

“Stop Soros”:  
A Fake  
Governmental  
Legislation  
Proposal  
in the Hungarian  
Election  
Campaign



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KÁRPÁTI

**O**n February 20, 2018, the Hungarian parliament started its spring session with a debate on a “Stop Soros” package of three bills. It was the last session before the parliamentary elections due on April 8. The package focuses on:

- organizations promoting migration,
- taxation of activities “promoting migration,”
- and restrictive regulations for organizations promoting migration as “counter-measures” to their activities.

The adoption of certain parts of the package would need qualified (two-third) majority. The governing alliance of Fidesz-KDNP (The Christian Democratic People’s Party) does not possess this majority at the present time in the parliament. Therefore, the proposals were tabled only for discussion and voting is not expected before the elections.

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LEGAL FLAWS OF THE TEXT MAKE IT PRACTICALLY IMPOSSIBLE TO INCORPORATE THE THREE BILLS OF THE PACKAGE INTO THE HUNGARIAN LEGAL SYSTEM

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IT IS ALARMING THAT THE PACKAGE CLEARLY SHOWS AN AUTHORITARIAN INTENTION ON BEHALF OF FIDESZ

With respect to this delay, and considering several grave incoherencies and legal vagueness in the proposals, it is not unrealistic to assume that the proposals are primarily intended for campaigning purposes. But it is also alarming that the package clearly shows an authoritarian intention on behalf of Fidesz. Should the governing party alliance gain a two-third majority in the upcoming elections, it would be able to transform this campaigning material into a real law and real restrictions of the civil society as a whole.

In a broader context, it should be kept in mind that Human Rights Watch, in its *World Report – 2018*, described the rule of Prime Minister Viktor Orbán as an “illiberal democracy.” Mr. Orbán himself had used this expression earlier when referring to his own government.

“Central Europe has become especially fertile ground for populists, as certain leaders use fear of migration elsewhere in Europe to undermine checks and balances on their power at home,” the report said, referring specifically to Hungary and Poland.<sup>1</sup>

<sup>1</sup> Roth, K. (2018) “The Pushback Against the Populist



INDIVIDUALS WHO "VIOLATE THE INTERESTS OF HUNGARIAN NATIONAL SECURITY OR ARE A THREAT TO PUBLIC ORDER" MAY BE ISSUED WITH A "RESTRAINING ORDER," WHICH WILL KEEP THEM OUT OF AN EIGHT-KILOMETER AREA OF HUNGARY'S SCHENGEN BORDERS

The presented article is an attempt to demonstrate that legal flaws of the text make it practically impossible to incorporate the three bills of the package into the Hungarian legal system.

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Challenge," [in:] *Human Rights Watch*. Available [online]: <https://www.hrw.org/world-report/2018/push-back-against-the-populist-challenge>

## OFFICIAL REASONING

In the future it will be substantially more difficult to organize, support, and finance immigration in Hungary if parliament passes the "Stop Soros" legislative package, said Bence Tuzson, Hungarian Minister of State for government communications. According to the minister, the government had conducted a social debate on the legislative package, where more than 600 opinions and recommendations had been received. In light of these recommendations, the bills have been further tightened, he added.<sup>2</sup>

According to these bills, organizations, which intend to support migration and apply for a permit issued by the Ministry of Interior (on behalf of the Minister) to pursue such activities, must undergo a national security procedure. For that purpose, the Ministry must obtain the opinions of the national security services, the Constitution Protection Office, the Information Office, and the Military National Security Service. The Ministry's decision can be appealed before a court of law, but only on the basis of procedural reasons.

The proposed legislation requires the applicant seeking to obtain a permit to also be screened, so as to determine whether it receives foreign funding for its activities. The National Tax and Customs Administration of Hungary would carry out this screening.

If anyone organizes, supports or finances migration without a permit, the prosecution service would have the authority to take action. As a first step, the prosecution

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<sup>2</sup> Rogán, K. (2018) "The Stop Soros Legislative Package Will Be Submitted in Stricter Form on Tuesday," [in:] *Website of the Hungarian Government: Cabinet Office of the Prime Minister*. Available [online]: <http://www.kormany.hu/en/cabinet-office-of-the-prime-minister/news/the-stop-soros-legislative-package-will-be-submitted-in-stricter-form-on-tuesday>

service would issue a warning and remove the organization's tax number from the relevant register. As a second step, it may impose a monetary fine of up to HUF 1.8 million (app. EUR 6,000), which might be followed by a third step: the prosecution service may press charges before a court of law and may request the termination of the organization. Organizations coming under the effect of such a law would have 90 days to submit their applications to the Ministry of Interior. If an organization receives funding from abroad for the purposes mentioned above, they are required to report the receipt of such funding to the National Tax and Customs Administration of Hungary within three days.

The proposal also includes an immigration financing duty "as a mark of social responsibility." Those who support such activities are required to pay a 25% "duty" on any money transferred to them from abroad.

Every organization that would come under the effect of the proposed legislation will be required to pay the above duty. The proceeds of the duty would be used for border protection purposes on a mandatory basis. Returns would have to be submitted by the end of the year, and the relevant amount would have to be paid by June 30 of the following year.

Exemption from the payment of the duty could be granted if the organization proves that it does not use its funding for migration purposes or is engaged in humanitarian activities.

If the payment obligation is not fulfilled, a liability extending to double the amount of the duty may come into effect.

Individuals who "violate the interests of Hungarian national security or are a threat to public order" may be issued with a "re-

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straining order," which will keep them out of an eight-kilometer area of Hungary's Schengen borders. The proposed legislation defines in detail which activities qualify as contrary to the interests of national security or as posing a threat to public order.



# INTERPRETATIONS IN THE MEDIA EMPHASIZED THAT THE BILL WAS A KEY PART OF PM ORBÁN'S ANTI-IMMIGRATION CAMPAIGN TARGETING U.S. FINANCIER GEORGE SOROS WHOSE PHILANTHROPY AIMS TO BOLSTER LIBERAL AND OPEN- BORDER VALUES IN EASTERN EUROPE

The Ministry of Interior (on behalf of the Minister) has the right to extend the immigration restraining order to the entire territory of the country if the individual concerned is not a Hungarian national. This type of restraining order can be issued in a state of emergency due to mass immigration.

In his speech in parliament, Minister of State Tuzson said that mass immigration had brought a major security risk to Europe, public security had deteriorated,

and the threat of terrorism had increased. The government will, however, "make every effort to protect Hungary, the Soros plan cannot prevail, its implementation must be prevented, and the relocation of migrants to Hungary is out of the question," he stressed.<sup>3</sup>

However, government spokesman Zoltan Kovacs, speaking in a state radio station – Kossuth Radio's "180 Minutes" program on January 18 – defended the bill, saying that "George Soros' network is working to ensure that as many people as possible reach Europe, because they believe this is what will ensure the future of the continent." According to Kovacs, this is a political program in which organizations that help migrants are taking part "disguised as human rights organizations."<sup>4</sup>

## INTERNATIONAL REACTION

After publication of the original proposals on January 18, 2018, several news reports found that the key element of the package was that the legislation would empower the Ministry of Interior to ban non-governmental organizations (NGOs) that support migration and pose a "national security risk."<sup>5</sup> The bill would allow for restraining orders that prevent activists from working in areas on the country's Serbian border, which is a frontier for the European Union, and similar restrictions for foreign nationals anywhere in the country.

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<sup>3</sup> Ibid.

<sup>4</sup> Kovács, Z. (2018) "We Will Be Doing Everything Possible to Close Existing Loopholes," [in:] *Website of the Hungarian Government: Cabinet Office of the Prime Minister*. Available [online]: <http://www.kormany.hu/en/government-spokesperson/news/we-will-be-doing-everything-possible-to-close-existing-loopholes>

<sup>5</sup> Bare Naked Islam (2018) *Hungary Submits Anti-Muslim Invasion "Stop Soros" Bill to Parliament*. Available [online]: <http://barenakedislam.com/2018/02/18/hungary-submits-anti-muslim-invasion-stop-soros-bill-to-parliament/>



## THE HUNGARIAN HELSINKI COMMITTEE SAID THE BILL WAS UNACCEPTABLE AND SERVED POLITICAL GOALS

Interpretations in the media emphasized that the bill was a key part of PM Orbán's anti-immigration campaign targeting U.S. financier George Soros whose philanthropy aims to bolster liberal and open-border values in Eastern Europe.<sup>6</sup> It was also mentioned that Orbán had been embroiled in an escalating "Stop Soros" feud with the 87-year-old Hungarian-born Jew, waging a billboard and media campaign asserting that he would "settle millions from Africa and the Middle East".<sup>7</sup> After Gergely Gulyas, the leader of the ruling Fidesz party's parliamentary group, accused Soros of a "full frontal" attack on Hungary in November 2017<sup>8</sup>, Soros described the ongoing campaign against him as "distortion and lies," meant to create a false external enemy.<sup>9</sup>

<sup>6</sup> Than, K. (2018) "Hungary Submits Anti-Immigration 'Stop Soros' Bill to Parliament," [in:] *Reuters*. Available [online]: <https://www.reuters.com/article/us-hungary-soros-law/hungary-submits-anti-immigration-stop-soros-bill-to-parliament-idUSKCN1FY1JE>

<sup>7</sup> Ibid.

<sup>8</sup> Al Jazeera (2018) *Hungary Blasted over 'Stop Soros' Bill Targeting NGOs*. Available [online]: <https://www.aljazeera.com/news/2018/01/hungary-blasted-stop-soros-bill-targeting-ngos-180118184038476.html>

<sup>9</sup> Reuters (2018) *Hungary Outlines "Stop Soros" Legislation Against Immigration*. Available [online]: <http://news.trust.org/item/20180117170228-z44xn/>

Pro-government Hungarian media reported that the new legislation could lead to a ban on Soros, who has U.S. and Hungarian citizenship, entering the country.<sup>10</sup>

It is important to point out that Hungary, like Poland and other ex-communist eastern member states of the EU, have all pushed a strong anti-immigrant stance, even though the number of asylum seekers who want to stay in these countries are very few compared to western European countries. Last year, the Orbán government introduced a measure requiring NGOs that get more than USD 26,000 (app. EUR 21,000) a year from international sources to register as "foreign-supported," raising alarm in the EU and the United States.<sup>11</sup>

The European Commission said in 2017 that it was taking Budapest to the European Court of Justice over its NGO laws as well as a higher education law that targets the Central European University in Budapest founded by Soros.<sup>12</sup>

### REACTION OF HUNGARIAN CIVIL ORGANIZATIONS

Human rights groups and critics have criticized the right-wing Hungarian government's introduction of legislation targeting NGOs that work with refugees and migrants.

<sup>10</sup> Than, K. (2018) "Hungary Submits Anti-Immigration 'Stop Soros' Bill to Parliament," [in:] *Reuters*.

<sup>11</sup> Hungarian Spectrum (2017) *Today's Extra: Interview with Leaders of Three Hungarian NGOs*. Available [online]: <http://hungarianspectrum.org/2017/04/19/todays-extra-interview-with-leaders-of-three-hungarian-ngos/>

<sup>12</sup> Baczyńska and L. Cusack (2017) "EU Steps Up Pressure on Hungary over Soros University, NGO Laws, Migration," [in:] *Reuters*. Available [online]: <https://www.reuters.com/article/us-eu-hungary/eu-steps-up-pressure-on-hungary-over-soros-university-ngo-laws-migration-idUSKBN1E11CN>



THERE WAS NO  
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The Hungarian Helsinki Committee, an NGO that has been providing support for the legal and human rights of various groups including asylum seekers and prisoners since 1994, said the bill was unacceptable and served political goals.

"[Its goal] is to stigmatiz[e] certain civil organizations that the government does not like (...) and to distance them from society, and in the end make their operation im-

possible," the committee, which receives a major chunk of its funding from Soros, said in a statement.<sup>13</sup>

Furthermore, the Károly Eötvös Institute for Public Policy (EKINT), led by former data protection ombudsman László Majtényi, released an assessment of the government's controversial Stop Soros bill.<sup>14</sup>

According to EKINT, the purpose of the bill is to silence NGOs that are critical of the government and restrict organizations from providing legal assistance in human rights cases. Defending human rights and making statements about the government will be tied to a license issued by the Ministry of Interior. If an organization does not have the license, such actions can be subject to penalties. The 25% tax imposed on the organizations that receive the license from the Ministry of Interior would be punitive.

The interior minister would be able to ban anyone from going within 8 km of the border. Another highly controversial point of the proposal is the fact that the Ministry of Interior's decision may be subjective and arbitrary, and the courts have no right to review the decision in merit.

"It should be clear to everyone: while this law attacks a specific set of NGOs, the government can later use this against anyone," EKINT writes.<sup>15</sup> "The government can decide at any time to use this law against anyone who is critical of the government health-care policies, education policies,

<sup>13</sup> Than, K. (2018) "Hungary Submits Anti-Immigration 'Stop Soros' Bill to Parliament," [in:] *Reuters*.

<sup>14</sup> Eötvös Károly Intézet (2018) *Az Eötvös Károly Intézet gyorselemzése a Stop Soros törvénycsomagról*. Available [online]: <http://ekint.org/alkotmanyossag/2018-02-14/az-eotvos-karoly-intezet-gyorselemzese-a-stop-soros-torvenycsomagrol>

<sup>15</sup> *Ibid.*

tax policies....citing the desire to protect [Hungary's] sovereignty. Because whoever is not with us is against us."<sup>16</sup>

Moreover Nora Koves, a human rights expert at the Budapest-based Eotvos Karoly Policy Institute, described the bill as "utter nonsense."

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OF SPEECH

"It doesn't make sense, not even in a legal perspective," she said in a telephone interview to Al-Jazeera. "We have no idea what the bill has to do with Soros. It's basically just part of the government's propaganda," she added,

"This new bill is just the next step along the way of undermining NGOs and distracting public opinion from actual problems like corruption." The broader campaign against

human rights groups and humanitarian organizations "could mean the end of NGOs" in Hungary, Koves concluded.<sup>17</sup>

The content of the package clearly shows that the Hungarian government looks upon any kind of migration as a negative phenomenon and considers punitive actions against those who promote migration in any way as justified. The civil society, however, is trying to defend its autonomy.

The analysis of EKINT has highlighted several legal absurdities and incoherencies of these proposals, which make it practically impossible to incorporate this text into a logical legal system. I try to summarize a few of them.

#### **LACK OF SOCIAL DEBATE**

The so-called public consultation required by law in dealing with government proposals in the case of this legislative package consisted of merely an email address (velemenyezes@mk.gov.hu)<sup>18</sup> to receive public opinions.

There was no transparency whatsoever in the process, nobody could check what opinions had been registered to the governmental mailbox. The government simply stated more than 600 opinions and recommendations had been received – and in the light of these recommendations, the bill had been further tightened.<sup>19</sup> It is clear now that the Hungarian government did

<sup>17</sup> Al Jazeera (2018) *Hungary Blasted over 'Stop Soros' Bill Targeting NGOs*.

<sup>18</sup> The e-mail address contains the word "opinion" in Hungarian and the extension is that of the Hungarian government.

<sup>19</sup> Magyar idők (2018) *Tuzson bence: Szigorított formában nyújtják be a „Stop Soros” törvénycsomagot*. Available [online]: <https://magyaridok.hu/belfold/tuzson-bence-szigoritott-formaban-nyujtjak-stop-soros-torvenycsomagot-kedden-2795877/>

<sup>16</sup> Ibid.



THE PACKAGE IS AN INTEGRAL PART OF THE GOVERNMENT'S COMMUNICATION CAMPAIGN THAT DENIES CIVIL ORGANIZATIONS BEING CRITICAL OF THE GOVERNMENT, THE RIGHT TO EXPRESS THEIR VIEWS, AND TAKE PART IN PUBLIC LIFE

not intend to facilitate public consultation on refugee policy, on migration or on civil society. This was a fake debate.

### **CLARITY**

Legal texts should be clearly understandable, and definitions are required to be clean-cut. According to the Hungarian Constitutional Court, it is unconstitutional if it is impossible to interpret the legal text or if different interpretations are possible and thus the consequences of the law are unforeseeable.<sup>20</sup> This package of bills introduces legal categories the definitions of which are vague. For instance,

nobody knows exactly what is meant by "organizations supporting migration." If "support" stands only for human trafficking, a new law would be redundant: it is already prohibited in the Hungarian penal code.<sup>21</sup> Does "support" mean giving legal advice to an asylum seeker? According to international conventions, signed and ratified by Hungary as well, everybody has the right to seek asylum.<sup>22</sup> If somebody can be punished for giving information to an asylum-seeker about the legal context, it makes it impossible to exercise the right to seek asylum, which is a legitimate action. Or does "support" mean to publicly speak in favor of migration? You cannot ban it, it would be the denial of one of the basic rights: freedom of speech.

Furthermore, what about money transferred from abroad? Regarding foreign financial support, the proposal mentions money transferred to the organization from abroad. It is not clear what kind of donation we speak about here. The political intention is pretty clear but from the legal point of view, into what category should fall, for example, a Hungarian citizen transferring the money from abroad or an international entity transferring the money from its Budapest office?

### **THE IMMIGRATION FINANCING DUTY**

Duties are usually to be paid for some kind of services of the authorities. For example, you ask for an official attestation and you pay for it. "Immigration financing duty" is not a duty; there is no service from the authorities at all. It is actually a fine or a pu-

<sup>21</sup> 2012. évi V. törvény (Btk.) 353.

<sup>22</sup> Article 14 of the Universal Declaration of Human Rights states that "[e]veryone has the right to seek and to enjoy in other countries asylum from persecution." The United Nations 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees guides national legislation concerning political asylum.

<sup>20</sup> Kiadó, O. (2011) *Alkotmánytan I.* Available [online]: [http://www.tankonyvtar.hu/hu/tartalom/tamop425/2011\\_0001\\_520\\_alkotmanytan\\_i/ch04s05.html](http://www.tankonyvtar.hu/hu/tartalom/tamop425/2011_0001_520_alkotmanytan_i/ch04s05.html)

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## SUCH LEGISLATION IS TYPICAL OF DICTATORSHIPS, NOT DEMOCRACIES

nitive tax – for some kind of activities that are not even defined as illegal according to the Hungarian law.

### **RESTRAINING ORDER**

It contradicts the spirit of the Hungarian constitution if the minister of interior has the right to determine whether an individual violates the interests of Hungarian national security, or is a threat to public order. In the case of Hungarian citizens, it is especially alarming, seen from the criteria of the rule of law, to ban someone from a specific area (8 kilometers from the southern border) of the country. “Ban” is a category of criminal law and it should be solely the up to the courts to have the right to ban someone from somewhere. The institution of a “restraining order” is a circumvention of the rules on “ban” because the Minister of Interior can use it without any court saying that a criminal act has been committed. This legal construction is a breach of the separation of powers since it helps the executive branch to “switch off” jurisdiction in a matter which should clearly belong to criminal law.

### **CONCLUSIONS**

The terminology of this package of bills is highly problematic from a legal point of view. Certain categories (e.g. “supporting migration” or “violate the interests of national security”) would enable the government an arbitrary interpretation.

According to the latest campaign slogans of Fidesz, it is important to go to the polls and give Fidesz a two-thirds majority, ensuring the adoption of the “Stop Soros” package. It clearly shows that the package is an integral part of the government’s communication campaign that denies civil organizations being critical of the government, the right to express their views, and take part in public life.

Should this text become an actual law, its tools will endanger the very existence of targeted civil organizations. The bills also contain measures that may restrict fundamental rights of individuals, e.g. the freedom of movement. Such legislation is typical of dictatorships, not democracies.

The future of this legislation lies in the outcome of the April 2018 parliamentary elections but the text itself in this campaign period is at least one of the main tools – if not *the* main tool – to convey the basic message of Fidesz. The message that goes somewhere along the lines of: “We will defend you from dangers but at the same time, we expect you to follow suit.” In this sense, the package can be considered as a “fake legislation initiative”, serving primarily political purposes. •



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# The Curious Case of (De)Centralization in Bosnia and Herzegovina



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ADMIR  
ČAVALIĆ

**B**osnia and Herzegovina is an exceptional case for liberal debate over decentralization. The political and legal order created by the international community in Dayton, Ohio (1995) resulted in a country divided into two parts, with one district.

Half of the country, called the entity of Republika Srpska, is extremely centralized with only a small percent of local (municipality) political power. The other half, the entity of the Federation of Bosnia and Herzegovina, is extremely decentralized and consists of ten cantons with ten cantonal prime ministers and more than one hundred cantonal ministers. For a long time, it was considered that this kind of political structure was the weakness of Bosnia and Herzegovina and the reason for its future disintegration as a state. But for twenty-



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three years, Bosnia and Herzegovina has managed to exist and in the last few years more and more authors and researchers acknowledge that its complexity and decentralization are the main reason why Bosnia and Herzegovina survives as a state, satisfying the needs of political elites. On the other hand, this situation provides an opportunity for excellent insight into the differences between the centralized and decentralized part of Bosnia and Herzegovina, with the highlight on the state of personal and any other freedoms.

This phenomenon, however, poses a number of questions: Are there any (political/economic and other) differences between the centralized and decentralized part of Bosnia and Herzegovina? What are the consequences of the complex political and legal structure of Bosnia and Herzegovina in the context of personal freedom of its citizens? What is the status of personal freedoms in Bosnia and Herzegovina, and what is the greatest challenge in this area?

Another important question that must be addressed is why is the (democratic) decentralization important for liberals? First of all, it improves the general and personal freedoms of the individuals and is an essential factor in achieving economic growth – which may also be observed in the case of Bosnia and Herzegovina. Democratic decentralization in the long run leads to the advancement of personal freedoms. Still, complexity can result in problems regarding the rule of law, which is shown by the *Human Freedom Index*, as the most problematic part of personal freedoms in Bosnia and Herzegovina.

#### **INTRODUCING DECENTRALIZATION IN BOSNIA AND HERZEGOVINA**

The small European country of Bosnia and Herzegovina (B&H) is truly unique when it comes to the relationship of decentraliza-



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tion and centralization. The peculiar constitutional arrangement of the country, which was primarily crafted due to war during the 1990s and the intervention of the international community, created a decentralized state structure that alongside the central government has entities, cantons, and municipalities as the levels of local government. Such a complex state structure provides specific insight into the consequences of (de)centralization and the comparison of its effects. It also enables an analysis of the impact of decentralization on the human rights of citizens of B&H. Before analyzing the specifics of this country, it is necessary to consider the essence and all the advantages of the decentralization process, especially from the libertarian position.

