



The  
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**Assessing the EU's 'new approach' to enlargement policy: The case of rule of law reform in Serbia**

**By:**

Jonathan Webb

A thesis submitted in partial fulfilment of the requirements for the degree of  
Doctor of Philosophy

The University of Sheffield  
Faculty of Social Sciences  
Department of Politics

May 2018



## **Abstract**

Rule of law is an important European Union (EU) principle. The EU aspires to promote it externally, particularly in the context of EU enlargement. In new Member States such as Hungary, Poland, Bulgaria and Romania, problems with rule of law 'backsliding' indicate that the rule of law was poorly embedded during previous accessions. Consequently, the EU's 'new approach' has made rule of law reform central to the accession processes of Candidate States in the Western Balkans. Despite this policy shift, it remains unclear whether this new approach supports the construction of both formal rule of law institutions and corresponding norms and practices, or whether formal compliance is decoupled from a change in practice. This thesis analyses the EU's new approach and its capacity to enact change by focusing on rule of law reforms in the Candidate State of Serbia. This thesis addresses two research questions:

- What are the key logics, imaginaries and interactions driving the delivery of rule of law reforms in Serbia?
- How effective is the EU's approach for ensuring the institutionalisation of the rule of law in practice?

To answer these questions, this thesis adopts a Cultural Political Economy approach. It analyses how key actors interact, understand, interpret and construct rule of law reforms. This analysis demonstrates the multiple understandings of rule of law that emerge and draws attention to the different political visions these understandings represent. The central argument of the thesis is that while the EU's new approach increasingly draws actors' attention to rule of law issues, it remains driven by a strategic logic. This reinforces the reproduction as opposed to contextualisation of its rule of law criteria, generates

contestation and reinforces existing power relations. This leads to the partial institutionalisation of the rule of law in practice, while simultaneously creating contestation and resistance to reforms.

## **Acknowledgements**

There are several people I would like to thank for their support. Without it, completing this thesis would have been significantly more arduous. Thank you to my supervision team, Andrew Geddes and Simon Rushton. Andrew's detailed comments and sharp analysis helped make this a robust piece of work. His extensive involvement throughout helped develop both this work and me as an academic. Simon's reassurances in the early stages of the PhD programme and his many words of encouragement also helped immensely. Thank you for offering an open door to your office, whenever it was needed.

Beyond my supervision team, I would also like to thank several members of staff in the Department of Politics at Sheffield. Sarah Cooke stood out from day one as someone supremely committed to her job. Her kindness, resourcefulness and commitment helped immensely. Any department would be privileged to have an individual like Sarah who consistently and without question went above and beyond to help. I would also like to thank two other academic members of staff. Jonathan Joseph, whose workshops helped challenge and develop my ability to think critically. Matthew Bishop, who helped me plan my early academic career. His advice probably helped me far more than can be appreciated right now, but in years to come, I think I will owe a lot to Matt's advice and mentorship.

My final thanks go to my family, who despite not always understanding the precise details of what I do, always offered their unwavering support and words of encouragement. To my parents Anne and Paul, I will never be able to thank them enough for everything they have done for me. Finally, to my partner, Michaela. Of all the things that happened over the past four years, our relationship is the thing I will cherish most. Through the hard times and the good of the PhD, she carried me through.

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## **Chapter 1: Setting the stage**

### **1.1 Rule of law reform in EU enlargement**

This thesis provides a fresh perspective on the European Union's (EU) promotion of rule of law reforms through EU enlargement policy. It does so by examining rule of law reforms in a current Candidate State, Serbia. In addition to generating new empirical insight on rule of law reforms in Serbia, the application of a Cultural Political Economy (CPE) approach demonstrates the crucial role that interpretive processes of sensemaking play in shaping politics and policy more generally. The thesis' central argument is that rule of law reform processes in Serbia result in limited change. To reach this conclusion, this thesis first demonstrates how rule of law reforms are promoted in line with a strategic logic and delivered through dominant social relations. It subsequently shows how promoted reforms support conceptually narrow understandings of key rule of law issues, which prevents rule of law reforms from resonating more widely and addressing the legitimate contestations raised by dissident actors. This results in the partial institutionalisation of the rule of law in practice.

A focus on EU-led rule of law reforms in Serbia provides insight into contemporary European politics. Rule of law is a key EU value, enshrined in Article 2 of the European Treaty (EUR-Lex, 2012). It is central to the EU's normative identity and shapes its determination to project liberal values as a global actor (Manners, 2002). In external contexts, the rule of law helps support liberal state-building (Chandler, 2007). However, contemporary challenges to the EU threaten its rule of law regime and its capacity to promote rule of law through EU enlargement.

Within the EU, increased apathy for further enlargement is exacerbated by the growing schism between old and new Member States (Schimmelfennig, 2008, pp.918-937). Evidence of rule of law backsliding in Poland and Hungary suggests that liberal democracy is a contested venture within the EU. In Hungary, the government has targeted fundamental freedoms of expression and press freedom (European Commission, 2017b). In Poland, the Law and Justice Party (PiS) has made a concerted effort to exert political control over the judiciary (Council of the European Union, 2017). In both cases, illiberal regimes have positioned themselves as populist challengers to the 'liberal elites' of Brussels and in doing so, directly challenged the EU's rule of law regime (Kelemen, 2017). Questions about the promotion of the rule of law and its capacity to endure in an enlarged EU are increasingly vital for understanding whether the European project will survive and thrive, at least as a liberal democratic polity.

In more recent accession cases, evidence suggests that the rule of law was poorly embedded. For example, in Bulgaria and Romania, which both joined the EU on 1 January 2007, corruption and organised crime has remained a persistent problem. In both countries, the continued application of the Cooperation and Verification Mechanism has raised questions about whether the EU accession process can initiate fundamental change (Toneva-Metodieva, 2014). In the case of Croatia, which was subject to the EU's expanded rule of law criteria during its accession process and achieved membership on 1 July 2013, the rule of law remains fragile and illiberal forces continue to play a powerful role in shaping Croatian politics (Rupnik, 2016, pp. 79–80).

Externally, the 'migration crisis' has further divided Member States. The Visegrád Group have rejected proposed asylum quotas and new forms of border control violate previously established human rights norms (Human Rights Watch, 2016). The resurgent assertiveness of

Russia as a global actor in the EU's neighbourhood has created new spaces of competition between rival geopolitical actors. After the conflicts in the former Yugoslavia ended, many saw the region's integration into the EU as inevitable. A credible membership prospect for the region was offered as a way of securing the post-conflict peace and completing the process of European integration (European Commission, 2003). However, allegations of Russian interference in the region and its capacity to turn regional elites away from the process of EU enlargement, demonstrates that EU-led rule of law reforms are not the only game in town and that alternatives exist to EU accession (Rankin, 2017; Radio Free Europe/Radio Liberty, 2017).

Between these internal and external challenges, there remains significant problems within the Western Balkans region that undermine the enlargement process and rule of law reforms. Unlike in established liberal democracies, rule of law has a short history in the Western Balkans. Violence and conflict accompanied the collapse of socialism. In the post-conflict period, clandestine networks of political elites have helped shape the region's politics (Kostovicova & Bojicic'-Dželilovic', 2006, pp.230–232). In the Western Balkans, there is a greater need to ensure that state-building is not detached from the substance of democratisation (Bieber, 2011). Consequently, the EU has promoted a more intensive rule of law agenda in the hope of more effectively exporting liberal democratic norms and the rule of law. However, there is an absence of scholarship examining to what extent the EU's increased focus on rule of law reforms will result in the more complete transformation of Candidate States.

### **1.1.2 The EU's rule of law criteria**

Against the backdrop of these internal and external challenges, the EU has emphasised a 'new approach' to enlargement, with rule of law reforms placed firmly at the centre of the accession process. This means that Chapters 23 and 24 of the EU *Acquis Communautaire* should be the first chapters opened and the last chapters closed during accession negotiations (Nozar, 2012). Chapter 23 covers the Judiciary and fundamental rights, whereas Chapter 24 covers justice, freedom and security (European Commission, 2015b). By focussing on these chapters from the very beginning of the accession process and ensuring they remain a feature throughout accession negotiations, it is hoped that the problematic post-accession backsliding and the poor internalisation of the EU's rule of law standards experienced in previous accessions will be avoided.

The EU's promotion of the rule of law doesn't just require the formal alignment of countries with the EU's rule of law *acquis*. It also requires the transfer of more informal rule of law norms. Problematically, the existing European Studies literature remains fixated on ascertaining and measuring the formal aspect EU rule transfer (Vachudova, 2014). By applying a novel methodological approach that goes beyond an analysis of formal rule transfer to ascertain how the rule of law is understood and subsequently enacted, this thesis moves beyond a study of formal compliance to see what rule of law reforms might achieve in practice.

### **1.2 Case selection: Analysing rule of law reforms through Serbia's accession process**

Analysing rule of law reforms in Serbia has heuristic value and the insights from this case can help build a more general theory of EU rule of law promotion and the role of interpretive processes therein (George & Bennett, 2005, pp.74–76). This thesis covers the period from 2000 onwards, when Serbia begun making significant pro-EU overtures. However, explicit

focus is placed on the period from 2014 to 2017. 2014 was an important moment as it marked the formal start of accession negotiations and Serbia's exposure to the EU's new approach. This thesis ascertains whether, during this period, formal institution building has been coupled with significant changes and convergences in understanding among target actors. Primary data is generated through extensive fieldwork conducted in Belgrade, Novi Sad, Brussels, Paris and Strasbourg. There are several reasons for analysing rule of law reforms in Serbia and why analysing rule of law reforms as on-going interventions in a current Candidate State has significant advantages.

First, it helps develop a fresh in-depth understanding of rule of law reforms and their associated reform processes. Unlike comparative analyses, which compare outcomes across multiple cases, the primary objective of this thesis is to examine a complex and multi-relational process. This necessitates focussing on how rule of law reforms are understood and articulated by different actors, how actors interact, whether reforms resonate with actors, and how the acceptance or contestation of reforms shapes possible outcomes. Focusing in-depth on rule of law reforms in Serbia allows the role of different institutions, actors and mechanisms to be discerned. This enables a robust analysis of different processes and the role they play in shaping interpretations and actions. Furthermore, by focussing on the delivery of rule of law reforms, the importance of socialisation for explaining how reform processes unfold is elucidated.

Up until the early 2000s, Serbia had been under the thumb of Milošević's authoritarian government and before that, Tito's Yugoslav socialism. In Serbia, the rule of law has a short history and the country's political tradition remains largely incompatible with liberal democracy. It is characterised by poor levels of social inclusion, corruption, and restrictions

on press freedom (Clark, 2008). This suggests that rule of law reforms may be difficult to achieve. Serbia provides a tough test for the EU, yet many of its post-conflict and post-socialist features are shared by other countries in the region. Lessons can be learned from this case and related to broader regional developments. Moreover, by focussing on rule of law reforms in Serbia, this thesis analyses the role played by different actors at different levels of government. Rule of law reforms occur within a policy network that involves both transnational and national actors and is not geographically confined to the polity of Serbia itself. In sum, analysing rule of law reforms in Serbia can also provide new insight into the dynamics of policy reforms more generally.

### **1.3 Hypothesis and research questions**

A single hypothesis informs this research. It is anticipated that the effective institutionalisation of the rule of law requires not only the formal construction of rule of law institutions. It also requires the construction of shared understandings which underpin rule of law reforms. Shared understandings are important because understandings inform practice (Zimmermann, 2017). Rule of law understandings must resonate with domestic rule of law issues. Different actors must be able to contextualise them in a range of organisational settings and raise legitimate concerns, which are then addressed through dialogue between actors. If this is not possible, rule of law reforms are likely to take on a narrow focus and will not filter down and enact change more widely within Serbia. In such cases, reforms are expected to be promoted in a minimalistic manner through cooperation with government elites and at the expense of wider society's inclusion. They are also expected to be driven by perceived interests and not a normative commitment to the rule of law. This is expected to result in the poor internalisation of rule of law norms and result in a superficial process of

reform, which does little to embed the rule of law in practice, or foster consultation and dialogue between actors about what the rule of law is and how it can be constructed. This focus on how rule of law issues are understood and the proposition that understandings inform action, justifies the application of a CPE approach, which facilitates the analysis of interpretive processes in politics and policy.

This hypothesis emphasises the socially constructed nature of rule of law reforms. It emphasises that the construction of shared understandings among a wide range of actors through inclusive processes of socialisation is vital for accompanying formal institutional change with informal change. In contrast, rule of law reforms that do not try to construct shared rule of law understandings will be ineffective. These reforms are likely to be driven by perceived interests, be focussed on processes of top-down institution building and lack inclusivity. In this regard, institutionalisation is understood in the broadest sense. It is not just about whether change is observed on the surface but also about how actors understand key rule of law issues. This means that the effectiveness of the EU's approach is judged on whether it produces a convergence in understandings between a range of political actors. Poor institutionalisation is expected to be indicated by a divergence of understandings, contestation and the absence of shared rule of law understandings among different actors.

Having identified the research problem central to this thesis and stated a hypothesis, two research questions are formulated to probe the research problem and test the proposed hypothesis. These research questions then generate sub-research questions, which help address each research question. The first research question concerns the delivery of the EU's new approach. This question aims to identify and understand the key drivers of the EU's

approach. Central to this question is the way the EU understands the Western Balkans region and the influence this has on the EU's rule of law delivery strategy:

*RQ1: What are the key logics, imaginaries and interactions driving the delivery of rule of law reforms in Serbia?*

Two sub-research questions help answer this question. The first sub-research question identifies the logics driving the EU's regional engagement and the imaginaries of the region which help shape the EU's regional engagement:

*SQ1: What are the key logics and imaginaries driving the EU's regional engagement?*

The second sub-research question analyses the key interactions underpinning the delivery of the EU's rule of law reforms. This is important for illuminating the social relations underpinning the delivery of reforms within the relevant policy network. A focus on social relations between actors is also important for understanding the role relationships of power play in constructing rule of law understandings:

*SQ2: Who are the key actors involved in the delivery of rule of law reforms in Serbia and how do they interact?*

The second research question addresses the effectiveness of the EU's new approach. It focuses on the capacity of the EU's new approach to shape understandings among key rule of law actors within Serbia and beyond. Central to this question is the relationship between formal institutional change, changes in understanding and practical outcomes.

*RQ2: How effective is the EU's approach for ensuring the institutionalisation of the rule of law in practice?*

To understand the extent to which the rule of law is institutionalised in practice, different understandings among key actors are identified, compared and related to the European integration context. This helps uncover the substance of reforms, the imaginaries that inform understandings, the political projects different understandings reinforce, the similarities and differences between understandings, and the iterative way rule of law reforms unfold. The degree of convergence between different actors' understandings is taken as a measure of effectiveness. The more shared understandings that emerge between a broad cross-section of actors and not just particular types of actors, the greater the degree of shared understanding and thus institutionalisation. In answering this question, the aim is not to quantify the EU's effectiveness. Rather, by applying qualitative methods to explore the ways in which rule of law reforms are understood and different rule of law concepts enacted, this thesis will give an indication of whether the EU's new approach does place rule of law reforms at the centre of the accession process in Candidate States. Consequently, it will also determine whether differentiated understandings and the prioritisation of other issues indicate a lack of shared understanding and subsequently, institutionalisation in practice.

