Is Free Movement Subverting Democracy in Central and Eastern Europe?

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When in September 2015 the Scottish voted against independence from the United Kingdom (UK) at least some of them did so for fear that the membership in the European Union (EU) of an independent Scotland is uncertain. It is impossible to tell what was the effect of the warnings in that sense from high-ranking EU officials, but it is certain that they were not providing incentives for a ‘yes’ vote. On the other hand, the independence campaign asserted that Scotland will remain in the Union or quickly re-accede to it, so nothing much would change in that respect. Had the same high-ranking EU officials assured the Scots that this is the case, the result of the vote might have been quite different. The relationship between the supranational Union and secessionist movements in subnational units has already been extensively discussed.¹ But the effect of the warrants for certain freedom and prosperity, which the EU provides, on the relationship between the citizens and their member states has received little attention. The purpose of this essay is to explore several ways in which European integration may confound that relationship.

The paper discusses the effect of the economic freedoms and especially how the free movement of people affects the citizens, especially of the ‘peripheral’ member states who are, as we know from A.O. Hirschman facing a perennial dilemma between ‘voice’ and ‘exit’.² The other choice they have to make according to him is between investing their time and energy in actions in the public sphere and pursuit of private welfare.³ The paper argues that the EU is encouraging increasing number of people to take the less publically-minded option in both cases. By facilitating the exit option on one side and enhancing the opportunities for private prosperity on the other, the Union, for all the great things it provides, subverts democracy in these countries. Citizens are less likely to take to the streets and protest against corrupt or inept governments, and more likely to either move to another country or to turn to private consumption.⁴ Those who remain concerned about the way the society they live in is run, have a firmly-guaranteed right to find another society. Then it is no surprise traditional

¹ See for example Weiler and N. Kirsch.
⁴ This is not necessarily bad - pursuit of private welfare in many cases will consist of entrepreneurship or creative activities, which are socially beneficial. For the purposes of this paper I shall consider ‘private’ any actions which are not expressly intended to voice concerns or bring about political changes.
sources of emigration, e.g. Southern Italy are trapped in corruption, and more recently Romania and Bulgaria seem to have entered the same trap.

Hirschman’s insights allow us to view migration from entirely different perspective. Mobility within the EU is normally understood as economic – a flow from poorer Central and Eastern Europe to the wealthier West recently replaced a similar flow from the poor South to the North. While economic factors are undeniably the main factor, they may hide a more complex picture, where other factors come into play, and persistently dysfunctional self-government is unlikely to be unrelated to it. True, when we think about political migration we think about persecution by authoritarian regimes and, for all their faults, the governments of all member states are democratic and respect the basic rights of their citizens. Yet smaller shortcomings may have more subtle effects on mobility, especially in a Union whose raison d’etre is to encourage it. It is obvious, for example, that besides moving to a wealthier country, citizens are generally moving from a low quality democracy to a higher quality democracy.

It is quite intuitive to expect that this movement will have some feedback on the quality of democracy too.

Thus in the paper I will set aside the common (macro)economic considerations and examine European mobility in terms of quality of governance and civic virtues. The first section merely sets the scene. In the tradition of neo-republicanism I shall define civic virtue as willingness to engage in peaceful contestation of government policies, which violate their rights (broadly conceived). This is relatively undemanding and does not presuppose any empirical qualities of the citizens – education, youth, etc. Yet a certain critical mass of citizens willing to engage in public contestation is necessary to sustain democratic governance. Below certain threshold democratic self-governance becomes dysfunctional. Willingness to engage depends, besides certain empirical qualities of the actual people, on certain environmental incentives, like ‘exit-voice’, and these incentives will be subject of the second section of the paper. There I explore four dynamics of participation and mobility which may (or may not) come into play in the context of European mobility. In the third and final section I shall suggest that the concept of regulatory competition common in the integration scholarship may be useful to explain not only the flow of goods and capital, but also of civic virtue. Regulatory competition prompts two possible scenarios and in both of them European mobility plays a negative role for the national democracy in Europe. I conclude with an argument that the EU must