## WHAT IS DECENTRALIZATION?

Decentralization is a process that significantly marks the first decades of the 21<sup>st</sup> century. Whether it is the decentralization of the Internet and the rise of cryptocurrencies like Bitcoin, or the fact that the OECD area has grown more decentralized over the last two decades, the fact is that decentralization is here and is happening all around us. Although there has been a trend of centralization in the last two hundred years<sup>1</sup>, the world has been turning to decentralization, especially in the context of the development of information technologies primarily linked to the Internet.<sup>2</sup> Whether it is a country, a region, a local community, a department in a company, or cryptocurrencies, this process changes the way people make decisions, but also how the elites are formed. Motives for this are different and range from mainly democratic/political motivations – eastern European countries (decentralization wave in 2000, 2004, 2006: Poland, Slovakia, the Czech Republic, Estonia, Hungary, among others) – to mainly economic/public finances motivation – Greece, Italy, or Portugal.<sup>3</sup> In short, decentralization is defined as the process of distributing or dispersing functions, powers, people or things away from a central location or authority.<sup>4</sup> With the understanding that the “cen-

<sup>1</sup> BitcoinWarrior.net (2014) *WSJ Reports on the Megatrend of Decentralization*. Available [online]: <https://bitcoinwarrior.net/2014/10/wsj-reports-megatrend-decentralization/>

<sup>2</sup> Sharma, G. (2014) *Weekend Read: The Imminent Decentralized Computing Revolution*. Available [online]: <https://blogs.wsj.com/accelerators/2014/10/10/weekend-read-the-imminent-decentralized-computing-revolution/>

<sup>3</sup> Allain-Dupré, D. (2010) *Decentralisation Trends in OECD Countries: A Comparative Perspective for Ukraine*. Available [online]: <https://www.oecd.org/regional/regional-policy/Decentralisation-trends-in-OECD-countries.pdf>

<sup>4</sup> The Economist. (2009) *Decentralisation*. Available [online]: <http://www.economist.com/node/14298890>



THE FUTURE  
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tral authority” is usually government, it is clear why decentralization is desirable from the position of classical liberalism and why its greatest scholars, such as Smith, Hayek, Mises, and Rothbard, glorified decentralization. Adam Smith wrote about the need for greater decentralization and accountability in state projects such as public education, toll roads, harbors, and even paving the streets of London. He emphasized that these should be provided at the local level. Even though public works could be captured or corrupted by special interests, limiting them to localities meant that even when errors or abuses emerged, the extent of the damage was limited.<sup>5</sup> Nobel Prize-winning economist Friedrich von Hayek stressed that free markets themselves are decentralized systems where individuals

who use prices as their guide produce outcomes without explicit agreement or coordination.<sup>6</sup> In discussing human rights, Murray N. Rothbard summarized this position as “universal rights, locally enforced”.<sup>7</sup> Ludwig von Mises is even more radical, leaning towards secession, writing that a nation has no right to say to a province: “You belong to me, I want to take you. A province consists of its inhabitants. If anybody has a right to be heard in this case it is these inhabitants”.<sup>8</sup>

Ideally, decentralization should proceed all the way down to the level of individual communities, to free cities and villages as they once existed all over Europe.<sup>9</sup> The libertarian position on this matter emphasizes the localization of costs, but also the fact that people closer to the problem know the best solution to solve it. They see these as main advantages of decentralization. As Matt Kibbe concludes, the future now depends on a continued commitment to the ethos of decentralization, the idea that even in politics, the customer is always right.<sup>10</sup>

## DIFFERENT TYPES OF DECENTRALIZATION

When it comes to governments and decentralization, there is a general trend towards decentralization, though with considerable variation in the degree and type of decentralization across countries.

<sup>6</sup> Zelkowitz, M. (2011) *Advances in Computers*. New York: Academic Press, p. 3.

<sup>7</sup> Rockwell, Jr. L. H. (2005) *What We Mean by Decentralization*. Available [online]: <https://mises.org/library/what-we-mean-decentralization>

<sup>8</sup> Mises L. (2012) *Mises on Secession*. Available [online]: <https://mises.org/library/mises-secession>

<sup>9</sup> Hoppe, H. (2014) *From Aristocracy to monarchy to democracy, The tale of moral and economic folly and decay*. Auburn: Mises Institute, pp 65.

<sup>10</sup> Kibbe, M. (2012) *Hostile takeover*. New York: Harper Collins Books, p. 332.

<sup>5</sup> Mueller, P. (2015) *Was Adam Smith a Libertarian?*. Available [online]: <https://www.libertarianism.org/columns/was-adam-smith-libertarian>



## UNDER DECENTRALIZATION, JURISDICTIONS MUST COMPETE FOR RESIDENTS AND CAPITAL, WHICH PROVIDES SOME INCENTIVE FOR GREATER DEGREES OF FREEDOM

Majority democracies and unitary states have undergone the greatest and most systemic decentralization, while decentralization in consensual democracies and federal states has occurred more at the margins.<sup>11</sup> Decentralization – the transfer of authority and responsibility for public functions from the central government to subordinate or quasi-independent governmental organizations and/or the private sector – is, undoubtedly, a complex multifaceted concept. The World Bank lists four standard types of decentralization: political, administrative, fiscal, and market.<sup>12</sup>

Political decentralization allows powerful decisions to be made at lower levels, while administrative decentralization refers to the redistribution of authority, responsibility, and financial resources to enable public services at the lower, local levels. Fiscal decentralization deals with the issue of adequate level of revenues to carry out decentralized functions effectively. Finally, from a libertarian perspective, the most desirable decentralization is economic or market decentralization. It implies switching power and responsibility from the public to the private sector through privatization and deregulation.<sup>13</sup> For further consideration, however, it is administrative decentralization that is most relevant.

### VIRTUES OF DECENTRALIZATION

There are many virtues of decentralization, and many have been previously stated by libertarian authors. Murray sees decentralized government as the best solution for the protection of freedom,<sup>14</sup> while Hayek writes that when the economic power is centralized as an instrument of political power, it creates a degree of dependence scarcely distinguishable from slavery.<sup>15</sup> Rockwell Jr. lists several reasons why decentralization is good.<sup>16</sup>

First, under decentralization, jurisdictions must compete for residents and capital, which provides some incentive for greater degrees of freedom, if only because local despotism is neither popular nor produc-

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<sup>13</sup> Ibid.

<sup>14</sup> Murray, C. (1988) *In Pursuit of Happiness and Good Government*. Indianapolis: Liberty Fund, p. 266.

<sup>15</sup> Hayek, F.A. (2013) *The Road of Serfdom*. London: The Institute of Economic Affairs, p. 42.

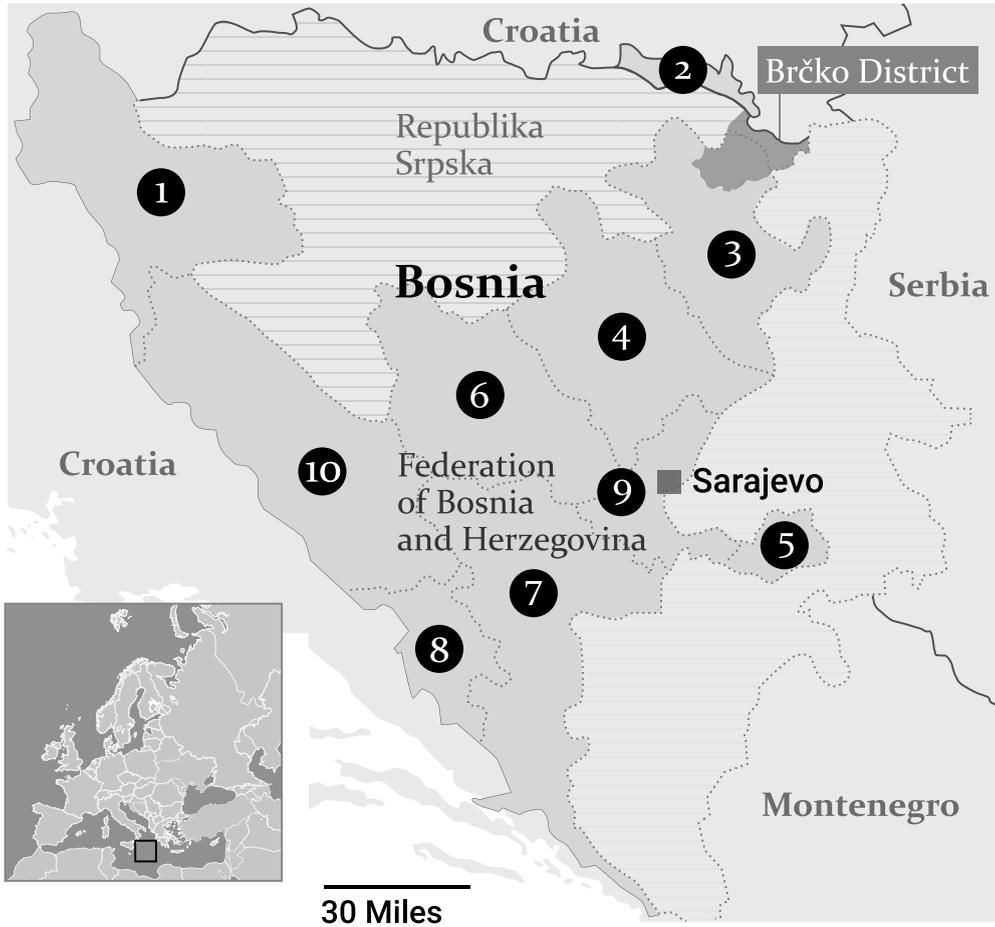
<sup>16</sup> Rockwell, Jr. L. H., op.cit.

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<sup>11</sup> Cain, B.E. et al. (2003) *Democracy Transformed?: Expanding Political Opportunities in Advanced Industrial Democracies*. Oxford: Oxford University Press.

<sup>12</sup> World Bank (2001) *What Is Decentralization?*. Available [online]: [http://www.ciesin.org/decentralization/English/General/Different\\_forms.html](http://www.ciesin.org/decentralization/English/General/Different_forms.html)

<sup>17</sup> Nardelli, A. et al. (2014) *Bosnia and Herzegovina: The World's Most Complicated System of Government?*. Available [online]: <https://www.theguardian.com/news/datablog/2014/oct/08/bosnia-herzegovina-elections-the-worlds-most-complicated-system-of-government>

Figure 1. Map of Bosnia and Herzegovina<sup>17</sup>

1 | Una-Sana Canton 1

2 | Posavina Canton

3 | Tuzla Canton

4 | Zenica-Doboj Canton

5 | Bosnia-Podrinje Canton Goražde

6 | Central Bosnia Canton

7 | Herzegovina-Neretva Canton

8 | West Herzegovina Canton

9 | Sarajevo Canton

10 | Canton 10



UNDER THE TERMS OF THE DAYTON PEACE AGREEMENT, B&H WAS ORGANIZED AS AN ASYMMETRIC FEDERATION UNDER THE PRECEPT THAT IT WOULD PROVIDE A FRAMEWORK FOR INTER-ETHNIC ACCOMMODATION, CREATE CHANNELS FOR DEMOCRATIC CONTESTATION, AND ULTIMATELY BRING PEACE AND STABILITY

tive. Second, localism internalizes corruption so that it can be more easily spotted and uprooted. Third, tyranny on the local level minimizes the damage to the same extent that macro-tyranny maximizes it. Fourth, no government can be trusted to use the power to intervene wisely. With such power, central governments will always invoke good motives even if they are

a purely a mask for power grabs. Fifth, the plurality of governmental forms – a “vertical separation of powers,” to use Stephan Kinsella’s phrase<sup>18</sup> – which prevents the central government from accumulating power.

One libertarian virtue of decentralization is that it provides a “safe space” for a citizen to have political commotion, regardless of the action of central authority. For individuals to be creative and innovative, they must be able to pursue their truth.<sup>19</sup> This is especially important from the human rights point of view. Decentralization allows an individual to have her/his own kind of truth.

Moreover, decentralization also pushes both responsibility and decision-making closer to the coal face, to the people who really know what is going on.<sup>20</sup> This is all point of the knowledge problem, stressed by Hayek.

Finally, it is possible to notice the interesting correlation showing that richer countries tend to be more decentralized, if we follow the relationship between subnational government (SNG) spending as a % of GDP and GDP per capita.<sup>21</sup>

### **DECENTRALIZATION IN BOSNIA AND HERZEGOVINA**

When it comes to decentralization in Bosnia and Herzegovina, this special phenomenon could only have resulted from the war during the 1990s. Without a given historical context, it is difficult to understand the cur-

<sup>18</sup> Kinsella, S. (2009) *The Unique American Federal Government*. Available [online]: <http://www.stephankinsella.com/2009/10/the-unique-american-federal-government/>

<sup>19</sup> Allison, J.A. (2015) *The Leadership Crisis and the Free Market Cure*. New York: McGraw-Hill Education, p. 44.

<sup>20</sup> Walling-Russell, E. (2012) *50 Ideas You Really Need to Know, Management*. London: Quercus, p. 61.

<sup>21</sup> Allain-Dupré, D. op.cit.



BOSNIA  
AND HERZEGOVINA,  
WITH A POPULATION  
OF 3.8 MILLION, HAS  
THREE PRESIDENTS,  
13 PRIME MINISTERS,  
MORE THAN  
180 MINISTERS,  
AND 700 MEMBERS  
OF SEVERAL  
PARLIAMENTS

rent administrative structure of B&H, nor would it have spontaneously developed under normal, peaceful circumstances.

Under the terms of the Dayton Peace Agreement,<sup>22</sup> B&H was organized as an asymmetric federation under the precept that it would provide a framework for inter-ethnic accommodation, create channels for democratic contestation, and ultimately

<sup>22</sup> The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Agreement, Dayton Accords, Paris Protocol or Dayton–Paris Agreement, (Bosnian: Dejtonski mirovni sporazum, Serbian: Dejtonski mirovni sporazum, Croatian: Daytonski sporazum) is the peace agreement reached at Wright-Patterson Air Force Base near Dayton, Ohio, United States, in November 1995, and formally signed in Paris, France, on 14 December 1995. The signatories were Franjo Tuđman, the president of Croatia, Slobodan Milošević, the president of Serbia - who later was tried at The Hague as a war criminal- and Alija Izetbegović, the president of Bosnia and Herzegovina.

bring peace and stability.<sup>23</sup> Hence, the primary motivation for decentralization was political – to exploit its alleged potential as a management tool for ethnic conflict. This involved a peculiar layering of government structures, from the central to the local level, aimed at balancing political and ethnic fractions.<sup>24</sup> In particular, the state structure consists of a central government, two entities, and a single district, a self-governing unit under the jurisdiction of the central government<sup>25</sup> (See Figure 1).

Bosnia and Herzegovina, with a population of 3.8 million, has three presidents, 13 prime ministers, more than 180 ministers, and 700 members of several parliaments.<sup>26</sup> Nardelli, Dzidic, and Jukic state in the *Guardian* that B&H is the world's most complicated system of government.<sup>27</sup> However, this complexity is to blame for the survival of the country during the twenty-three years following the war.

As summarized by *The Economist*, the government system in B&H puts an emphasis on consensus. Formally or informally, governments in Bosnia and Herzegovina need partners, who often come from different ethnic groups.<sup>28</sup> The Bosnians are

<sup>23</sup> United Nation Peacemaker (1995) *General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement)* Available [online]: <https://peacemaker.un.org/bosniadaytonagreement95>

<sup>24</sup> Bojičić–Dželilović, V. (2011) "Decentralisation and Regionalisation in Bosnian-Herzegovina: Issues and Challenges", [in:] *LSEE Papers on Decentralisation and Regional Policy 2*. London: London School of Economics and Political Science.

<sup>25</sup> CIA (2018) *The World Factbook*. Available [online]: <https://www.cia.gov/library/publications/the-world-factbook/geos/bk.html>

<sup>26</sup> Klix.ba (2015) *Američki analitičar: BiH, zemlja sa tri predsjednika, 13 premijera i bez pristojne vlade*. Available [online]: <https://www.klix.ba/vijesti/bih/americki-analiticar-bih-zemlja-sa-tri-predsjednika-13-premijera-i-bez-pristojne-vlade/151110080>

<sup>27</sup> Nardelli, A. et al., op.cit.

<sup>28</sup> The Economist (2017), *Why hasn't Bosnia and Her-*

expected to behave like the Swiss, who are champions of compromise.<sup>29</sup> Different levels of government and the complexity of the entire system of government create an incentive for political elites to maintain this system and not to divide the country. In short, an extremely decentralized system preserves the existence of B&H as a state.

### POWER STRUCTURE IN THE MOST COMPLICATED COUNTRY IN THE WORLD

When it comes to the level of power within a complex administrative structure in Bosnia and Herzegovina, it is mostly located in two entities,<sup>30</sup> each having the two largest budgets in the country. The central institutions of B&H are weak, with the bulk of governmental competencies residing in the two entities. The central government has a limited budget, which, because of the blockade from the Republic of Srpska (RS), representatives have not been increasing since. After the entities, cantonal budgets have the biggest power along with Brčko District as a separate unit beside the two entities.

Now, concerning the cantons. In existing constitutional arrangements, in line with the Swiss model, the cantons operate as mini-states. Most of their budgets are spent on education, but also for the judiciary, healthcare, and other local affairs. Below the cantons are municipalities and cities as a unit of local self-government.

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*zegovina collapsed?*, Available [online]: <https://www.economist.com/blogs/economist-explains/2017/11/economist-explains?zid=307&ah=5e80419d1bc9821eb e173f4f0f060a07>

<sup>29</sup> Oertig-Davidson, M. (2011) *Beyond Chocolate, understanding Swiss culture*. Basel: Berigi books, p. 152.

<sup>30</sup> Encyclopaedia Britannica (2018) *Bosnia and Herzegovina*. Available [online]: <https://www.britannica.com/place/Bosnia-and-Herzegovina#ref42673>

Simply put, B&H is administratively divided into two entities and one district. While one entity (Federation of B&H) is decentralized with the distribution of powers towards cantons and then municipalities, the other entity (RS) is centralized with municipalities and cities as the lowest levels of local self-government. Knowing this, are there any substantial differences between the two parts of B&H and, if so, what are the effects of these on human rights?

### DIFFERENCES BETWEEN TWO ENTITIES

First of all, it is important to note that it is indeed difficult to determine the causes of some social phenomena. According to Nassim N. Taleb, in the complex world, the notion of "cause" itself is suspect.<sup>31</sup> For this reason, we will only try to look at and perhaps briefly explain some noticeable differences between the centralized and decentralized part of Bosnia and Herzegovina.

It is important to note that the Federation of B&H and the RS are different on many grounds, and not solely regarding their administrative structure. For instance, the Federation of B&H is traditionally more oriented towards industry, while the RS is oriented towards agriculture. Also, in the Federation of B&H, there are almost twice as many inhabitants (mostly Bosniaks and Croats), while in the RS, there are fewer inhabitants (mostly Bosnian Serbs). Geopolitically, the Federation of B&H is more connected with Croatia and the international community, while the RS has special ties with the Republic of Serbia, and more connections to Russia. When it comes to the cantonal level, there are numerous competencies, but the two most important fields in their budget, next to administration costs, are education and healthcare.

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<sup>31</sup> Taleb, N.N. (2012) *Antifragile, Things that Gain from Disorder*. London: Penguin Books, p. 56.

### (1)3 EDUCATION SYSTEMS<sup>32</sup>

The education system in Bosnia and Herzegovina is largely decentralized, because not only is education not within the jurisdiction of the state,<sup>33</sup> but it is also, as in the case of the Federation of B&H, it is within the jurisdiction of cantonal levels and even in some cases to the competence of municipalities. Unlike the Republic of Srpska, where the Ministry of Education and Culture has the greatest power in defining education in this entity, in Federation of B&H, cantons are regulating the education system. The Federal Ministry only coordinates the planning of the activities in the field of education.<sup>34</sup> This means that cantons can make educational curricula themselves or define ways of implementing educational policies.

It is not “one system for the entire society”, as stated by David Boaz.<sup>35</sup> Cantons maintain all the power not explicitly entrusted to the federal government and are particularly authorized for determining educational policy, which includes the adoption of educational regulations, and the definition and

implementation of cultural policy.<sup>36</sup> Thus, for example, Canton Sarajevo prepares its own curriculum based on successful examples of some countries in the world.<sup>37</sup> On the other hand, the Tuzla Canton plans to introduce the subject of entrepreneurship into its education system.

One of the direct effects of the decentralization of education in the Federation of B&H is that “hot” educational topics, including teachers’ problems or strikes, are localized at the canton level. This creates a situation where children in some cantons start their school year on time, while others have extra days of summer break due to the strike of educational unions. Another “hot” issue, namely religious education within the education sector, is also dealt with at the canton level, and each of the cantons has a different policy on this matter (whether the religion as a school subject is optional or not, or whether it enters the grade average).<sup>38</sup>

On the other hand, there are no variations in the RS, which means that more secular parents (or religious, in the context of future reforms) have no alternative when it comes to the education of their children. This is also the case with language, which is one of the political problems in B&H. The Ministry of Education and Culture in the RS does not recognize the Bosnian language,

<sup>32</sup> Bosnia and Herzegovina has 13 ministries of education – at the level of the Republika Srpska, the Federation of B&H, ten cantons, and the Brčko District. In addition, there is one ministry at the state level, the Ministry of Civil Affairs, which is responsible for carrying out tasks that are in the competence of B&H and related to the establishment of basic principles of coordination of activities, harmonization of the plans of the entity authorities, and defining the strategy on the international plane, among others, for the field of education. At the level of B&H, there are several strategic documents, agencies, and co-ordination bodies related to education. Nevertheless, lower levels have the highest role in education.

<sup>33</sup> At the state level there is no ministry of education, but the Ministry of Civil Affairs, which has very modest, almost symbolic competencies in education in the country.

<sup>34</sup> Federalno ministarstvo obrazovanja i nauke (2018) *Pregled sektora*. Available [online]: <http://www.fmon.gov.ba/Sektor/PregledSektora?id=2>

<sup>35</sup> Boaz, D. (2008) *The Politics of Freedom*. Washington, D.C.: Cato Institute, p. 152.

<sup>36</sup> Večernji list (2009) *Federacija BiH je uzurpirala ovlasti županija u kulturi i obrazovanju*. Available [online]: <https://www.vecernji.ba/federacija-bih-je-uzurpiralao-ovlasti-zupanija-u-kulturi-i-obrazovanju-61656>

<sup>37</sup> Ibrahimović, N. (2018) *Od naredne školske godine novi kurikulum eksperimentalno u školama*. Available [online]: <http://www.skolegijum.ba/tekst/index/1461/od-naredne-skolske-godine-novi-kurikulum-eksperimentalno-u-skolama>

<sup>38</sup> Muminović, D. (2011) *Vjeronauka u bh. školama: Koliko ministara toliko i pravila*. Available [online]: <https://www.nezavisne.com/novosti/bih/Vjeronauka-u-bh-skolama-Koliko-ministara-toliko-i-pravila/88305>

mostly spoken by the Bosniaks.<sup>39</sup> The Ministry of Education and Culture in the RS struggles with the right name for the Bosnian language, although Bosnian is defined by the constitution. For this reason, numerous protests and boycotts throughout the RS have been organized from 2015 until today,<sup>40</sup> but there is still no change because this requires greater consensus within the entity and an intervention without the possibility of the localization of the problem.