The third sub-research question support this by looking at what role semiosis — a mode of sensemaking — plays in shaping understandings and informing action. By taking actors as the entry point to understand how a range of social structures shape their understandings, this thesis shows how semiosis shapes rule of law reform processes:

*SQ3: How do actors construct an understanding of rule of law reforms through semiosis and what informs these understandings?*

The extent to which constructed understandings are shared or contested is taken as an indicator of how widely institutionalised a rule of law concept is. The more convergence, the

more amicable and institutionalised a rule of law concept. The more contestation and divergence, the less institutionalised:

*SQ4: To what extent do we find convergence, divergence and contestation between different understandings and why?*

The final sub-research question ascertains what these different understandings tell us about the state of European integration in Serbia. By relating micropolitical insights to the much larger process of European integration, the different political projects understandings reflect is deduced. From this, it is possible to generate inferences about what different understandings tell us about the process of European integration in Serbia.

*SQ5: What do the different understandings of actors tell us about rule of law reforms in Serbia and European integration more generally?*

#### **1.4 Contribution**

This thesis contributes to the field of European Studies and within this field, to the literature on enlargement and Europeanisation. It makes distinct conceptual, empirical and methodological contributions.

Conceptually, this thesis provides a new way of theorising EU enlargement. It moves beyond existing paradigms by charting a middle path between institutionalist approaches and new forms of interpretivist thinking in political science. It does so by conceptualising institutions more broadly as the social contexts in which actors are situated. It further highlights the important role that sensemaking in these contexts plays in determining action. This conceptual elaboration is important for understanding what role culture, broadly conceived, plays in shaping politics. CPE complements and expands the constructivist tradition within

European Studies and International Relations (IR). The concept of sensemaking is often alluded to but poorly elaborated in existing constructivist accounts, which tend to focus on how actors are socialised into the EU's rule and norms. Instead, this thesis focuses on how relations between actors at different levels — which run in multiple directions — shape the formulation of understandings. It further highlights how internal processes of reasoning inform practice and consequently, influence reform outcomes.

Empirically, by focussing on rule of law reforms in Serbia and relating this case to the broader context of European integration and enlargement, this thesis contributes to an understanding of contemporary politics in South East Europe and the EU. An analysis of rule of law reforms illuminates important policy changes that support democratisation in Serbia. More broadly, it also tells us about the contemporary drivers of EU external action. Qualitative fieldwork conducted at the domestic level and supranational level will demonstrate how the EU's engagement with Serbia is influenced by its internal politics. By uncovering the dynamics that drive rule of law reforms and the EU's engagement with Serbia, this thesis advances our understanding of European integration.

The methodology underpinning this thesis allows it to push the boundaries of contemporary European Studies. The application of a CPE approach to the chosen topic provides a set of methodological tools to analyse accession related reforms that occur in Candidate States. This is important for moving beyond orthodox methodological approaches, which favour monocausal explanations of change and focus primarily on formal institutions. Instead, a CPE approach takes actors as the key entry point for understanding reforms. It opens the 'black box' of Europeanisation and shows how socially constructed understandings of an issue can

differentially shape action, depending on the social relations which sustain and communicate understandings.

### **1.5 Organisation of the thesis**

The central argument of this thesis was elaborated in section 1.1. This argument holds that while the EU's new approach increasingly draws actors' attention to rule of law issues, it remains driven by a socially constructed strategic logic. This reinforces the reproduction as opposed to contextualisation of its rule of law criteria around a narrow set of understandings. This leads to the partial institutionalisation of the rule of law in practice, while simultaneously creating contestation and resistance to reforms. In addition to this central argument, several other findings are presented throughout the thesis. The overall structure of the thesis follows.

Chapter 2 locates the thesis' research within the broader literature. This chapter explores the relevant rule of law literature, EU enlargement literature and interpretivist policy studies literature, before locating CPE alongside these literatures. This literature review identifies a gap in the way in which existing accounts overlook the relationship between formal institutional change and the way in which policy reforms are interpreted. This chapter argues that by incorporating insights from the interpretivist turn in political studies, a CPE approach is well-placed to analyse how rule of law reforms are interpreted and the importance of these interpretations for shaping how rule of law reforms are institutionalised.

Chapter 3 outlines in detail the theoretical framework of CPE and operationalises it to analyse rule of law reforms in Serbia. It outlines a novel research design. First, it discusses the importance of structuration and semiosis for understanding and analysing processes of social construction. It justifies the use of semi-structured interviews to gain insight into these processes. Following this, the chapter outlines how the interview material will be analysed in

a way that allows actors' understandings to be deduced. The use of social network analysis is also outlined as an appropriate method for determining what role socialisation plays in disseminating rule of law reforms in Serbia. This network analysis is important for helping answer RQ1 and SQ2. Following this discussion of methods, the underlying philosophy of CPE is outlined. This section outlines how the thesis' approach follows a critical realist philosophy and adheres to its stratified ontology and epistemic pluralism. This chapter concludes by reflecting on the value added by applying a CPE approach.

Chapter 4 provides important context on rule of law reforms in Serbia. In doing so, it also introduces original empirical material, which helps identify some of the key challenges faced by rule of law reformers in Serbia. Taking the post-Milošević period as a distinct turning point in Serbian politics, this chapter looks at the way Serbia has engaged with the EU from 2000 to 2017. It highlights the key political projects that have been articulated in Serbia during this period and how political reforms have often been enacted in a piecemeal manner. It suggests that because of extensive compromise between domestic actors and the EU, a strategic process of Europeanisation has occurred. It argues that the EU's reliance on the application of conditionality has prioritised relations with governmental actors. This has resulted in the delivery of reforms in a top-down manner. This has achieved some change but has left relatively untouched the structures of key domestic institutions and has done little to encourage normative change within institutions. It is shown how various EU instruments reinforce these strategic and top-down reform dynamics. This chapter further shows how top-down reforms have generated significant contestation that has exacerbated existing divisions between government and civil society. The entrenched nature of the Serbian public administration and the difficulty of achieving reform is further illuminated by drawing on

interview material. This chapter concludes by reflecting on the challenging context in which rule of law reforms take place in Serbia and what this means for the EU's new approach.

Chapter 5 engages with RQ1 and SQ1. It outlines the way in which EU actors understand and construct a political imaginary of the Western Balkans region and Serbia within this region. This chapter shows how political issues not directly related to rule of law criteria shape the EU's external engagement and create an imaginary centred upon the concepts of risk and instability. It demonstrates how this imaginary is constructed in contemporary intergovernmental forums and in relation to recent experiences of enlargement. This focus on risk and instability leads to the prioritisation of an approach that addresses three perceived instances of instability: economic, geopolitical and migration. This chapter shows how rule of law reforms are understood as important for addressing these issues and improving stability. It further shows how perceived interests drive the EU's regional engagement. This chapter concludes by reflecting on how interests are socially constructed and related to political imaginaries. It reiterates that a strategic logic drives EU enlargement. However, the outlined evidence suggests that contemporary concerns and historical experiences shape this strategic logic. Consequently, it is socially constructed and not the outcome of predetermined preferences.

Chapter 6 engages with RQ1 and SQ2. It uses social network analysis to ascertain the role that social relations between actors play in the policy network surrounding rule of law reforms in Serbia. This chapter outlines the possibility for both substantive normative socialisation and more instrumental socialisation that is likely to reproduce power relations, hierarchies and narrow interpretations. It outlines how a strategic process of instrumental socialisation informs the way in which key actors engage with one another in the rule of law field. It is

demonstrated that while there is extensive interaction between governmental actors and international organisations, socialisation between these actors and NGOs has been limited and superficial. This results in a perception that the role of civil society is tokenistic and designed to legitimise rule of law reforms. This chapter concludes by reflecting on the procedural and intergovernmental nature of socialisation, which follows a strategic logic. This suggests that the EU's new approach needs to better encourage a process of reflection and deliberation among a range of actors to ensure the construction of shared rule of law understandings.

Chapter 7, 8 and 9 explore three rule of law topics within the context of Serbia's EU accession. These are: judicial reform, anti-corruption and fundamental rights. These chapters look at the process of semiosis among key actors to analyse how discursive *variations* are *selected* and *retained* by key actors in a way that leads to the construction of understandings. Each of these chapters engage with RQ2, SQ3, SQ4 and SQ5. Regarding judicial reform, chapter 7 outlines how a dominant understanding emerges that is centred on the idea of judicial reform and efficiency. It shows how this understanding is transferred from external actors to key governmental actors. Following this, it outlines a range of contesting understandings. The first of these understandings emphasises the importance of an independent judiciary. The organisational context and experience actors have of political interference in Serbia's recent history shape this understanding. Another contesting understanding emphasises the need for increased ownership of reforms. This contesting understanding is informed by the experience of actors and their interaction with external actors who are perceived to drive reforms. Regarding what these understandings tell us about European integration, this chapter raises three points. First, the emergence of differentiated understandings is argued to demonstrate

the contested nature of accession reforms and the difficulty of promoting a single reform agenda. Second, the divergence between different understandings demonstrates the EU's attempt to create a reform strategy that brings all actors together has shortcomings. A greater emphasis on dialogue between actors is suggested as a possible remedy for this. Third, despite contestation, different understandings are not mutually exclusive. However, actors struggle to reconcile different understandings within the reform process. This chapter concludes that rule of law reforms intersect with domestic and supranational politics and cannot be understood as a purely apolitical technical process.

Chapter 8 looks at anti-corruption policy. It demonstrates the emergence of a dominant understanding that reflects an interpretation of corruption as poor administrative culture. The proposed corrective of good governance is argued to reflect a neoliberal imaginary. Several contesting imaginaries are shown to emerge in response. The first of these reflects the view that a good governance focus neglects the systemic causes of corruption due to its focus on individual behaviours. A second contesting perspective suggests that some actors believe good governance underestimates the challenge of corruption and its deep-rooted and multi-causal character. A third contesting understanding reflects a view that the dominant reform paradigm does not focus enough on high-level political corruption. In terms of what these understandings tell us about European integration, the presence of significant contestation demonstrates the partial failure of the EU's new approach to create a coherent policy regime. This chapter further suggests that different understandings are the product of organisational context, past experiences and current lived experiences. Furthermore, it is suggested that actors find it difficult to reconcile multiple reform narratives. This is shown to

be indicative of the difficulty the EU faces in constructing a cohesive reform narrative that allows for the widespread institutionalisation of the rule of law in practice.

Chapter 9 examines fundamental rights. The first understanding of fundamental rights emphasises that fundamental rights is an everyday issue relevant for *all* citizens. This understanding stresses the importance of social inclusion and the empowerment of citizens vis-à-vis the state. In contrast to this perspective, a first divergent perspective suggests that the current reform narrative lacks a clear definition of fundamental rights. Contesting actors argue that the abstract use of the term fundamental rights diminishes the meaningfulness of reforms. The second contesting perspective emphasises how current reforms and associated discourse simulate change, without meaningfully engaging with key fundamental rights issues. Organisational context is once more shown to be key in shaping the construction of reforms. In terms of what these understandings tell us about European integration, this chapter emphasises that while a neoliberal or economic discourse does structure the emergence of a dominant understanding, this is less prevalent than in the field of judicial reform and anti-corruption reform. This chapter also highlights how the ‘functional’ use of fundamental rights discourse reinforces a superficial and strategic process of accession, because dominant reform understandings lack a clear normative commitment to fundamental rights. Furthermore, it is shown that the eclectic framing of fundamental rights makes it difficult for external actors to monitor the policy area effectively.

This thesis concludes by reflecting on the thesis’ key findings and summarising its findings to each research question. Chapter 10 discusses the contribution made, the limits of the research and the avenues for future research delineated by the thesis’ contribution.



## **Chapter 2: Literature Review and theoretical developments**

### **Introduction**

This chapter reviews the existing literature on EU enlargement and accession-related rule of law reforms. In doing so, it outlines the distinct contribution this thesis can make to the existing literature both empirically and theoretically. This chapter is comprised of four parts. First, the empirical literature on rule of law reform in the Western Balkans is examined. The rule of law is broken down into composite policy areas: judicial reform, anti-corruption policy and fundamental rights. This section outlines what is already known about rule of law reforms in the Western Balkans region and the importance of rule of law reforms for enabling European integration.

Second, a range of existing theories for understanding how the rule of law is promoted towards Candidate States is examined. These theories are institutionalist in nature and correspond with rational, constructivist and discursive approaches respectively. Rational approaches are argued to display an inherent reductionism. A focus on preferences is argued to overlook the complex way in which different actors determine their course of action. Despite the promise of constructivist accounts for explaining how rule of law reforms resonate in Candidate States, orthodox constructivist accounts are argued to lack a thorough account of the role power plays in explaining why rule of law reforms are instigated or contested. Discursive approaches emphasise the role different types of argumentation play in aiding the institutionalisation of the rule of law. However, these approaches have often been narrowly defined in the European Studies literature and have not frequently been applied. Having reviewed these different strands of literature, it is suggested that the European Studies literature would benefit from new insights in political science, which

emphasise the importance of interpretation for exemplifying how and why rule of law reforms might be accepted or contested.

Third, interpretivism is outlined as a new approach in political science that can add much needed nuance to the approaches prevalent in European Studies. Interpretivism builds on developments in Constructivist Institutionalism and puts forward an actor-centred approach. Its fundamental philosophy rejects the perceived structuralism of institutionalist approaches. Adherents of interpretivism advocate the important role that culture and interpretation play in shaping policy reforms. Despite offering a fresh perspective and analytical focus for scholars interested in institutional and policy analysis, many interpretivist accounts do not offer an explicit analytical framework. In addition, while sensemaking is identified as important for explaining policy reforms and political transformation, it is not embedded in a formal analytical framework. Finally, while interpretivist accounts tend to avoid determinism and structuralism, the emphasis placed on agency inadvertently neglects the role that social structures play in informing action and shaping sensemaking.

Fourth, this chapter presents Cultural Political Economy (CPE) as a concrete analytical framework. Theoretically, CPE emphasises the importance of actor sensemaking within institutional settings. These sensemaking processes and the social construction of imaginaries are argued to shape action. The central focus placed on how relationships between structures and agents shape sensemaking processes enables CPE to offer fresh insight into the role context, hierarchy and power relations play in shaping rule of law reforms. Furthermore, this approach is novel given its complete absence of application to the issue of EU enlargement and rule of law reforms more generally. For these reasons, CPE is advanced as the chosen analytical framework. Furthermore, CPE also provides a theory of change. Its emphasis on the

relationship between actors and context — which builds on and advances the concept of situated agency outlined by scholars of interpretivist governance (Bevir & Rhodes, 2010) — as well as its focus on how material and ideational factors shape interpretive processes, suggests that the EU's efforts to promote the rule of law will only be successful if it correctly identifies and ensures that reforms resonate with existing discourses, symbols and meanings, which help actors make sense of the world.

Having outlined the relevant gaps in the literature both empirically and theoretically, this chapter concludes. It reflects on the need to move beyond the methodological rigidity of the EU enlargement literature and to embrace new theories. This is important for advancing our understanding of accession-related rule of law reforms and for appreciating the potentially overlooked role sensemaking and interpretation plays in explaining how rule of law reforms are institutionalised in practice.

## **2.1 Rule of Law Reform in the Western Balkans**

In the context of enlargement, rule of law acts as a vehicle to promote and support the EU's Copenhagen Criteria and liberal democracy (Börzel et al., 2017, p.162; Lacey & Bauböck, 2017). Rule of law covers a broad range of policy areas and is often considered to form the 'substance' of liberal democracies (Bugaric, 2008, pp. 197–198). The concept has often fallen victim to conceptual stretching and can be taken to cover everything from the EU's basic values to the practice of democratic politics (Magen, 2016, pp. 1051–1052). In recent years, the European Commission has more strictly defined its rule of law concepts, focussing the attention of scholars around several key principles. First, a judiciary should be independent and impartial. Second, government and its officials should be accountable under the law and take a clear stance against corruption. Third, laws must protect fundamental rights and be prepared in a

transparent, efficient and fair manner (European Commission 2014). As was outlined in the introduction, this thesis explores three of the policy areas outlined in Chapter 23 of the EU *Aquis*, which Serbia must align with: judicial reform, anti-corruption policy and fundamental rights. It examines these policy areas to answer the questions outlined in chapter 1.

