succession within a very broad intellectual framework. Furthermore, on many points there are striking similarities between his and my views: e.g. the lack of genuine political thought in Muscovy.[130] I mention only this aspect because it is the one most closely related to Ostrowski's introductory comments, stating that I justified my "anticipated" assessment of the period ca. 1700–1725 on two grounds: 1. by emphasising "the significance of the change that occurred in Russian thought on power both in texts and iconography in a short time", highlighting, at the same time, "the problem of reception of Western ideas"; and 2. by adopting "a longue durée approach in understanding some aspects of Russian political thought and political vocabulary even as late as the twentieth and twenty-first centuries".[131] However, none of these issues, which are indeed integral to my argument, are discussed in Ostrowski's contribution; to be sure, the book, as the title suggests, is on the Russian perception of ruling power. Ostrowski, however, focused on various other aspects that I touched upon only in passing, or not at all. Therefore, for the most part, I have to pass over his detailed and eloquent exposition without comment, although I think it could be a good starting point for a new discussion on the role of Peter the Great in Russian history. Nevertheless, I do not want to leave the core problem unanswered. Of course, I also made some definitive statements regarding a few aspects of Peter's reign other than those which can be subsumed under the term ideology of power, and whether his rule, taken as a whole, constitutes a turning point, or simply the continuation of trends (the latter opinion is advocated by Ostrowski). I remain committed to my view, while allowing, of course, that there can be other assessments of Peter's reign, placing emphasis on fields other than the ones I dealt with in my book.

127 See these later in the relevant footnote.

128 While I completely accept the first two parameters as crucial in assessing significant change, I do not think that the "originality" of a certain measure, in the sense that it is an invention of the person introducing the given measure, should be a decisive parameter. No doubt, most of Peter's "reforms", as they are usually called, came originally from Sweden, Denmark and Prussia, but they were novel in the Russian context. Furthermore, two other parameters might be worth considering to spur a further discussion: the *massive use of force* to achieve the intended effect on the one hand, and the *rapidity* of implementation on the other.

129 Bushkovitch 2021.

130 I quoted him approvingly and extensively on this point in the book. Sashalmi 2022: 21.

131 These sentences are quotations from my book.

To formulate very briefly my standpoint on the "Petrine paradigm", I completely agree with Martin's interpretation of my book, namely that Peter I's reign between ca. 1700 to 1725 is a landmark, and "Peter was, indeed, an important inflection point in Russian history; that the discontinuities between Russia before and after Peter self-evidently outweigh whatever continuities" can be identified[132]. As I put it plainly in the book: "I am not to say, of course, that 'everything began with Peter'".[133] But there was no return to the Muscovite past,[134] a statement which, of course, does not invalidate continuities in various fields (e.g. the composition of the ruling elite at the time of Peter's death, or above all what Fernand Braudel called "material civilization"). Furthermore, in response to Martin, I think that the issue of changes/continuities under Peter I should not necessarily be seen through the prism of the "early modern"–"modern" divide of Russian history, not least because these terms were coined for European history, covering roughly the centuries between the 1450s and 1789.[135]

Remaining within the field of chronological comments, I continue with an answer to Martin's remark concerning the inclusion of the epilogue discussing contemporary Russia – an answer that also touches upon Ostrowski's "durability" parameter. My aim with the epilogue was, in the first place, to show the plausibility of the method called "serial contextualism" (coined by David Armitage)[136] tracing the history of the phrase *tselost' gosudarstva* ("unity/integrity of the state"). This phrase, which Richard Wortman termed a "charismatic word", in its Russian interpretation means more than merely the inviolability of the state's territory (which is common to each and every state) since *tselost' gosudarstva* is closely connected to autocratic power, as Wortman has shown, presenting its history from the eighteenth to the twenty-first century.[137] Moreover, it has become the core of the "Russian state narrative".[138] Regarding the history of this "charismatic word" I clearly stated that the main body of my book ends precisely where Wortman's begins, that is, with Peter I. At the same time, in

[132] I agree completely with the final section of Langer's comments, comprising a little bit more than one third of his whole text, as it confirms my contention regarding the impact of Peter I on the course of Russia's history. At the same time, Stevens' comments (e.g. on the difference between pre-Petrine and Petrine map making, the latter reflecting the territorially-minded perception of the realm) also support my position. Martina Winkler has recently published an important biography of Peter, which there is not space to discuss here but which has a lot to say on the ongoing debate on Peter's role and his reign in the context of Russian history. Winkler 2024.

[133] Sashalmi 2022: 26.

[134] For a cursory exposition of the various fields where crucial changes took place and which pertain to Ostrowski's "depth" parameter, see Sashalmi 2022: 24–28. Many other issues could be added: e.g. the appearance of a socio-cultural rift between the lower strata of the population and the nobility above all; introduction of the poll tax which blurred the serf–slave distinction; conscription replacing military servitors as the source of manpower for the army; Russia's becoming self-sufficient in producing iron and making armaments, and becoming the greatest producer of iron in Europe; the shift of Russia's foreign trade towards Europe instead of Central Asia, etc. For military and military-related economic matters see Sashalmi 2024: 157–183.