A somewhat similar problem exists in the Federation of B&H, which is practicing "two schools under a single roof," i.e. the practice of separating children in one educational institution by ethnicity and accordingly under different education plans and programs, is still localized and reproduced in three cantons. Most of these schools are located in the Central Bosnia Canton (14), followed by the Herzegovina-Neretva Canton (12), and the Zenica-Doboj Canton (6).<sup>41,42</sup> The local and foreign media usually inaccurately report that the phenomenon of "two schools under one roof" is the problem for B&H.<sup>43</sup> This is not true, as it is the problem of the particular cantons,

which makes it easier to solve. Regarding the quality of education, especially higher education, there is no clear data that could be used to look at the differences between two entities. Still, it is evident that although all Bosnian universities lag behind the European standard, the universities in the Federation of B&H are far ahead of those in the RS.<sup>44</sup>

Interestingly, even though private universities are present in the RS, there are cantons in the Federation of B&H that are also liberal in this regard. In the Central Bosnian Canton, private faculties are opened, while in Zenica-Doboj Canton they are outlawed. Consequently, students in B&H often go from one canton to another to study what they want.

## CHEAPER AND/OR BETTER HEALTHCARE

Healthcare is another area that differs in between the two entities. The management and financing of healthcare in Republic of Srpska is centralized, unlike the Federation of B&H where this area is regulated even at cantonal levels. The federal level has a coordinating role in the management and financing of programs treating cardiovascular and malignant diseases and the provision of haemodialysis services at the level of the Federation.<sup>45</sup>

Just like in the case of education, the healthcare system in the Federation of B&H is largely decentralized. These administrative differences significantly con-

<sup>39</sup> Aljazeera Balkans (2018) *Salkić: Najteži oblici diskriminacije Bošnjaka u RS-u*. Available [online]: <http://balkans.aljazeera.net/vijesti/salkic-najtezi-oblici-diskriminacije-bosnjaka-u-rs-u>

<sup>40</sup> Aljazeera Balkans (2018) *Roditelji bošnjačke djece nastavljaju bojkot nastave*. Available [online]: <http://balkans.aljazeera.net/video/roditelji-bosnjacke-djece-nastavljaju-bojkot-nastave>

<sup>41</sup> Aljazeera Balkans (2017) *Bosanski jezik u RS-u: Roditelji će vratiti djecu u škole po provedbi presude*. Available [online]: <http://balkans.aljazeera.net/video/bosanski-jezik-u-rs-u-roditelji-ce-vratiti-djecu-u-skole-po-provedbi-presude>

<sup>42</sup> Diskriminacija.ba (2017) *Mapa: Dvije škole pod jednim krovom u BiH*. Available [online]: <http://www.diskriminacija.ba/teme/mapa-dvije-%C5%A1kole-pod-jednim-krovom-u-bih>

<sup>43</sup> Reuters (2017) *Bosnian students keep up their protest against segregated schools*. Available [online]: <https://www.reuters.com/article/us-bosnia-protests-students/bosnian-students-keep-up-their-protest-against-segregated-schools-idUSKBN19B26P>

<sup>44</sup> Slobodna Bosna (2016) *Svjetska rang lista fakulteta: Univerzitet u Sarajevu na 1850 mjestu, a banjalučki na 3969 poziciji*. Available [online]: [https://www.slobodna-bosna.ba/vijest/26791/svjetska\\_rang\\_lista\\_fakulteta\\_univerzitet\\_u\\_sarajevu\\_na\\_1850\\_mjestu\\_a\\_banjaluchki\\_na\\_3969\\_poziciji.html](https://www.slobodna-bosna.ba/vijest/26791/svjetska_rang_lista_fakulteta_univerzitet_u_sarajevu_na_1850_mjestu_a_banjaluchki_na_3969_poziciji.html)

<sup>45</sup> Huseinović, S. (2017) *Zdravstvo u BiH je „komplikirano“ i „neefikasno“*. Available [online]: <http://www.dw.com/bs/zdravstvo-u-bih-je-komplicirano-i-neefikasno/a-38140412>

tribute to the different treatment of patients, i.e. the situation when residents in one part of B&H have less or greater rights in the field of healthcare insurance, easier or more difficult access to healthcare services, and a better or worse quality of these services than residents in other parts of the country.

However, the ratio of the B&H healthcare-related spending as part of GDP is 7.2%, which is similar to the allocation rate in countries of the former Yugoslavia (Croatia 7.5%, Montenegro 6.8%, Slovenia 8.4%, Serbia 8.0%), EU countries (Sweden 8.9%, Norway 8.7%, Italy 9.0%, Austria 9.9%), and countries that were once part of the communist bloc (Romania 5.7%, Russia 5.3%, the Czech Republic 6.8%, Bulgaria 6.9%, Albania 6.2%). There are, however, entity differences, so in the Federation of B&H healthcare-related spending is higher (8.82%) than in the RS (5.58%).<sup>46</sup> Nevertheless, the domestic healthcare system is the worst in the region.<sup>47</sup> The real problem is not the issue of financial allocations, but the lack of proper healthcare initiatives and corruption.

In the Federation of B&H, there are significant differences between the cantons themselves, so Sarajevo Canton for healthcare spends as much as the entire budget of some cantons.<sup>48</sup> Average spending per insured person per canton is uneven and ranges from BAM 466 (app. EUR 238.04) in Central Bosnia Canton to BAM 888 (ap. EUR 453.84) in Sarajevo

<sup>46</sup> Mujkić, E. (2011) *Sistem zdravstva u Bosni i Hercegovini: stanje i pravci moguće reforme*. Sarajevo: Fondacija Centar za javno pravo

<sup>47</sup> Aljazeera Balkans (2014) *Zdravstvo u BiH najlošije u regiji*. Available [online]: <http://balkans.aljazeera.net/vijesti/zdravstvo-u-bih-najlosije-u-regiji>

<sup>48</sup> Aljazeera Balkans (2017) *Bh. zdravstvo: Dobro nam je, tako nam i treba*. Available [online]: <http://balkans.aljazeera.net/vijesti/bh-zdravstvo-dobro-nam-je-tako-nam-i-treba>

vo Canton.<sup>49</sup> This created an initiative to change the whole system because of discrimination.<sup>50,51</sup>

What is also interesting is that, similar to education, the strikes of healthcare workers are localized and reduced to the canton levels. In general, the Federation of B&H provides better healthcare services with better quality clinics. The best healthcare center is in FB&H.<sup>52</sup> Some healthcare services are better in the RS, but what makes it different is a healthcare fund which more generously funds certain services (such as In Vitro Fertilization). This is possible due to smaller obligations and fewer users of the fund. Also, the fund covers treatment in the Federation of B&H.<sup>53</sup> In practice, B&H citizens have alternatives for using better quality healthcare services in the Federation of B&H and cheaper healthcare insurance in the RS.<sup>54</sup>

## ECONOMIC DIFFERENCES

When it comes to economic issues, there are some differences, although it is difficult to determine if they are caused by the de-

<sup>49</sup> Federalni zavod za programiranje razvoja (2017), *Izveštaj o razvoju Federacije BiH 2016*. Sarajevo: FZPR

<sup>50</sup> Vukmanić, V. (2009) *Do univerzalne zdravstvene zaštite u Bosni i Hercegovini pregled stanja i preporuke za djelovanje*. Sarajevo: Inicijativa i civilna akcija (ICVA).

<sup>51</sup> Numanović, E. (2017) *Zdravstvena zaštita u BiH*. Available [online]: <http://eu-monitoring.ba/zdravstvena-zastita-u-bih-problemi-decentraliziranog-sistema-medunarodne-politike-i-neophodnost-reforme-zdravstva/>

<sup>52</sup> Tadić, N. (2016) *Evo zašto je UKC Tuzla najbolji zdravstveni centar u BiH*. Available [online]: <http://ba.n1info.com/a130054/Vijesti/Vijesti/UKC-Tuzla-najbolji-zdravstveni-centar-u-BiH.html>

<sup>53</sup> Fond zdravstvene zaštite Republike Srpske (2018) *Zdravstvena zaštita u drugom entitetu*. Available [online]: <https://www.zdravstvo-srpske.org/pitanja-novinar/zdravstvena-zastita-u-drugom-entitetu.html>

<sup>54</sup> Večernji.ba. (2017) *Trudnice iz Federacije idu po knjžice u RS*. Available [online]: <https://www.vecernji.ba/vijesti/trudnice-iz-federacije-idu-po-knjzice-u-rs-1208932>



NO MATTER WHERE THEY LIVE, CITIZENS OF B&H RECEIVE SIMILAR OR SAME PROTECTION OF RIGHTS REGARDING LEGAL GENDER, PARENTAL RIGHTS, AND THE LIKE

gree of decentralization or other predispositions (such as industrialization of the Federation of B&H). Generally, the residents of the Federation of B&H are relatively richer, with lower net debt per capita.

According to data from 2015, GDP per capita in Bosnia and Herzegovina was BAM 7,473 (EUR 3820.88 ).<sup>55</sup> When it comes to entities, data from 2015 show that GDP per capita of the Republic of Srpska is BAM 6,463 (EUR 3,304.48), which is below the average of B&H, while the GDP per capita in the Federation of B&H was BAM 8.010 (EUR 4,095.45), more than BAM 1,500 (EUR 766.93 ) than in the RS. It should be noted that the GDP per capita in both entities is several times lower than the EU average, and three times lower than in neighboring Croatia.<sup>56</sup>

<sup>55</sup> Bosnia and Herzegovina uses BAM currency. One euro is 1.96 BAM.

<sup>56</sup> Ajanović, A. (2017) *RS (ni)je bolji dio BiH*. Available [on-

When discussing entity economies, it is not possible to ignore the amount of public debt of both entities. The latest comparable data, from June 2016, show that net debt per capita in the Federation of B&H amounted to BAM 2,396 (EUR 1225.06 ), while in the RS it was 81% higher, with BAM 4,328 (EUR 2212.87) per person. Also, on the basis of indirect taxes, the RS pays much less than the Federation of B&H (BAM 3.3 billion to 1.56 billion – EUR 1,68 billion to 797 million).<sup>57</sup> This shows that it is much easier to create public debt by a more centralized entity.

However, decentralization also has its own shortcomings, in particular, because of the inability to apply economies of scale in a single economic space, but also because of the enormous bureaucratic apparatus that is partly a consequence of decentralization. This is clearly visible in the *Human Freedom Index*,<sup>58</sup> regarding the economic freedoms.

B&H has the lowest ratings in terms of the *Size of Government* (score 5.3, out of 10.0) and of the *Legal System and Property Rights* (score 4.2, out of 10.0). This is precisely the price of decentralization that B&H pays. The decentralized system produces a huge government, which is also one of the reasons for the existence and stability of the whole country. The complexity of the decentralized legal system leads to the rule of law not being sufficiently developed and the central government having no influence on reform in this area.

line]: <http://istinomjer.ba/rs-nije-bolji-dio-bih/>

<sup>57</sup> Ibid.

<sup>58</sup> Vásquez, I. and T. Porčnik, (2017) *The Human Freedom Index 2017*. Washington, D.C.: Cato Institute, Fraser Institute, and Liberales Institut. Available [online]: <https://www.cato.org/human-freedom-index>.

This is a long-term obstacle to the lives of citizens of B&H, especially companies and entrepreneurs.

In addition, decentralization complicates and creates more regulation, especially when it comes to regulating business (score 5.3 in the *Human Freedom Index*). Specifically, there are over 400 parafiscal levies<sup>59</sup> with no central register for them. Each of the levels of government can *ad hoc* impose certain levies on businesses and citizens, which can only be challenged by higher levels of the judiciary in the long run generating cost for the entire society.

## HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA

When it comes to human rights in Bosnia and Herzegovina, it can be concluded that, unlike economic freedoms, personal freedoms (according to the *Human Freedom Index*)<sup>60</sup> have better ratings (7.93 versus 6.61 for economic freedom). The best score in the area of personal freedom B&H received on issues of *identity and relationships* (9.3), *security and safety* (9.0), *religious freedom* (8.8), *association* (8.8), and *expression and information* (8.7).

Regarding identity and relationships, no matter where they live, citizens of B&H receive similar or same protection of rights regarding legal gender, parental rights, and the like. As far as security and safety, government security agencies and police have a remarkable degree of coordination, no matter how complex the system of jurisdiction is. There are sporadic interethnic incidents, but these are mostly local.

<sup>59</sup> Novalić, N. (2016) *Kako parafiskalni nameti koče bh. privredu: Vlast poslodavcima naplaćuje i kisik*. Available [online]: <https://www.klix.ba/biznis/privreda/kako-parafiskalni-nameti-koce-bh-privredu-vlast-poslodavcima-naplaćuje-i-kisik/160929104>

<sup>60</sup> Vásquez, I. and T. Porčnik, op.cit.

It is interesting to mention in this context the spectacular operation "Ruben", which was performed in the entire RS entity, and was presented as an act of arrest on the dozens of people associated with terrorism. It was subsequently found that these people were not related to terrorism and that the police action was an act of force and intimidation. Some people arrested even filed a lawsuit.<sup>61</sup> This discovery led to numerous criticisms, arguing that these activities were to shock the Bosniak returnees who were expelled from the area of RS during the Bosnian war.<sup>62</sup>

Regarding religious freedoms, they are guaranteed in B&H no matter where the person lives. There are sporadic physical attacks on religious holidays, especially on the returnees in the RS, which are well indexed and observed (8.3 scores for harassment and physical hostilities on the *Human Freedom Index*). Citizens of B&H also have the freedom of association, and the NGO sector is extremely developed, especially in the Federation of B&H (there are associations registered at cantonal level). Freedom of assembly and protest is determined by decentralization, which means it depends on local regulations.

When it comes to Expression and Information, it is indicative that B&H has the worst rating on the indicator *Laws and Regulations That Influence Media* (6.7) on the *Human Freedom Index*. Apart from laws of local character, domestic media is mostly legally influenced by the Communications Regulatory Agency of Bosnia and Herzegovina (CRA), which is centralized, i.e. it oper-

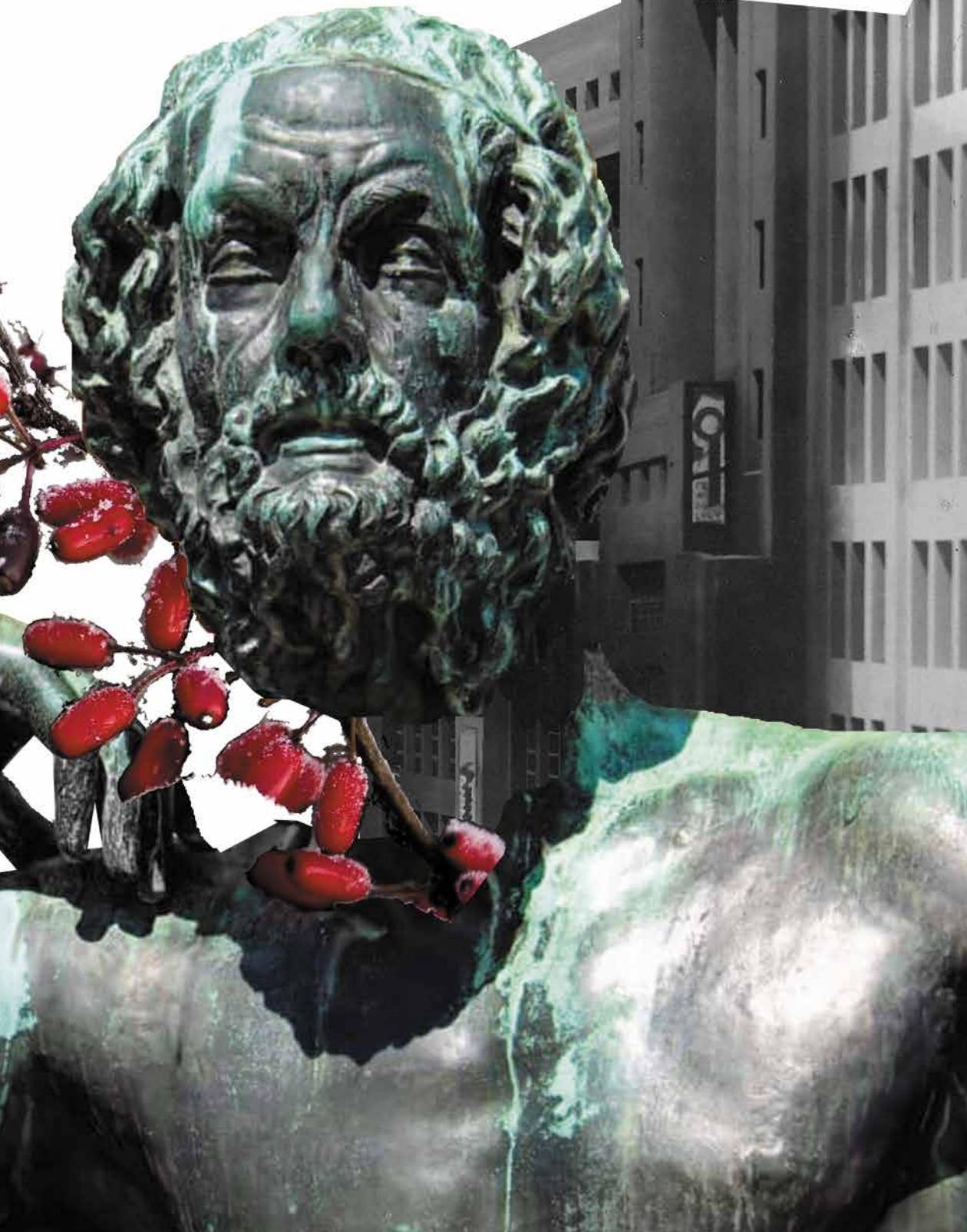
<sup>61</sup> N1 (2016) *Obustavljena istraga protiv uhapšenih u akciji "Ruben"*. Available [online]: <http://ba.n1info.com/a95322/Vijesti/Vijesti/Akcija-Ruben.html>

<sup>62</sup> Radio Slobodna Evropa (2015) *Akcija "Ruben": Za osam uhapšenih zatražen pritvor*. Available [online]: <https://www.slobodnaevropa.org/a/akcija-ruben-za-osam-uhapšenih-zatražen-pritvor/27001953.html>

A collage of images. At the top, a golden statue of two women with closed eyes. Below it, a white banner with the text 'LITTLE NOTED OR KNOWN, THEY BEAR SCARS'. To the right, a branch with red berries. In the foreground, a large, weathered bronze statue of a hand holding a small object. The background is dark and textured.

**LITTLE NOTED  
OR KNOWN, THEY BEAR  
SCARS**

personal freedoms





THERE ARE ALSO DIFFERENCES BETWEEN THE CANTONS IN RESPECT FOR HUMAN RIGHTS, BUT THIS IS NOT WELL DOCUMENTED. SOME CANTONS ARE MORE CONSERVATIVE, WHILE SOME ARE MORE LIBERAL

ates throughout the entire territory of B&H. Still, on the ground, political pressures influence the media, and this was recognized in the Index since the lowest rating for all indicators for B&H is precisely that in relation to *Political Pressure, Control Media* (4.3). However, unlike other countries, this does not mean that the central government controls B&H media. In the Bosnian case, different levels of government and various political parties influence different media, which gives plurality of (controlled) media information. Namely, the cantonal television stations are largely dependent on cantonal authorities controlling them through the budget. Entity television depends on political parties that have the option of re-

placing their leadership. It is most difficult to control a state (central) media, which is generally considered most neutral.

B&H has the worst ratings on individual components of personal freedom regarding the *rule of law* (5.8) and this is the highest price tag of decentralization. A complex legal system does not guarantee *Procedural Justice* (6.9), *Civil Justice* (5.0) and *Criminal Justice* (5.6). However, this is mostly the result of the pressure of political parties, and the influence of the authorities on the judiciary.

There are also differences between the cantons in respect for human rights, but this is not well documented. Some cantons are more conservative, while some are more liberal. Thus, in one canton, a bill on abortion was proposed in 2016 that forbids abortion, fetal trade, hybrid creatures, and euthanasia.<sup>63</sup> What is particularly worrying about human rights issues is the fact that the centralized RS usually has autocratic-oriented leaders who increase the sense of dominance of the majority nation in that entity. This is specifically the case with Milorad Dodik, who has been under the sovereignty of this entity for a decade. Such a thing cannot happen in the Federation of B&H, which is based on a broad coalition of winning parties, that eliminates the possibility of obtaining an autocrat to govern all processes. This in turn opens up space for local political bosses, who are controlling individual cantons.

## CONCLUSIONS

Decentralization in Bosnia and Herzegovina complicates all the political relations in it, but also keeps this country in existence and

<sup>63</sup> Dnevno.ba (2016) *Hrvatski savez HKDU-HRAST i HSP Dr. Ante Starčević: Borit ćemo se za zakon koji štiti život od začeca do prirodne smrti*. Available [online]:<http://www.dnevno.ba/vijesti/hrvatski-savez-hkdu-hrast-i-hsp-dr-ante-starcevic-borit-cestmo-se-za-zakon-koji-stiti-zivot-od-zaceca-do-prirodne-smrti-41388/>

makes it more stable in the long term. This is precisely the main feature of decentralized systems that appear to be fragile at first, but are still much more stable in the context of extraordinary shocks compared to centralized systems. This happened in 2014 during the “Bosnian Spring” events, which, in fact, only represent the fall of five cantonal governments. The potential revolution was again localized thanks to decentralization.

Importantly, the citizens of B&H have different opinions about (de)centralization. Citizens of the Federation of B&H, for example, seek more centralization through the abolition of cantons, while citizens in the RS, and especially the opposition there, seek more decentralization through the establishment of regions. Based on the presented analysis, it is possible to outline several recommendations:

1. It is necessary to preserve the decentralizing framework of B&H, with the possibility of specific, administrative reforms in the direction of better regionalization and strengthening of the middle and lower levels of government in relation to the entities.
2. It is necessary to improve fiscal decentralization and to establish a fairer system for the transfer of revenues from lower-level taxes. Also, a rise in the budgets of entities should be stopped, compared to lower units' budgets.
3. For the benefit of the stability of relations in the entity, but also in the whole country, the cantonization or regionalization of the RS would be the best option in the long run.
4. It is necessary to make constant efforts to improve human rights in B&H, especially when it comes to minorities that may be discriminated in certain parts of the country.

These topics can be analyzed and explored from different angles, and a lot of research is needed in this direction to get the right conclusions. Future research in this area should pay greater attention to the factual differences between centralized and decentralized parts of B&H, and, based on that, make conclusions about the best possible administrative structure of the country. ●



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ADMIR  
ČAVALIĆ

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# Watch Out: Paternalism Is Taking over Europe!