### **2.1.1 Judicial reform**

In terms of composite policy areas, judicial reform is perhaps the most crucial. Judicial reform in the context of enlargement concerns the independent exercise of the judiciary, which should also be effective and efficient (European Commission, 2015b). Judicial independence is the subject of contemporary debates concerning rule of law ‘backsliding’ in Hungary, Poland and Romania (Blauberger & Kelemen, 2017; Kelemen, 2017; Sedelmeier, 2014). Judicial reform in the Western Balkans has a relatively short history that is tied directly to the post-socialist transformation of the region and the prospect of EU Membership offered at the Thessaloniki summit in 2003 (European Commission, 2003).

To date, judicial reforms in the Western Balkans have struggled to take root. While examples exist that demonstrate the positive role EU accession has played as a driver of rule of law reform more generally, change within the judicial systems of individual countries had been limited (Kmezic, 2016). History plays an important role in shaping the path dependent development of rule of law in the Western Balkans and countries such as Serbia have sought to undertake reforms in an environment where institutional structures are inherited from successive socialist and authoritarian regimes (Dallara, 2014). These historical path dependencies are important. However, contemporary events also shape rule of law reforms in powerful ways and much of the current judicial reform shortcomings have been attributed to the dysfunctional way reforms are advanced and administered. Some scholars have

criticised the EU's conditional approach for failing to encourage a suitable change in mentality among target judicial institutions and actors (Dallara, 2014; Kochenov, 2008; Mendelski, 2013, 2016). Others have highlighted how Western Balkans elites continue to obstruct judicial reforms to preserve their own vested interests by blocking organised advocacy groups and preventing the construction of autonomous institutions (Elbasani, 2013; Elbasani & Šabić, 2017).

While existing accounts have been useful for identifying the relationship between actors, institutions and policy change (or lack of), they have focussed less on why reforms might be contested or rejected. There are also relatively few studies examining the potential contradictions inherent within the EU's approach, and how this might produce unintended reform outcomes (Fagan et al., 2015). The default explanation for resistance is that reforms run against the existing interests of elites and the power structures which sustain them (Noutcheva, 2009; Vachudova, 2014). Such an understanding assumes that interests are formed *ex ante* and correspond with a rational assessment of the political situation and policy context. However, interests might also be constructed in administrative and cultural contexts, and actors might make sense of their interests in complex ways. Recent studies suggest close attention needs to be given to the domestic administrative contexts in which judicial reforms occur, if the EU is to effectively recognise and respond to new strategies of control and interference deployed by domestic elites (Fagan, 2016). Consequently, this thesis does not presuppose how actors interpret judicial and other rule of law reforms, nor how actors interpret their interests in relation to reforms and act upon them. Instead, it focuses on how actors' understandings of key issues are constructed in different contexts and how this subsequently influences their action and engagement with rule of law reforms.

### **2.1.2 Anti-corruption**

The second important policy area examined in this thesis is anti-corruption policy. Given the vastness of the existing literature, this review limits its scope to a discussion of corruption and anti-corruption policy in the context of post-socialist transition and the Western Balkans region. In terms of the broader literature, it is worth highlighting the general consensus that a range of factors including culture, belief systems, political transition and economic transition, facilitate the production and reproduction of corruption (Ashforth, et al., 2008a; Graf Lambsdorff, 2005; Sandholtz & Taagepera, 2005).

In the Western Balkans, corruption is perceived to be widespread and driven by clandestine political structures that function on systems of patronage (Vachudova, 2009; Wallace & Latcheva, 2006). State capture is considered to be deep and corruption is pervasive within public institutions across the region (Elbasani & Šabić, 2017). Corruption is further proliferated through elite actor networks (Kleibrink, 2015). Consequently, corruption undermines the region's Europeanisation process because elites obstruct reforms that threaten their patronage networks (Noutcheva, 2009).

Anti-corruption strategy has been outlined as a key component of Chapter 23 because corruption undermines political independence and accountability. The EU's focus on political and administrative corruption corresponds with its adherence to principles of good governance. Good governance principles include accountability, transparency and efficiency (Aguilera & Cuervo-Cazurra, 2009; Mungiu-Pippidi, 2015). EU enlargement scholars have largely focussed on how engagement with the EU can transfer these principles of good governance to Candidate States (Moravcsik & Vachudova, 2003; Mungiu-Pippidi, 2005; Pridham, 2002). A more critical body of literature has examined what good governance means

in practice. This literature has argued that despite promising transparency and accountability, good governance remains driven by a paternalistic (Chandler, 2007, 2010) or a neoliberal logic (Bedirhanoglu, 2007; Demmers et al., 2004; Mikuš, 2016). This critical literature tends to conclude that good governance exacerbates political disengagement in the Western Balkans and serves the external interests of the EU and its partners.

Empirical studies of corruption and critiques of good governance obscure debates about *how* anti-corruption strategy is understood by different actors, and how actors relate these understandings to different political projects. Furthermore, anti-corruption policy may have an ambiguous effect. This is because its promotion is reliant on existing elites, who themselves may be corrupt. This justifies a focus on the key actors involved in implementing anti-corruption reforms. It is important to understand their characteristics, whether they support or contest anti-corruption reforms and whether they support or subvert an anti-corruption agenda.

### **2.1.3 Fundamental rights**

Fundamental rights in the context of EU enlargement involves the transposition of the EU's charter of fundamental rights into the legal framework of Candidate States (Official Journal of the European Communities, 2000). This includes respecting human rights and the respect for and inclusion of minorities. It also covers areas such as a freedom of expression and media freedom.

Formally, the accession process requires Candidate States to put in place legislation that protects the rights of minorities and upholds social freedoms. In previous accessions however, this formal change has often done little to advance the minority rights of vulnerable groups, such as the Roma (Hughes & Sasse, 2003; O'Dwyer & Schwartz, 2010; Sasse, 2008;

Vermeersch, 2003, 2012). The decoupling of formal improvement in the legal framework from the lived experience of minority groups is also an issue in the Western Balkans region. For example, LGBT communities report continued discrimination, despite some positive legislative changes taking place (Igrutinović et al., 2015; Selmić, 2016). Similarly, despite legislative changes, the region's Roma minority continues to live at the periphery of society (Kacarska, 2015; McGarry, 2017; Sardelić, 2015).

Another area of fundamental rights that is salient in the Western Balkans is freedom of expression, including media freedom. Media freedom has been a persistent issue in the Western Balkans and journalists across the region have faced violence and intimidation for pursuing politically sensitive topics (Huszka, 2018; Irion & Jusic, 2014). Freedom House's media freedom in the world has seen little change in the Western Balkans region and in recent years, has even reported significant declines in media freedom (Freedom House, 2015a, 2017).

A brief examination of the literature demonstrates the fragile state of fundamental rights in the Western Balkans region. To better understand why it has been difficult to advance fundamental rights, it is important to understand how key policy actors understand fundamental rights issues and the sensemaking processes determining their support or rejection of fundamental rights issues. By ascertaining the reasons why fundamental rights reforms are understood, accepted, contested and rejected, this thesis can complement the existing literature.

## **2.2 Current conceptualisations of the diffusion process: How the EU elicits change in Candidate States**

The EU's method for transferring important rules and norms to Candidate States during enlargement has typically been conceptualised as a process of Europeanisation. Put succinctly,

Europeanisation concerns the alignment of countries with the formal and informal rules and norms of the EU (Radaelli, 2002). Europeanisation approaches broadly align with an institutionalist paradigm. This is because they are focussed on how the EU can change institutions in Candidate States and promote the alignment of these domestic institutions with its rules and norms. As the following paragraphs will demonstrate however, within the Europeanisation literature, the importance of sensemaking is not adequately conceptualised as an important factor that shapes how the EU is perceived, how its reforms are understood and how action is constructed in relation to a subjective understanding of accession-related issues.

Building on the Europeanisation literature, Börzel and Risse (2011) have outlined different mechanisms through which Europeanisation occurs. Their approach has been widely cited and built upon by other scholars researching various aspects of EU enlargement, as well as other forms of regional integration and EU foreign policy (Jetschke & Murray, 2012; Keukeleire & Delreux, 2014; Spendzharova & Vachudova, 2012a). Analytical models of diffusion identify the role of three logics: consequential, appropriateness and communicative. The first of these logics can be considered to correspond with Rational Choice Institutionalism, the second Sociological Institutionalism and the third Constructivist Institutionalism. These logics inform various processes that result in the diffusion of EU norms and institutions (Börzel & Risse, 2011):

*Table 2.1: Diffusion Mechanisms. Source: Börzel and Risse (2011, p.6)*

| <i>Underlying logic of social action</i>                     | <i>Diffusion mechanism</i>  | <i>Example instruments</i>   |
|--|---|--|
| Manipulating utility calculations (instrumental rationality) | Positive and negative incentives and capacity building                    | EU conditionality, material resources on condition of reform       |
| Socialisation (normative rationality)                        | Promote new ideas through social learning and creating normative pressure | EU Twinning Programmes, interlinkage between epistemic communities |
| Persuasion (communicative rationality)                       | Promote ideas as legitimate through reason-giving                         | High-level dialogue  |

Each logic of social action rests on distinct assumptions regarding actors, their motivations and their interactions with institutions. Börzel and Risse identify these logics as ideal types, accepting the application of aligned instruments rarely occurs exclusively in real life (Börzel & Risse, 2011, p.5). The instruments associated with these logics are conceptualised as policy tools that can initiate a causal process of diffusion. Diffusion is proposed to be subject to scope conditions that depend on: domestic incentives for institutionalisation; the degree of statehood; government type; and the power asymmetries between the sender and receiver of rules and norms (Ibid, pp.10-14).

Börzel and Risse's focus on logics and mechanisms is characteristic of institutionalist thinking and the belief that 'institutions are the central component of political life' (Peters et al., 2005, p.122). Their approach and the approach of many other institutionalist scholars methodologically prioritises the institutional environment in which political actors operate (Lowndes & Roberts, 2013, pp.6–7). This chapter's following sections will outline the merits of this institutionalist thinking while also highlighting the added value of alternative approaches.

### 2.3 Rational Approaches

The first diffusion mechanism is based on the logic of consequence. This logic implies anticipated prior preferences and utility outcomes determine social action (March & Olsen, 1998, p. 94). This logic corresponds with rational choice approaches. Rational choice theories emphasise the material and strategic nature of the social world. Rational Choice Institutionalism (RCI) conceptualises institutions to act as a restraint on the strategic preferences of actors and argues that institutions play a role in shaping preference formation (Dowding, 1994; Koelble, 1995, pp. 234–237). In European Studies, such approaches are dominant. The influence of rational choice permeates Liberal Intergovernmentalism (LI), perhaps the most dominant model for understanding European integration. LI emphasises how EU Member States set their preferences domestically and subsequently interact within the institutional structures of the EU to produce supranational outcomes (Moravcsik, 1995).

In the case of enlargement, the decision to engage with EU Candidate States and the way in which EU Candidate States engage with the EU is subsequently shaped by preferences and national interests. From this perspective, cost-benefit calculations dominate and domestic actors in Candidate States are likely to engage only if there are credible ‘incentives’ offered by the EU (Schimmelfennig, 2005; Schimmelfennig & Sedelmeier, 2005; Vachudova, 2005). Actors are seen to respond to the positive incentives offered by prospective membership, as well as the negative consequences of being denied membership. Reform processes are seen to be highly dependent on strategic factors and cost-benefit scenarios (Schimmelfennig & Sedelmeier, 2004). Compliance studies also conform to this rational paradigm because they generally equate the effective transposition of the EU *acquis* with a subsequent change in behaviour. This is because actors are considered rational agents and as rational agents, they

conform and operate according to new institutional rules constructed through Europeanisation (Böhmelt & Freyburg, 2013, 2017; Hille & Knill, 2016; Knill & Tosun, 2009; Toshkov, 2008). This process of alignment with EU rules is further conceptualised to limit the possibility for domestic elites to engage in corruption as their actions become constrained by new institutional rules (Vachudova, 2009, p.50). In other areas, it has been argued that the use of conditionality as a significant stick to induce reforms had 'put the reform of sensitive sectors such as the judiciary and public administration on the political agenda' (Noutcheva & Bechev, 2008, p.140).

Despite retaining their dominance, rational theories, which focus on the EU's use of conditionality during accession, have struggled to explain the issue of backsliding highlighted in chapter 1. Rational approaches fixate on the increased use of modified conditionality to ensure compliance (Gateva, 2013; Sedelmeier, 2017, pp. 342–343). However, conditionality has its limits. Increasingly, Europeanisation scholars suggest that the ability of enlargement policy to transform Candidate States depends on the domestic configuration of actors therein, and their capacity to implement reforms (Börzel et al., 2017, pp.168–170). Mitigating veto players and empowering reform coalitions is recognised as important for ensuring new rules and norms transfer successfully (Schimmelfennig, 2014). However, ensuring domestic actors cooperate is increasingly difficult when EU incentives are not perceived as credible by domestic elites in Candidate States (Huszka, 2018). Furthermore, domestic reform coalitions increasingly find themselves marginalised, and struggle to align their positions with the views communicated by their domestic constituents (Kortenska et al., 2016; Dimitrova & Kortenska, 2017).

A so-called 'domestic turn' is increasingly advocated within the EU Studies literature (Slootmaeckers et al., 2016). This domestic turn suggests that more focus needs to be placed on the domestic context in Candidate States, to better conceptualise the nuanced interplay between external incentives and domestic factors, which occurs during Europeanisation (Dimitrova & Buzogány, 2014). Parau (2009) suggests that in previous cases of successful transformation, conditionality alone cannot explain positive outcomes. Using the example of Romanian civil society empowerment, she suggests that change occurred through three causal pathways: the government's desire for the country to accede to the EU; transnational advocacy networks; and the government's self-identification with some elements of the advocacy network, reinforced by a concern for its external reputation (Parau, 2009). From this perspective, monocausal explanations focussed on the use of conditionality alone cannot explain transformation. Domestic interests, social pressure and two-way socialisation processes also play a crucial role.

Looking into the domestic context, previous studies have shown that during the Eastern enlargement, the need to attract foreign investment sufficiently motivated domestic elites to seek EU integration and comply with the EU's conditionality criteria (Parau, 2012). While domestic elites in the Western Balkans have similarly engaged with the EU to secure financial investment and other resources in the past, the rise of global powers that can offer similar material resources without attaching the strings of rule of law reform means that the EU is no longer the only game in town (Mujanović, 2018). With alternative sources of power now available to domestic elites, the EU's conditionality procedure will find it increasingly difficult to motivate domestic actors to adopt reforms. This suggests that conditionality will increasingly have to be coupled with persuasive forms of socialisation.

Critical accounts of EU state-building in the region further demonstrate the decreased attractiveness of the EU as an end-point for the Western Balkans countries (Belloni, 2016). Conditionality is further undermined by the fact the EU's rule of law *acquis* is often vague. This means the effectiveness of conditionality is severely hampered by its decreasing credibility, the opportunity to obtain resources through other means and a lack of clear rules that can be communicated towards Candidate States (Bieber, 2011, p.1793). While conditionality might force compliance, it remains questionable whether compliance alone is enough to change deep-rooted practices, which in the absence of conditionality, are likely to reappear. This has been shown in the cases of Bulgaria and Romania, where even post-accession conditionality in the form of the Cooperation and Verification Mechanism, has struggled to prevent the re-emergence of political corruption (Ivanov, 2010). Consequently, recent analysis has concluded that in the Western Balkans, the rule of law cannot be engineered through the smart design of formal institutions alone. Successful reforms require the support of actors within and beyond key political institutions, who buy into rule of law norms and values (Strelkov, 2016). It is also important to understand the confounding role played by socio-economic factors and domestic legacies, which shape the way EU incentives are interpreted (Dolenec, 2013, pp.195–196).