[135] For other periodisations see my article: Sashalmi 2025. For the caveats against periodisation in general, and its implications for Russian history, see especially Nancy S. Kollmann's comments. Kollmann 2010: 439–447. Indeed, a periodisation has to be "multilayered and self-reflective". Kollmann 2010: 439.

[136] Armitage 2012: 497–499.

[137] Wortman 2018: 159–181.

[138] See chapter 6 with the same title: *The Birth of the 'Russian State Narrative'* Sashalmi 2022: 165–175.

the spirit of "serial contextualism" (and "durability"), I think it is justified to examine the importance of this phrase in some contemporary sources that Wortman did not analyse. Why? In Edwin Bacon's opinion, as Marco Puleri quoted him, "in order to better understand a political system, we should pay close attention to the stories that its political actors tell about themselves and their system". Puleri is right to claim that in Russia's case "this entails mainly the need to reconsider the historical legacies coming from imperial and Soviet times".[139] This statement applies directly to the "integrity of the state", which is the core idea of the "strong state" narrative.[140]

One last word on periodisation. My book concentrates on ideology and its expression in texts and imagery, and Martin rightly states that "periodization and the Petrine Revolution are given equal billing right on the cover of the book". I suppose that his statement was motivated not just because the subtitle ("Assessing the Significance of Peter's Reign") is placed alongside the dates of 1462–1725, but also due to the iconography of the cover. If so, I must admit that its choice was quite deliberate! The frontispiece (Benjamin Patersen's etching entitled *A Monument to Peter I,* 1799) serves as a paratext to my argument, showing the "Bronze Horseman" – the statue of the rider and the horse, although based on antique prototypes, is a characteristically early modern Western iconographic expression of rulership – and Neptune, the antique God of the sea, which is an allusion to Russia's becoming a sea power (note that the depiction of pagan gods was forbidden by the Orthodox Church before Peter). At the same time, the Bronze Horseman erected by Catherine II (1782) is a *post mortem* assessment of Peter's reign by the empress, and as such, a proof of the Petrine legacy in the eighteenth century.

Regarding Martin's remark on the use of Keenan's lengthy study, *Muscovite Political Folkways,*[141] Keenan's essay is, of course, an intelligent interpretation of Russian political culture and as such it has the advantages and at the same time the disadvantages/constraints characteristic of the genre. Indeed, the study may have deserved a reference in the book (especially because it goes beyond the Muscovite period) but as Keenan in this study did not analyse primary sources, I left it unmentioned. Moreover, in my view, Keenan understated the link between high and vernacular notions of power, which has been well documented by later historiography, first of all in the works of Maureen Perrie.[142] However, some of Keenan's categories that structure his narrative, e.g. "The Political Culture of the Muscovite Court", and "The Political Culture of Muscovite bureaucracy", are in fact reminiscent of a problem which can be called "the languages of power discourse", an issue I pondered in the section of my book dealing with the "Prikaz notion of *gosudarstvo*".[143] These two points are also answers

139 Puleri 2020: 17.

140 The criticism that the book ends with an epilogue focusing on contemporary Russia (the 1993 constitution of the Russian Federation and the presence of Petrine ideas in Putin's rhetoric) came up in some of the reviews, while others, by contrast, welcomed it. Since this article is not about responding to published reviews, I do not cite them here. Regarding the importance of Peter's image for Putin see also Winkler 2024: 19–20, and also her "Conclusion" 449–452.

141 Keenan 1986.

142 Among other works see especially Perrie 1999.

143 Sashalmi 2022: 312–339.

to Langer's similar observation concerning the analysis of "peasant, monastic-ecclesiastical, and court-bureaucratic cultures".

The languages of power discourse, and the issue of discourse itself in the narrow meaning used by the Cambridge School of intellectual history (which, in Martin's wording, "was not on the radar")[144] brings me to his questions: "[W]as there a need in pre-modern Russia for 'legal notions of sovereignty' or the 'state' before the eighteenth century? Did the Muscovites have their own versions of these western notions that worked just fine already?" These questions, indeed, are well-placed as they concern the key problems dealt with in the book, and, at the same time, relate to the "laconic character" of Muscovite ideology. Let me quote on this point Rowland, whose ideas have shaped my approach to a great extent:

> "Although Russian thinkers were ignorant of the concept of sovereignty as a term in formal political discourse, if we were to ask who was sovereign in the Russian state, the only correct answer from any abstract or theoretical point of view, would be that God Himself was sovereign."[145]

Formulations such as "The Tsar's heart is in God's hand", "There is no power but of God", are both biblical statements that comprise the very base of the Muscovite theological justification of power – this being not only the dominant but, by and large, the only conceptual language employed[146] – worked well not only in the Muscovite era but even later, in Petrine and post-Petrine Russia too. However, the conscious turn to the West, the new self-image of rulership on the one hand (ca. 1700), and the unintended effect of western ideas which could pose a threat to autocracy on the other, demanded new tools for its defence. At this point it is plausible to refer to Stevens' question: "What benefits did the prolonged retention of the political 'notions' of pre-Petrine Russia offer the functioning of that developing spatially-expansive realm?" In other words, how did the charismatic-theocratic perception of ruling power and the legal-rational definition of ruling power starting from the Petrine era co-exist?