\*

BILL  
WRITZ

**B**e it alcohol, tobacco, or sugary drinks; individuals have a number of vices that they voluntarily engage in. It has been commonly accepted that we attempt to engage in these “vices” with moderation. However, over the past years, public health advocates have made it their mission to regulate people’s lifestyle directly and indirectly. Consequently, we have seen the emergence of the so-called “Nanny State,” in which the politicians in charge of the regulatory state have deemed themselves competent to determine the right amount of consumption on all of these products. Over the past years, the pressure (and influence) drastically increased, but this has been their mission for decades. After all, British MP Iain Macleod referred to the Nanny State as early as the 1960s. Despite being largely a phenomenon of Northern and Western Europe, the Nanny State is extending to Central and Eastern Europe, encouraged by individual states: such as the United Kingdom, the European Union, as well as international organizations like the United Nations and the World Health Organization. Citizens need to ask questions about the proper role of government when it comes to individuals’ personal freedom, ask for inquiries into the unintended consequences and the general effectiveness of these policies.

### ALCOHOL CONSUMPTION

“Alcohol may be man’s worst enemy, but the Bible says love your enemy.” Be that Frank Sinatra, as the origin of this quote,<sup>1</sup> or the loud advocates for prohibition in the 19<sup>th</sup> and 20<sup>th</sup> century,<sup>2</sup> governmental

<sup>1</sup> Kahn, J.M.D. (2016) “Another New Year Another Past, Same Old Hangover?”, [in:] *Huffington Post*. Available [online]: [https://www.huffingtonpost.com/joel-kahn-md/another-new-year-same-old\\_b\\_8801734.html](https://www.huffingtonpost.com/joel-kahn-md/another-new-year-same-old_b_8801734.html)

<sup>2</sup> Engs, R. C. (2000) “Phases of Health-Reform Movements”, [in:] *Clean Living Movements: American Cycles of Health Reform*. Praeger Publishers.

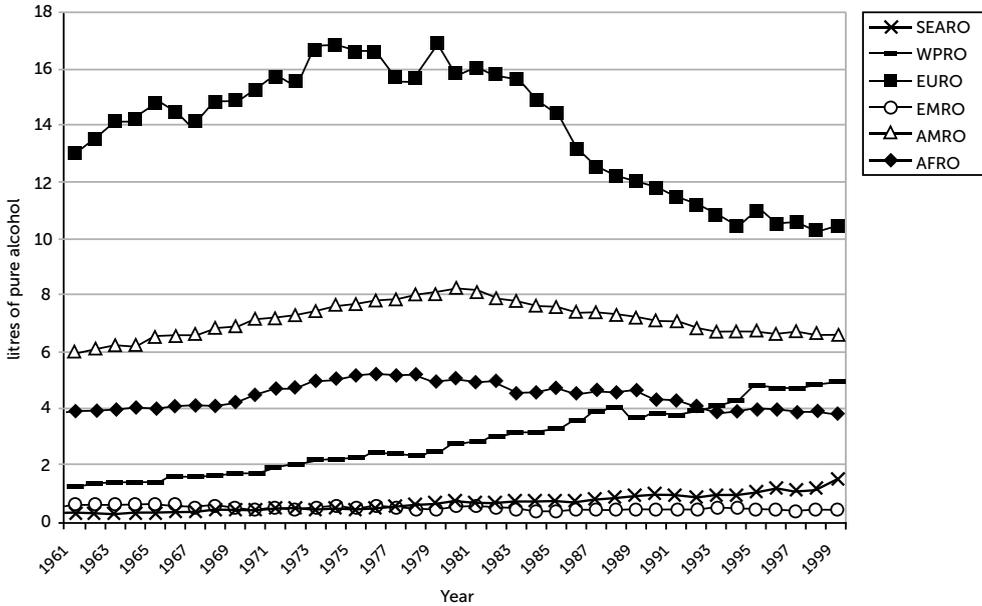
”  
NO EVIDENCE  
POINTS  
TO THE FACT  
THAT MINIMUM  
PRICING WOULD  
ACTUALLY REDUCE  
THE CONSUMPTION  
OF SPIRITS

positions on alcohol have certainly always been ambiguous. The data displays that the prevalence of drinking has decreased over time: WHO numbers show that European total pure alcohol consumption (in liters) per capita has decreased from 12.5 liters in 1961 to above 10 liters in 1999.<sup>3</sup> When considering global total alcohol consumption, it may be observed that there are strong fluctuations that might not necessarily explain a general trend (See Figure 1). For instance, the 1979 spike in European consumption wasn’t significant in setting a trend for its time, given the gradual decline in the following decades. This puts certain headlines about exploding rates of alcohol consumption, such as “Alcohol is the only drug epidemic we’ve got”,<sup>4</sup> in perspective.

<sup>3</sup> WHO (2004) *Global Status Report on Alcohol, Department of Mental Health and Substance Abuse*. Geneva, pp. 9-12.

<sup>4</sup> McDonald, P. (2015) “Alcohol Is the Only Drug Epidemic We’ve Got. Where’s the National Task Force on That?”, [in:] *The Guardian*. Available [online]: <https://www.theguardian.com/commentisfree/2015/apr/16/alcohol-is-the-only-drug-epidemic-weve-got-wheres-the-national-taskforce-on-that>

Figure 1: Population weighted means of the recorded adult per capita consumption in the WHO Regions 1961-1999



Data from the World Health Organization from 2010 and 2015 suggests that European consumption levels continue to remain between 8 and 11 liters of pure alcohol per adult per capita per year.<sup>5</sup> (See Figures 2 and 3)

## ALCOHOL-RELATED POLICIES: PIGOUVIAN TAXES

While the initial goal of levying taxes in Europe is to raise revenue, it is also increasingly a model to discourage certain behaviors. Examples can be found in increased tobacco and alcohol taxation.<sup>6</sup> In the at-

tempt to reduce the overall alcohol consumption, fueled by the idea that despite drinking being on a long-term decline, public health advocates in Europe campaign for burdensome taxes on alcoholic beverages.<sup>7</sup> This is done by varying levels of VAT tax rates on alcohol, but specifically through excise tax rates.

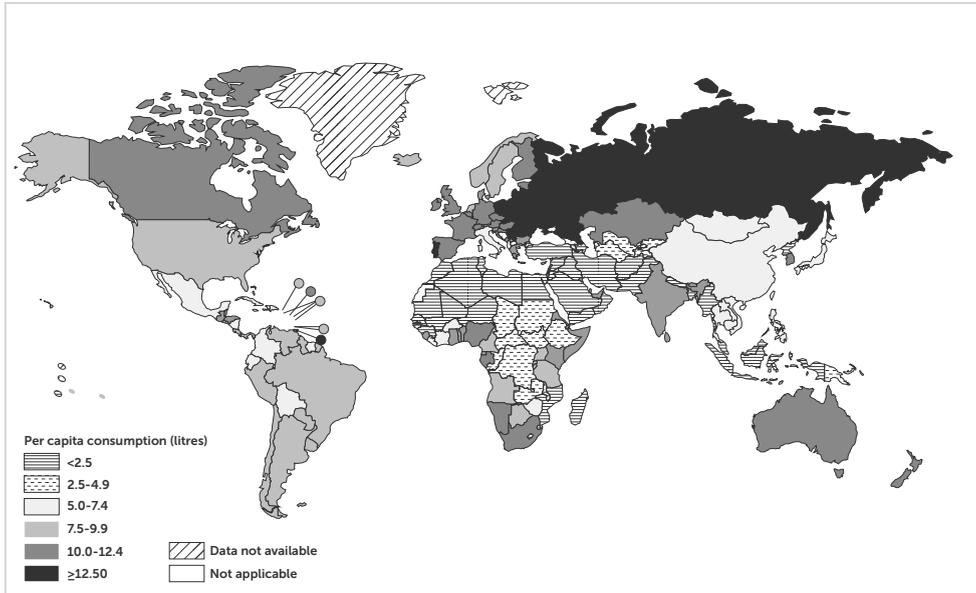
When comparing excise tax rates across Europe, we see that Central and Eastern European countries choose rates that fall below the average of other areas in Europe. Sparkling wine rates in the Czech Republic, Estonia, Croatia, Hungary and Slovakia in 2017 were close to 0 (See Figure 4). In fact, excise taxes on both still and sparkling wine are only high in Western and Northern European countries that have negligible pro-

<sup>5</sup> WHO (2014) "Total Alcohol per Capital (15+ Years) Consumption, in Litres of Pure Alcohol", 2010, Health Statistics and Information Systems (HSI). Available [online]: <http://gamapserv.who.int/mapLibrary/app/searchResults.aspx>; WHO (2016) *Total Alcohol per Capital (15+ Years) Consumption, in Litres of Pure Alcohol*. Information Evidence and Research (IER). Available [online]: <http://gamapserv.who.int/mapLibrary/app/searchResults.aspx>

<sup>6</sup> Kofler, G., M.P. Maduro, and P. Pistone (eds.) (2011) *Human Rights and Taxation in Europe and the World*. Amsterdam: International Bureau of Fiscal Documentation (IBFD), p. 521.

<sup>7</sup> WHO (2012) *European Action Plan to Reduce the Harmful Use of Alcohol 2012-2020*. WHO Regional Office for Europe, pp. 24-25.

Figure 2: Total alcohol per capita (15+ years) consumption, in litres of pure alcohol, 2010

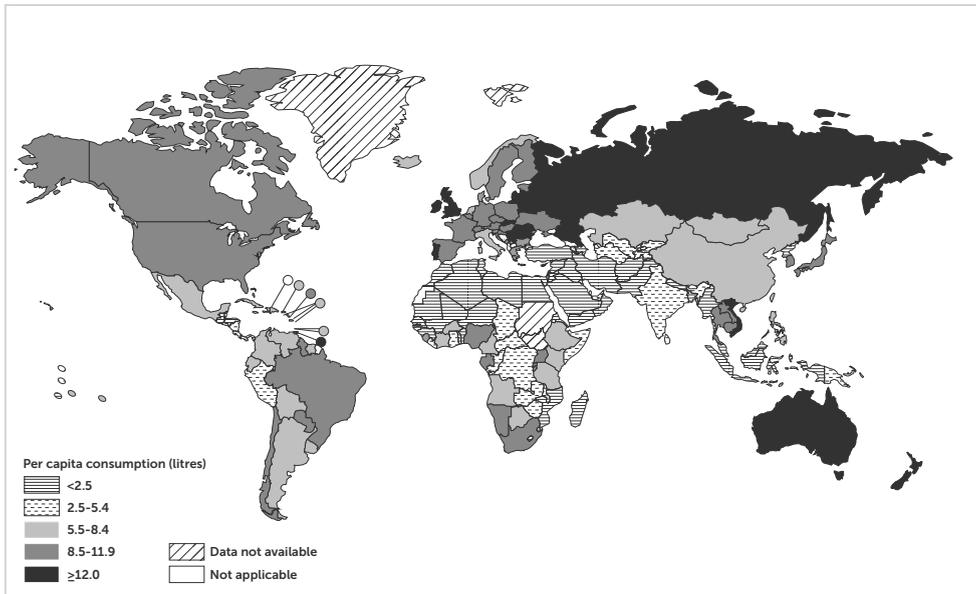


The boundaries and names shown and the designations used on this map do not imply the expression of any opinion whatsoever on the part of the World Health Organization concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Data Source: World Health Organization  
Map Production: Health Statistics and Information Systems (HSI)  
World Health Organization



Figure 3: Total alcohol per capita (15+ years) consumption, in litres of pure alcohol, projected estimates, 2015

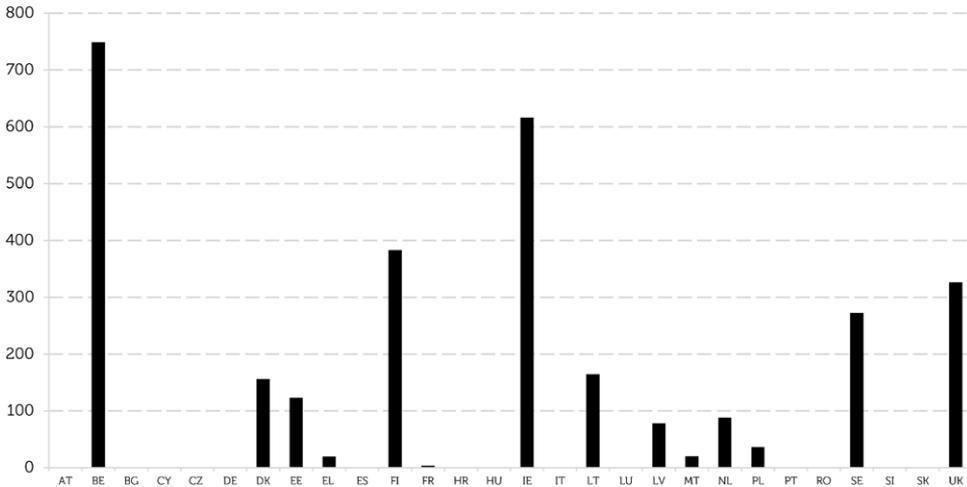


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Data Source: World Health Organization  
Map Production: Health Statistics and Information Systems (HSI)  
World Health Organization



Figure 4: Still wine (values in EUR at 3/10/2016)



Minimum Excise Duty: 0 EUR per hectoliter of product

duction rates in these areas, such as the United Kingdom, Ireland, Sweden, Finland or Denmark.<sup>8</sup>

On ethyl alcohol, or what is also known as strong alcohol, we see rates in 2017 that are considerably higher (See Figure 5). Only a handful of states, including Bulgaria, Croatia, and Romania, have excise tax rate below EUR 1000 per hectolitre.

In a comprehensive review on alcohol taxes and the shadow economy in Estonia, Robert Mürsepp explains the correlation between increased excise taxation and developments in illicit trade, stating that “[p]roponents of raising the excise tax under the banner of saving public health, claim that it is possible to increase taxes so that the consumption of alcohol is reduced. While this applies in theory, it is hard to achieve in real life due to the volatile nature of the shadow economy.”<sup>9</sup> This underlines

that even when consumption goes down under the effect of a certain set of tax policy measures, this does not mean that overall consumption has declined, as the shadow economy plays a significant role in determining consumer behavior.

A review of nineteen studies by the Department of Economics of Pennsylvania State University only found two instances that showed a significant and substantial reduction in drinking rates in response to alcohol price rises – “and even these two showed mixed results”.<sup>10</sup> In *The Economics of Alcohol*, Robert Pryce found that heavy drinkers’ price elasticity of demand was only barely distinguishable from zero, and concluded that “[t]he quantity results show that price-based measures will have little effect in reducing heavy consumption because of their small ab-

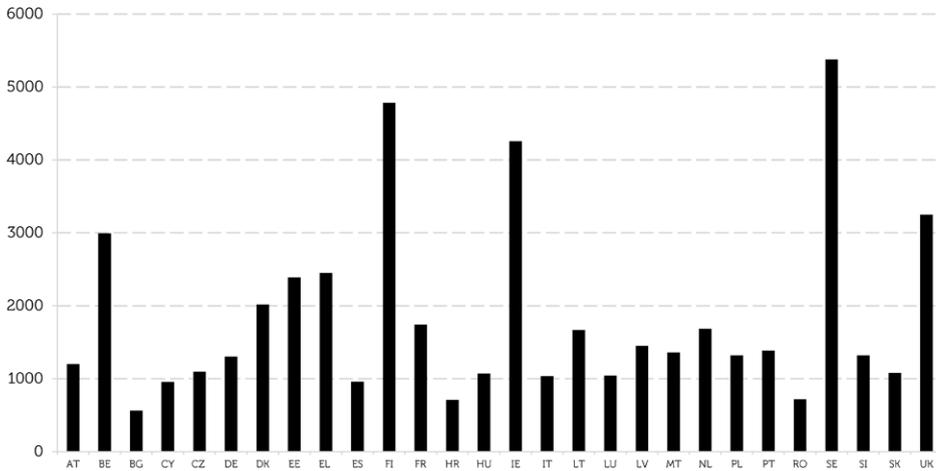
<sup>9</sup> Mürsepp, R. (2015) “Alcohol Excise and the Shadow Economy in Estonia”, [in:] *4Liberty.eu Review* No. 3, pp. 82-92.

<sup>10</sup> Nelson, J. P. (2013) *Does Heavy Drinking by Adults Respond to Higher Alcohol Prices and Taxes? A Survey and Assessment*. Pennsylvania: Department of Economics, Pennsylvania State University, p. 11.

<sup>8</sup> European Commission (2017) *Excise Duty Tables* (shows the situation as of July 1, 2017). Brussels.

<sup>9</sup> Mürsepp, R. (2015) “Alcohol Excise and the Shadow

Figure 5: Ethyl alcohol (values in EUR at 3/10/2016)



Minimum Excise Duty: 550 EUR or 1000 EUR per hectolitre of pure alcohol



AFTER A DECADE  
-LONG FEUD  
WITH PRODUCERS,  
THE SCOTS HAVE  
CRACKED DOWN  
ON ALCOHOL  
CONSUMPTION

solute price elasticity, whilst simultaneously having a large negative effect on consumer surplus for the light drinking majority, because of their large absolute price elasticity.”<sup>11</sup>

<sup>11</sup> Pryce, R.E. (2016) *The Economics of Alcohol: A Collection of Essays*, Doctoral Thesis. Lancaster University, p. 47.

### MINIMUM ALCOHOL PRICING

Take the example of minimum unit pricing on alcohol in Scotland. After a decade-long feud with producers, the Scots have cracked down on alcohol consumption. The legislation, which the Scottish parliament passed in 2012, and which the Supreme Court only recently allowed them to implement, sets a minimum price of 50 pence per unit of alcohol, which would lift the lowest price of a bottle of whisky to GBP 14.<sup>12</sup>

The European Court of Justice in Luxembourg had ruled in 2015 (ruling C-333/14) that Scotland would only be allowed to set minimum pricing if it were able to prove that the measure would increase public health.<sup>13</sup> However, the United Kingdom Su-

<sup>12</sup> O’Leary, E. (2017) “Scotland Becomes Minimum Alcohol Price Trailblazer in Bid to Boost Public Health,” [in:] *Reuters*. Available [online]: <https://www.reuters.com/article/us-britain-scotland-alcohol/scotland-becomes-minimum-alcohol-price-trailblazer-in-bid-to-boost-public-health-idUSKBN1DF1EH>

<sup>13</sup> Court of Justice of the European Union (2015) *The Scottish Legislation Introducing a Minimum Price per Unit of Alcohol Is Contrary to EU Law If Less Restrict-*



## THE OVERARCHING CONSENSUS IN PUBLIC POLICY IS THAT TAX INCREASES REDUCE CONSUMPTION OF TOBACCO PRODUCTS

preme Court in a 2017 ruling (in the case *Scotch Whisky Association and others (Appellants) v The Lord Advocate and another (Respondents) (Scotland)*) concluded “minimum pricing is a proportionate means of achieving a legitimate aim.”<sup>14</sup> It would stand to reason that the “proportionate means” part of the argument was actually backed up by science, but the opposite is the case as no evidence points to the fact that minimum pricing would actually reduce the consumption of spirits.

Just as the example of increased taxation, setting price limits is unlikely to show the desired results. The empirical evidence support this as the heaviest drinkers’ responsiveness to price changes was statistically indistinguishable from zero.<sup>15</sup> Even

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*tive Tax Measures Can Be Introduced*, Press release N°155/15, Luxembourg. Available [online]: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-12/cp150155en.pdf>

<sup>14</sup> *Scotch Whisky Association and others (Appellants) v The Lord Advocate and another (Respondents) (Scotland)* (2017) UKSC 76.

<sup>15</sup> Manning, W., L. Blumberg, and L.H. Moulton (1995) “The Demand for Alcohol: The Differential Response to Price,” [in:] *Journal of Health Economics*, Volume 14, Is-

more recent studies find that hazardous and harmful drinkers (people who consume more than 17.5 units per week) had a very low response to price changes.<sup>16</sup>

In essence, a complete absence of information about price changes is actually more effective. And yet, the United Kingdom’s Supreme Court judges stated in the previously mentioned ruling that minimum pricing was “a proportionate means of achieving a legitimate aim,” because it does not matter whether your policy works or not, as long as you had good intentions.

### ALCOHOL-RELATED SALES RESTRICTIONS

The restriction of the exact day and time in which alcohol sales are allowed is a constant topic of debate in public policy at both the national and local level of governments in Europe. Apart from the age-restrictions on alcohol, the sale of alcohol after 10 p.m. is only allowed if storeowners were guaranteed a special license, which can only be acquired if they follow a special course.<sup>17</sup> In countries such as Norway<sup>18</sup> or Sweden,<sup>19</sup> the sale of alcohol is a monopoly of the state. The scientific evidence on

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sue 2, pp. 123-48.

<sup>16</sup> Purshouse, R.C., P.S. Meier, A. Brennan, K.B. Taylor, and R. Rafia (2010) “Estimated Effect of Alcohol Pricing Policies on Health and Health Economic Outcomes in England: An Epidemiological Model,” [in:] *The Lancet*, Volume 375, Issue 9723, pp. 1355-1364.

<sup>17</sup> Service-Public-Pro.fr (2018) *Vente d’alcool la nuit*, Direction de l’information légale et administrative (Premier ministre). Ministre chargé de l’intérieur. Available [online]: <https://www.service-public.fr/professionnels-entreprises/vosdroits/F22386>

<sup>18</sup> Strand, S. (2018) “Today’s Vinmonpolet – a modern chain with a social responsibility,” [in:] *Vinmonopolet no.* Available [online]: <https://www.vinmonopolet.no/social-responsibility>

<sup>19</sup> Government Offices of Sweden (2015) *Swedish Alcohol Retailing Monopoly (Systembolaget Aktiebolag)*. Available [online]: <http://www.government.se/government-agencies/swedish-alcohol-retailing-monopoly-systembolaget-aktiebolag/>

the issue is split: some studies have failed to find changes in consumption or a reduction in alcohol-related problems following changes in hours of sale.<sup>20</sup> Other studies have reported increases in traffic accidents and assaults.<sup>21</sup> Even researchers, who seem very supportive of the idea of restricting sales hours, fail to provide sufficient scientific evidence to support the claim definitively.<sup>22</sup>

Given this sparse amount of evidence in support of restriction of alcohol sales hours, questions need to be asked about the unintended consequences of this policy. If store owners are already infringing on the law by selling alcohol past a certain time, and, depending on the country they are in, they are already at risk of losing their license, then what could prevent them from running the risk of infringing on other rules and regulations such as selling to minors? Before public policy-makers jump to conclusions about the effectiveness of restricted sales times, they should consider the implications that these policies have not only on the business freedom of the owners or the individual liberty of the consumers, but also which consequences may arise from such a policy. It should remain within the personal freedom of both the consumer and the storeowner to choose the legal products that can be sold.