Conditionality has provided an appropriate framework that allows scholars to conceptualise formal alignment with EU rules. However, to appreciate the importance of social context and interpretation in shaping the formation of preferences, a more nuanced conceptualisation is necessary. This nuanced conceptualisation requires understanding actors not as utility maximisers but as human agents, whose understandings determine the way in which they engage with the EU and its reform agenda.

### **2.3.1 The challenge of moving beyond formal compliance**

Theoretical elaboration is also necessary to address the difficult issue of moving beyond formal compliance. Ensuring that formal compliance is matched by adherence to new rules and norms in practice is necessary to ensure that new institutions do not remain 'empty shells' (Dimitrova, 2010). Post-socialist countries in Eastern and South East Europe struggle to overcome institutional legacies. In these contexts, informal institutions remain strong. Despite some degree of formal compliance with the EU's accession criteria, informal rules and norms continue to undermine the effectiveness of new institutions (Innes, 2004).

Mungiu-Pippidi (2015) suggests that public participation in the design of new institutions is necessary for new rules to become 'rules of the game'. Consequently, there is a strong relationship between the strength of democracy and effective institutionalisation of the rule of law; once a balance of power has been achieved between domestic constituents and governing elites through the strengthening of democratic institutions, the introduction of new rules and norms can effectively constrain major actors, preventing them from circumventing formal and widely legitimised institutions (Mungiu-Pippidi, 2006). This implies that the effective promotion of the EU's rule of law criteria needs to be coupled with wider support and assistance for the creation of a pluralistic and democratic society.

Mendelski's (2013) critique of EU rule of law promotion in the Western Balkans suggests that moving beyond formal compliance requires a significant recalibration of the way in which the EU engages with Candidate States. He argues that the activities of the EU and pro-reform actors have successfully promoted change in the legal framework. However, the uncoordinated delivery and incoherence of the EU's reform approach has undermined adherence to the rule of law in practice. Consequently, significant gaps exist that allow formal

rule of law institutions to be circumvented by domestic elites (Mendelski, 2013). The EU's focus on ensuring the adoption of formal rules, in tandem with the partisan empowerment of domestic change agents, is further argued to result in a biased assessment of rule of law reforms, whereby formal change is equated with a change in practice (Mendelski, 2016). An alternative argument has been made that greater alignment of EU rules and norms with domestic normative frameworks, coupled with the empowerment of sincere reform coalitions, might better result in the institutionalisation of the rule of law in practice (Mendelski, 2013, 2016; Webb, 2018).

Ensuring that new rule of law institutions are coupled with new rules in practice remains a challenge in the Western Balkans. Political authority continues to flow through informal networks that operate in parallel to formal institutions. This results in the continuation of informal practices that subvert and capture institutions, turning them into empty shells that are unable to enforce new rules (Dimitrova, 2010; Kostovicova & Bojicic'-Dželilovic', 2013). The more strongly externally introduced rules deviate from previously established practices, the more likely partial compliance and the proliferation of existing practice (Noutcheva, 2009; Fagan & Wunsch, 2018). If change is to be realised and a move beyond formal compliance achieved, it is also necessary to ensure additional resources are assigned to help domestic actors adopt and adapt EU rules and norms (Buzogány, 2009).

In sum, the importance of moving beyond formal compliance is increasingly recognised in the literature. More and more, studies of EU enlargement appreciate the complexities of introducing new rules and recognise that conditionality alone will not induce a deeper change in the absence of appropriate domestic engagement. However, there has yet to be large-scale study of whether the EU's new approach represents the type of effective change needed.

Furthermore, the reductionist ontology associated with rational choice approaches continues to dominate the field. This results in the limited application of alternative approaches that provide insight into how EU rules become contextualised and institutionalised in practice.

### **2.3.2 Rational reductionism?**

On a theoretical level, rational choice is reductionist. By conceptualising actors as *homo economicus*, normative and social aspects that actors have are completely stripped away. The rational account of agency not only reifies liberal economic theory, it also reduces the complexity of the social world in a parsimonious manner (Archer, 2002, pp.11–12). What remains is a theory that does not correspond with actors' own accounts of their behaviour in policy reform processes.

In terms of how policy change occurs, policy studies literature suggests that actors are often not rational and that ideas and beliefs matter (Faleg, 2017; May, 1992). The core assumptions of the Advocacy Coalition Framework (ACF), perhaps one of the most widely cited frameworks for studying policy change, highlights the importance of socialisation between actors and the role that beliefs play in fixing policy perspectives (Weible et al., 2009, p.122). By focussing on the importance of different organisational contexts and actor beliefs, the ACF and other policy learning approaches draw our attention to the importance of cultural factors that explain rule of law reform (Dunlop, 2009, pp.294–295; Howorth, 2004). In contrast to rational choice, the policy learning literature suggests that actors are often reflexive and capable learners, whose actions are shaped by far more than endogenously formulated preferences (Sum & Jessop, 2013, pp.63–64).

In the case of rule of law reforms in Serbia, moving beyond the rationalist tendencies of the existing literature is also important to answer more challenging questions. How are reforms

meaningfully enacted as opposed to simply complied with? What role do social relations play in shaping agency? What social and reputational stigma might actors come under when they do or don't comply with rule of law reforms? Perhaps more fundamentally, does the lived-experience of individuals really convey a picture of rational behaviour? The methodological individualism evident in rational choice accounts is poorly equipped to answer such questions (Bulmer & Joseph, 2016, p.733; Cramer, 2002). Such accounts relegate the role of culture and shun a more sophisticated notion of the political in favour of a focus on preferences. Actors are perceived to not capably recognise the inherent appropriateness of certain values, responding only to reforms if their interests are enhanced or placed under threat. Such a parsimonious perspective does not account for the complex nature of organisational conduct.

Several 'sociological' approaches further challenge rational choice theory's conceptualisation of social situations. Adler-Nissen's (2014) account of EU diplomatic practices challenges the rational conceptualisation of a static world, where actors occupy fixed preferences. An examination of EU diplomats and other 'communities of practice' demonstrates how institutions are interactively engaged with by actors, creating micro-social worlds which shape their behaviour (Adler-Nissen, 2016; Bicchi, 2014). Rational approaches tend to dismiss the role social interaction plays, conceptualising preference change to occur only instrumentally. Furthermore, adopting the EU's legal framework does not necessarily mean corresponding norms have been internalised by actors (Wiener, 2015). This is demonstrated in contemporary political developments, which raise tough questions about the plausibility that a simple re-aggregation of preferences can induce the type of change needed to enact meaningful rule of law reforms. It thus becomes clear that rational choice perspectives fail to account for the world as it is and ignore the social dynamics of policy change. Perhaps most

importantly, the following section demonstrates the failure of rational choice accounts to reflect the empirical reality they claim to observe.

### **2.3.3 The emergence of backsliding as a challenge to conditionality**

Developments within the EU in the form of post-accession backsliding justify a critical evaluation of political conditionality as the dominant tool for inducing Europeanisation. In Poland and Hungary, there has been an encroachment on the independent exercise of the judiciary and attempts to restrict freedom of expression (Blauberger & Kelemen, 2017; Kelemen, 2017). In Bulgaria and Romania, residual issues of corruption continue to undermine the exercise of rule of law institutions (Ivanov, 2010; Levitz & Pop-Eleches, 2010; Toneva-Metodieva, 2014). Questions have also been raised about the contemporary effectiveness of the EU's conditionality tools for enacting meaningful change in the case of Serbia. Economides and Ker-Lindsay (2015) argue that current compliance with accession reforms has occurred in response to material incentives. This has resulted in the pragmatic and superficial adoption of EU rules and norms. As a result, there has been an avoidance of aligning domestic practices with EU expectations (Economides & Ker-Lindsay, 2015, p.4). They conclude that conditionality promotes a short-term interest-based policy shift, as opposed to a process of normative Europeanisation that alters the behaviour of actors (Ibid, p.13). This is important — in our case, a change in behaviours is necessary to move beyond formal compliance and support the institutionalisation of the rule of law in practice.

Contemporary developments in new Member States demonstrate that while conditionality might result in pre-accession compliance, it does not constitute an effective instrument for locking in rule of law reforms. This suggests a need to comprehend the appropriate circumstances for the application of conditionality, as opposed to prioritising conditionality

as a uniform policy. Furthermore, conditionality is defined through discourse, interaction and other complex process of socialisation. As Vasilev (2016) concludes: 'without discursively induced actor transformations, EU membership would not have been interpreted as a carrot and exclusion from EU membership would not have been interpreted as a stick' (Vasilev, 2016, p.753). To comprehend whether EU conditionality can construct new rule of law understandings, an approach must be adopted which takes the role of discourse, ideas, socialisation and other cultural aspects seriously. This requires engagement with an alternative body of literature that focusses on processes of social construction and interpretation.

To summarise, the application of conditionality can have a 'straightjacket' effect on Candidate States, using material leverage to elicit reform compliance. To what extent this leads to actors upholding the rule of law as 'something worth respecting' and the extent that conditionality leads to a change in practice requires further analysis. In contrast to the methodological individualism and reductionism espoused by rational choice, an alternative perspective of preference formation is adopted in this thesis, which takes preferences to be formulated 'on the basis of deep seated and socially shaped sentiments, filtered through a process of socialisation' (Crossley, 2008, p.95). To avoid the decoupling of actual practice from implemented laws, there remains a need for fundamental social change to occur during accession, transforming how actors come to evaluate certain preferences (Slapin, 2015). Conditionality can therefore be effective for inducing engagement, but it says very little about how deep processes of change might occur and the roles played by norms and values.

## **2.4 Constructivist perspectives**

Orthodox constructivist accounts correspond primarily with the second diffusion logic in table 2.1. This logic of appropriateness is reflected in Sociological Institutionalism (SI) and its focus on 'norm guiding behaviour' (Börzel & Risse, 2011, p. 5). Due to the dominance of rationalist approaches, Börzel and Risse (2009) note: 'alternative [constructivist] mechanisms [to conditionality], such as socialization, persuasion and emulation, have received little attention in the literature so far' (Börzel & Risse, 2009, p.10). This 'thinner' strand of constructivism associated with SI emphasises the causal power of ideas and the role they play in shaping interests (Carlsnaes et al., 2002, p.57).

The constructivist research tradition builds on the logic of appropriateness outlined by March and Olsen (1998). Constructivists place analytical focus on the significance of norm guided and identity-based action, whereby the behaviour of actors reflects their view of the world and their perceived position within it. Crucially for constructivists, it is an actor's interpretation of norms and other ideational factors that shapes their conduct. Situational cues of their social environment elicit a 'mutually constitutive' response to new norms, whereby actor interpretation reconstructs new norms and new norms reconstruct actor interpretation of a given situation (Sending, 2002). The EU literature has by and large been slow to accommodate constructivist approaches. Despite its late introduction, constructivism provided a 'breath of fresh air' when placed alongside rational analytical approaches (Checkel & Moravcsik, 2001, pp.219–220).

### **2.4.1 Identity and socialisation as key constructivist building blocks**

Constructivist research focuses extensively on the importance of identity and socialisation. In terms of identity, constructivists explain change in terms of whether new norms and practices

resonate with existing identities and values (Fuchs, 2011). In the case of rule of law reform, different outcomes are possible depending on the answer given to the question: 'what does a person like me (identity) do (rules) in a situation like this (recognition)?' (Weber et al., p.282). Identities themselves are not static or fixed like preferences and are malleable to change. Actors can thus readjust their identities and align with new norms.

Dimitrova (2010) highlights that new institutions are only effective when they are underpinned by corresponding rules and norms, which are followed in practice. According to her framework, three outcomes of accession reforms can be theorised: First, the reversal of new rules; second, institutionalisation involving the alignment of formal and informal rules; third, 'empty shells' when actors ignore new rules and parallel informal rules are used (Ibid., p.146). Dimitrova suggests that the institutionalisation outcome requires aligning external rules and domestic interests. This requires identifying who the key domestic veto players are and using robust processes of strategic bargaining to align with domestic preferences and force compliance where necessary (Ibid). This perspective is informed by rational choice theory and its associated ontology. However, an alternative constructivist explanation suggests that the alignment of formal rules with informal rules and practices will be more effectively achieved through processes of socialisation, which focus on changing identities and socialising actors into both the formal and informal rules of the EU (Fagan & Wunsch, 2018, p.14).

Constructivists emphasise the importance of socialisation for explaining identity change and socialisation into new institutional norms. From this constructivist perspective, socialisation involves any process of social interaction with institutions and other actors (Checkel, 2005, pp.805–815). This strand of constructivism emphasised the importance of institutions

because socialisation is initiated in an institutional context, where actors are socialised into the EU's 'way of doing'. A good example of this socialisation process is visible in the EU's Technical Assistance and Information Exchange (TAIEX) instrument as well as the Twinning programmes between Member States and Candidate States. These programmes aim to foster understanding of the accession process and demonstrate the compatibility of the EU's norms with existing practice (European Commission, 2014).

In the case of accession reforms, socialisation is conceptualised as important for socialising actors into new patterns of behaviour that uphold the rule of law in practice. As Sasse (2008) concludes in her comparative study of minority rights in Latvia and Estonia: 'without at least a degree of socialisation, the implementation of rationally adopted laws and policies from the accession period is bound to remain patchy' (Sasse, 2008, p.856). While scholars identify the importance of socialisation for ensuring behavioural change, they have tended to relegate it as an explanatory factor given the salience of the rational perspective. For example, in their edited volume examining the Europeanisation of Central and Eastern Europe (CEE), Schimmelfennig and Sedelmeier conclude that: 'rule adoption is primarily driven by the conditional external incentives of the EU' (2005, p.211). This returns us full circle to the dominant view that rational self-interest drives accession reforms in Candidate States. Accepting this premise once more opens a difficult set of questions about the transformative capabilities of the EU's enlargement agenda and the possibility for its new approach to induce a change in practice.

In terms of why this change in practice is important, Kochenov (2008) draws attention to the failure of previous enlargements to communicate principled rule of law norms because of the EU's procedural pre-accession conditionality. The procedural format of accession

negotiations is considered to provide limited opportunities for domestic actors to understand EU norms in relation to domestic circumstances. An increased focus on socialisation is important for encouraging reflexivity and the actual adoption of the rule of law in practice (Kochenov, 2008, p.93). This suggests that an approach focussed on how actors understand and construct rule of law reforms, as opposed to assuming that actors will unquestionably follow new institutional rules, can generate new insights into the transformative power of the EU's rule of law approach. Other scholars concur that a process-orientated approach, which involves engagement between the EU and a range of domestic actors to contextualise rule of law reforms, could increase the legitimacy of accession related reforms in different country contexts (Mendelski, 2016, pp.377–278). When it comes to rule of law promotion in Serbia, a more process-orientated approach based on 'partnership and mutual responsibility' is believed to result in the contextual application of EU rule of law norms (Toneva-Metodieva, 2014, pp.546–548). Conditionality is often conceptualised as the main catalyst for change, with socialisation serving a secondary function. Yet if an actual change in practice is to occur, this will occur only through socialisation. In sum, socialisation is necessary to enable a change in rule of law practice, as opposed to compliance.

This perspective, that socialisation matters for enabling behavioural change among actors, is well supported in the policy studies literature (Dunlop, 2009; Kamkhaji & Radaelli, 2017). Sabatier notes that in a world where actors have cognitive limits and seek to realise core values with limited resources, actors are provided with a strong incentive to learn more about problems and the consequences of policy alternatives (Sabatier, 1988, p.159). Socialisation is particularly important within policy networks as connections between actors form conduits for sharing knowledge, learning, innovation and embedding network practices (Davies, 2011).