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5 To search for references. In Gambetta?
6 According to recent estimates, Romania and Poland are among the biggest suppliers of emigrants to the OECD countries (5.6% and 5.4% accordingly) with only China ahead of them. For the last 20 years the population of Bulgaria dropped from nearly 9 million to just above 7. Although there are no reliable estimates of the part played by emigration, there is little doubt that as proportion of own population Bulgaria is one of the top countries of emigration.
7 I will duck the question how to measure low and high quality. Hirschman notes that any state and organization is occasionally failing to perform its basic functions, and there is little doubt that some European countries are failing more often than others.
8 There are no reasons to think that civically active people are more prone to exit, or that the youth and education (which are associated with economic migration) are correlated with civic virtue. In many cases the uneducated underdogs might be more likely to bring about revolution. So by all likelihood, the emigrants would comprise of a wide spectrum of social groups and strata.
compensate this negative effect on domestic democracies and intervene well beyond the current minimum and suggest some ways, which may be politically feasible. I also argue that mobility creates a general problem for democratic self-government, so such interventions should include monitoring for all 28 member states and address systemic problems wherever they appear.

II. European Mobility and National Participation – Four Dynamics

1. Voice-exit

   a. *Too easy to exit*: EU is *meant* to facilitate exit. This can be seen as an aspect of the ‘brain-drain’ which is much lamented in the literature (and nationalist politicians) but I understand it not in economic but civic terms. Yet this is an old hat and I doubt if there is any need to elaborate, important to mention because its interrelationship with the other factors is important, they reinforce each other. Important to remind that I do not maintain that only the ‘virtuous’ migrate, and migration is not so huge (12 out of 500 Europeans), but *together with the other factors* makes a difference.

   b. Less incentives for voice. The other side of the same coin. Those who remain concerned about the way the society they live in is run have a firmly-guaranteed right to move to another EU state. On one hand, if you do not like the way your country is run, it is easier to exit and settle elsewhere; on the other hand, if you want certain policies in the society you live in, you do not need to push too hard for a change at home, you can yourself move to the place of your liking.

   Distinction from the argument for the ‘European straightjacket’: Certainly, the fact that EU constrains the choices of national democracies is important. This is far too common to need elaboration. Yet the thesis that the bad EU (and even worse WTO) incapacitate national governments so they cannot deliver all the goodies they are poised to give to their citizens is misleading to a great extent. For every half-awake EU lawyer is obvious that member states still have quite significant leeway when implementing EU rules, and it is obvious that some states are delivering much better than others. Still, it is undeniable that some options are off the table, and this is another reason to make voice less valuable and citizens more likely to disengage from participation in national politics.

   The decreased value of voice is compensated in part by the opportunity for participation at PanEuropean level. Many stakeholders – industry as well as NGOs - do engage with the European institutions in attempt to achieve their national goals. Still, the net effect is probably decrease of the value of voice.
In principle the EU bureaucracy (and the ECtHR) could substitute contestations from too passive a public, by demanding protection of rights and soliciting opinions from the public and actually it does so. But there are two problems:

i. Reverses accountability – to the top

ii. Violates subsidiarity – they simply do not know local conditions and preferences; direct governance from Brussels, even when it is effective and efficient (economic term!) can amount to bigger domination even when it is called to substitute extremely inept corrupt administration which is nevertheless local.

c. (a) and (b) form vicious circle. Each alone might not be a problem (on one hand, so far not huge mobility, on the other voice still enough meaning to be worthy the effort)

d. It may be reinforced by adaptive expectations on the part of citizens – if the Commission or Olaf can be expected to take steps, to discipline corrupt governments, why shall citizens bother? Desuetude. It is good when citizens can rely on institutions to economise on virtue (that’s why the separation of powers was invented) but economisation has fallout effect too.