## TOBACCO CONSUMPTION

<sup>20</sup> McLaughlin, K.L. and A.J. Harrison-Stewart (1992) "The Effect of a Temporary Period of Relaxed Licensing Laws on the Alcohol Consumption of Young Male Drinkers," [in:] *International Journal of Mental Health and Addiction*, Volume 27, Issue 4, pp. 409-423.

<sup>21</sup> Chikritzhs, T. and T. Stockwell (2002) "The Impact of Later Trading Hours for Australian Public Houses (hotels) on Levels of Violence," [in:] *Journal of Studies on Alcohol and Drugs*, Volume 65, Issue 5, pp. 591-599.

<sup>22</sup> Hahn, R.A., J.L. Kuzara, and R. Elder, et al. (2010) "Effectiveness of Policies Restricting Hours of Alcohol Sales in Preventing Excessive Alcohol Consumption and Related Harms," [in:] *American Journal of Preventive Medicine*, Volume 39, Issue 6, pp. 590-604.

Tobacco consumption has different rates of prevalence across European countries (See Figure 4). Not only do Central and Eastern European countries have a higher overall consumption of cigarettes, they also have a larger rate of 20+ cigarettes/day. Bulgaria, Hungary, Croatia, Latvia, Estonia, Austria, Slovakia, Poland, the Czech Republic, Lithuania, Romania, and Slovenia are all above the EU-28 average on total prevalence of cigarette smokers.<sup>23</sup> [See Figure 6]

## SALES DROPS AFTER PRICE INCREASES DO NOT ACCOUNT FOR THE SHADOW ECONOMY

Tobacco-related tax policies are subject to continuous political debate, and are one of the main public policy influences on the products' consumption. The overarching consensus in public policy is that tax increases reduce consumption of tobacco products, with varying studies setting price elasticity at -0.4.<sup>24</sup> International research varies on the extent to which making cigarettes more expensive forces people to quit, and prevents ex-smokers from starting again, or whether it is the best strategy for reducing smoking levels.

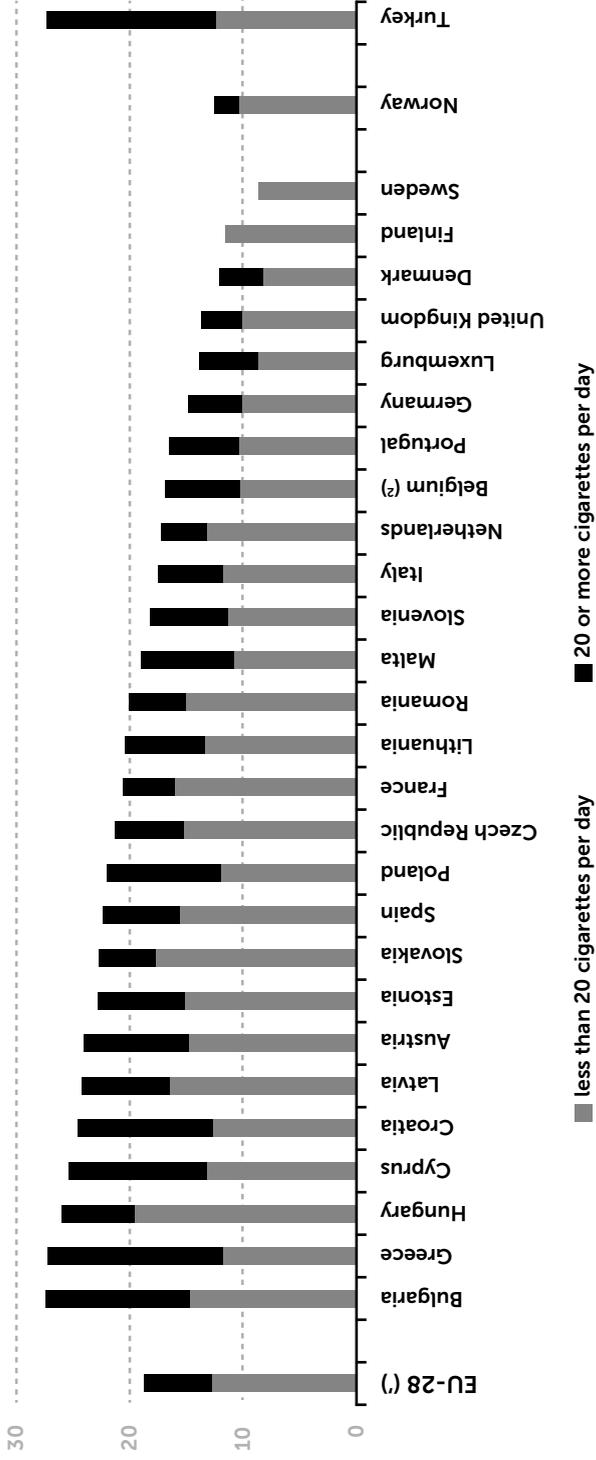
However, setting smoking levels through sales numbers is inherently misleading, due to the prevalence of black market sales. The illicit tobacco trade is a global issue accounting for an estimated 10.4% of the cigarette market worldwide. In addition to being a major funding source for organized crime, the cost to European tax revenues is estimated to amount to EUR 11.3 billion a year.<sup>25</sup> This means that a large number

<sup>23</sup> Eurostat (2017) "Tobacco Consumption Statistics," [in:] *Eurostat Statistics Explained*. Available [online]: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Tobacco\\_consumption\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Tobacco_consumption_statistics)

<sup>24</sup> World Bank (1999) *Curbing the Epidemic. Governments and the Economic of Tobacco Control*. Washington D.C.: World Bank.

<sup>25</sup> Michalopoulos, S. (2016) "'Cheap Whites': The New

Figure 6: Tobacco consumption in Europe



Note: ranked on the overall proportion of daily smokers. 2014 data for Ireland not available.

(1) Estimates.

(2) Data with low reliability.

of tobacco consumers' behavior does not enter the records of tobacco sales, which distorts the perceived reduction in consumption for those who merely consume these statistics.

In fact, Eastern European countries have been among the largest contributors to this trend of 'illicit whites', meaning cigarettes, which were produced under a legal framework in one country, yet smuggled into another without the payment of customs duties. Belarus is retailer number 1 of illicit whites to the European Union, through a variety of brands. In 2014, the largest part of C&C (Counterfeit and Contraband, including Illicit Whites) in the United Kingdom originated from Belarus, with 15.7%; in Germany, most C&C's came out of the Czech Republic with 20.1%, while in Austria most illicit trade originated from Hungary, with 26.6% of total illegal trade.<sup>26</sup>

### TOBACCO-RELATED POLICIES: PLAIN PACKAGING

A 2014 study conducted at the Department of Economics at the University of Zurich, Switzerland, analyzed the effects of plain packaging on the prevalence of minors who smoke in Australia. It showed that for young people, the neutral packaging had absolutely no effects on their consumption. "Altogether, we have applied quite liberal inference techniques, that is, our analysis, if anything, is slightly biased in favor of finding a statistically significant (negative) effect of plain packaging on smoking prevalence of Australians aged 14 to

17 years". The researchers also added: "[...] if the guiding research question is whether there is a plain packaging effect at all, one must adjust the confidence intervals to take the possibility of 'cherry picking' into account (that is, the possibility of searching for a statistically significant effect over the entire period). Such an adjustment requires the use of uniform confidence intervals, in which case there is again no evidence for a plain packaging effect on smoking prevalence."<sup>27</sup>

A 2016 study by the School of Economics, Finance and Marketing of the RMIT University in Melbourne, Australia, concluded that the policy didn't hold what it promised and criticized the government of funding biased research. As they concluded, "[i]n the first instance the Australian federal government paid over AUD 3 million of taxpayer funds for a research project to accurately and factually evaluate the impact of the introduction of the plain packaging policy. (...) While it is true to say that research was undertaken, data was collected and then analyzed, it is not clear that the results of that research have been accurately described and disseminated to the Australian government, the Australian community, or the broader international community."<sup>28</sup>

It appears that the public policy analysts who studied the policy were the same people who advocated for it in the first place. This is rightfully raising serious questions about the policy-making process.

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Trend Dominating Tobacco Black Markets," [in:] *Euractiv.com*. Available [online]: <https://www.euractiv.com/section/health-consumers/news/mondaycheap-whites-the-new-trend-dominating-tobacco-black-markets/>

<sup>26</sup> KPMG (2014) *A Study of the Illicit Cigarette Market in the European Union, Norway and Switzerland*. Available [online]: [http://kpmg.co.uk/creategraphics/2015/06\\_2015/CRT026736/files/assets/common/downloads/CRT026736%20Project%20SUN%20COMBINED%20v10.pdf](http://kpmg.co.uk/creategraphics/2015/06_2015/CRT026736/files/assets/common/downloads/CRT026736%20Project%20SUN%20COMBINED%20v10.pdf)

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<sup>27</sup> Kaul and Wolf (2014) "The (Possible) Effect of Plain Packaging on the Smoking Prevalence of Minors in Australia: A Trend Analysis," [in:] *Working Paper Series*. Zurich: Department of Economics No. 149, University of Zurich, pp. 9-10.

<sup>28</sup> Davidson, S. and A. De Silva (2016) *Stubbing Out the Evidence of Tobacco Plain Packaging Efficacy: An Analysis of the Australian National Tobacco Plain Packaging Survey*. Melbourne: RMIT University – School of Economics, Finance and Marketing, p. 11.



## WHO'S FCTC 2030 PROJECT IS SUPPORTING TOBACCO CONTROL MEASURES IN COUNTRIES WORLDWIDE, INCLUDING COLOMBIA, EL SALVADOR, JORDAN, MADAGASCAR, AND NEPAL

However, it becomes increasingly clear that plain packaging won't only be applied to a handful of Western European countries. For instance, the Republic of Georgia is being parachuted into a law mandating the plain packaging for all tobacco products.<sup>29</sup>

The change of heart in Georgia is no chance occurrence. Not only has the United Nations congratulated the country on its decision, the United Kingdom, backed by the World Health Organization, has pledged funding for the policy.<sup>30</sup>

<sup>29</sup> Ossowski, Y. (2017) *New Anti-Tobacco Measures won't work in Georgia, Tsarizm*. Available [online]: <https://tsarizm.com/analysis/2017/05/12/new-anti-tobacco-measures-wont-work-georgia/>

<sup>30</sup> UNDP (2017) *UN Supports Comprehensive Tobacco-*

These financial incentives are not limited to Georgia; the WHO's FCTC 2030 project is supporting tobacco control measures in countries worldwide, including Colombia, El Salvador, Jordan, Madagascar, and Nepal. Conditions for obtaining these funds include the "willingness to increase tobacco taxation" or the "ambitions to accelerate implementation of the WHO Framework on Tobacco Control."<sup>31</sup>

By voting for plain packaging, the Georgian parliament has gone beyond the EU's strict directive on tobacco (TPD2), ignoring the EU and WHO advice to go step-by-step. This essentially means that taxpayers in the UK are paying millions of pounds to help implement a policy proven ineffective elsewhere.

The United Nations is not Georgia's only cheerleader in this endeavor. UN officials are using the implementation of these measures as leverage for membership negotiations. United Nations Development Program (UNDP) representatives have said that, "Passage of the draft legislation would align Georgia with its obligations as a Party to the WHO Framework Convention on Tobacco Control (FCTC), and help meet Article 356 of the EU-Georgia Association Agreement, which makes FCTC implementation a precondition for further European integration."<sup>32</sup>

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*Control Legislation in Georgia*. New York City. Available [online]: <http://www.ge.undp.org/content/georgia/en/home/presscenter/pressreleases/2017/05/02/un-supports-comprehensive-tobacco-control-legislation-in-georgia.html>

<sup>31</sup> WHO (2017) *FCTC 2030. Strengthening WHO FCTC implementation to achieve the Sustainable Development Goals*. Geneva. Available [online]: <http://www.who.int/fctc/implementation/fctc2030/en/>

<sup>32</sup> Agenda.ge (2017) "UN supports comprehensive tobacco-control legislation in Georgia," [in:] *UNDP Georgia*. Available [online]: <http://agenda.ge/news/78771/eng>

International organizations therefore seem to push policies infringing on personal freedoms in parts of the world, including Eastern Europe. This policy is ill advised; the choices regarding liberal policies on lifestyle choices should be up to individual countries by principle, and shouldn't be dependent on other political priorities. In the same way, Western European countries certainly wouldn't accept that trading relations with China were to be made dependent on an adoption of Chinese authoritarianism.

### SMOKING BANS: THE EFFECTS OF SECOND-HAND SMOKE HAVE BEEN OVERBLOWN

The bans on smoking indoors had largely been implemented because early studies believed there to be a correlation between secondhand smoke and heart disease, going as far as claiming a drop in 60% in hospital admissions for cardiovascular diseases; a number which quickly made it into mainstream headlines such as the *Wall Street Journal*.<sup>33</sup> However, upon publication the study only claimed a 40% drop.<sup>34</sup>

A 2006 study in the Piedmont region in Italy revealed an 11% drop in heart disease, a much smaller drop than the 60% that politicians had promised.<sup>35</sup> After a sweeping ban on smoking inside in England, a study

found a heart attack reduction of only 2%.<sup>36</sup> That number is so low that it might not be related to the bans at all. A study in New Zealand found no correlation whatsoever.<sup>37</sup> Similar US-studies have subsequently appeared in the *Journal for Community Health*<sup>38</sup> as well as the *American Journal of Medicine*<sup>39</sup>, in the United States.

### THE FREEDOM TO ACT SELF-DESTRUCTIVELY

In an essay to *The Freeman*, Don Boudreaux expresses his dissatisfaction with the Nanny State. He concludes his analysis of the freedom to enjoy tobacco as follows: "I have my own proposed tobacco settlement. Let's recognize that smoking is voluntary. Let smokers enjoy their cigarettes, and let tobacco companies be regulated only by the market by putting an end to government's odious molestation of smokers and tobacco companies."<sup>40</sup> There is an inherent right for individuals to act self-destructively, which lies in each and everyone's personal freedom.

<sup>33</sup> Winslow, R. (2003) "Montana City Smoking Ban Appears to Cut Heart Attacks," [in:] *Wall Street Journal*. Available [online]: <https://www.wsj.com/articles/SB104924037780880000>

<sup>34</sup> Sargent, R.P., R.M. Shephard, and S.A. Glantz (2004) "Reduced Incidence of Admissions for Myocardial Infarction Associated with Public Smoking Ban: Before and After Study," [in:] *British Medical Journal*, Volume 328, Issue 7446, pp. 977-980.

<sup>35</sup> Barone-Adesi, F., L. Vizzini, F. Merletti, and L. Richiardi (2006) "Short-Term Effects of Italian Smoking Regulation on Rates of Hospital Admission for Acute Myocardial Infarction," [in:] *European Heart Journal*, Volume 27, Issue 20, pp. 2468-2472.

<sup>36</sup> Sims, M., R. Maxwell, L. Bauld, and A. Gilmore (2010) "Short Term Impact of Smoke-Free Legislation in England: Retrospective Analysis of Hospital Admissions for Myocardial Infarction," [in:] *British Medical Journal*, 340: c2161.

<sup>37</sup> Edwards, R., G. Thomson, and N. Wilson, et al (2008) "After the Smoke Has Cleared: Evaluation of the Impact of a New National Smoke-Free Law in New Zealand." A Report Commissioned and Funded by the New Zealand Ministry of Health.

<sup>38</sup> Rodu, B., N. Peiper, and P. Cole (2012) "Acute Myocardial Infarction Mortality Before and After State-Wide Smoking Bans," [in:] *Journal for Community Health*, Volume 37, Issue 2, pp. 468-472.

<sup>39</sup> Basel, P. et al. (2013) "The Effect of a Statewide Smoking Ordinance on Acute Myocardial Infarction Rates," [in:] *The American Journal of Medicine*, Volume 127, Issue 1, 94.e1-94.e6.

<sup>40</sup> Boudreaux, D. (1997) *Freeman Essay #13: "The Nanny State,"* [in:] *Café Hayek*. Available [online]: <http://cafe-hayek.com/2017/12/freeman-essay-13-nanny-state.html>



IN OCTOBER 2011, DENMARK'S LEADING COALITION INTRODUCED A TAX ON FATTENING FOODS AND BEVERAGES: SUCH AS BUTTER, MILK, CHEESE, MEAT, PIZZA, AND OIL, AS LONG AS THEY CONTAIN MORE THAN 2.3% SATURATED FAT. AFTER FIFTEEN MONTHS IN EFFECT, THE SAME PARLIAMENTARY MAJORITY REPEALED THE TAX, AS THE DANES RECOGNIZED THE MEASURE TO BE A FAILURE

As for the lieu of consumption, property rights are key: individuals should be allowed to smoke as much as they want, as long the owner of the property has authorized him/her to do so. Framing the discussion in the fact of "the rights of non-smokers", as it has been done,<sup>41</sup> misses the point of the argument: your ability to ban the act of smoking of another individual should only extend as far as your own property does.<sup>42</sup>

### **SUGARY AND "FATTY" PRODUCTS**

Sugary products and so-called "fatty" foods have come increasingly under fire for the health concerns that they pose. The lifestyle policies that are already in affect are not as far-reaching as they are in the domains of tobacco and alcohol. However, one notable example of the Danish "fat tax" stands out.

Most of the governmental pushes to limit the consumption of sugar in society, be that the ban on unlimited soda-refills in France or soda taxes in Ireland, ignore the real-life examples of the implementation of such punitive taxes. France has had its soda tax since 2012, yet, rising obesity levels and the absence of long-term studies make its effect difficult to determine as of now. As a matter of principle, evaluating the effect of a single tax increase on a particular product on population-wide obesity rates is generally a complicated task. However, the analysis on specific consumption rates is a case study that has been illustrated by Denmark, after the introduction of its "fat tax".

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<sup>41</sup> Katz, J.E. (2005) "Individual Rights Advocacy in Tobacco Control Policies: An Assessment and Recommendation," [in:] Tobacco Control, ii36-ii37.

<sup>42</sup> Skoble, A. (2012) "Smoking Bans: Banning Freedom," [in:] Libertarianism.org. Available [online]: <https://www.libertarianism.org/media/around-web/smoking-bans-banning-freedom>

In October 2011, Denmark's leading coalition introduced a tax on fattening foods and beverages: such as butter, milk, cheese, meat, pizza, and oil, as long as they contain more than 2.3% saturated fat.<sup>43</sup> After fifteen months in effect, the same parliamentary majority repealed the tax, as the Danes recognized the measure to be a failure. Still, a study in the *European Journal of Clinical Nutrition* suggests that in the months during the implemented tax, the sale of these foods fell by between 10 and 15%.<sup>44</sup> However, this does not account for the stockpiling or hoarding effect that the Danes experienced prior to the introduction of the tax:

"[...] this size of this "hoarding" might also be a part of the explanation for the observed decrease in consumption of fats, at least in the period following right after the introduction of the tax."<sup>45</sup>

In fact, when analyzing the effects over the 15 months during which the tax was in effect in Denmark, we find a marginal drop of 0.9% in consumption of fatty foods and beverages, which lies within the margin of error.<sup>46</sup>

It stands to reason that prior to the introduction of so-called "fat" or "sugar taxes", the preventative unintended consequences that such policies can have should be

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<sup>43</sup> BBC (2012) *Denmark Introduces World's First Food Fat Tax*. Available [online]: <http://www.bbc.com/news/world-europe-15137948>

<sup>44</sup> Vallgård, S., L. Holm, and J.D. Jensen (2014) "The Danish Tax on Saturated Fat: Why Did It Not Survive," [in:] *European Journal of Clinical Nutrition*, Volume 69, Issue 2, pp. 223-226.

<sup>45</sup> Jensen, J.D. and S.Smed (2013) "The Danish Tax on Saturated Fat: Short Run Effects on Consumption and Consumer Prices of Fats," [in:] *Food Policy*, Volume 42, October, pp. 18-31.

<sup>46</sup> Bødker, M., C. Pisinger, U. Toft, and T. Jørgensen (2015) "The Danish Fat Tax—Effects on Consumption Patterns and Risk of Ischaemic Heart Disease," [in:] *Preventive Medicine*, Volume 77, pp. 200-203.



NUDGE THEORY  
WAS POPULARIZED  
AS A CONCEPT  
BY NOBEL  
PRIZE WINNER  
AND AMERICAN  
ECONOMIST  
RICHARD THALER,  
AND HAS SINCE  
BEEN A BOOMING  
TREND IN MODERN  
GOVERNMENT  
POLICY

first examined. It is to nobody's advantage if consumers chose low-quality products with the same amount of sugar and fat, only to keep their consumption at the same price.

### PERSONAL CHOICE

The consumption of fatty foods considered to be unhealthy are a matter of individual choice. In their inherent nature, they represent a trade-off in utility for the consumer. As Ninos Malek writes: "Every time you buy cigarettes or unhealthy food, and every time you do not buy food that's good for you, you are weighing your own costs and benefits."<sup>47</sup> Consumers wouldn't choose

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<sup>47</sup> Malek N.P. (2003) "Fast Food and Personal Responsibility," [in:] *Foundation for Economic Education*. Available [online]: <https://fee.org/articles/fast-food-and-personal-responsibility>

to buy these goods if they were not convinced that it would increase their personal well-being, no voluntary exchange takes place unless both parties benefit.<sup>48</sup> Stella Zawistowski writes in *The Objective Standard*: “The proper role of government is not to count our calories or to watch our weight but to protect our rights. The government has no moral right to interfere with a food producer’s offerings, a restaurant’s menu, or an individual’s diet. And where the government has created for itself a legal right to do so, such laws should be repealed.”<sup>49</sup> In essence, freedom implies the eventuality that individuals make choices that aren’t healthy in every aspect, but they have an inalienable right to make these choices regardless.

### NUDGE THEORY IN PUBLIC POLICY

Nudge theory was popularized as a concept by Nobel Prize winner and American Economist Richard Thaler, and has since been a booming trend in modern government policy. Nudging is a set of policies, which indirectly push consumers or users to adopt a certain behavior. A prominent example is the pictures of flies put in urinals in men’s bathrooms, in order to improve cleanliness.<sup>50</sup> However, nudging increasingly becomes a matter of public policy.