In this regard, social network analysis is useful for mapping and elaborating how actors mobilise and interact with one another to achieve objectives and policy outcomes within policy networks (Lazega, 2013; J. Scott, 2012). Institutional scholar have also noted the capacity of institutions to collectively learn either through experience or lesson drawing (Peters, 2011, p.79; Stone, 1999). Similarly, a CPE approach emphasises that actors have the capacity to learn and improve their capacity to act in line with either their identities or interests (Sum & Jessop, 2013, p.64). Insights from the policy studies literature suggest that the rational-normative divide is neither insurmountable nor a reflection of the world as it is. Interests do matter and actors are strategically orientated towards achieving objectives. Yet actors are also motivated by values, do follow norms and are capable of learning and changing their understanding of a topic. Any change in values, norms, learning and understanding are likely to be initiated by socialisation. For this reason, socialisation is a key aspect of this thesis' research agenda.

#### **2.4.2 Normative Power or Normative Hegemony?**

Constructivism has also played an important role in shaping the way scholars understand the EU as a 'normative power' (Manners, 2002). Normative Power Europe's (NPE) five 'core' norms of peace, liberty, democracy, rule of law and human rights are argued to guide the EU's external action. They are proposed to be transferred to other states and international bodies the EU engages with through a range of interactions including procedure, diffusion or a cultural filter (Manners, 2002, pp.242–245). According to the NPE framework, the EU promotes the rule of law externally because it believes that its intrinsically good norms should also guide the behaviour of other countries and international organisations (Iusmen, 2014, pp.172–173; Sjursen, 2002).

While NPE reintroduces the importance of ideational factors and culture, it has been critiqued because it lacks a meaningful conception of power and hierarchy. The concept of hegemony is particularly important because it has been argued to permeate the normative power of the EU. Diez (2013) in his notable critique of the NPE concept outlines four problems with the concept, of which two fundamentally challenge the EU's normativity. First, there is a question about the role that interests play in determining EU foreign policy, as indicated by the EU's sporadic adherence to key norms and values in different contexts (Diez, 2013, p.197). Second, Diez raises the question about the EU's effectiveness as a normative power — are the norms promoted by the EU capable of influencing third parties (Ibid, p.197)? This critique highlights the uneasy tension between interests and ideas inherent in the NPE framework. If rational perspectives are reductionist in their conceptualisation of individuals as utility-maximisers, NPE is too idealistic in its conceptualisation of how and why the EU acts in its external engagements. Furthermore, it has been demonstrated that when it comes to promoting the rule of law in the Western Balkans, the normative power of the EU has been limited (Noutcheva, 2009).

To address weaknesses in the NPE concept, a notion of hegemony has been amalgamated with the concept of normative power. This concept of hegemony is useful for understanding why the EU engages Candidate States in state-building processes and outlines an alternative explanation of why the EU acts to promote rule of law reform. The concept of hegemony focuses on the interplay between economic interests and ideas to explain the enduring structure of the international system and the relationship between different actors in the international system (Cox, 1983; Pijl, 1998). The concept of hegemony is also useful for

thinking about the struggles between different actors who seek to support or subvert different hegemonic projects (Bulmer & Joseph, 2016; Diez, 2013, p.201).

The concept of normative hegemony resonates with other developments in constructivist theory. For example, critical constructivists emphasise the inherent contestation which accompanies norm promotion (Wiener, 2007; Wolff & Zimmermann, 2016). Norms cannot be internalised if they are forced upon recipients and most norms are contested, all be it to different degrees (Bueger, 2016). For norm promoters, contestation must be overcome through processes of dialogue which seek to contextualise new norms (Groß, 2015). Alternatively, more powerful actors can mobilise a range of social forces to support their norm promotion efforts and overcome contestation (Bridoux & Kurki, 2014). This contested dynamic may be reflected in the EU's attempts to promote rule of law reforms during the accession process.

In sum, the concept of normative power as hegemony is useful for: transcending the interest and ideas divide constructed by rationalist and constructivist perspectives; for introducing the concept of hegemony and reintegrating a notion of power; for highlighting the importance of contestation; and for reinstating the critical purpose of research in the field of European Studies (Diez, 2013, p.206).

The idea of normative hegemony helps ensure that power and material interests are not neglected, while also recognising the importance of ideas, norms and values. Furthermore, it also resonates with the empirical reality of rule of law reforms in the Western Balkans. Various studies have highlighted the role that elite political networks play in sustaining networks of patronage, which ultimately subvert democracy and diminish the rule of law (Belloni & Strazzari, 2014; Kleibrink, 2015). Through the lens of hegemony, it becomes apparent that the

EU might be the hegemonic game in town, but not necessarily the only game in town. Alternative political projects will compete or cooperate with the EU, depending on whether the EU advances or undermines their political interests (Chandler, 2007, 2010; Visoka & Richmond, 2017). Without a critical reflection on the EU's engagement in Serbia, problem-solving accounts tend to overlook the power relations that permeate the accession process. The importance of hegemony is thus reflected in the CPE approach adopted in this thesis and its focus on the role that power relations and cultural structures play in the production of rule of law understandings.

In sum, while the constructivist paradigm broadly conceived provides a much more realistic account of actors and their behaviour within organisational settings, it lacks an appropriate account of power and the role it plays in legitimising and delegitimising discourses, ideas, actions and imaginaries. An additional criticism of the orthodox constructivist literature is that it lacks an account of sensemaking. While orthodox constructivism holds that the world is socially constructed, its account of social construction is at times overly simplistic. Identity cues and socialisation are important, yet the factors that determine the extraction of cues or direction of socialisation are not well elaborated. In contrast, a cultural perspective focuses on the details of meaning making to discern not only how ideas and discourses are constructed, but also the relationship between social constructions, power, materiality and context. For this reason, CPE is deemed appropriate as it provides a more nuanced account of how Serbian actors make sense of rule of law reforms and the power relations that permeate reform processes.

## **2.5 What role for discourse?**

Constructivist literature emphasises socialisation as the process through which identity is transformed and norm following behaviour created. Many constructivist accounts however lack a facilitating mechanism that explains how actors can be persuaded to follow new norms. Likewise, rational choice theorists often fail to explain how actors come to change their preferences. The introduction of a communicative logic is proposed to help rectify this by providing a mechanism that demonstrates how and why actors modify their preferences, values and identity (Risse, 2000, p.34). Such discursive accounts represent a 'thicker' form of constructivism and are inspired by post-structuralism. The importance of discourse and communicative action for explaining behaviour change and successful policy reform outcomes have also been heavily emphasised by discursive/constructivist institutionalists (Hay, 2008; Schmidt, 2010). While early scholarly research emphasised the role of communication in actor interactions, Constructivist Institutionalism (CI) has taken the idea of discourse further and advanced a 'interpretivist turn' in politics and policy studies (Hay, 2011).

Early research in IR highlighted the role that communicative action plays in international politics (Müller, 2004; Risse, 2000). This communicative action stems from a communicative logic. This logic is associated with the Habermasian concept of 'communicative action', defined as the use of non-verbal (gesture) and verbal (speech) communication, to achieve a certain end (Risse & Sikkink, 1999, pp.3–4; Schmidt, 2008). Before turning to the argumentation element of communicative action, the strategic use of discourse must be outlined. This is important because the use of discourse does not always resemble an 'ideal speech situation' and can be used to reinforce perceived strategic interests (Jessop, 2004). Deitelhoff and Müller (2005) identify three types of communicative action, two of which

correspond with the strategic use of discourse. These are briefly profiled before ascertaining the role discourse plays according to CI.

### **2.5.1 Bargaining**

Bargaining is defined as the classical mode of strategic action. It occurs in relation to fixed preferences and the communication of threats and reward to coordinate action. Bargaining as a form of communicative act is visible in the EU accession process. During negotiations, the EU overcomes impasses in strategic action through the use of 'promises and threats', ensuring Candidate States take the desired course of action and comply with the EU's accession requirements (Börzel, 1997; Neyer, 2003, p.692). Neyer suggests:

*The perfect setting for a bargaining procedure consists of a group of only two actors, of which one is strong and rich and the other one is weak... The strong and rich state will always be able to threaten the other state with negative consequences in the event that it does not agree to a proposed solution (Neyer, 2003, p.698).*

Given the fundamental power asymmetries between the EU and Serbia, it seems likely the EU will prioritise bargaining as its main mode of communicative act. Whether this results in the institutionalisation of the rule of law in practice, as opposed to nominal compliance, is more ambiguous. For example, it has been demonstrated that many of the EU's key 'breakthroughs' with Serbia have been an outcome of strategic bargaining around key points of contestation (Economides & Ker-Lindsay, 2015). However, bargaining only reinforces superficial change (Grimm, 2015). Bargaining that occurs between the EU and Candidate State governments reinforces the dominance of domestic actors, supersedes dissident discourses and limits the opportunity for a meaningful discussion about EU accession and rule of law reforms (BiEPAG, 2017; Mendelski, 2013).

### **2.5.2 Rhetorical action**

Rhetorical action, that is the strategic use of discourse and norm-based arguments to achieve strategic objectives, is a second form of strategic discourse. A good example of this discourse is outlined in Frank Schimmelfenning's (2001) analysis of Eastern enlargement. During the Eastern expansion of the EU, certain Member States demonstrated clear opposition. Opponents of enlargement were forced to change their preferences due to the strategic use of arguments by those in favour. The argument was made that opponents of enlargement were contradicting their commitment to the EU's liberal norms and the expected behaviour of a liberal democratic Member State. Opposition was therefore delegitimised within the European community and opponents of eastern enlargement were trapped by their previous rhetorical commitments, forcing a preference change (Schimmelfennig, 2001, pp.47-80). In the case of current enlargements, scholars have suggested that the EU remains rhetorically trapped in its commitment to the accession of the Western Balkans countries (Koinova, 2011; Stahl, 2011). It is important to consider the role that rhetorical arguments and articulated identities might play in justifying both the actions of the EU and domestic actors within Serbia.

Rhetorical action is not about actors engaging in a cooperative search for truth, instead actors: 'seek to assert their own standpoint and are not prepared to change their own beliefs or be persuaded themselves by the better argument' (Risse, 2000, p.8). Upholding the distinction in the literature between rhetorical and communicative action is important for empirically assessing how the EU employs discourse. Doing so helps uncover the interplay between persuasive processes and strategic deliberations, demonstrating the different strategies employed by the EU to ensure the successful application of its new rule of law approach (Elgström, 2000, p.458).

### 2.5.3 Arguing

Arguing is identified as the true mode of communicative action in Habermas' *Theory of Communicative Action* (Habermas, 1984). This form of discourse operates in relation to principally open preferences, which are malleable to change on the basis of better arguments and not strategic interest (Deitelhoff & Müller, 2005, p.170). Given communicative action in the true Habermasian sense is concerned with truth seeking and identity change, it is perhaps unsurprising it is more commonly associated with constructivist arguments (Habermas, 2003). Individuals adjust their behaviour because they are linguistically capable of interpreting knowledge and when subject to reasoned argument, adjust their preferences (Habermas, 1984). Deliberation is necessary for constructing communicative processes. Deliberation allows arguments to be exchanged, the validity of facts to be assessed and a change of preference to occur. Argumentation gives actors the opportunity to adjust their behaviour, based on their evaluation of facts presented during argument (Quantin & Smith, 2013, p.267).

Arguing is important for conveying policy ideas. Constructivist institutionalists argue that discourse not only expresses actors' strategic interests or normative values; it is also designed to persuade others of the necessity or appropriateness of a given action (Schmidt, 2008, p.312). In the case of rule of law policy, a similar argument has been made in terms of how the EU defines key criteria. For example, its conditionality agenda and the need to adopt difficult rule of law reforms in exchange for reward is communicated through argumentation, where so-called 'carrots' are defined by the EU and interpreted as positive by Candidate States (Vasilev, 2016, p.753). This discourse not only communicates but constructs how actors understand rule of law reforms, the EU and other important aspects of political transformation (Nitoiu & Tomic, 2014, p.2). Actors' ability to reflect on discourse and

construct new discourses highlights an important role for agency vis-à-vis institutions, which remains unaccounted for in the other institutionalisms and distinguishes CI from the other 'new institutionalisms' (Schmidt, 2008, p.314).

## **2.6 Informing an interpretivist turn**

CI has many similarities with interpretivism. Interpretivist approaches are somewhat alien to the field of enlargement studies, which has typically focussed on how EU rules and regulations are transposed (Knill & Tosun, 2009; Toshkov, 2008). Consequently, existing studies tend to consider formal rule change to be indicative of reform success. They do not probe whether a more fundamental change in understanding occurs. As was outlined in the introduction, in the cases of Bulgaria and Romania, formal rule change was not accompanied by a change in practice in key rule of law areas (Levitz & Pop-Eleches, 2010; Toneva-Metodieva, 2014). Consequently, EU institutions remained 'empty shells' — devoid of rule of law norms to guide actor conduct (Dimitrova, 2010). In hypothesising why this was the case, chapter 1 suggested that formal change was not matched with a change in understanding. However, it was argued that the EU's new approach might lead to a more fundamental change in understanding. To test this hypothesis, it is necessary to deploy an approach which is focussed on analysing how actors understand and make sense of politics and policy. Interpretivism is one such approach. Within the interpretivist tradition, the idea of situated agency is of critical importance (Hay, 2011, p.175). Situated agency refers to the way that actors within organisational settings actively construct political action through discourse and practice. The construction of 'governance narratives' helps actors understand and make sense of policy reforms and political transformation (Bevir & Rhodes, 2006; Pollitt, 2013). The application of approaches that focus on the role of situated actors and sensemaking is novel in relation to the EU

enlargement literature. Instead of examining the outcomes of accession reforms, a notion of situated agency allows the researcher to step inside the black box of Europeanisation and uncover how actors make sense of and respond to the EU's rule of law approach.

In addition to narrative, practice is another important interpretivist concept. Much of the 'practice turn' builds on the sociological work of Pierre Bourdieu (1990). However, it is in the field of organisational science that an empirical research programme originates. Wenger's (1999) study first outlined the important role communities of practice played in producing organisational outcomes. Adler (2008) notes communities of practice serve as the carriers of social structures across geographic boundaries. Like-minded groups of practitioners, who are contextually bound by a shared interest in applying a common practice, define how community actors socialise, communicate and subsequently socially construct rational calculation (Adler, 2008, pp.196-197). This is made possible because participation in a community of practice constitutes a learning process, transforming the disposition of actors and encouraging them to behave in a particular way (ibid, p.198). This focus on socialisation and learning builds upon orthodox constructivist approaches. However, its emphasis on the dialectical interaction between actors as the catalyst of social construction is distinctive.

The concept of practice in the field of IR and has been advanced by scholars such as Adler and Pouliot (2011), Donnelly (2012) and Brown (2012). However, a focus on practice has remained largely absent from the European Studies literature. Some notable examples do exist, largely concerning the internal dynamics of EU policy networks (Juncos & Pomorska, 2011, pp.1096-1114) and the effect informal practices have on formal governance (Kleine, 2013, pp.303-314). However, some accounts are more substantive. Adler-Nissen (2014) argues that orthodox constructivism regularly fails to connect concepts of norm transfer and

socialisation to the 'lived and embodied individual experiences at the everyday level' (Adler-Nissen, 2014, p.50). Any argument that behaviour is the result of diffused norms becoming institutionalised must therefore place the 'concept of norm following into context' (Ibid, p.55). Methodologically this involves two things. First, it must be identified how norms and the roles actors attach to them fit into existing fields of practice. Second, if a norm does not fit, can the EU effectively reshape the field through its various mechanisms, creating new practice and ensuring the institutionalisation of its norms (Ibid, p.70)?