Although the ruler became an *imperator* (from 1721), a person conceived as the source of law and the head of a bureaucratic government apparatus, he appeared in this guise mostly in the eyes of the westernised elite holding the most important posts in the army and the administration, while he remained *tsar,* the divinely appointed person, for most of the society. This was true not only for Russians but also for the various peoples of the constantly expanding multi-ethnic empire (probably with the exception of the peoples living in its western borderlands who, before their incorporation into Russia, had developed a different understanding of the ruler and rulership).[147]

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144 That is why I called Muscovite ideas on power "monolithic", due to the lack of potentially rival ideas. Sashalmi 2022: 346–347.

145 Rowland 2007: 278. In line with this he is also of the opinion that "terms like 'state' and 'sovereignty' are misleading" in the Muscovite context. Rowland 2020: 368.

146 In Rowland's words, "the religious side of political thought was hypertrophied". Rowland 2007: 269.

147 See, for instance, especially the case of the Kingdom of Poland which received a constitution in 1815!

The fact that the formula, "The Tsar's heart is in God's hand", the very linchpin of the ideology of power, was recorded as a proverb in the seventeenth century (among many other proverbs of biblical and non-biblical provenance alike) is the best proof, in my view, of how the Russian Orthodox Church inculcated the basic tenets of ideology downwards through society. It is true, of course, that besides these laconic justifications of power there existed more sophisticated and literary justifications of power, such as the *Tale of the Vladimir Princes,* to name just one emblematic source. But even this text – which established the mythical descent of the Rurikids and hence of the Muscovite princes from Caesar Augustus through his mythical brother, Prus, and which was invoked in 1547 at Ivan IV's coronation as tsar to justify this title – contains one of the first occurrences of the crucial premise: "The Tsar's heart is in God's hand". Later on, it was enough simply to mention this legendary descent in short eulogising passages such as in the introduction of the seventeenth-century *Annals* (*Vremennik) of Ivan Timofeev.*

The problem referred to as the "model of notions of power" proposed by the Church – an issue similar to the one Langer raised regarding Volotskii and the *Book of Degrees* as "too easily dismissed" by me – in fact found ample expression in my book. There, I discussed Professor Sergei Bogatyrev's interpretation of advice-taking, namely, that the Tsar and the boyars were conceived in the role of Christ and the apostles, respectively.[148] Additionally, the book contains a substantial exposition of the rather debatable idea of "symphony": particularly its grandiose literary manifestation in the *Book of Degrees,* since (among others) it was "symphony" which comprised the structural principle of this work (as shown in Professor Gail Lehnhoff's analysis).[149] Further, I traced its modification under the impact of the controversy between Nikon and tsar Alexis in the mid-seventeenth century. The idea of "symphony", of course, could have been documented at more length in Muscovite sources, which, to be sure, are very scarce in this field. Let me quote on this point two lines from a very insightful article which has been published as part of a journal issue that I have edited together with Professor Ann Kleimola, and to which my article, mentioned previously, serves as an introduction: "Principles were, as a rule, not a matter of debate in Muscovite political culture. Experiences of crisis, such as the Time of Troubles or the conflict between Patriarch Nikon and Tsar Aleksei Mikhailovich, did, however, instigate pertinent fervent discussions."[150] These topics are treated in some detail in the book.

Concluding my answer to the contributors (and addressing possible future readers of my book), let me note here that it is always the author who knows her/his own book the best in terms of "whys" (structure, topics included or excluded, didactical repetitions, etc.), but it goes without saying that it is perfectly natural that the "whys" can be different from the side of readers. This is the very nature of the phenomenon called "reception".

148 Bogatyrev 2000.

149 Lenhoff 2005: 31–50. On Volotskii see Sashalmi 2022: 197–201, 203–210; on the *Book of Degrees* Sashalmi 2022: 191–197 and the numerous references elsewhere.

150 Pissis 2025: 98. These statements also underline the relevance of Stevens' previous remarks.

I am very grateful to all who took part in the roundtable discussion, as well as the other scholars who wrote reviews of my book,[151] and who are renowned authorities in the field of "early modern Russia", that they took the time to read and comment on my work. Many thanks to Professor Eve Levin for being the moderator of the roundtable in Boston as well as for her hard work with editing. Once again, I cannot be grateful enough to Ann Kleimola whose continuous help made it possible for me to publish this book. Although many issues raised in the reviews surfaced during the roundtable discussion, and perhaps many remained unanswered even here, I consider the publication of the roundtable proceedings to be a fitting coda to the intellectual response my book evoked.

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[151] For the full list of reviews see https://m2.mtmt.hu/gui2/?mode=browse&params=publication;33209762

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