In a 2016 article in the *Conversation*, Ivo Vlaev, professor of behavioral science at the University of Warwick, suggested that it is possible to nudge people into drink-

ing less alcohol.<sup>51</sup> In an experiment, he laid out that drinkers reduced their consumption when they got a text message saying: ‘You are in the top 10% of heaviest drinkers.’ In a similar example, HMRC had raised an additional GBP 210 million of tax revenue after sending people tax reminder letters saying that most people in their town had already paid.<sup>52</sup>

The “nudgers” are spreading among academics and influence public policy makers. Examples of this can be found in the advocacy in the likes of Italian policy advisor Alberto Alemanno, who engaged in repeated advocacy for plain packaging of cigarettes. In early 2010, long before the legislative introduction of plain packaging in France and the United Kingdom, the Italian activist penned *The Case of Plain Packaging for Cigarettes*, with an underlying tone showing clear support for the measure. However, even Alemanno warned against the legal problem of “not establishing a causal link between the measure and the protection of the specific public interest,”<sup>53</sup> something France and the UK have consciously ignored. This has, and will lead to, multiple lawsuits by the tobacco industry, as has been the case for the latest EU Tobacco Directive 2014/40/EU, which also increased the size of warning labels on packs of cigarettes.<sup>54</sup>

<sup>48</sup> Public Broadcasting Service (2000) *On Freedom and Free Markets (Interview with Milton Friedman)*. Available [online]: [http://www.pbs.org/wgbh/commandingheights/shared/minitext/int\\_miltonfriedman.html](http://www.pbs.org/wgbh/commandingheights/shared/minitext/int_miltonfriedman.html)

<sup>49</sup> Zawistowski, S. (2014) “Of Freedom and Fat: Why Anti-Obesity Laws Are Immoral,” [in:] *The Objective Standard*. Available [online]: <https://www.theobjectivestandard.com/issues/2009-spring/anti-obesity-laws/>

<sup>50</sup> Wu, F. H. (2017) “The Nobel Prize and the Urinal Fly,” [in:] *Huffington Post*. Available [online]: [https://www.huffingtonpost.com/entry/the-nobel-prize-and-the-urinal-fly\\_us\\_59ddaa76e4b07a185aa75f91](https://www.huffingtonpost.com/entry/the-nobel-prize-and-the-urinal-fly_us_59ddaa76e4b07a185aa75f91)

<sup>51</sup> Vlaev, I. (2016) “How to Start Nudging People to Drink Less Alcohol,” [in:] *The Conversation*. Available [online]: <https://theconversation.com/how-to-start-nudging-people-to-drink-less-alcohol-57704>

<sup>52</sup> The Behavioural Insights Team (2013) *Behavioural Insights Tax Trials Win Civil Service Award*. Available [online]: <http://www.behaviouralinsights.co.uk/tax/behavioural-insights-tax-trials-win-civil-service-award/>

<sup>53</sup> Alemanno and Bonadio (2010) “The Case of Plain Packaging for Cigarettes – an Overview,” [in:] *European Journal of Risk Regulation*, pp. 268-70.

<sup>54</sup> European Union (2014) “Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014,” [in:] *Official Journal of the European Union*, pp. 1.

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# NUDGE THEORY IS JUST STARTING TO SHOW ITS EFFECTS ON PUBLIC POLICY. IT WILL CERTAINLY BE AN INTEGRAL PART FOR THE CREATION OF NEW LIFESTYLE REGULATIONS IN THE UPCOMING YEARS

Nudge theory is just starting to show its effects on public policy. It will certainly be an integral part for the creation of new lifestyle regulations in the upcoming years. Its implementation asks important questions about privacy protection, branding rights, and individual liberty itself.<sup>55</sup> The mere fact that established news outlets subtitle nudging as “How subtle policy shifts can be in everyone’s best interest”<sup>56</sup> should

<sup>55</sup> Zoido-Oses, P. (2014) *The Problem with Nudge Policies Is That They Threaten Our Freedom to Choose to Act Well*. London: The London School of Economics and Political Science. Available [online]: <http://blogs.lse.ac.uk/politicsandpolicy/the-problem-with-nudge-policies-freedom-to-choose/>

<sup>56</sup> Chu, B. (2017) “What Is ‘Nudge Theory’ and Why Should We Care? Explaining richard Thaler’s Nobel economics prize-winning concept,” [in:] *Independent*. Available [online]: <http://www.independent.co.uk/>

raise eyebrows regarding the definition of “subtle” and “best interest.” Furthermore, it needs to be pointed out that governmental limits have the characteristic of being difficult to remove, which, as Micah Mattix points out in an article entitled “Freedom and the Nanny State” for *The American Conservative*, makes them different from advertising or other forms of involvement into personal choices.<sup>57</sup>

## CONCLUSIONS

Paternalistic lifestyle regulations do not merely infringe on the principles of consumer choice and individual liberty, their applications rarely show any real-life improvement of public health. Given the large amount of unintended consequences, additional data could show in the future that the policies indeed deteriorated public health, as the consequences on black market development through illicit trade, as well as shifts in consumer behavior already display. Public policy makers would be ill advised to jump to emotional responses in light of public health hazards. Rather, they should improve their balance of support for the choices of individual consumers and evidence-based policy-making. ●

[news/business/analysis-and-features/nudge-theory-richard-thaler-meaning-explanation-what-is-it-nobel-economics-prize-winner-2017-a7990461.html](https://www.theamericanconservative.com/features/nudge-theory-richard-thaler-meaning-explanation-what-is-it-nobel-economics-prize-winner-2017-a7990461.html)

<sup>57</sup> Mattix, M. (2014) “Freedom and the Nanny State,” [in:] *The American Conservative*. Available [online]: <http://www.theamericanconservative.com/prufrock/freedom-and-the-nanny-state/>



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# Nudging: New Trend in Paternalistic Policies - Cases of Serbia and Croatia



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ALEKSANDAR  
NINKOV

**R**egulatory and other related government policies primarily aim to alter people's incentives and hence change their behavior. If the government wants more people to wear seat belts in their cars, it legally imposes a penalty for driving without a seat belt. If the government wants people to consume less sugar, they propose a regulation that limits the amount of sugar in products being sold on the market or they impose sugar taxes. However, there is another way of influencing citizens' behavior. People can be nudged in a certain direction without the government introducing regulatory bans or implementing high taxes. As any changes in default options, framing or social influences may have a great impact on the choices people make, public policy creators use insights from psychology to create nudges and as such influence people in a subtler way.

One of the most powerful instruments of nudging is a default rule. People tend to stick to their current position, even when a change would be beneficial to them. If inertia and status quo bias have a great influence on behavior, then a default option plays an important role even if individuals are completely free to choose otherwise.

Serbia and Croatia decided to use the influence of default to nudge their citizens towards being organ donors. As such, Croatia has passed a law that presumes peoples' consent to be organ donors unless an individual explicitly makes a decision not to be one. In Serbia, a bill is being proposed with the same content. In both cases, nothing will be legally prohibited and no changes in economic incentives have been introduced, though presumed consent to be an organ donor has shown to result in higher rates of organ donation.

This kind of government intervention raises a series of questions regarding personal freedoms. On the one hand, some authors use the term 'libertarian paternalism'<sup>1</sup> to describe policies based on nudging. The word 'libertarian' is used because freedom of choice is formally preserved. 'Paternalism' means that despite having freedom of choice, decision-making is still influenced in a direction that increases the wellbeing of people.<sup>2</sup> On the other hand, there are serious critiques of nudging as a new form of influence on behavior that does not respect individuals as independent and capable of following their own goals.<sup>3</sup>

## HUMAN BEHAVIOR AND CHOICE ARCHITECTURE

Many seemingly unimportant and small factors can have a significant influence on our decision-making process. For example, consumers are more likely to buy products that are positioned on the shelf at eye level. Also, people are influenced by what others are doing: if government sends a message that many people support organ donation, it makes us think about becoming a donor.

The way options are framed has a great influence on how people make decisions. As an example, individuals are more likely to accept an operation if the doctor tells them that they have a 90% chance of survival than if they were told that there is only a 10% chance they will die.<sup>4</sup> When estimating risks and probabilities on their own, people rely on how well they remember events. That is why they estimate that

<sup>1</sup> Thaler, R. H. and C.R. Sunstein (2008) *Nudge: Improving Decisions about Wealth, Health and Happiness*. Yale University Press.

<sup>2</sup> Ibid.

<sup>3</sup> White, M. D. (2013) *The Manipulation of Choice: Ethics and Libertarian Paternalism*. Palgrave Macmillan U.S.

<sup>4</sup> Thaler, R.H. and C.R. Sunstein (2008) *Nudge: Improving Decisions about Wealth, Health and Happiness*. Yale University Press, p. 36.



UNLIKE  
TRADITIONAL  
WAYS OF DECISION  
INFLUENCING,  
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DOES NOT BAN  
OR TAX UNDESIRE  
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BY GOVERNMENT  
OFFICIALS

death from a tornado is more likely than from asthma.<sup>5</sup> During elections, the order of candidates on a ballot has an impact on the number of votes cast.<sup>6</sup>

Can we explain these systematic deviations from rational behavior? Author Daniel Kahneman<sup>7</sup> writes about System 1 and System 2 reasoning. The former is fast, intuitive, and unconscious. It uses shortcuts to make a conclusion and uses less energy. The latter is slow, deliberative, requires concentration and uses more energy. When someone gives an answer to the question  $2 + 2 = ?$ , he/she uses System 1. When an inexperienced driver tries to park a car in a small space, he/she uses System 2.

System 1 is useful since it does not require deep concentration and consideration all the time. However, System 1 uses shortcuts to come to a conclusion. These conclusions are often very precise, but sometimes they lead to systematic errors. Because the deviations from rationality are systematic, we can predict them. In other words, we can say that in situation X, we will have behavior Y that is biased because of the shortcuts in reasoning.

These shortcuts in reasoning are called heuristics. Some of the most important types include availability heuristics, representativeness heuristics, and anchoring. Availability heuristics are employed in a situation where an individual estimates risk and probability according to emotions. Shark attacks are in fact very rare, but people often overestimate the risk of such an occurrence because when a shark attacks a human being, it stays engraved in our memory and is followed by strong emotions.

Representativeness heuristics imply that people are using categories and classify events by similarity. Anchoring is a situation when a random number influences our estimation. For example, a random price proposed for a product can affect an amount of money that consumers are willing to pay for that product. Additionally, the negotiations of the amount that is to be bought are mainly anchored in the price that was initially proposed, or by the first person to make a bid.<sup>8</sup>

Governments are increasingly using the knowledge about human behavior with an intent to influence citizens' decisions, and nudge them toward certain outcomes. Subjects that shape options are called "choice architects." These agents create

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<sup>5</sup> Kaneman, D. (2015) *Misliti, brzo i sporo*. Heliks, p. 129.

<sup>6</sup> Thaler, R. H. and C.R. Sunstein, (2008) *Nudge: Improving Decisions about Wealth, Health and Happiness*. Yale University Press, p. 246.

<sup>7</sup> Kaneman, D. (2015) *Misliti, brzo il sporo*. Heliks.

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<sup>8</sup> *Ibid.*, p.116.

a context in which choices are made so they can use factors that influence behavior. It is important to note that, unlike traditional ways of decision influencing, nudging does not ban or tax undesired options by government officials. Choice architects use knowledge from psychology to create efficient and subtle nudges without restricting options available.<sup>9</sup>

For example, a government may send a message to households with information on the usage of electrical energy of their district. If an average usage of energy for the district is lower than the one from the household, there is a large chance a household will lower its own consumption in the future.<sup>10</sup> In this way, households with high usage of electrical energy can be nudged to consume less, thus spending less on electrical energy. Moreover, if government officials want to lower consumption of unhealthy foods and drinks, there is a simple nudge at hand – a removal of these products from the shelves that are placed at eye level for the consumers (this regulation can be seen as illiberal because government regulates private entities, but on the other hand people are still free to buy what they want without any restrictions).

### EXAMPLES OF NUDGING

There are a plethora of examples of public policies that may be used to illustrate the phenomenon of nudging. These include cases for the United States and the United Kingdom where special teams have been created to research, propose, and implement nudges.<sup>11</sup> They focus chiefly on the following areas:

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ONE OF THE SOLUTIONS FOR LOW ORGAN DONATING RATES IS A CHANGE IN DEFAULT RULES. INSTEAD OF SUPPOSING THAT CITIZENS ARE NOT POTENTIAL ORGAN DONORS UNLESS THEY EXPLICITLY MAKE A DECISION TO BE DONORS, WE CAN CHANGE RULES AND DEFINE THAT EVERY CITIZEN IS WILLING TO BE A DONOR UNLESS SOMEONE ACTIVELY DECIDES NOT TO BE A DONOR

<sup>9</sup> Thaler, R. H. and C.R. Sunstein (2008) *Nudge: Improving Decisions about Wealth, Health and Happiness*. Yale University Press.

<sup>10</sup> Ibid. p. 68.

<sup>11</sup> <http://www.behaviouralinsights.co.uk/>



## STATUS QUO BIAS IS A SIGNIFICANT TRAIT OF HUMAN BEHAVIOR

### 1. **Social influence and antibiotics overuse:**

the United Kingdom, like many other countries, has a problem with too many prescribed antibiotics.<sup>12</sup> Overuse of antibiotics makes bacteria resistant to drugs.<sup>13</sup> Therefore, it is crucial for a patient to use an antibiotic only when absolutely necessary. But how do you nudge doctors to prescribe an antibiotic only when necessary? The Behavioral Insights Team experimented whether simple information from the authority can change the behavior of doctors.<sup>14</sup> The top 20% of doctors that were prescribing the largest number of antibiotics in a region received a message from the Chief Medical Officer informing them that 80% of their colleagues are prescribing fewer antibiotics. As most people are strongly influenced by what other people do, this intervention by the Behavioral Insights Team led to a reduction of the number of prescriptions for antibiotics.<sup>15</sup> This could be an important part in the effort to decrease antibiotic overuse.

<sup>12</sup> Hallsworth, M. (2016) "Reducing Antibiotic Prescribing: A New Bit Study Published in the Lancet", [in:] *The Behavioural Insights Team*. Available [online]: <http://www.behaviouralinsights.co.uk/health/1516/>

<sup>13</sup> WHO (2017) *Antibiotic Resistance*. Available [online]: <http://www.who.int/mediacentre/factsheets/antibiotic-resistance/en/>

<sup>14</sup> Hallsworth, M. (2016) "Reducing Antibiotic Prescribing: A New Bit Study Published in the Lancet", [in:] *The Behavioural Insights Team*. Available [online]: <http://www.behaviouralinsights.co.uk/health/1516/>

<sup>15</sup> Ibid.

2. **Framing and fat intake:** producers of dairy foods sometimes write on their products that they are, for example, 80% fat-free and not that they include 20% fat. In 2011, the United States government forbade companies to declare a percentage of a product that is fat-free without also declaring the percentage of fat the product contained.<sup>16</sup> In other words, the government prohibits companies from framing a percentage of fat in their products in a way that is presenting only the positive side(s) of a product.

### 3. **Default rules and printing machines:**

the more paper used, the more forests need to be cut down. An experiment at Rutgers University in the USA showed that a change in a default rule could cut paper usage.<sup>17</sup> Instead of 'print on a single side' default, we can change the default to 'print on both sides.' People often stick with a default option. With a 'print on both sides' default, people are nudged to use less paper for printing. This nudge has a greater impact on the reduction of paper being used for printing than a 10% tax on paper products. A change in default rules is sometimes even more effective than other public policies.<sup>18</sup>

4. **Speed limits and optical illusion:** how do you nudge drivers to slow down when approaching an unsafe section of a road? Optical illusion can have an important influence – if workers drew white lines on a road that are closer and closer to each other, drivers would be under the illusion that they are accelerating. As a result, drivers would therefore instinctively slow down when approaching an unsafe section.

<sup>16</sup> Sunstein, C. R. (2015) *Choosing not to Choose: Understanding the Value of Choice*. Oxford University Press, p. 67.

<sup>17</sup> Ibid., p. 26.

<sup>18</sup> Ibid., p. 27.

## DEFAULT RULES AND ORGAN DONATION: THE CASES OF SERBIA AND CROATIA

One of the most powerful nudges are default rules. Status quo bias is a significant trait of human behavior. People are biased to stick to their current situation. We could have a great opportunity to get a better job, but status quo bias can stop us from even applying for that position. Furthermore, it is very likely that many default options on our mobile phones are not changed. But why do people stick to their current position, even if a change could bring them more benefits? Cass Sunstein, in his book *Choosing Not to Choose: Understanding the Value of Choice*, writes about several reasons why status quo bias is important and powerful.<sup>19</sup> Among some of the main reasons for such human behavior he lists inertia, informal signals, loss aversion, and a sense of responsibility.

Inertia and procrastination explain why active choosing requires energy, effort, and attention. All three are scarce resources. Overcoming default rule can be delayed for a long period of time because of these reasons. In the case of an informal signal, if a choice architect chooses a default rule, people may believe that the default is carefully considered and designed to bring better results. For example, workers can stick to automatic enrollment for a pension and health insurance plan, believing that a group of experts decided that default enrollment to a certain plan is the best solution. Loss aversion and a sense of responsibility explain why, when making a choice, we feel responsible for our actions. On the other hand, if we stick to the default rule, a sense of personal responsibility for an outcome is lost. In addition, we fear that we will make a mistake and experience

a loss if we go out of our comfort zone. In regard to organ donations, there are more people who are willing to be donors after death than the people who sign a donor card.<sup>20</sup> The difference between attitudes toward organ donation, and the number of donor cards signed can be explained in several ways.

First, citizens might recognize organ donation as socially desirable and noble, but they personally may not want to be a donor themselves. Second, they might want to become donors, but they procrastinate. Third, they may want to sign a donor card, just not now. Fourth, they do not want to think about death. Fifth, organ donation is something that they do not want to think about at all. Most importantly, decision-making can be complicated and can demand various interventions for solving the problem of low donation rates.

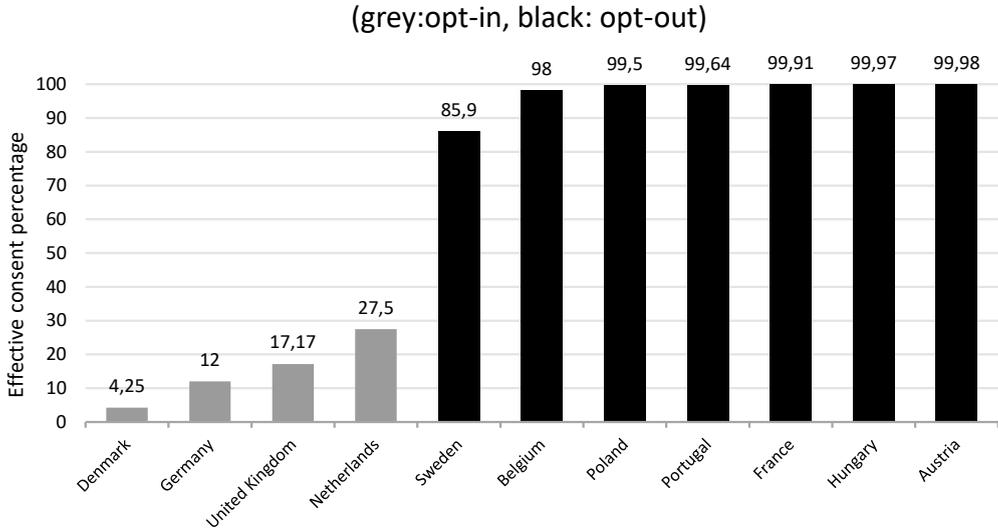
One of the solutions for low organ donating rates is a change in default rules. Instead of supposing that citizens are not potential organ donors unless they explicitly make a decision to be donors, we can change rules and define that every citizen is willing to be a donor unless someone actively decides not to be a donor. In other words, a government can redefine what will happen if an individual does not take any action. Figure 1 shows consent rates with different default rules.<sup>21</sup> Inertia, procrastination, and refusing to think about an issue lead to an increase in consent rates in the opt-out system.

<sup>20</sup> Thaler, R.H. and C.R. Sunstein (2008) *Nudge: Improving Decisions about Wealth, Health and Happiness*. Yale University Press., p. 174.

<sup>21</sup> Note that an individual can stick to opt-out default rule and be considered as a donor, but a family can still reject organ donation. In other words, consent rates and actual donation rates can be very different from each other. The graph presents only effective consent rate, not a number of performed organ donations.

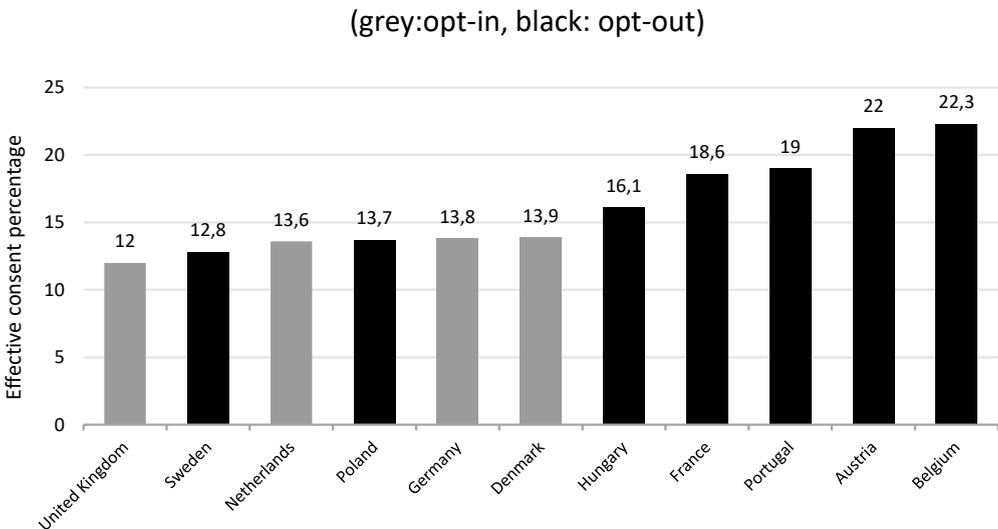
<sup>19</sup> Ibid.