The concepts of narrative and practice are important for moving beyond a narrow focus on rules, norms and institutions. Interpretivism's emphasis on relational interaction, situated agency and interpretation are important for ascertaining the substance of rule of law reforms. However, despite a focus on 'thick' processes of social construction, a specific model of sensemaking is not salient within the interpretivist and practice literature. For this reason, a CPE approach is favoured because its analytical framework emphasises actor sensemaking.

## **2.7 A cultural approach: between interpretivism and institutionalism**

CPE aims to chart a middle path between institutionalism and interpretivism. It does so by analysing the role that contextual factors, institutions and social relations play in structuring meaning-making processes. CPE is not a codified theory or a concrete set of methodological imperatives. It is an approach that reintegrates important ideas of sensemaking into the study of politics and political economy, alongside institutions and structure (Sum & Jessop, 2013, p.1). Furthermore, its notion of culture is not reducible to discourse or language. It encompasses the 'ensemble of social processes by which meanings are produced, circulated and exchanged' (Ibid, p.viii). It has been widely applied to areas such migration (Mayblin, 2016), change in academia (Vostal, 2016), mobilities (Paterson, 2014) and as a methodological

tool for studying organisations (Belfrage & Hauf, 2017). However, it has not been applied as an approach for studying rule of law reforms.

CPE is an approach that emphasises sensemaking. Sensemaking approaches have been advanced primarily in organisational studies and have found limited application in political studies (K. Weber & Glynn, 2006; Weick, 1995). CPE is an approach to sensemaking that aims to understand how understandings and actions are constructed through the mediation of material and ideational factors in contexts of organisational culture (Jessop, 2010). It thus avoids the overly deterministic methodological individualism and materialism of rational choice approaches (Checkel, 1998), as well as some forms of constructivism that dismiss the importance of structure and social relations in shaping processes of interpretation (Glynos & Howarth, 2008). The broader sensemaking literature suggests that sensemaking occurs as actors attempt to grapple with complexity (Ashmos et al., 2000; Moss, 2008). As actors cannot grasp the social world in its entirety, they engage in sensemaking to try and simplify and respond to problems (Sum & Jessop, 2013, p.21). Unlike interpretivism, a CPE approach provides an underlying reason for why sensemaking occurs. Consequently, the more complex a policy area, the more intensive processes of sensemaking will be.

Because CPE offers a middle-ground between institutionalism and interpretivism, it addresses several gaps identified in the previous sections. It allows us to appreciate the role that processes of social construction play within distinctive political contexts. Unlike interpretivism, which often neglects the importance of context, a CPE approach does not take agents as blank slates. Rather, the contexts in which actors are situated shapes their understanding of rule of law issues. This process of meaning making cannot be captured by institutionalism, which has tended to conceive of institutions in a narrow sense and has struggled to demonstrate what

role context more broadly plays in shaping action. At the other end of the spectrum, interpretivism has overlooked the importance of structure and context in explaining the production and reproduction of understandings and action. Overcoming these limits with a CPE approach is important for providing a robust analysis of how rule of law reforms are understood. By outlining an original theory of social construction, CPE tries to ascertain how several factors determine the way in which rule of law is understood. Understandings are important because they inform action. Determining factors which shape understandings include: history; experience; organised imaginaries; material and ideational interests; and power and social relations (Sum & Jessop, 2013, p.198)

In sum, CPE aims to provide insight into how actors make sense of the world. It acknowledges that understandings are socially constructed but that social constructions can be analysed and the factors informing them unpicked. This is novel in the case of rule of law reforms. It allows us to not only appreciate that complex policy reforms are contentious and differentially implemented. It also allows us to understand *why* reforms are contested. This is important for understanding how contestation and differences can be mitigated, as well as the factors informing contestation and the construction of alternative understandings. By identifying the factors which shape understandings and the implementation of reforms, this thesis can make a significant contribution to the wider literature.

## **2.8 Conclusion**

A review of the existing literature has identified the existing empirical and theoretical research relevant to this thesis. Reviewing this literature has demonstrated how this thesis' research agenda can complement and expand the literature. This chapter first appraised what is known about rule of law reforms in the Western Balkans. It identified the absence of

research that explored how actors understand key rule of law concepts and the role these understandings might play in shaping reforms. Following this, existing theoretical approaches for exploring EU enlargement and Europeanisation were reviewed. These approaches were institutionalist in nature. This institutionalist literature was argued to offer a limited account of socialisation, power and sensemaking. To rectify this, two novel approaches were outlined, neither of which have been applied in the context of the thesis topic. These were interpretivism and CPE. Interpretivist approaches highlighted the importance of narrative and practice. However, their accounts of sensemaking were less explicit. In contrast, it was argued that a CPE approach could generate new empirical insight and address existing shortcomings in the theoretical literature. It was also argued that CPE provides a more explicit focus on sensemaking than most interpretivist accounts, which justifies its application.

The next chapter takes the theoretical tools of CPE and constructs a research design. The methodology underpinning this research design emphasises the role of power, social relations, situated agency and modes of sensemaking. It outlines both the methods associated with a CPE approach and its foundational philosophy.

## **Chapter 3: The methodology underpinning a CPE approach**

### **Introduction**

This chapter outlines the thesis' methodology. It explains how it will apply a CPE approach to analyse rule of law reforms in Serbia, having justified the reasons for applying a CPE approach in the previous chapter. This chapter proceeds as follows. First, it outlines the key components of a CPE approach. It then outlines how a CPE approach will be applied to the topic of rule of law reforms in Serbia.

The second section discusses the application of specific methods as part of this CPE approach. Semi-structured interviews are outlined as an appropriate tool for generating data. The analysis of this interview material to identify the factors informing how actors make sense of rule of law reforms in Serbia is shown to be an appropriate technique for identifying the semiotic processes reflected in interview material. Following this, social network analysis is introduced as a suitable method for analysing the role social relations play in (re)producing understandings among different actors.

The final section outlines the critical realist philosophy underpinning CPE. The ontological and epistemological components of critical realism are elaborated. The important role philosophical considerations play in informing the thesis' research design is outlined. This chapter concludes by reflecting on this thesis' research design and the value of CPE as an approach for studying rule of law reforms in Serbia.

### **3.1 CPE: A theory of sensemaking**

This section outlines a research design informed by a CPE approach. It is important to note that CPE does not prescribe specific methods. However, six principles can help inform research design: (1) the grounding of the cultural turn in political economy; (2) an emphasis

on the role of sensemaking mechanisms in shaping social construction, political projects and hegemony; (3) a concern with the interdependence of semiotic and extra(non)-semiotic factors; (4) a relational account of individual, organisational and social learning; (5) an emphasis on how actors select different strategies and prioritise certain objectives; and (6) a critical examination of political imaginaries and the forms of political domination they support (Sum & Jessop, 2013, p.23).

It is important to note that a CPE approach does not need to focus on these features in full or in equal measure. They are however guiding principles that should be considered by scholars when designing research and locating their analysis in a 'bigger CPE picture' (Ibid, p.23). Some principles are more relevant for this thesis than others. For example, a focus on sensemaking mechanisms is vital for ascertaining whether the EU's new approach is effective in changing understandings and institutionalising the rule of law in Serbia. In contrast, the grounding of the cultural turn in political economy is less relevant because this thesis is not explicitly focussed on the political economy of European integration in Serbia. Given the scope of the six features and the specificities of the chosen case, the following four unique aspects are developed as important principles, which shape this thesis' research design. These four aspects are informed by CPE's focus on sensemaking:

Table 3.1: Four aspects of the thesis' CPE approach. Source: Author generated.

|  |
|--|
| <ol style="list-style-type: none"> <li>1) Structuration — how institutions, contexts and events influence the way that situated actors construct political imaginaries and prioritise certain logics.</li> <li>2) The importance of socialisation, policy learning and actor networks in explaining the construction of understandings, and the political projects and reform paradigms they support.</li> <li>3) Semiosis — the importance of organisational context, actor objectives, identity and discourses in shaping semiosis through the <i>variation, selection</i> and <i>retention</i> of narratives which inform understanding and action.</li> <li>4) The importance of analysing social constructions and drawing inferences about the political projects being articulated through rule of law reforms in Serbia and what this tells us about European integration more broadly.</li> </ol> |
|--|

These four aspects help focus this thesis' analysis. Their relevant analytical concepts and association with appropriate research questions and methods are outlined in table 3.2:

*Table 3.2: The relationship between research questions, analytical concepts and methods. Source: Author generated.*

| <i>Research questions and Sub-research questions</i>  | <i>Analytical concepts</i>  | <i>Methods</i>   |
|---|---|--|
| <p>RQ1- What are the key logics, imaginaries and interactions driving the delivery of rule of law reforms in Serbia?</p> <ul style="list-style-type: none"> <li>• SQ1- What are the key logics and imaginaries driving the EU's regional engagement?</li> <li>• SQ2- Who are the key actors involved in the delivery of rule of law reforms in Serbia and how do they interact?</li> </ul>  | <ul style="list-style-type: none"> <li>• The role of structuration — the relationship between social structures and actors — in shaping the formation of imaginaries and in prioritising certain logics.</li> <li>• Socialisation within the rule of law policy network as a key social structure shaping the perspective and actions of actors.</li> </ul>   | <ul style="list-style-type: none"> <li>• Semi-structured interviews and the tracing of actions to formative events and institutions to appreciate how social structures shape the formation of understandings and prioritisation of logics.</li> <li>• Social network analysis to understand how socialisation shapes action and understandings within the rule of law policy network.</li> </ul>  |
| <p>RQ2- How effective is the EU's approach for ensuring the institutionalisation of the rule of law in practice?</p> <ul style="list-style-type: none"> <li>• SQ3- How do actors construct an understanding of reform processes through semiosis and what informs these understandings?</li> <li>• SQ4- To what extent do we find convergence, divergence and contestation between different understandings and why?</li> <li>• SQ5: What do the different understandings of actors tell us about rule of law reforms in Serbia and European integration more generally?</li> </ul> | <ul style="list-style-type: none"> <li>• The role of semiosis — an internal sensemaking process — in determining how diffused rule of law reforms are understood through the presence of discursive <i>variation</i>, the <i>selection</i> of discursive variations and the <i>retention</i> of selected discourses in practice to inform understandings.</li> <li>• The importance of convergence, divergence and contestation for indicating the extent to which new understandings are shared and how effective the EU's approach is in creating shared understandings and mitigating contestation.</li> <li>• The belief that understandings reveal details about the politics of Serbia and European integration.</li> </ul> | <ul style="list-style-type: none"> <li>• Semi-structured interviews, which are coded to identify instances of <i>variation</i>, <i>selection</i> and <i>retention</i>.</li> <li>• Categorisation of understandings into dominant and contesting perspectives to reveal the dimensions of contestation and ascertain how effective the EU's approach is in mediating these contestations to ensure the effective institutionalisation of the rule of law in practice.</li> <li>• Mapping identified understandings with political processes and state-building projects to understand more broadly what they tell us about European integration.</li> </ul> |

The following sections provide more detail on structuration and semiosis —two modes of sensemaking. These two modes of sensemaking occur as actors attempt to grapple with complexity. According to sensemaking scholars, actors struggle to grasp the social world in its complexity and focus selectively on some aspects as they attempt to make sense of their world and participate in it (Jessop, 2010; Maitlis & Sonenshein, 2010). Within the CPE framework it is important to distinguish between the two modes of sensemaking.

Structuration is one mechanism of sensemaking. It emphasises the importance of social interaction in shaping selectivity or choice (Jessop, 2010). Its primary focus is on how relationships between actors and their social environment (such as institutions and other social structures) shape the construction of social imaginaries, which inform actors' preferences and actions. It focuses on the 'structural' aspect of sensemaking, meaning its focus is on how institutions, events, social relations, networks and other social structures shape the formation of understandings. In contrast, semiosis focusses on how concepts, policies, ideas and actions, are interpreted and reconstructed as policy understandings. Semiosis focuses on how actors extract discourses and ideas, before internalising them and embedding them in action. Semiosis takes place sequentially through processes of *variation*, *selection* and *retention*. This process of semiosis will be elaborated on in section 3.1.3.

While the two modes of sensemaking are interrelated, different modes are likely to be dominant at different moments. For example, in highly institutionalised environments where material practices and institutional dynamics are more coherent, fixed and identifiable, structuration is more likely. In contrast, actors will need to frequently construct new understandings through semiosis in environments where there are multiple sites and scales of interaction, and where new ideas are frequently introduced (Ibid, pp.341-342).

For this reason, a typology is constructed to apply a CPE approach. The assumption is made that at the policy formation and delivery stage, the institutionalised environment within the EU and the relationships EU actors form with other actors, gives rise to relatively fixed dynamics and interactions. This justifies a primary focus on structuration and an analytical focus on the events and social interactions, which construct policy imaginaries. Following this, a focus on semiosis is used to demonstrate how actors make sense of policy reforms as they are diffused and how they relate these policy reforms to their existing organisational context. This typology distinguishes between the use of different sensemaking practices at different stages of the policy process.

### **3.1.1 Structuration**

The first important aspect of a CPE approach is structuration. Structuration is one mode of complexity reduction that allows actors to 'go on' in the world and make sense of rule of law reforms (Jessop and Sum, 2013, pp.150-151). The first two empirical chapters of this thesis deploy methods that focus explicitly on the structuration component of CPE. These methods are designed to ascertain the key logics, imaginaries and interactions driving the delivery of rule of law reforms. Semi-structured interviews are deployed to ascertain the key logics driving the EU's enlargement agenda towards Serbia. The importance of social imaginaries and the role they play in constructing perceptions of the Western Balkans region is ascertained. Social imaginaries are 'semiotic systems that frame individual subjects' lived experiences of an inordinately complex world and/or inform collective calculation about that world' (Ibid, p.165). Social imaginaries are constructed through both structuration and semiosis. However, structuration focuses on how emergent patterns of social interaction between actors and their social environment, shapes action and the construction of

imaginaries. It further focuses on how historical patterns of interaction and experience shape the formation of imaginaries (Ibid, p.148-151). Structuration has parallels with frame theory (Payne, 2001; Surel, 2000). Frame theory identifies how the social construction of shared understandings emerges in the context of specific social conditions (Benford & Snow, 2000). It is these contexts and social conditions that 'frame' how problems are perceived and contribute to the construction of imaginaries, which inform action.

Chapter 4 discusses the importance of social imaginaries for domestic actors in Serbia. However, the primary purpose of chapter 4 is to provide context. It therefore focuses on how imaginaries are strategically deployed, as opposed to formulated. Chapter 5 explicitly focuses on how EU imaginaries of the Western Balkans are formed. It focuses on the way institutions, events and the environments in which actors are situated, shapes the way in which actors construct understandings. This focus on how actors construct imaginaries in response to social structures, broadly defined, constitutes an application of structuration theory. Chapter 5 deploys documentary source analysis and interview material to trace the factors that have shaped the EU's understanding of the region. It further demonstrates how constructed imaginaries privilege certain logics, which inform action.