2. Public participation – private welfare:

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pursuit of private prosperity. Not only a matter of mobility, CoE protection factors in too. In the European constitutional order private liberty is protected so well that people hardly need their political rights for such purposes (with Orban overt about ‘illiberal democracy’ not so sure). In other words, the EU guarantees to the bourgeois the possibility to remain bourgeois without taking the trouble to be also a citizen.

c. Again mutual reinforcement: 1a, 1b, 2a and 2b all in the same direction, only voice in EU institutions mentioned under 2b drives in the other direction. The minimum safety guarantee, taken together with the enhanced possibility for exit and the opportunity cost of pursuit of private prosperity may be particularly vicious combination. Even when minimally decent democracy is guaranteed, there would be some people who would raise voice for a more just society. One factor encouraging participation – the availability of examples from other member states may encourage more such voices. Provides focal point for sure. Also, even when people are free and eased to move to a better place, many will do so, but others will remain and engage in civic action. But when all of the listed dynamics drive in the same direction, there might be both too little to gain from contestation and too few people who are prone to take the bother.

d. Besides the mutual reinforcement, disengagement has its own dynamics, which is self-enforcing: loss of skills when running on autopilot. Less participation, less skills and less appetites for participation, find literature on capacity building in protest movements. On the other hand, fossilization or outright corruption of local elites make the contestation more difficult and the gains from the bother even smaller. (examples from my EUDO café article for imperturbable elites – ‘paid protests’, ‘controlled vote’).

These dynamics work even without the governments playing any particular part; there is a ‘natural’ tendency for degeneration of national democracy and civic virtues under the cosiness of the EU umbrella.

Note that when citizens are perceived by the government as a resource – the brain drain view – the incumbents have good reasons to provide incentives to the citizens to stay. Following obvious economic rationales, one can think that governments would be wary of free movement, and compete for citizens. Such ‘races to the top’ may or may not happen when governments try to attract investments by improving conditions for business (ref to doing business indexes) and may or may not happen if they compete to attract labourers. But when it comes to citizens qua citizens, to contest or otherwise actively engage, the incentive for the governments would be rather the opposite. On the contrary, governmental elites may be happy to nudge the participation-inclined citizens away. However, they may be very inclined to attract non-participating but still voting citizens as we shall see below.
Enter Orban, Ponta and Borissov.

Many ways to manipulate and reinforce the above dynamics. In Bulgaria some supporters of the previous government explicitly stated that ‘students who do not like it here can go to Europe’. The phrase ‘Terminal 2’ is now very common metaphor for taking the exit option (so this paper may not be so innovative after all). But the ability of the incumbent government to manipulate the non-resident voting rights adds a different dimension to European mobility.

3. Politics of franchise (it is hardly a coincidence that the examples come from the countries which are seen as the worst functioning democracies in other respects – media freedom, corruption, etc.)

   a. Hungary – enfranchising 500 000 non-residents
   b. Bulgaria – the franchise of non-resident ethnic Turks is always a huge issue, though governments are only tinkering with the modalities of the franchise, not such momentous changes as in Hungary.

   In both Hu and Bg the diaspospora is historic and unrelated to the EU, but obviously EU is encouraging new migrations, so more such issues in the future.
   c. Romanian presidential elections in 2014 (this already involves European mobility, Romania has significant population in other member states). The case demonstrated to everyone what so far was discussed mostly by experts - that external votes may swing the result. The Romanian example was positive – citizens mobilized to contest what the government was doing. But in the long run, and elsewhere the effect may be negative – if incumbents are seen as able to play with expat votes, both the expats may be disinclined to play the game and the residents may feel doubly dominated (by governments and by diaspora). This is a call for a common standard of best practices, and pan-european monitoring body, like the Venice commission for example.

4. Loyalty – as per Hirschman, certain measure of loyalty is needed to achieve an optimal mix between exit and voice. But loyalty on a country scale is nationalism and is a dangerous cure in the first place. Second, the EU seeks, though with very limited success, to undermine this too. If it was more successful, nothing would be left to sustain national democracy (while pan-european democracy is still nowhere to be seen).

III section

If this is so (or to the extend this is so – there are other factors and they may be more important, I do not have a measure for the effect of the mobility on national democracy) what follows.