Figure 1: Effective consent rates



Source: Johnson, E.J. and D. Goldstein (2003) "Do Defaults Save Lives?", [in:] *Science*, Volume 302. Available [online]: <http://www.dangoldstein.com/papers/DefaultsScience.pdf>

Figure 2: Number of actual donations per million people



Source: Buck, S. (2015) *A Misleading Chart on Organ Donation Rates*. Available [online]: <http://www.arnoldfoundation.org/a-misleading-chart-on-organ-donation-rates/>

Figure 3: Deceased donors per million (by year, by donor country, based on population at start of year)

<b>Donors used pm</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>Austria</b>	20.2	25.0	22.6	23.2	22.7	22.1	24.3	22.9	23.9	23.5
<b>Belgium</b>	24.8	25.7	24.3	29.2	28.8	27.4	25.2	28.0	28.4	30.6
<b>Croatia</b>	17.8	17.4	29.5	33.6	34.3	32.4	33.7	37.6	35.8	31.8
<b>Germany</b>	14.4	14.6	15.5	14.4	12.7	10.7	10.5	10.6	10.1	9.3
<b>Hungary<sup>25</sup></b>					6.2	12.6	20.1	17.7	18.0	15.4
<b>Luxembourg</b>	18.6		6.0	17.6	7.6	14.9	7.3	5.3	5.2	15.2
<b>Netherlands</b>	12.3	13.0	13.0	13.3	15.1	15.2	16.1	15.7	13.8	14.3
<b>Slovenia</b>	17.8	16.2	19.5	15.1	22.4	21.9	20.9	25.7	19.9	18.9
<b>ALL ET</b>	<b>15.6</b>	<b>16.1</b>	<b>16.9</b>	<b>16.8</b>	<b>15.3</b>	<b>14.4</b>	<b>14.9</b>	<b>15.1</b>	<b>14.5</b>	<b>13.9</b>

Source: Eurotransplant. Available (online): <http://statistics.eurotransplant.org/reportloader.php?report=49044-61139format=html&download=0>



## CHURCH ALSO HAS A SIGNIFICANT ROLE TO PLAY – SUPPORTING ORGAN DONATION CAN HAVE AN INFLUENCE ON RELIGIOUS PEOPLE

On the other side, consent rates should not be confused with actual donation rates. The number of people who give consent by following default rule is drastically different from the number of people who actually become donors. Families can reject donation even if their relative followed the default rule. Figure 2 presents actual donation rates, not effective consent rates in same countries.

Importantly, a change in default rules without other interventions might not be sufficient for increasing organ donations and transplants. First, it is crucial to have a good healthcare system with well-equipped hospitals, educated and trained doctors, and efficient coordination among the actors. Second, it is important to educate the public and create a sense of trust in the healthcare system. In the end, a family could refuse to give approval for donation if they believe that a system is corrupt, that only rich people can receive an organ, or that doctors behave unethically. The church also has

a significant role to play – supporting organ donation can have an influence on religious people.

Croatia and Serbia decided to implement this nudge and change default rules. Current Serbian law about organ transplantation requires expressed consent for organ donation after death.<sup>22</sup> Families can refuse to donate the organs from their deceased relative even if the relative has signed a donor card.

In Serbia, a bill from 2016 is waiting approval in parliament that would regulate organ donation in a different way.<sup>23</sup> This bill is a part of an effort to increase rates of organ transplants. In 2017, Serbia had only 4.2 donors per million residents.<sup>24</sup> In contrast, Croatia had 31.8 organ donors per million residents in the same year (See Figure 3). The proposed bill defines different criteria for organ donation. Consent for organ donation is presumed, with families being able to oppose organ donation even if a person expressed consent for donation.

Croatia has a law that is similar to the bill being proposed in Serbia.<sup>26</sup> The law was initiated in 2012, but Croatia conducted systematic efforts to raise the number of

<sup>22</sup> "Zakon: O Transplantaciji Organa" (2009) [in:] *Sl. glasnik RS*, Volume 72. Available [online]: ([http://www.paragraf.rs/propisi/zakon\\_o\\_transplantaciji\\_organa.html](http://www.paragraf.rs/propisi/zakon_o_transplantaciji_organa.html))

<sup>23</sup> "Nacrt Zakona o Presadivanju Ljudskih Organa u Svrhu Lečenja – Tekst Propisa" (2016) [in:] *Kompanija Paragraf*. Available [online]: [http://www.paragraf.rs/nacrti\\_i\\_predlozi/161216-nacrt\\_zakona\\_o\\_presadivanju\\_ljudskih\\_organa\\_u\\_svrhu\\_licenja.html](http://www.paragraf.rs/nacrti_i_predlozi/161216-nacrt_zakona_o_presadivanju_ljudskih_organa_u_svrhu_licenja.html)

<sup>24</sup> Petrović, L. (2017) "U Srbiji udvostručen broj donora organa", [in:] *B59*. Available [online]: [https://www.b92.net/zdravlje/vesti.php?yyyy=2017&mm=10&nav\\_id=1313444](https://www.b92.net/zdravlje/vesti.php?yyyy=2017&mm=10&nav_id=1313444)

<sup>25</sup> Hungary became a preliminary member of Eurotransplant in 2012 (full membership in 2013).

<sup>26</sup> "Zakon o presadivanju ljudskih organa u svrhu liječenja" (2012) [in:] *Zakon*, Issue 144. Available [online]: <https://www.zakon.hr/z/556/Zakon-o-presa%C4%91ivanju-ljudskih-organa-u-svrhu-rije%C4%8Denja>



## FORCED TO CHOOSE, THERE IS A STRONG LIKELIHOOD THAT PROCRASTINATION AND/OR INERTIA WILL NOT OCCUR

transplants in previous years. Default rule is just one of the measures, (See Figure 3). A rise in deceased donors started long before the law had been adopted. There is good coordination and management, national organization of the transplant program, membership in the Eurotransplant, and public campaign.<sup>27</sup> Importantly, opting out of the default option must be as easy as possible. If people have to spend hours to opt out and choose not to be donors, then it is not a nudge. Nudging requires that freedom of choice be protected. If there are obstacles for choosing other options that take the form of time-consuming bureaucracy and waiting in a hospital, then freedom of choice is not preserved.

There is also a third way of creating a context in which citizens are making decisions about organ donation. An alternative to default rules is 'forced choosing'-- people must choose whether or not they want to be potential organ donors. For example, if an individual wants to get a driver license, he/she must answer a question about or-

gan donating. Mandated choice is implemented in New Zealand – people must mark whether they want to be donors, and it is written on their driver's license.<sup>28</sup>

The idea of mandated choosing has a number of benefits. First of all, when an individual is forced to choose, there is a strong likelihood that procrastination and/or inertia will not occur. There is no default rule – people cannot just do anything. They are actually forced to make a decision. Secondly, it is controversial to assume anything about organ donation. It is an important question, and all individuals should have an exclusive right to decide what they would do with their body parts.

In this context, being aware just how powerful procrastination and inertia are, it is problematic to claim that a person actually wanted to be a donor just because he/she did not make a decision not to be a donor. In addition, it is much easier for a family to decide whether to allow organ donation if their deceased relative actively made a choice. Such a family may also know about inertia and procrastination. A fact that a deceased person stayed firm with the default rule does not tell us anything about their preferences and wishes on organ donation. On the other hand, choice is mandated and it can be a problem for personal freedoms. An individual does not have an option to decide not to make a choice.

### **DIFFERENT ORGAN DONATING CHOICE ARCHITECTURES: WHO MAKES A DECISION?**

We mentioned three different choice architectures regarding organ donation: presumed rejection to be a donor, presumed consent, and compulsory choice. The

<sup>27</sup> Živčić-Čosić, S. et al. (2013) "Development of the Croatian Model of Organ Donation and Transplantation", [in:] *Croatian Medical Journal*, Volume 54(1), pp. 65-70.

<sup>28</sup> See: Organ Donation New Zealand. Available [online]: <https://www.donor.co.nz/about-odnz/>



## LIBERTARIAN PATERNALISM IN THE HANDS OF CORRUPT GOVERNMENT OFFICIALS CAN SERIOUSLY ENDANGER FREEDOM AND INDEPENDENCE

question is, who has the main role in deciding about organ donation: the individual or their family? Where lies final decision?

Presumed rejection, under current Serbian law, states that an individual must explicitly make a choice if s/he wants to be a donor. However, a family can overrule the decision if 'it can be unequivocally concluded'<sup>29</sup> that an individual changed her/his opinion about organ donation. So the decision of a person plays a great role, allowing the family very little space to influence the decision after the death of a relative. This approach also has its drawbacks, primarily that citizens often fail to make a decision to be a donor, even if they wish to be one. But when a person makes an active decision to be a donor, their

family cannot easily, and without a clear reason, reject organ transplantation from their deceased relative.

Presumed consent, on the other hand, uses this failure to make a decision to raise consent rates. But in this model, the family has a much bigger role. In the proposed Serbian law, if a person doesn't take any decision, they are considered to be a donor. But their family decides whether their relative would actually become an organ donor in this situation. In other words: because of inertia, in the opt-out system an individual often sticks to the default rule. Nobody knows their real wishes, we only know that they did not take any action regarding the default option, and in that situation their family makes the final decision. So basically, if someone sticks to the default rule, it allows the family to make the final decision of whether or not their organs will be donated.

Also, in this model, it is problematic to exclude family members from the process. There is no clear and definite answer to the question of what the deceased would have wanted to be done with their organs. Lack of active choice not to be a donor means almost nothing if we know how powerful the default rule is. Because government doesn't have a clear preference, it is reasonable to give the final decision to the family.

The third option may be the best solution if government wants simultaneously to raise consent rates while leaving the decision to an individual. Inertia and status quo bias are no longer a problem; a person must make a choice. Nothing is presumed, so there is not much need for the role of their relatives. This model emphasizes the importance of clear preferences about someone's organs after death. If we

<sup>29</sup> See: Article 50 in "Zakon: O Transplantaciji Organa" (2009) [in:] Sl. *glasnik RS*, Volume 72. Available [online]: ([http://www.paragraf.rs/propisi/zakon\\_o\\_transplantaciji\\_organa.html](http://www.paragraf.rs/propisi/zakon_o_transplantaciji_organa.html))

agree that just assuming anything about organ donation is controversial, this may be the most plausible option.

### **NUDGES: PERSONAL FREEDOM AND ETHICAL CONCERNS**

Nudges may be divided according to intentions. The nudges of the first type compel people to act in a way that makes them better off (by their own standards). As people have a tendency to behave in an irrational manner, a government can nudge them in the right direction. For example, a government could nudge people to exercise more, consume less sugar, or save more for retirement. However, as Mark D. White elaborates in his book *The Manipulation of Choice: Ethics and Libertarian Paternalism*, the problem is that there is no way for a government to know people's true goals.<sup>30</sup> Government officials presuppose that there is a set of universally desirable wishes or outcomes. In other words, different goals are not equally valuable by some external 'objective' criteria. This attitude is far from liberal thinking. Of course, individuals have the freedom to act differently, but firstly they are seen as irrational, and secondly if nudges are so powerful, it could be difficult to choose an option that the government does not consider valuable.

The second type of nudges are measures that influence behavior to solve public problems, such as those of organ donation/transplantation or waste/recycling. The problem with this approach is that a government treats citizens like irrational beings that are not capable of being responsible and independent. Therefore, the government uses the same cognitive failures and biases to nudge them. People are sometimes sticking to default rules be-



JUST LIKE  
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OF CITIZENS CAN  
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FOR GOVERNMENT  
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CAN ALSO BE  
A REASON AGAINST  
INTERVENTION

cause they are procrastinating, but government officials use the same human characteristics to get different outcomes. They are not treating people as capable of learning and overcoming mistakes.

The third type of nudges is based on government officials having bad intentions or being biased. Libertarian paternalism in the hands of corrupt government officials can seriously endanger freedom and independence. Officials can turn public policies based on nudging in their favor. In addition, government officials are only human, and are prone to making errors in reasoning. Just like irrationality of citizens can be a reason for government intervention, irrationality among government officials can also be a reason against inter-

<sup>30</sup> White, M. D. (2013) *The Manipulation of Choice: Ethics and Libertarian Paternalism*. Palgrave Macmillan US.



## PERSONAL FREEDOM IS ONE THAT SHOULD MAKE US RESPONSIBLE, MORE RATIONAL, AND BETTER INFORMED

vention. Sometimes a government can make a problem even worse, which can lead to the creation of other problems. For example, availability heuristics can cause officials to redistribute a great amount of resources for solving a problem that is not that important. Because people are not good at estimating risks and frequency of some problems, they can think that it requires government action. Or the costs of government intervention can be hidden and not visible at first glance.

By nudging, a government encourages human flaws. If this strategy is designed in a way that takes care of our cognitive flaws, we can act mindlessly and do not have the opportunity to learn from our mistakes. Personal freedom is one that should make us responsible, more rational, and better informed. By manipulating our freedom, nudging takes away those benefits from us. We know that government is taking care of our mindless and irresponsible behavior, so we do not have to.

Mark D. White proposes three solutions for a government to treat people with respect and dignity.<sup>31</sup> First, government should

provide information. The goal of information should not be to influence behavior, but rather to inform neutrally. For example, many people may not know where and how to sign up for a donor card. Maybe they do not even know that patients are dying due to the shortage of organ donors. In this case, the goal should be to raise public awareness. After that, an individual should have full freedom to choose without being nudged.

Second, it can be effective to educate citizens about their biases and flaws. People often make mistakes when acting instinctively and emotionally, so advising them to take time while making important decisions could be constructive. In the case of organ donations, informing people about status quo bias, and educating them on how to overcome it could possibly bring positive results. In the end, when making mistakes, we learn how to control our biases. A nudge does not teach us that.

Third, a sense of responsibility is very important. If a government takes care of our weaknesses, then there is no reason to be concerned about the consequences of our potentially mindless decisions. If the whole system is designed to use our flaws and generate better results, we do not have an incentive to work ourselves. As soon as government steps back, it is our responsibility if a disaster occurs. If someone thinks that there should be more organ donors, and is willing to become a donor, such a person must ensure not to procrastinate. Different default rules can fix a problem now, but in the long term, people are deprived of responsibility and learning.

### CONCLUSIONS

Influencing behavior without setting restrictions can be seen as an attractive measure for both liberals and paternalists. Nudging has already become popular in the West, particularly in the United States and

<sup>31</sup> Ibid. p. 137.



## INFLUENCING BEHAVIOR WITHOUT SETTING RESTRICTIONS CAN BE SEEN AS AN ATTRACTIVE MEASURE FOR BOTH LIBERALS AND PATERNALISTS

the United Kingdom where special bodies are researching decision-making and proposing public policies that nudge citizens. On the contrary, Serbia does not have such a practice, though a bill to change default rules for organ donating has already been introduced.

It seems like a logical and acceptable solution; if people behave in a mindless and lazy manner, we should change the way in which options are presented so that these traits solve problems within the society. On the other hand, government doesn't restrict anything. Freedom of choice is preserved; no regulatory bans or high taxes are imposed.

Libertarian paternalists claim the same should be done with pension savings, healthcare insurance, pollution, antibiotics overuse, electricity consumption, smoking, and many other issues. People often make systematic mistakes in reasoning, which is why it is claimed a system should be designed to use these mistakes in order

to produce better results. Governments should intervene to save citizens from themselves.

However, there are ethical concerns regarding the freedoms, dignity, respect, and autonomy of individuals. Libertarian paternalists believe that the state should take care of its citizens in the same way that parents take care of their children. Citizens are in trouble because of their flaws, therefore the only solution is governmental supervision. Yet, libertarian paternalists do not think about finding solutions to the fundamental problem – mindless and biased reasoning.

If a government is neutral and does not influence decision-making, people will have an opportunity to make mistakes and learn from them. In this scenario, freedom contributes to the development of an individual. Therefore, citizens could be educated on heuristics and biases, as well as ways to deal with these phenomena when they face problems in their personal lives. ●



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# Freedom, State, and Religious Education: In Search of Common Ground



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DARIA  
HEJWOSZ-GROMKOWSKA

If an outsider takes a look at the religious landscape in Europe, a variety of odd or even schizophrenic behaviors may be observed. On the one hand, some people claim that they do not believe in God, while on the other, they get caught up in the Christmas shopping frenzy. They neither attend masses nor pray; yet they are excited about Eastern spiritual practices, and so they practice yoga instead. They distance themselves from religious symbols, but end up wearing yin and yang on at-shirt. They do not wish to be preached to, yet they are happy to quote the Dalai Lama on random occasions. These practices show that people of the West tend to regard themselves as spiritual but not religious. It also proves that many Europeans, and Americans too, are giving up traditional churches and turning towards spirituality and Eastern tradition.

Although the Western societies are commonly perceived as secular, they exhibit a need of spirituality. Some may say that religion is a private matter, but when a religious fundamentalist commits a crime religion comes out as a destructive power to European values. Sometimes we forget that European values have their origins in Christian tradition, with institutions such as schools and universities originally being funded and

run by the church. From this perspective, Samuel Huntington's thesis about the clash of civilization is still valid, and religion itself plays a leading role in shaping political, sociological, and cultural discourse.<sup>1</sup>

### SECULARIZATION OF THE STATE AND SEARCHING FOR SPIRITUALITY

According to Peter Berger, modern societies are increasingly secular and plural.<sup>2</sup> However, it cannot simply be said that 'God is dead' – god still lives, maybe not just the Christian God. This means that people are not atheists *sui generis*, rather they search for a god or gods and they find him/her/ them in different places, not solely in the traditional, hegemonic Church.<sup>3</sup>

A traditional church – be it Catholic, Anglican, Lutheran – has long been losing its privileged position in the society since the Reformation, Industrial Revolution, and especially after WWII.<sup>4</sup> Sociologist Thomas Luckmann argues that religion is a private matter, god is silent, and that religion no longer plays a crucial role in public discourse. It must be noted that secularization may be understood as a decline in the role



LIBERAL STATES  
PROVIDE TWO  
TYPES OF FREEDOM:  
OF RELIGION  
AND FROM RELIGION

<sup>1</sup> Huntington, S. (1993) "The Clash of Civilizations", [in:] *Foreign Affairs*, Volume 72, No. 3.

<sup>2</sup> Berger, P. (1967) *The Sacred Canopy: Elements of a Sociological Theory of Religion*, Garden City New York: Doubleday & Company Inc.

<sup>3</sup> See, for example: De Castella, T. (2013) "Spiritual, but Not Religious", [in:] *BBC News Magazine*, January 3. Available [online]: <http://www.bbc.com/news/magazine-20888141>;

Tan, C. (2013) "Why Do Brits Seek Eastern Spirituality When They Have So Much of Their Own?", [in:] *The Spectator*, February 16. Available [online]: <https://www.spectator.co.uk/2013/02/western-feng-shui/>

<sup>4</sup> Chadwick, O. (1975) *The Secularization of the European Mind in the 19<sup>th</sup> Century*, Cambridge: Cambridge University Press;

Gellner, E. (1992) *Postmodernism, Reason and Religion*. London and New York: Routledge;

Habermas, J. (2006) "Religion in the Public Sphere", [in:] *European Journal of Philosophy*, Volume 14, Issue 1;

Luckman, T. (1967) *The Invisible Religion: the Problem of Religion in Modern Society*. New York: MacMillan.



## THE ISSUE OF THE BURKA IS RELATED TO THE FUNDAMENTAL RIGHT TO RELIGIOUS EXPRESSION

that the Church plays in the Western, liberal state and society.<sup>5</sup> This does not indicate, however, any struggle with the Church, but rather signifies that it is being ignored and that societies live according to the “*etsi deus non daretur*”<sup>6</sup> principle.

Nevertheless, people in the West do not resort to apostasy; rather, they abandon traditional religious practices and rituals. Many of them believe that living without God is possible and may perhaps be even better. In his teachings, philosopher Leszek Kotakowski emphasized that faith and religion help human beings overcome every-day absurdities, and may calm existential fears.<sup>7</sup> This may be the reason why people tend to exhibit a wide range of spiritual practices in the form of myths, legends, esoteric neo-pagan traditions, and off-trail healing methods. These forms of spirituality are competitive to traditional church. People move away from traditional churches and religious rituals, but they still search for non-material values for some

kind of spiritual experiences. This trend was confirmed in the Pew Research Centre survey conducted in the United States – 37% of Americans regard themselves as spiritual but not religious. These people are not affiliated to any religious institution.<sup>8</sup>

The term “spiritual but not religious” has become very popular, recently gaining more and more supporters across the West.<sup>9</sup> Traditional church is an impostor to these people, while new forms of spirituality offer – just like a free market – many choices and lifestyles. Terence Copley describes spirituality in a rather interesting manner stating that it is “like Lycra underwear according to its advertising claims, spirituality can could itself to fit any personal contour. It is assumed that individuals are expected to conform to a religion and its doctrines: religion is perceived as a take-it-or-leave-it affair. You fit in or you don’t. Spirituality is the bespoke tailoring of the personal life, with oneself as the tailor. Spirituality is moving all the time and cannot be captured in a net or formula”.<sup>10</sup>

### CITIZENSHIP, RELIGION, AND FREEDOM: STRANGE BEDFELLOWS OR LONG-TERM PARTNERS?

The terms ‘religious’ and ‘religion’ have numerous definitions based on concepts grounded in various disciplines, but what about ‘secular’ and ‘secularization’? These signify something more than a sheer lack of religious institutions in the state and society. Marius Felderhof, a scholar from the University of Birmingham, argues that “pri-

<sup>5</sup> Eade, T. (2012) “Spiritual and Moral Development” [in:] *Debates in Religious Education*, L.P. Barnes (ed.). London and New York: Routledge.

<sup>6</sup> Even if God did not exist.

<sup>7</sup> Kotakowski, L. (2001) *The Presence of Myth*. Chicago and London: University of Chicago Press.

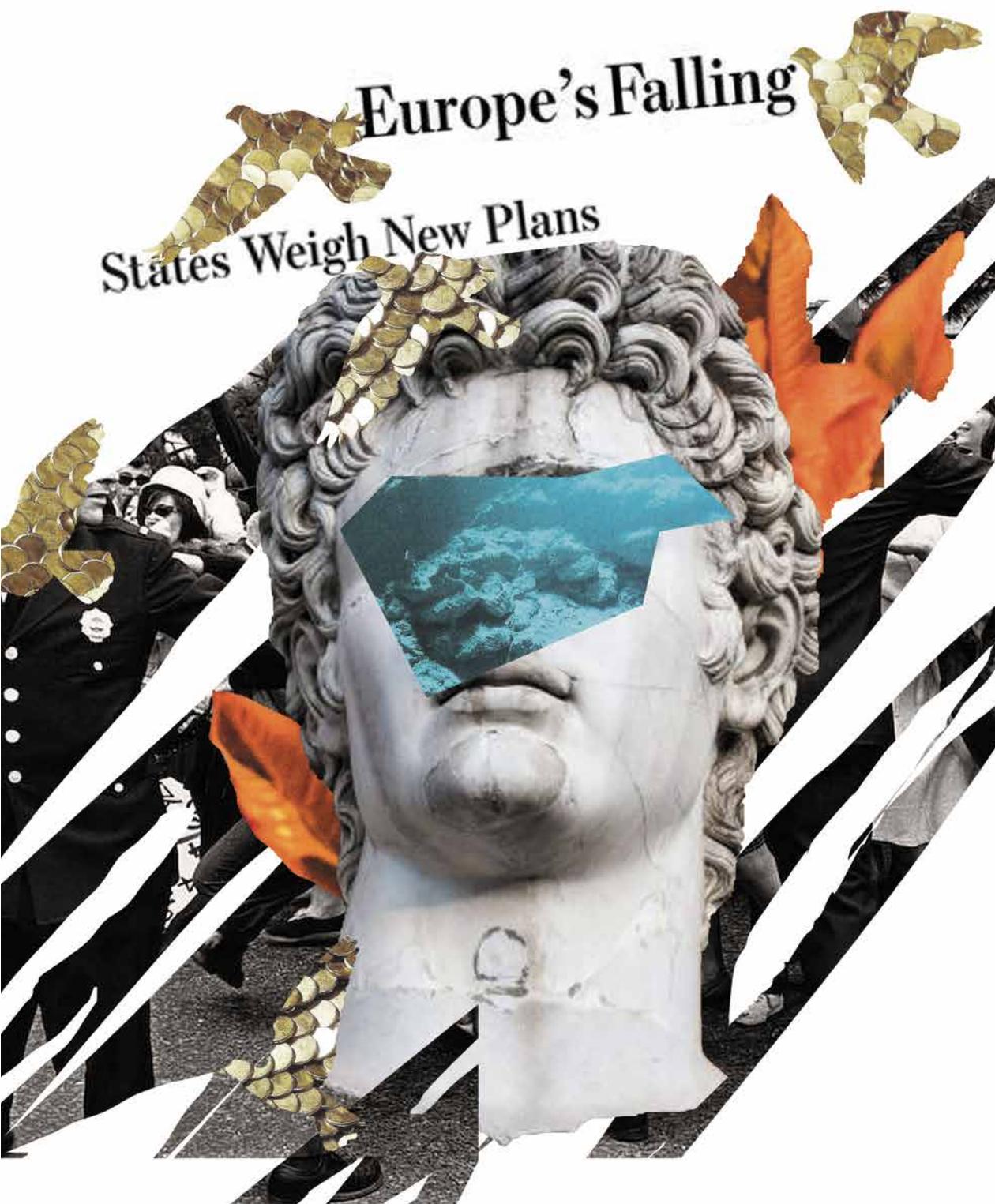
<sup>8</sup> Per Research Center (2012) “Nones” on the Rise. Available [online]: <http://www.pewforum.org/2012/10/09/nones-on-the-rise/>

<sup>9</sup> Heelas, P. (2009) *Spiritualities of Life: New Age Romanticism and Consumptive Capitalism*. UK: Blackwell Publishing, p. 83.