Social interactions are an important aspect of structuration and the broader CPE framework. Social interactions can help actors advance interests, implement strategies and achieve their objectives. While social interaction is frequently cited as important by constructivist scholars concerned with socialisation, it is often analysed with process tracing methods that try to trace unidirectional identity and normative change. Such approaches overlook the relational manner in which actors shape and are shaped by socialisation, as well as the role power relations play in structuring socialisation (Flockhart, 2010). In contrast, this thesis

conceptualises socialisation as occurring between actors in policy networks (Davies, 2011; Sum & Jessop, 2013, pp.60–62). Relations between actors contribute to structuration by providing conduits through which ideas, resources and knowledge is disseminated (Inkpen et al., 2005). These flows help inform understandings and construct imaginaries. The social relations between actors and the imaginaries they share create intersubjective interpretations, which inform action. Chapter 6 applies social network analysis (SNA) to ascertain the role that social interaction plays in constructing understandings and action. It focuses on the type of interaction between actors, how socialisation shapes understanding and how rule of law reforms are delivered through policy networks.

### **3.1.2 Semiosis**

Semiosis involves the *variation*, *selection* and *retention* of discursive and material practices by actors. Semiosis helps actors construct meaning in a complex world and organise constructed meanings into distinctive political imaginaries that frame their actions. An analysis focussed on semiosis not only highlights how actors understand policy reforms, it also ascertains the emergent political projects and institutional structures that these understandings reflect and reinforce (Jessop, 2010, p.341). The concepts of *variation*, *selection* and *retention* are a central part of CPE's framework of semiosis analysis.

*Variation* concerns the variation in discourses and practices that actors use to describe a process, interpret events and engage in social action. Different variations are visible in the concepts and ideas that actors associate with rule of law reforms. The emergence of a discursive *variation* is shaped by the specific circumstances and organisational context in which reforms occur and can involve the translation and reinterpretation of existing discourses (Sum & Jessop, 2013, p.184). The idea of *variation* shares much in common with

the 'policy narrative' literature, which highlights how actors construct policy narratives to help them make sense of policy reforms. These narratives are adopted based on the extent to which they resonate with an actor and their organisational culture (Bevir & Rhodes, 2006, p.118). This idea of resonance brings us on to the second aspect of CPE, *selection*.

*Selection* of a specific *variation* occurs when a reform narrative or concept resonates in a personal, organisational and institutional context. Selection of a *variation* is likely if actors consider it to help them interpret events, a *variation* conforms to existing beliefs, legitimises action, plausibly represents social phenomena and is perceived to help meet organisational objectives. Power relations and path-dependencies also determine whether it is possible for actors to select certain *variations* of a discourse and the likelihood of selection (Sum & Jessop, 2013, p.185).

*Retention* concerns how selected *variations* are enacted in organisational routines, integrated into institutional rules and embedded in intellectual technologies (Ibid, p.185). For example, a reported change in practice or the introduction of a new technology to change or improve practice would indicate attempts to retain a selected discursive *variation*. This *retention* is deduced from the 'policy stories' actors tell. The ways in which reforms are reported to change actor conduct and perspectives on the topics under discussion are taken as a key indication that a *variation* has been retained. Together, these factors of *variation*, *selection* and *retention*, shape the evolution of semiosis. This ongoing process of semiosis can provide important insight into how different actors understand reforms and the implications these understandings have for the emergence of new institutions in Serbia.

### **3.2 Putting theory into practice: fieldwork and interviews**

To generate primary data directly from key actors who devised EU rule of law policy and were involved with rule of law reforms in Serbia, fieldwork was undertaken over the course of six months. In total, 57 semi-structured interviews were conducted with key actors in Serbia, as well as in Brussels, Paris and Strasbourg. A full list of interviews conducted is included in Appendix A. Undertaking an initial analysis of EU documents and the action plans for rule of law reforms, which were provided by the Serbian Government, helped identify a purposeful sample of key actors. These documents included: EU enlargement reports; EU press releases on the issue of rule of law reform in the Western Balkans and Serbia; action plans for Chapters 23 and 24 provided by the Serbian Government; publications by influential research centres such as the Balkans in Europe Policy Advisory Group; and civil society forums, such as the National Convention on the European Union in Serbia and prEUgovor, who provide their alternative reports and action plans on rule of law reforms in Serbia.

The sampled documents were appropriate because they detailed the key international actors, domestic actors and civil society organisations who play a prominent role in Serbia's rule of law reforms. In total, 15 initial actors were identified and approached for interviews. These 15 actors were broken down into five international actors, five governmental actors and five influential NGOs. To move beyond this initial sample of actors, snowball sampling was used. This required distributing a questionnaire, which allowed actors to nominate other actors they considered important. This snowball method helped identify additional interviewees who were not visible in formal documentation.

While the response rate from prospective interviewees was generally high, some individuals did not respond to requests to be interviewed or declined to be interviewed. It is important

to acknowledge this as it has implications for the empirical analysis, particularly the social network analysis, which is detailed in section 3.2.2. However, the most significant actors were interviewed. This was confirmed by consulting formal documents and conversing with interviewees, to ensure that the most important actors had been interviewed. This isn't to say that more actors couldn't have been interviewed. For example, with additional time and resources, the diplomatic representation of all EU Member States could have been interviewed.

In the case of the network analysis, the network presented in chapter 6 constitutes the central actors involved in the rule of law policy field in Serbia. It is acknowledged that beyond this network, other actors exist and link into this network. The network diagrams presented in chapter 6 are designed to demonstrate how the key actors interact with one another and the role these interactions play in shaping policy outcomes. The analysis served a heuristic purpose to help demonstrate the role socialisation plays in shaping understandings among important actors.

The primary site for fieldwork was Belgrade. This is because many of the key international actors such as the EU, Organisation for Security and Co-operation in Europe (OSCE) and relevant diplomatic embassies, had their main regional base in Belgrade. Furthermore, as the capital of Serbia, Belgrade was also the location of key government institutions, as well as the headquarters for many NGOs, who had both a domestic and international presence. In addition to fieldwork conducted in Belgrade, important domestic and regional actors were identified and interviewed in Serbia's second biggest city, Novi Sad. As the capital of the Autonomous Province of Vojvodina, Novi Sad has a distinctly multi-ethnic character and is home to a range of prominent organisations, primarily working in the fields of rule of law and

human rights. This second site within Serbia allowed the fieldwork to move beyond the capital and access the insights of important actors beyond the confines of Belgrade.

To facilitate access to individuals and institutions in Serbia, Serbo-Croatian language skills were acquired in advance of the fieldwork. While many of the interviews were subsequently conducted in English, the ability to speak the national language was important for gaining the trust of potential interviewees and accessing state institutions. As has been outlined already and is further detailed in the empirical chapters, issues of transparency and access in many ways define the Serbian public administration. While many of the international actors and domestic NGOs interviewed were open to participating in the research project, it was necessary to establish a different type of rapport with public officials. This required presenting the research project as openly as possible, clearly communicating the conditions of anonymity and confidentiality, and using pre-existing relationships to organise additional interviews.

The fieldwork conducted in Brussels required gaining access to the EU institutions, primarily the EU Commission. In comparison to the fieldwork conducted in Serbia, access to the EU was relatively formal. Among international organisations, often the relationships established with interviewees in one organisation, helped facilitate access to interviewees in another organisation. This required travelling to the headquarters of the Council of Europe (CoE) in Strasbourg and Organization for Economic Co-operation and Development (OECD) in Paris. The fieldwork experience helped reinforce the multilevel and international dimensions of this thesis. While the topics discussed were often similar and remained focused on rule of law issues, the sites and scales of the empirical work transcended a geographic case.

To answer the first research question, selected interviewees were asked questions that explored how they understood the Western Balkans and Serbia's place within it. They were

subsequently asked questions that explored which issues concerned them most and what they thought informed the delivery of rule of law reforms in Serbia. They were also asked questions about the relationships that mattered most to them, as well as the perceived role different relationships and socialisation mechanisms played in shaping their understanding of policy issues and work practices. To answer the second research question, interviewees were asked questions that ascertained how they understood the rule of law issue under discussion, why these understandings resonated and how they thought these understandings shaped their organisation's work. The rule of law issues discussed were judicial reform, anti-corruption policy and fundamental rights. These issues correspond with key rule of law policy areas and provided three different policy cases to analyse. Interviewees were asked how their understandings informed their practice. They were then asked how this compared to the way they thought other actors understood the issue.

### **3.2.1 Analysing the interviews**

Of the 57 interviews conducted, 37 are directly cited. The interviews not directly cited provided valuable context. The interview transcripts were analysed with the assistance of NVivo software. First, the factors informing the delivery of rule of law reforms in Serbia were identified through the categorisation of interview material into themes under the label 'imaginaries'. Following this, the salient ideas, concepts and themes informing how actors made sense of rule of law reforms in Serbia were ascertained. This involved identifying initial narratives and discourses that emerged around rule of law reform issues and categorising them under *variation*. Following this, the reasons why these discourses initially resonated with actors was categorised under *selection*. Finally, the way in which these narratives were reinforced and reified through action was categorised under *retention*.

In addition, the contestations communicated by interviewees were considered to reveal a lot about the power dynamics that manifested during rule of law reforms. These different contestations, as well as cases where common understandings emerged, were categorised under the labels contestation and convergence. It was assumed that the more contested rule of law understandings were, the less effective the EU's approach was in promoting the institutionalisation of the rule of law in practice.

### **3.2.2 Social network analysis**

A CPE approach emphasises that social relations between actors enables socialisation. This can help produce a convergence in understanding and inform shared action. Despite constituting a large field of study in the social sciences, social network analysis has been sparsely deployed to study socialisation in policy networks. Social network analysis is a useful method for visualising and analysing the composition of policy networks. To capture the different modes of socialisation that occurred in the network, interview material was analysed to substantiate the network analysis and provide insight into how actors socialise. The scope condition for selecting participants was the key actors involved in the rule of law policy fields of judicial reform, anti-corruption and fundamental rights.

Social network analysis (SNA) was operationalised to ascertain the relationship between different actors and the role these relationships play in producing and reproducing understandings, as well as the power relations within policy networks (Borgatti et al., 2013). SNA focuses on two types of actor relationship: similarities and relational events. Similarities refer to relational phenomena that are not quite social ties but can be treated as such methodologically, given they are often antecedent and consequential of social ties. These types of ties include physical proximity, co-membership in groups or similar occupation. The

second type, relational events, includes interactions between individuals and flows of information, beliefs and money (Borgatti et al., 2013, p.4). This thesis is concerned with capturing relational events as these directly informed the construction of understandings.

To capture data for the SNA, actors sampled from EU and Serbian Government documents were initially approached for interviews. These actors were then asked to nominate other actors (organisations, not individuals) that they felt were important in their network. They were instructed to write the name of these actors in a short questionnaire form. From here, a network was established using snowball sampling. The research process gave pre-eminence to participants and allowed them to nominate other actors they considered 'significant'. This allowed actors to be incorporated that could be 'hidden' or omitted from documentation, but none-the-less were important network actors. Furthermore, it allowed a network to be generated inductively based on how actors perceived their own network. This allowed actors to say which relationships they valued most and provided insight into how actors understood their own network. This approach gave pre-eminence to interviewees to discuss their everyday practices and reflect on whether these had changed because of socialisation processes. This helped trace different processes and helped identify underlying mechanisms that may affect the behaviour of different actors. This more qualitative form of SNA requires accepting that networks may always be partial, but the relationship between central network actors can be captured (Heath et al., 2009). The established network was visualised using the Gephi programme.

The approach outlined here complements and adds to the existing literature on socialisation. Whilst existing accounts of socialisation in International Relations and European Studies have added substantially to our understanding of socialisation, often these accounts favour a

functionalist view of socialisation. These accounts make impressive use of survey data to link socialisation mechanisms to a proposed change in perspective or administrative change (Checkel, 2005; Hooghe, 2005; Meyer-Sahling et al., 2016; Schimmelfennig, 2005). Whilst these accounts provide a good heuristic, they do not step inside the process of socialisation nor do they sufficiently consider the methodological challenge of measuring internalisation and cognitive adaptation (Freyburg, 2015, pp.60–61).

In contrast, the outlined approach of this thesis considers socialisation to have a meaningful influence if it results in a change in actor understanding. A more superficial realignment of perceived interests is possible, but this points to a more limited process of socialisation and sensemaking. Follow up interviews encouraged actors to reflect on their understanding of rule of law issues and their relationship with other actors. This approach may lack the robustness of large-scale survey data but it has significant advantages for three reasons. First, it is less concerned with trying to empirically quantify the extent to which socialisation changes behaviour through structured survey tools. Instead, it focuses on the relationship between socialisation and practice from a qualitative perspective. This approach encouraged interviewees to provide their perspective on socialisation. Second, it captures the multiplicity of socialisation processes and the many forms they take, by allowing actors to identify salient socialisation processes when multiple mechanisms are identified. Third, it allows a wide range of socialisation consequences to be discerned by linking practice to interaction and reflecting on the extent to which practices are a product of socialisation. This was done by asking questions that encouraged actors to reflect on their understandings over time, the institutional and other structural changes that EU integration had affected, and how their understandings may or may not be an outcome of socialisation with other actors.

### **3.3 The Philosophy of CPE**

As with all methodological approaches, certain philosophical underpinnings inform a CPE approach and have shaped the research design of this thesis. The original CPE approach advanced by Jessop and Sum (2013) is grounded in a critical realist philosophy. The following sections examine the ontology and epistemology of critical realism. Following this, the heuristic value of the chosen case study is outlined. Overall, this section justifies grounding CPE in a critical realist philosophy.

Key to all forms of scientific realism, including critical realism, is a belief that our objects of study exist independently of the concepts and discourse used to describe them. This belief, that facts exist independently of a researcher's own practice of inquiry, is termed 'mind-world dualism' —the worldview that an objective reality does exist. For mind-world dualists, the subjective can be separated from the objective because the way we understand analysed objects does not alter their substance; subjective understandings simply represent objects of inquiry in a particular way (Jackson, p.34). 'Transfactualism' is another important philosophical aspect of critical realism. Transfactualism involves theorising about the existence of underlying but unobservable generative properties (Ibid, p.36). These causal properties give rise to empirical regularities. Transfactualism's core proposition is that the domain of the empirical is simply the surface of social reality and that as researchers, we should aim to go beyond this domain to provide meaningful explanations. Jackson (2010) has usefully located critical realism alongside other research philosophies for comparison:

Table 3.3: A summary of the four key research philosophies in social science. Source: Jackson, 2010, p.74.

|  |                           | <i>Relationship between knowledge and observation</i> |                        |
|--|---------------------------|---|------------------------|
|  |                           | <i>Phenomenalism</i>                                  | <i>Transfactualism</i> |
| <i>Relationship between the knower and the known</i> | <i>Mind-world dualism</i> | Neopositivism   | Critical realism       |
|  | <i>Mind-world monism</i>  | Analyticism   | Reflexivity            |

### 3.3.1 Ontology

The best way to understand the difference in approaches summarised in table 3.3. is to detail the ontology of critical realism. Ontology concerns what exists in the social realm, the nature of what exists and what is the relationship between those things that exist (Bache et al., 2012, p.64). Ontological stratification reflects the world view of critical realism that social reality is composed of three domains or ‘strata’, which interact in the following manner: (1) real or causal mechanisms cause (2) actual events that we as researchers (3) empirically experience and observe (Ibid). Ontological stratification is important because it requires critical realist research to try and ascertain the underlying factors that give rise to the processes and empirical regularities we observe.

Another important ontological consideration is the relationship between structure and agency. While most interpretivist accounts take an agency-centred perspective, a critical realist informed CPE approach emphasises the dialectical relationship between structure and agency. From a CPE perspective, the choices of actors are shaped sequentially in relation to structure. While agents have the capacity to reshape structures, temporally they must initially

respond to structures as they are situated agents (Archer, 1995). This means that actors will construct certain understandings and pursue particular types of behaviour as a consequence of the way in which social structures function (Bourdieu, 1990).