   1. Regulatory competition
While these dynamics apply to all citizens, they create acute problems only when democracy was not functioning well in the first place. In such cases all of the above will work in the same direction. Certainly, no democracy is perfect, and citizens of Britain or France may have good reasons for exit too. Yet there are much fewer countries they may want to go (though quite a few leave Britain for other reasons; FN to remind that the paper is not seeking to find actual reasons for mobility but to suggest what incentives citizens may have AND what effect European mobility may have on the democracy in the member states). But mobility has palpable effect in the weak democracies in Central and Eastern Europe. Probably the same is true also for other states like Italy and Greece. Their democratic shortcomings were criticised before, were overshadowed by much graver problems in the postcommunist countries and were brought back to light by the euro crisis nowadays.

Competition for virtue. Again – not in the sense that best citizens emigrate, but in the sense that overall ‘amount’ of political participation flows, with significant net losses along the way. Migrants are from all walks of life, but certainly only citizens who are discontent with something – be it economy, democracy or climate – move. So despite of the diversity of actual emigration, it is almost certain to decrease the number of citizens who are available for contestation. The loss of civic participation is absolute. Unlike the ‘brain drain’ which can be seen as zero-sum game, where one country is winning what another is losing, in this case the sum is likely to be negative – the person who has exited her corrupt country of origin to move to a better-governed place, is generally lost for this country while it is unlikely for her to be very actively involved in the host country, at least in the short run. Though she can still vote in her home country, she is unavailable for street rallies for example, so net loss for the country of origin is almost certain. So in the worst case scenario, while countries inadvertently compete for virtuous citizens, the general ‘level’ of civic virtue decreases for all. In the ‘optimistic’ scenario, the quality of democracy in the ‘best’ will raise even more, and in the laggards will drop further. Under no scenario the low performers will catch up with the high performers.

2. Spill-over and case for intervention

If this is so it would follow that the differences between the quality of democracy in the various states are bound to either persist or increase. This is an unintended consequence of the benefits the EU provides. The irony is that the EU made significant efforts for ‘capacity building’ in the weak new democracies and actually made considerable progress during the accession process.

I would eschew the common criticisms that the EU is subverting democracy in member states as the bureaucrats in Brussels make choices instead of ‘the people’ or that EU law frustrates national redistributive policies which is a reason for citizens to get disinterested in politics altogether. My argument is rather the opposite – that the EU guarantees also some minimal democracy in the member states, so the citizens can economise on participation in politics. If the EU is to blame for anything, it might be for contributing to the transformation of the citoyen into bourgeois.
Thus, democracy is collateral damage of free movement. Classic case of spill-over – one European policy affects other seemingly unrelated areas. In this case it seems to be reaching very far, in *Cassis* interstate trade in liquors was affecting certain health policy only, in this case mobility of people reaches the very foundation of democracy and society. The solution should be in the same lines – European-level intervention to compensate the fallout in national democracy in the member states for which the EU may have inadvertently contributed.

This sounds radical, and in some sense it is. But the remedial measures may not need to be radical at all. If contestation is a matter of critical mass, as I argue, just a little help may prove sufficient. Corrupt national politicians need not to be supervised by Brussels bureaucrats, which would be inimical to the very idea for *self-*government (though when Berlusconi was effectively fired by his peers most Italians drew a breath of relief). In the general case some nudges from European institutions may be enough,\(^\text{10}\) and if their introduction is framed well, may come to be liked by the citizens. Equality of member states is particular concern; if the monitoring body is perceived as even-handed, it may build trust.\(^\text{11}\) Systematic monitoring by dedicated EU institutions (or quasi-NGO bodies embedded in academia) and by peer review (‘naming and shaming’) in special Council sessions may fill the vacuum. Not accountability to the top, but nudge to enhance accountability to the citizens. Commission can monitor to assure transparency, single out who performs how, etc.

\(^\text{11}\) Compare the rituals of universal periodic review of the human rights records. This is obviously far too weak, but in principle EU has gone much long way into development of such mechanisms so it can do much better.