<sup>10</sup> Copley, T. (2005) *Indoctrination, Education and God. The Struggle for the Mind* London: Society for Promoting Christian Knowledge.

# Europe's Falling

## States Weigh New Plans



or to a modern period, religion was simply what everyone did, i.e. it was how they lived".<sup>11</sup> Following Reformation, the word 'secular' emerged and shaped the socio-political aspects of human life. As Marius Felderhof, a scholar researching secularization, observes, 'secular' might refer:

1. "to collective life outside monastic walls (...);"
2. "(...) to the world where people can live their lives free from direct ecclesial influence or control but where religious faith could nevertheless freely express itself and where religious individuals and institutions are active and contribute to public debate and decisions about society's collective life (...)"
3. "(...) to a situation where the state has devised an independent value system that impinges on religious life so that the individuals and institutions are constrained or straightforwardly prevented, from operating according to their own standards and purposes in the public life square".

An example of the latter was the introduction to the Catholic adoption agencies injunction, in order not to favor solely heterosexual couples. This practice is not about equity – as the British government suggested – but precisely about secularism.<sup>12</sup>

Today in the West, we are witnessing the discursive struggle over the place of religion in the social life (e.g. debates on burka, same-sex marriages). Samuel Huntington describes it perfectly as a "clash of civilizations".<sup>13</sup> Moreover, the terms "religion" and "conflict" often appear together

in the public debate. Today, one example of religious conflict in the West is a war waged over headscarves.

Liberal states provide two types of freedom: *of' religion* and *from' religion*.

Let us take a look at France. President Nicolas Sarkozy has spoken out strongly against burkas, stirring up a stormy debate. He claimed that "the burka – a garment covering women from head to toe – reduced them to servitude and undermined their dignity".<sup>14</sup> This attitude is an example of freedom *from* religion. President Barack Obama, contrary to his French colleague, said that freedom is about the possibility of expressing religious beliefs, and the burka is a perfect example of manifesting one's religious convictions.<sup>15</sup> From this point of view, the issue of the burka is related to the fundamental right to religious expression.

The contentious relationship of religion and freedom is also manifested in the matter of same-sex marriages. All three leading world religions (Judaism, Christianity, and Islam) condemn this type of human relationship and perceive same-sex marriage as a heavy sin. Nevertheless, currently, an increasing number of liberal states changed the law to give same-sex marriages the same legal status as opposite-sex marriages have.<sup>16</sup> The religious people who openly criticize same-sex marriages are accused

<sup>14</sup> BBC News (2009) "Sarkozy Speaks Out Against Burka". Available [online]: <http://news.bbc.co.uk/2/hi/europe/8112821.stm>

<sup>15</sup> LaFranchi, H. (2009) "In Battle of the Burqa, Obama and Sarkozy Differ", [in:] *The Christian Science Monitor*, June 23. Available [online]: <https://www.csmonitor.com/USA/Foreign-Policy/2009/0623/p02s20-usfp.html>

<sup>16</sup> See: Perper, R. (2017) "The 25 Countries around the World Where Same-Sex Marriage Is Legal", [in:] *businessinsider.com.pl*. Available [online]: <https://businessinsider.com.pl/international/the-25-countries-around-the-world-where-same-sex-marriage-is-legal/kw38chk>

<sup>11</sup> Felderhof, M. (2012) "Secular Humanism", [in:] *Debates in Religious Education*, L. P. Barnes (ed.). London and New York: Routledge, p. 146.

<sup>12</sup> Ibid.

<sup>13</sup> Huntington, S. (1993) "The Clash of Civilizations", [in:] *Foreign Affairs*, Volume 72, No. 3.



## CITIZENSHIP AND RELIGION SUPPORT CIVIC ENGAGEMENT AND SOCIAL PARTICIPATION

of being bigots, intolerant, and parochial. Thus, they may experience some kind of ambivalence – on the one hand, they are expected to be tolerant towards other lifestyles (including same-sex couples), while on the other hand they feel obliged to follow religious commandments. The example of same-sex marriage shows how the social tensions in terms of religious issues may emerge.

### RELIGIOUS EDUCATION IN COMMUNITY SCHOOLS?

Some scholars (James Arthur, Robert Putnam, Jean Bethke Elshtain, among others) argue that citizenship and religion support civic engagement and social participation.<sup>17</sup>

J.B. Elstain, an American ethicist and philosopher, claims that “those among us who seek a thoroughly secularized society, stripped of any and all public markers and reminders of religion in the view that religion

must be privatized and become invisible to public life, wind up, however inadvertently, weakening our civic life”.<sup>18</sup> Moreover, Robert Putnam, an American political scientist who shows the role of the parishes in the local communities, indicates that they help to cumulate social capital (especially bonding). However, he concludes that social capital has been weakening in the local communities, as less people go to churches and attend Sunday schools.<sup>19</sup> James Arthur also points to the significant role of churches and parishes in developing social engagement.<sup>20</sup> In the Christian tradition, responsibility is a virtue and participation in social and civic life is a moral duty.

There are two main approaches towards teaching religious education in schools: *from* and *about* religious sources. The former is often confessional in nature, and includes elements of worship, while the latter is phenomenological and academic-oriented.<sup>21</sup> Most Western state-run schools offer religious education<sup>22</sup> (either confessional or phenomenological). When religious education is mandatory in the educational system, it usually employs the phenomenological approach. This is the case for Norway and England and among others. Confessional religious education is usually optional.

<sup>17</sup> See: Arthur, J. (2008) “Christianity, Citizenship And Democracy” [in:] *Education For Citizenship And Democracy*, J. Arthur, I. Davies, and C. Hahn (eds.), Los Angeles, London, New Delhi, Singapore: Sage; Elshtain, J.B. (2001) “Civil Society, Religion, and the Dormation of Citizens”, [in:] *Making Good Citizens. Education and Givil Society*, D. Ravitch, J.P.Viteritti (eds.). New Haven and London: Yale University Press; Putnam,R. (2001) *Bowling Alone: The Collapse and Revival of American Community*. New York, London, Toronto, and Sydney: Simon & Schuster Ltd.

<sup>18</sup> Elshtain, J.B. (2001) “Civil Society, Religion, and the Dormation of Citizens”, [in:] *Making Good Citizens. Education and Givil Society*, D. Ravitch, J.P.Viteritti (eds.), New Haven-London: Yale University Press, p. 272.

<sup>19</sup> Putnam,R. (2001) *Bowling Alone: The Collapse and Revival of American Community*. New York, London, Toronto, and Sydney: Simon & Schuster Ltd.

<sup>20</sup> Arthur, J. (2008) “Christianity, Citizenship and Democracy” [in:] *Education for Citizenship and Democracy*, J. Arthur, I. Davies, C. Hahn (eds.). London: Sage.

<sup>21</sup> Barnes, L. P. (ed.) (2012) *Debates in Religious Education*. London and New York: Routledge.

<sup>22</sup> Pepin, L. (2009) “Teaching about Religions in European School Systems. Policy, Issues and Trends”. Network of European Foundations.

As Western societies are more plural and multicultural than in the past, the educational systems of Western states adopted to the challenge of dealing with diversity in the classrooms. This is the case for Norway, for example, where for many years religious education used to be compulsory. Christian-oriented Norway lost in the European Court for Human Rights two cases on religious education in schools (in 2006 and 2008).<sup>23</sup> Before these events, schools had been obliged to teach Christian re-

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<sup>23</sup> Leivrik, O. (2010) "Models of Religious Education in the Muslim World: Current Developments and Debates on How to Teach Religion and Ethics in Public Schools", [in:] *International Handbook of Inter-religious Education*. London and New York: Springer.



RELIGIOUS  
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ligion and ethics. The Court found that Christianity was being privileged (2006) and that the school course, *Christianity, religion, and ethics*, violates the human right to be taught in a critical, plural, and objective way. Consequently, the Norwegian curricula must follow the multi-religious approach – 55% of the content of the religion lessons should be devoted to Christianity, 25% to non-Christian religions and issues, and 20% to philosophy and ethics.<sup>24</sup>

Today, in many Western societies, the debate on religious education is not so much about its presence in the school system as such, but rather about the content of curricula. After all, the main objective of religious education is to promote tolerance and understanding of the *others*. From this point of view, religious education in schools can help in building and maintaining a multi-cultural dialogue. To achieve this goal, policymakers together with the representatives of the Church must accept pluralism as a core value. Teaching about religious issues is nowadays not about converting people, but rather about searching for the common ground between believers and non-believers.

### SECULAR SCHOOLS IN POLAND?

In 2015, my colleagues from the *Liberté!* quarterly magazine launched in Poland the "Secular School" campaign. The aim of this endeavor was for the state to stop financing religion classes in Polish schools. Back then, I did not join the initiative because I believed that the problem is not the existence of classes on religion in the school system or who pays for them. The real problem lies in the curricula, or lack

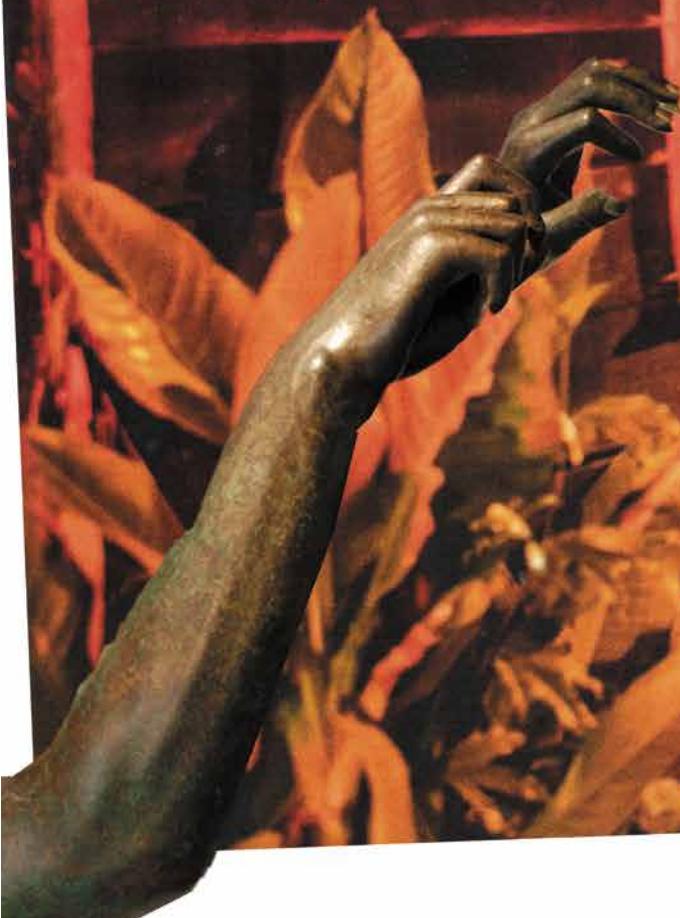
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<sup>24</sup> Donnelly, J. (2011) "Folgero v Norway 29.06.07 European Court of Human Rights", [in:] *teachdontpreach.ie*. Available [online]: <https://www.teachdontpreach.ie/2011/11/folgero-v-norway-29-06-07-european-court-of-human-rights/>

EL BILLOR  
DEL GOZO

*An Audacious Liberal*

All Feel the Mood of a New Era



thereof, in what children are being taught and how this process of education is conducted. After 1989, Poland missed its chance to get it right and to discuss the role and purpose of religious education in Polish schools.

Currently, a class on religion in Poland is optional and financed from the state budget. Each school under the Education Act from 1991 is obliged to provide this course on demand for at least seven pupils (not only Catholics). Even though the legal basis for religious education in Poland is non-discriminatory – no interference between secular orientation and religious orientation – there is one aspect that should be modified. The church, especially the privileged in the Poland Roman Catholic Church with 95% of Poles declaring to be Catholics, should be more open and inclusive when planning and conducting classes on religion. It should invite different groups to cooperate in designing the curricula and handbooks. Additionally, pluralism and a multi-cultural dialogue should be encouraged as a vital part of school curricula.

## CONCLUSIONS

Teaching *about* religion in schools is a mandatory element of the school system in most of the European countries, even though some may deem it to be a form of indoctrination. Yet, indoctrination can also be secular, with totalitarian regimes looked upon as an example. From this point of view, the school as a micro-world should simply offer pupils a choice. When religion is removed from public discourse altogether, citizens are deprived of the freedom to define themselves by the means of religion. The same happens when only one “true” religion is imposed on whole societies or states. In such a case, an individual is not left with much choice.

All this has already happened in the past – the option ‘without God’ was known in the communist regimes or Nazi Germany, while the option ‘with God’ was practiced in Portugal or Spain. Therefore, religious pluralism, a multi-cultural dialogue, and a balance between religious and secular claims and demands must be acknowledged and protected.

It is worth remembering that religion is a part of European culture and heritage. The people who think of themselves as liberals should be able to learn from this heritage and, build bridges between the past and the future. We must find a future that is not necessarily secular or radically religious, but rather – a golden mean. ●



DARIA  
HEJWOSZ-GROMKOWSKA

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## MEMBERS OF 4LIBERTY.EU NETWORK

**Free Market Foundation** (Hungary) is a think tank dedicated to promoting classical liberal values and ideas. The organization's projects focus on advocating a free market economy and fighting racism. The Foundation's activities involve education, activism, and academic research alike, thus reaching out to different people.

**Liberální Institut** (Prague, Czech Republic) is a non-governmental, non-partisan, non-profit think tank for the development, dissemination, and application of classical liberal ideas and programs based on the principles of classical liberalism. It focuses on three types of activities: education, research, and publication.

**The Lithuanian Free Market Institute** (Vilnius, Lithuania) is a private, non-profit organization established in 1990 to promote the ideas of individual freedom and responsibility, free markets, and limited government. The LFMI's team conducts research on key economic issues, develops conceptual reform packages, drafts and evaluates legislative proposals, and aids government institutions by advising how to better implement the principles of free markets in Lithuania.

**The F. A. Hayek Foundation** (Bratislava, Slovakia) is an independent and non-political, non-profit organization, founded in 1991, by a group of market-oriented Slovak economists. The core mission of the F. A. Hayek Foundation is to establish a tradition of market-oriented thinking in Slovakia – an approach that had not existed before the 1990s in our region.

**IME** (Sofia, Bulgaria) is the first and oldest independent economic policy think tank in Bulgaria. Its mission is to elaborate and advocate market-based solutions to challenges faced by Bulgarians and the region face in reforms. This mission has been pursued since early 1993 when the institute was formally registered a non-profit legal entity.

**The Academy of Liberalism** (Tallinn, Estonia) was established in the late 1990s. Its aim is to promote a liberal world view to oppose the emergence of socialist ideas in society.

**INESS** (Bratislava, Slovakia), the Institute of Economic and Social Studies, began its activities in January 2006. As an independent think tank, INESS monitors the functioning and financing of the public sector, evaluates the effects of legislative changes on the economy and society, and comments on current economic and social issues.

**Projekt: Polska** (Warsaw, Poland) comprises people who dream of a modern, open, and liberal Poland. It is those to whom a democratic, effective, and citizen-friendly government is a key goal, and who help accomplish this goal while enjoying themselves, forming new friendships, and furthering their own interests.

**Liberales Institut** (Potsdam, Germany) is the think tank of the Friedrich Naumann Foundation for Freedom dedicated to political issues such as how liberalism can respond to challenges of the contemporary world and how liberal ideas can contribute to shaping the future.

**Fundacja Liberté!** (Lodz, Poland) is a think tank created in Łódź in 2007. Its mission is to promote an open society, liberal economic ideas, and liberal culture, and to organize a social movement around these ideas. Among the foundation's most recognizable projects are: Liberté!, Freedom Games, 6. District. The foundation is coordinating the 4liberty.eu project on behalf of Friedrich Naumann Foundation.

**Republikon Institute** (Budapest, Hungary) is a liberal think tank organization based in Budapest that focuses on analyzing Hungarian and international politics, formulating policy recommendations, and initiating projects that contribute to a more open, democratic, and free society.

**Civil Development Forum (FOR)** (Warsaw, Poland) was founded in March 2007 in Warsaw by Professor Leszek Balcerowicz as a non-profit organization. Its aim is to participate in public debate on economic issues, present reliable ideas, and promote active behavior. FOR's research activity focuses on four areas: less fiscalism and more employment, more market competition, stronger rule of law, and the impact of EU regulations on the economic growth in Poland. FOR presents its findings in the forms of reports, policy briefs, and educational papers. Other projects and activities of FOR include, among others, Public Debt Clock, social campaigns, public debates, lectures, and spring and autumn economic schools.

**Visio Institut** (Ljubljana, Slovenia) is an independent public policy think tank in Slovenia. Aiming for an open, free, fair, and developed Slovenia, the Visio Institut is publishing an array of publications, while Visio scholars regularly appear in media and at public events.

## COOPERATING PARTNERS FROM EASTERN PARTNERSHIP COUNTRIES

**The Institute for Economic Research and Policy Consulting** (Kiev, Ukraine) is a well-known Ukrainian independent think tank, focusing on economic research and policy consulting. IER was founded in October 1999 by top-ranking Ukrainian politicians and scientists, and a German advisory group on economic reforms in Ukraine, which has been a part of Germany's TRANSFORM program. Its mission is to provide an alternative position on key problems of social and economic development of Ukraine.

**Svetilnik** (Ljubljana, Slovenia) is a non-profit, non-governmental, and non-political association. Its mission is to enlighten Slovenia with ideas of freedom. The goal of the association is a society where individuals are free to pursue their own interests and are responsible for their actions.

**New Economic School – Georgia** (Tbilisi, Georgia) is a free market think tank, non-profit organization, and NGO. Its main mission is to educate young people in free market ideas. It organizes seminars, workshops, and conferences for education and exchanges of ideas. NESG was founded by Georgian individuals to fill the knowledge gap about the market economy in the country and the lack of good teachers and economics textbooks.

**PIOTR BENIUSZYS**  
**POLITICS UNDER THE REIGN OF SOCIAL MEDIA**

**PAGE 006**

Tweets and Facebook posts are frequently quoted in papers and on their websites, occasionally constituting the whole story. The public takes note. People who hitherto disregarded social media as a not-so-serious activity are faced with necessity to reconsider, since most of politics and their country's future seems to be decided there. These citizens, then, enter the stronghold of extremists and see a tendency to increase tolerance towards radical views.

**ESZTER NOVA**  
**CENSORSHIP IS THE LEAST OF THE PROBLEMS: THE POLITICAL  
AND ECONOMIC THREATS TO FREEDOM OF THE PRESS IN HUNGARY**

**PAGE 034**

Under state capture and a quickly enriched oligarchic class, loyal allies of the governing party can hold a considerable share in the media and tilt it towards governmental propaganda. In December 2017, PM Orbán announced his plans to take the rest of the Hungarian media "into Hungarian hands" and with that, he invented media sovereignty, a new tool of authoritarianism. According to him, if the United States and Germany can have 'locally owned media,' then so can he.

**IVAN BREGOV**  
**PERSONAL FREEDOMS UNDER ONGOING TRANSITION FROM TOTALITARIANISM  
TO DEMOCRACY: THE CASE OF BULGARIAN JUDICIARY**

**PAGE 054**

The role of the judiciary is of particular importance for the exercise of rights and the protection of the interests of citizens. If prosecutors do not investigate and accuse equally all criminal suspects, then the state is the protector of crime and aggressor against personal freedom.

**JÁNOS KÁRPÁTI**  
**"STOP SOROS": A FAKE GOVERNMENTAL LEGISLATION PROPOSAL  
IN THE HUNGARIAN ELECTION CAMPAIGN**

**PAGE 086**

According to the latest campaign slogans of Fidesz, it is important to go to the polls and give Fidesz a two-thirds majority, ensuring the adoption of the "Stop Soros" package. It clearly shows that the package is an integral part of the government's communication campaign that denies civil organizations being critical of the government, the right to express their views, and take part in public life. Such legislation is typical of dictatorships, not democracies.

**BILL WIRTZ**  
**WATCH OUT: PATERNALISM IS TAKING OVER EUROPE!**

**PAGE 114**

Be it alcohol, tobacco, or sugary drinks; individuals have a number of vices that they voluntarily engage in. It has been commonly accepted that we attempt to engage in these "vices" with moderation. However, over the past years, public health advocates have made it their mission to regulate people's lifestyle directly and indirectly. Consequently, we have seen the emergence of the so-called "Nanny State," in which the politicians in charge of the regulatory state have deemed themselves competent to determine the right amount of consumption on all of these products.

**DARIA HEJWOSZ-GROMKOWSKA**  
**FREEDOM, STATE, AND RELIGIOUS EDUCATION: IN SEARCH OF COMMON GROUND**

**PAGE 144**

Today, in many Western societies, the debate on religious education is not so much about its presence in the school system as such, but rather about the content of curricula. After all, the main objective of religious education is to promote tolerance and understanding of the others. From this point of view, religious education in schools can help in building and maintaining a multi-cultural dialogue.