Debate


The Western Balkans as a Paradigmatic Challenge to the Study of the Current Europeanization

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With the borders of the European Union moving south-eastwards, we have been awarded yet another real-world experiment on the domestic impact of the EU.

Tanja A. Börzel & Thomas Risse, *When Europeanization Meets Diffusion: Exploring New Territory*

This time there is no question about what sociologists mean when they talk about crisis. The European integration project has never since its inception been as close to a crash as it is now. Nor do we need much justification for the view that what now is needed is critique, a social science that offers views on how modern societies work, stick together and change.

Pekka Sulkunen, *Coming of Age*, President’s Address. *European Sociologist*, Issue 34, Summer
The year 2014 will be remembered most probably by the unprecedentedly sharp political crisis in Ukraine. It has been responsible for reshuffling the agenda of European societies since it questioned the most basic values and principles that the post-WWII development of Europe has been built on. A crisis of such magnitude makes everything else seem insignificant. This is the major reason why an extraordinarily important initiative of the EC did not receive the due attention of the European public. In early February, the Commission published a unique Anti-corruption Report\(^1\) providing detailed comments on the state of play in every member-state. A month later the EC announced the creation of a Framework to safeguard the rule of law in the EU\(^2\), making clear that the Anti-corruption Report is actually a key component of the new political mechanism aimed at the protection of the rule of law. The latter was obviously identified as a crucial impediment to the functioning of many member-states and, hence, to the functioning of the Union itself.

The importance of the EC’s new initiative derives from the fact that up to that moment there was no legal foundation and no political instruments for intervening in this very delicate sphere of public life. This policy omission is not an arbitrary one. The entire sphere of justice and home affairs (JHA) is vaguely and unsystematically regulated in the acquis of the EU for two major reasons. First, according to the foundation documents of the EU, a well-established system of the rule of law is a precondition for any country’s claim for accession to the EU and thus a mechanism for the protection of the latter has seemed unnecessary because it concerns the civilizational, value and institutional integrity of the member-states. Second, the variety of national specifics in the particular design and concrete practices in the field of justice and home affairs is so vast and essential that any change in this field would concern the basic pillars of public life in the respective society and, hence, resistance against the eventual unification would be especially strong and successful. Yet the decades-long course of Europeanization, both through the processes of deepening integration and of parallel enlargement of the EU, proved that the sphere of JHA is of a fundamental importance for the competitiveness of the economy and the truly democratic character of the political system in any national society. This is why the reliability of the institutional order in that sphere is a premise for the rule of law and for an effective fight against corruption.


This is how the safeguard of the rule of law evolved into a contemporary basic political priority of the EC.

These current political developments raise the value of academic expertise about the EU's capacity to transform effectively the countries aiming at EU accession. On the one hand, there is an urgent need for political success in the process of Europeanization for the countries aiming at accession, without which the Ukrainian crisis could be repeated in an even sharper form. On the other hand, such a success is hardly probable without a far deeper understanding of the mechanisms through which the Europeanization process achieves its goals. This is exactly where the need for a sophisticated academic understanding of the intricacies of Europeanization emerges. These are the grounds for a serious interest in Florian Trauner's new book, *The Europeanization of the Western Balkans. Justice and Home Affairs in Croatia and Macedonia*. Moreover, the Western Balkans are 'the usual suspects' for a source of political instability in Europe.

The book has many undoubted academic merits. It is built up as a classical academic investigation, beginning with a clarification of the theoretical problem and an explication of the methodological approach, both of which have to pass the test of the empirical findings. Following this the book provides a description of the data gathered and its interpretation against the initial hypotheses, which leads to the final justification of the researcher's primary intentions.

The architectural soundness and the conceptual clarity of the text are among the most remarkable features of Trauner's work. This does not imply any sort of depreciation of the extraordinarily comprehensive study of the enormous factual material regarding the processes of Europeanization in the two substantially different Southeastern European countries that the author knows in detail and perfectly well. I have no concerns about recommending Trauner's book as an example of excellent scholarship in the field of European studies.

The author explicitly follows the approach of rational institutionalism, which is the prevailing orientation in the mainstream literature on Europeanization, exemplified by the works of Ulrich Sedelmeier, Tanja Börzel, Frank Schimmelfennig, and many others. Being loyal to this influential paradigm and its conceptual and methodological standards, he strives to prove the universal capacity of the EU to sustainably transform the societies aiming at accession. This is how the main task of the research work, comprising a comparative analysis of Croatia and Macedonia, is being defined: despite the substantial differences between these two national cases (and, respectively, differences in the processes of building the national potentials of becoming commensurable
with the EU member-states), the analysis is targeted at and reaches the goal of demonstrating that Europeanization has been successful in both cases. In accord with this research plan (which is directly derivative of the paradigmal approach chosen), the author then traces in detail the broad variety of overlapping and complementary policy instruments of the Europeanization process in the countries of the so-called Western Balkans. Trauner then describes in two subsequent chapters how the implementation of these policy instruments in each of the two societies has led to important positive innovations in the realm of JHA, taking into consideration the national specificity of the cases. Hence, in the case of Croatia attention is given primarily to the settlement of the border-controversies, while in the Macedonian case the heaviest emphasis is placed on the introduction and maintenance of a cross-border visa regime. This research design and its fulfillment are truly impeccable.

This is not to say that there is no room for an argument with the concept of the book. However, the discussion will concern neither the author nor the fulfillment of his research plan. Rather, what is worth questioning here is the broader paradigm, which has essentially predetermined the orientation of the study and its results.

The insurmountable liability of the book is that it is, as the author declares correctly in the preface, an elaboration of his PhD dissertation, which was successfully defended in... 2009. The problem is that meanwhile the development of the EU underwent a very serious change, which redefined the agenda and the priorities of the Union. The challenges encountered by the EU at present, when Trauner’s book struggles on the academic market, are very different from those five years ago. Despite the radical claim of rational institutionalism to the universality of its approach and its powers of explication, the heuristics of this paradigm is rather restricted. It cannot be applied to all cognitive tasks with guaranteed results. As Attila Ágh rightfully emphasizes, the rationalistic approaches have had no problem in explaining the success of Europeanization till the fifth enlargement of the EU. For nearly twenty years the enlargement of the EU has been an almost unconditional ‘one way success story’. Within that political context, reference to the mechanisms of cost/benefits analysis, rational tools application and rational compromise negotiations of opposite interests has been meaningful and productive. With the accession of Sweden, Finland and Austria to the EU there was no room for doubts about whether the Union possesses a capacity to transform the new members. Most naturally the grave problem then began to appear with the Big Bang Enlargement to the CEECS, where the due social transformations were much more fundamental and comprehensive and, hence, the success was uncertain, if not dubious (Sedelmeier 2011, 2012).
Yet in purely cognitive terms, rational institutionalism has had no sensi-
tivity to the transformed subject matter of Europeanization studies because
of its universalism. This is the paradigmal root of the stubborn resistance to
admit the deep controversies and support the illusion of continuous success
of Europeanization. It is symptomatic that in the mainstream literature on
Europeanization – even in 2011 – it is claimed that the critical interpretations
of the transformative power of the EU are negligibly few and void of serious
arguments in general (Sedelmeier 2011, 2012; Toshkov 2013).

The actual situation is rather different. First, after the accession of Bulgaria
and Romania, the capability of pre-accession conditionality to bring essen-
tial and irreversible change was questioned by the fact that the accession was
conditional and a new political instrument – the Cooperation and Verification
Mechanism – had been actuated. Thereafter the number of studies revealing
the insufficiency of the post-accession conditionality escalated. For example,
M. Racoviţă published a study proving that about eighty percent of the insti-
tutional and normative innovations in Romania, which have been imposed
on the country by the EU, have been dismantled later on (Racoviţă 2011). In
more general terms, there has been abundant evidence that post-accession
conditionality in the form of CVM, which was supposed to remedy the defi-
cits of the pre-accession conditionality, has been a continuous failure because
it is incapable of achieving the goals that the EC had targeted through its
implementation.5

The more important problem is that the twin cases of Bulgaria's and Roma-
nia's membership failure is only a culminating phase of a longer and broader
process that Attila Ágh has named a 'crisis of the post-accession condition-
ality', which is derivative of the lack of 'pre-pre-accession management', which
actually means a failure of the EU to truly transform the applicant countries by
the instruments of conditionality. This is why as early as 2008 Agh was able to

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3 This cognitive caveat is necessary because a couple of political stakes could be identified in
support of the would-be universal success of the transformative power of the EU.

4 One should recall the warning of James Hughes and his associates that the implicit positiv-
ism behind the rationalistic approaches is the major source of the mystification of the pro-
cess of Europeanization (Hughes et al. 2005).

5 For empirical proofs for the CVM’s failure see more in Dimitrov et al. 2014. For more on CVM
The critical literature on the EU’s transformative power is really vast (for example: Mungiu-
Pippidi 2011; Racovita 2011; Tanasoiu 2011; Tanasoiu/Racovita 2012; Ganev 2012; Ivanov 2012;
Gateva 2013; Buzogany 2012; Papakostas 2012; Andreev 2009; Trauner 2009; Kochenov 2009;
Cirtautas/Schimmelfennig 2010; Dírzu 2011; Ekiert 2008; Grabbe 2006; Johnson 2005; Manio-
diagnose the situation in Bulgaria and Romania as “the quiet before the storm”\textsuperscript{6}. The renowned Hungarian social scientist was correct in his understanding of the post-accession period (Ágh 2007; 2008a; 2008b). It is very telling that in his preface Trauner makes explicit his academic acknowledgements and gratitude to Ágh, but in his study he never mentions any of these publications.

Ágh, moreover, does not stand alone. We should remember that in 2009 Kochenov summarized his analysis on the conditionality of the EU regarding the field of the rule of law under a telling generalization – that is, as a ‘resounding failure’. The list of critical examinations of the process of Europeanization has been rapidly growing in recent years\textsuperscript{7}. Surprisingly, Trauner’s own well-informed study from 2009 on the implementation of CVM in Bulgaria and Romania (Trauner 2009) has not influenced the perspective through which he has scrutinized the developments in Croatia and Macedonia\textsuperscript{8}. But these are not (and should not be) two different stories if the subject matter proper is the Europeanization of the Western Balkans. How could Croatia and Macedonia be really successful in the Europeanization of their justice and home affairs if Romania and Bulgaria persistently fail in the establishment of the rule of law? Should we be satisfied with a shallow Europeanization (Börzel 2011; Börzel/Risse 2012)\textsuperscript{9}?

This is exactly where the big paradigmal debate should be launched, and the discussion in Fl. Trauner’s book could be a good starting point. The uncritical

\textsuperscript{6} “Nowadays the situation in Bulgaria and Romania can be described as ‘the quiet before the storm’ as the July 2008 Commission Report indicates” (Ágh 2008a: 17). It is not surprising that the stakeholders in the myth of the EU’s universal transformative capacity refused to see the storm even when it actually hit...

\textsuperscript{7} See again the authors enumerated in footnote 4.

\textsuperscript{8} Trauner was not only right in his conclusion that “the outlook for successfully enforcing and applying EU law – as follow-up stages to transposing – is rather bleak for Bulgaria and Romania. The unfinished transition of the countries could potentially have a strong impact on the political, cultural, and institutional factors that determine the compliance culture of a EU member state. Less favorable cultural factors include the widespread distrust in the functioning of the rule of law and the political and administrative system as a whole, fostered by the highly salient problem of corruption; political factors such as the persisting dominance of an ‘old’ political elite which signed up for (EU-oriented) reforms in rhetoric, but not in action; and institutional issues such as dysfunctional court-systems and deficiencies in administrations. Overall, the implementation process in Bulgaria and Romania seems to follow a pattern comparable to what has been observed as the ‘world of dead letters’ (Falkner et al. 2008). As outlined, member states belonging to this group of the ‘world of compliance’ typology typically transpose EU law in a compliant manner yet have substantial problems when enforcing and applying the legislation” (Trauner 2009: 11–12). Even more important is his keen sensitivity to the difference between the Romanian and the Bulgarian performances.
universalism is a main characteristic of rational institutionalism, and it quite easily extrapolates the findings of a single case to the general class of the same phenomena as if these were the manifestation of a common principle. This is exactly how the problem of the rule of law has been treated in the rational institutionalism paradigm to which Trauner deliberately adheres. First of all, despite the fact that the empirical material used concerns Croatia and Macedonia only, the research findings claim validity for the entire region of the Western Balkans. Such a claim needs to be justified by conceptual and empirical arguments if possible (it will be easier, I assume, to prove that Macedonia and Albania are radically different and that Croatia and Serbia are also not that similar, not to speak of Bosnia and Herzegovina).9

Secondly, universalism is duplicated on the turf of the particular subject matter studied: it is not the entire field of justice and home affairs that has been investigated but some very tiny sections of it. It is undoubted that the issues of the border-lines or the border management10 both pertain to the sphere of justice and home affairs, but it has not been proven that these issues are the central, the crucial, or at least representative of the whole system of JHA.11 If this were the case then it had to be argued and justified. It is reasonable to argue that each of the two problems, chosen by Trauner in his study because of the EU’s security concerns, are very important for the respective national societies under consideration, but their relative weight is not even commensurable with the problem of the irresponsible judicial system or the problem of systematic corruption, which are the notorious core problems of the JHA sphere in Southeastern European countries.

Yet this is exactly how a political insinuation is unintentionally construed: first we take two national cases of success in tackling important but marginal, preparatory problems that are predominantly of techno-procedural nature (despite the political stakes in them) and that do not relate directly to

9 Certainly, the epistemological advantage of the emphasis on the qualitative difference should not be uncritically universalized: in the realm of advanced Modernity the national specifics of a country could be disregarded with no substantial harm while in the cases of retarded modernization it is exactly the national specificity that should be paid special attention to.

10 Namely “border control service and improving the ability to fight illegal migration and human trafficking” (p. 175).

11 “Out of the broad justice and home affairs acquis, the focus is placed on border management and the Western Balkans’ preparations for the implementation of the Schengen acquis. The policies discussed in this analysis constitute an central area of cooperation and an important pre-requisite for the eventual integration of the Western Balkan countries into the EU” (p. 11).
substantial redistribution of power in the home country.\textsuperscript{12} Next we extrapolate this partial success as a general policy trend in the field of JHA in the Western Balkans (pp. 177–178). This is methodologically incorrect and, even more importantly, it is extremely dangerous for the future of the EU and its possible future enlargement(s).\textsuperscript{13}

Nevertheless, this paradigmatic approach has predefined the way the author treats the two national cases – Croatia and Macedonia. They are countries with populations and the two are far less national societies – as such, they have received a short, sketchy description and their specific legacies are marked but not studied as influencing the national political systems and the respective patterns of political decision-making. For example, it is not at all the same whether the major political parties are heavily dependent on large-scale smuggling, human trafficking, etc. or not. If we change the paradigm, what would become of primary importance would be exactly the difference between the two countries, leading to a difference in the scope and the depth of Europeanization because of the inclusion of the different levels of commercialization, the decentralization of governance, the peculiarities in the political systems, the influence of the historical and cultural legacies, and the religious diversities.\textsuperscript{14}

Fl. Trauner, however, intentionally seeks and finds proofs mainly for the universal success of the Europeanization of the spheres of JHA in the two countries.\textsuperscript{15} Only rarely we do encounter examples of national specificities, such as the fact that the local governmental institutions do not communicate among

\textsuperscript{12} “[…] while the EU was a very important change agent (among other domestic ones) in triggering rule of law reforms and bringing about formal and efficiency-related change (improving \textit{de jure} rule of law and judicial capacity), it has not been able to change domestic power structures and create an accountable, impartial, and uncorrupt judiciary. The limited improvement of \textit{de facto} rule of law is attributed to the inappropriate reform approach by the EU which couldn’t work under domestic conditions of clientelism” (Mendelski 2011: 236).

\textsuperscript{13} Trauner himself has recognized the danger and has put at the very end of the book a note of precaution: “this analysis does not claim that the effectiveness of EU acquis conditionality in the policy field of justice and home affairs allows for drawing conclusions about EU democratic and economic conditionality in the Western Balkans in general” (p. 177).

\textsuperscript{14} It is worth mentioning that when discussing issues of techno-procedural institutional character, as the border management problem for example, the role of the historical and cultural legacies is far less significant in comparison with the creation of an efficient and responsible judicial system. For more on this topic see the works of M. Mendelski (Mendelski 2009, 2010, 2011, 2012).

\textsuperscript{15} The key question guiding Trauner’s research is: “Does the EU successfully transfer its rules and institutions to the Western Balkans and if so, what are the factors that affect the countries’ choice for rule adoption?” (p. 5).
themselves. Such key peculiarities are not taken as core characteristics of the national systems of JHA. If taken in due seriousness, the latter fact would radically question the establishment of the rule of law, which the system of JHA is supposed to protect.

It is fair to admit that such problems would have been far more difficult to recognize prior to 2009. Nevertheless, in 2014 they have acquired primary significance for the European public and for the institutions of the EU. The academic expertise should not stay aloof from the current agenda of the EU, and this is why the paradigmal debate proposed here should not be ignored.

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