Realist philosophies of the social science underpin many 'thin' versions of constructivism and their accounts of structure and agency. These constructivist accounts integrate symbolic interactionist accounts of ideational motives with substantive theories of social structure in order to reveal the causal properties of ideas (Wendt, 1999, p. 51). By detaching constructivist theory from constructivist philosophy, the mediating role played by ideas can be more clearly delineated. Ideas in this sense can have causal power. For example, in mediating an individual's material preferences and affecting how individuals perceive choice. To use a more concrete example, the EU's rule of law concept invokes a set of dispositions and constituting practices, such as the independent exercise of the judiciary or the protection of citizens from the arbitrary powers of the state. Inside Serbian rule of law institutions, which are underpinned by their own interpretation of the rule of law, other factors and ideas may give rise to contrasting understandings. In both cases, social construction is shaped by the context in which actors are situated. Context forms an important structure that shapes and is reshaped by agency. While interpretivism or 'thick' forms of constructivism also acknowledge the importance of context, they differ from critical realist informed approaches such as CPE. This is because critical realists hold that context always shapes processes of social construction first in a temporal sequence (Archer, 1995).

As highlighted in table 3.3, neopositivism is a phenomenalist approach. Phenomenalism holds that we can only know about the world through human perception or 'sense-data'. As such, the only direct source of knowledge is experienced through empirical research. This lies in

contrast to critical realism and its focus on drawing inferences from empirical data about the underlying causes which give rise to observations. Unlike neopositivists, critical realists try to avoid the formulation of law-like generalisations. For critical realists, causality must be understood and analysed in relation to context (Jackson, 2010, p. 43). For neopositivists, valid assertions can only be made if they meet specific generalities, which are likely to apply across cases. For this reason, neopositivist research tends to focus on the analysis of objective data and the use of systemic cross-correlations to demonstrate how empirical findings adhere to general laws (Kurki, 2008, pp.57–58). In contrast, critical realism makes use of hermeneutic reasoning to uncover other possible causes for events, which may have not generated empirical ‘sense-data’, but still exist as real generative mechanisms, all be it idle when a researcher is undertaking empirical analysis (Ibid).

This distinction between the critical realist position and neopositivist position has important methodological implications. While the focus of CPE is on uncovering the understandings of actors and the way they make sense of the world, its philosophical underpinnings emphasise the importance of ascertaining the reasons why these understandings emerge. This means that processes of structuration, semiosis and socialisation must be scrutinised to ascertain not only *how* they occur, but *why* they occur in a certain way. This requires identifying the underlying factors that give rise to these processes through the application of qualitative techniques. It also requires drawing inferences about these processes to ascertain how they might influence other macro level political processes, such as European integration.

Because of its critical realist philosophy, CPE differs not only from neopositivism, but also mind-world monist philosophies. Mind-world monist approaches, such as interpretivism, assert that a researcher cannot separate their ‘analytical reality’ from an actual reality and as

such, the mind world dualist distinction between matter and mind is indistinguishable to a researcher (Jackson, 2010). At the phenomenalist end of this mind-world monism spectrum, analyticism stipulates the assumptions and ideas of a researcher shape the research process. Because of this, the production of knowledge must be grounded in the practical involvement of a researcher, and the construction of 'analytical narratives' must demonstrate how empirical deductions have been constructed into statements (Ibid, p.142). Reflexivity holds the same mind-world monist position as analyticism, believing the ideas of a researcher cannot be separated from reality. It differs from analyticism because of its use of transfactual reasoning. This reasoning calls for the researcher to locate their own research practices in a broader social and cultural context, within which they are embedded (Ibid, p.157).

In contrast, a critical realist position is a mind-world dualist position. This may seem counterintuitive because this thesis focuses heavily on processes of interpretation and relationality. These are concepts usually associated with mind-world monist constructivism or reflexive and interpretivist approaches (Hay, 2005, pp.39-45). However, a critical realist informed CPE approach holds that understandings and imaginaries, while subject to interpretation, can tell us about 'real' processes or 'causes'. Sum and Jessop (2013) justify grounding CPE in a critical realist philosophy:

*Adherents of critical realism point to the existence of real but often latent causal mechanisms... On this basis, critical realists distinguish among real mechanisms, actual events and empirical observations... For critical realists then, science involves a continuing, spiral movement from knowledge of empirical phenomena to knowledge of the underlying causal mechanisms that generate them (Sum & Jessop, 2013, pp.8–9).*

To summarise the critical realist position, empirical regularities are open to interpretation. However, through the application of scientific method and the use of theoretical abstractions that seek to elucidate the causes of empirical regularities, we can make claims about ‘actual’ phenomena. In our case, rule of law reforms are open to interpretation and socially constructed in different ways. However, by unpicking the way in which different imaginaries and interpretations are constructed, CPE aims to elucidate the ‘actual’ processes and relations that give rise to these interpretations. In contrast, reflexive or interpretivist positions hold that reality is a social construction and that scientific methods cannot accurately represent a social world that is fluid and open to interpretation.

### **3.3.2 Epistemic pluralism**

Aside from its stratified ontology, critical realism differentiates itself from neopositivism through its epistemic pluralism (Patomäki & Wight, 2000, p.225). This involves treating methodological rules as principles that inform scientific inquiry and not law-like dogma (Pawson, 2013, p.xi). For critical realists, the ‘science’ of social science is the procedure followed to study and analyse phenomena (Kurki, 2007, p.372).

Understanding epistemic pluralism requires revisiting the distinction between ‘explaining’ and ‘understanding’ accounts (Hollis & Smith, 1990). These two approaches have traditionally been cast as incommensurable, leaving a researcher with two separate empirical stories to tell (Jackson, 2010, p.9). Explaining approaches prioritise objective knowledge and understanding approaches subjective knowledge. However, critical realism integrates these two approaches within a single framework through epistemic pluralism. Explanatory knowledge can help premise foundational theories that apply across cases. These theories

precondition, but do not determine our work. For critical realists, accessing subjective knowledge through qualitative methods helps us to understand phenomenon and find alternatives to foundational theories (Ibid, p.13). The subsequent refinement of theory is useful for helping ground these subjective insights. Utilising both sources of knowledge allows critical realism to identify the constitutive factors that give rise to empirical regularities that we observe (Kurki, 2008, p.224). This is reflected in oscillation between theory and empirical observations. While this thesis is primarily a qualitative study, the application of different methods ranging from interviews to SNA, reflects an adherence to epistemic pluralism. It indicates the openness of this research to both explaining and understanding accounts and their associated episteme.

To summarise, regarding ontology, critical realism is a mind-word dualist approach. It adheres to transfactualism and a stratified ontology. Regarding epistemology, epistemic pluralism underpins the eclectic application of qualitative methods and the search for insight that can help refine initial assumptions. This involves an openness to different episteme and different methods, provided they offer insight into rule of law reforms in Serbia.

### **3.3.3 The heuristic value of case study research and inferences**

Critical realist research aims to postulate a link between empirical phenomena and underlying factors that explain their occurrence. From this philosophical perspective, the purpose of case study research is to elaborate and provide insight into the possible causes of empirical phenomena, in a way which helps develop new theories. For this reason, an analysis of rule of law reforms in Serbia is used to develop a theory of the role that understandings and sensemaking processes plays in shaping policy reforms. As a heuristic case, insights from this case are used to develop a more general theory of the role sensemaking processes play in

explaining policy reforms (Eckstein, 2000, pp.137–138). This back and forth process of developing and refining theory primarily involves abductive reasoning. In the first instance, abductive reasoning starts from certain assumptions or hypotheses. In the case of this thesis, the expectation is that the effective institutionalisation of the rule of law requires a convergence in understandings. This was detailed in section 1.3. This hypothesis is grounded in a perspective that the way in which actors interpret rule of law reforms matters. Ascertaining the extent to which it holds true requires developing a theory of sensemaking through the application of a CPE approach. This involves a spiral movement between the: ‘abstract and concrete, between theoretical and empirical, involving both an interpretive and causal dimension of explanation’ (Belfrage & Hauf, 2017, p.260).

This abductive approach lies in contrast to neopositivist deductive approaches, which start from the premise of a theory and end with conclusions that prove or disprove initial hypotheses. In such cases, there is little focus on theory refinement because emphasis is placed on the development of law-like generalisations (Jackson, 2010, p.83). There are also differences to inductive reasoning, which focuses primarily on the formulation of new theories on the sole basis of observed empirical regularities (Danermark et al., 2001). In the context of this thesis, initial CPE ideas are developed through empirical case study research. This process of theory building means that the research process is intuitively open-ended. Insights are continuously abstracted and analysed to understand how they fit into processes of rule of law reform, and the initial assumptions of this thesis presented in chapter 1 are refined as new empirical material allows for further theoretical substantiation (Pawson, 2013, p.89).

### **3.4 Conclusion**

This chapter outlined the methodology of the thesis. It first outlined the general principles of a CPE approach and showed how they apply to this thesis. It then substantiated the theory of CPE by elaborating on two modes of sensemaking: structuration and semiosis. This allowed it to develop a research design around CPE principles and outline some appropriate methods. The final section of this chapter then linked these theoretical and methodological points to a critical realist philosophy, which underpins CPE. The limitations of the chosen research design have not been discussed here. Instead, its limitations will be discussed in the concluding chapter, in section 10.4. The next chapter provides context to the chosen case study. It outlines political developments in Serbia since 2000. These events are important as they explain the current context of reforms. Following this chapter, the methodology outlined here is applied across five empirical chapters.



## **Chapter 4: Developments in Serbia in the post-Milošević era and the process of European integration**

### **Introduction**

This chapter outlines the key political developments in Serbia and the EU's activities in Serbia since 2000. It engages with several chapter-specific questions while also beginning to ascertain the logics and imaginaries that characterise the relationship between the EU and Serbia. It focusses on the domestic political imaginaries deployed by Serbian actors and how these imaginaries have elicited certain responses from the EU and the international community. This provides insights into the logics informing action and the imaginaries associated with different political projects. This focus on imaginaries is explored in greater depth in chapter 5, which focuses on how imaginaries drive the EU's approach, as opposed to the behaviour of domestic actors. In terms of chapter specific questions, these are useful for structuring the content of this chapter and thematically exploring key developments in Serbia since 2000. What are the key political events that have occurred in Serbia since 2000 and how do these relate to European integration? What characterises the EU's approach and what have been the mechanisms for delivering reforms? What aspects of European integration have been contentious and how has this contestation undermined attempts to promote the rule of law?

Alongside an analysis of documents, this chapter also introduces original interview material to elaborate on recent events and ascertain the role that different logics and imaginaries have played in shaping Serbian politics. This chapter is broken down into three parts.

The first section presents an analysis of political events in Serbia since 2000. It argues that three political imaginaries exist within Serbia. These correspond with different political projects, which support or oppose Europeanisation to different degrees. This section also

emphasises how Serbia's post-Milošević political development has been heavily intertwined with the EU's regional engagement. It demonstrates how the strategic mobilisation of different imaginaries by domestic elites in Serbia has frustrated EU reforms to date. Furthermore, the EU's attempts to promote stability within the country have required a series of compromises. This has led to the entrenchment of political elites and the reinforcement of imaginaries that might have otherwise been deconstructed.

The second section explores the specific mechanisms and instruments the EU has used to ensure compliance with its reform agenda. It demonstrates how the EU's contemporary engagement builds upon its existing state-building agenda, the Stabilisation and Accession process (SAP). The focus of the EU's approach till 2014 remained focussed on top-down capacity building and formal institution building. This approach struggled to challenge elite actor networks or mitigate competing political projects. These shortcomings are demonstrated by examining two case studies — media freedom and security sector reform.

This chapter concludes by reflecting on reforms to date. Despite progress, entrenched political elites continue to determine the direction of Serbian politics. It also reflects on the EU's intertwining of democratisation and stabilisation, which have made political transformation overwhelmingly contingent on conditionality. This results in the strategic engagement of domestic elites with the EU in a way that is hypothesised to hinder rule of law reform and its capacity to construct understandings in partnership with pro-reform actors, which leads to positive change.

#### **4.1 Post-Milošević Serbia**

Since 2000, the EU and the international community have focused on the promotion of stability towards Serbia and the Western Balkans region more widely. The EU has ensured

political actors comply with its process of stability promotion through the extensive use of political conditionality — the release of financial capital in exchange for political reform. Whilst this promotion of stability appears to be a logical solution to the problem of regional instability, political conditionality has also produced significant downsides. In particular, a context of reform under conditionality is argued to have done little to induce deeper social reforms and the construction of authentic democratic institutions (Grimm, 2015; Grimm & Leininger, 2012). The consequences of this are visible in Serbia, where strategic interests and nationalist tendencies have shaped political developments alongside EU accession. In the post-Milošević context, Serbian nationalism remains a significant political movement, all be it a peripheral one. However, the transformation of the previously nationalist and pro-Russian Serbian Progressive Party (SNS) into a pro-EU party in 2009, demonstrates that political identities are fluid among Serbia's political elites (Subotic, 2011). The SRS position has been characterised as a 'middle-path' political movement that advocates European integration, as long as it advances the national interest of Serbia and its ruling elite. Politicians have drawn on different imaginaries at different moments in time. Drawing on diverse imaginaries and their associated discourses has allowed domestic elites to strategically frame politics in different ways to secure their positions of power. These different political perspectives are considered imaginaries because they are constituted through the organisation of interests, ideas and discourses into a social construction, which informs action (Sum & Jessop, 2013, p.67). This organisation occurs via structuration, whereby social relations and interactions with the institutional and political landscape across time shape the formation of political action (Ibid, p.165). The following sections will demonstrate how these imaginaries have driven Serbian politics and the way domestic actors engage with the EU:

*Table 4.1: Political imaginaries mobilised by Serbian actors. Source: Author generated.*

| <i>Political imaginary</i>   | <i>Key narrative and actions</i>  | <i>Outcome</i>  |
|------------------------------|---|---|
| Normative<br>Europeanisation | <ul style="list-style-type: none"> <li>• Embrace both substantive social reform as well as free market reforms.</li> <li>• Opening up of political process to include new actors and authentic institutionalisation of democratic norms.</li> </ul>   | <ul style="list-style-type: none"> <li>• Institutionalisation of democratic norms and construction of liberal democracy.</li> <li>• Creation of democracy from below.</li> </ul>  |
| Strategic accession          | <ul style="list-style-type: none"> <li>• Embrace substantial free market reforms to develop Serbia.</li> <li>• Compliance with EU <i>acquis</i> presented as evidence of Serbia's reorientation towards the EU.</li> <li>• Compliance with reforms on the basis they do not threaten the 'national interests' of Serbia.</li> </ul>                                   | <ul style="list-style-type: none"> <li>• Comply with political reforms on the basis the position of elites is not compromised, and free market reforms remain popular among elites and citizens.</li> <li>• Compliance primarily with economic chapters of <i>acquis</i> and limited compliance with rule of law criteria.</li> <li>• Limited adoption of democratic norms that threaten the capacity of elites to control politics.</li> <li>• Construction of semi-authoritarian regime.</li> </ul> |
| Serbian nationalism          | <ul style="list-style-type: none"> <li>• Presentation of government opposition such a NGOs and other civil society groups as an externally supported violation of Serbia's national interests.</li> <li>• Protection and advancement of Serbian national interests.</li> <li>• EU membership as a threat to the national and cultural character of Serbia.</li> </ul> | <ul style="list-style-type: none"> <li>• Used as a frame to silence criticism of government actions and to exert pressure on the EU when the Serbian government seeks to avoid EU demands.</li> <li>• Associated with a nationalist political project which is anti-EU, pro-Russian and supports an ethnocentric Serbian state.</li> </ul>  |

#### **4.1.1 Events since 2000**

The complex post-Milošević political environment in Serbia has been characterised by extensive political compromise. This compromise has allowed establishment figures to preserve their own positions on the basis that some form of reorientation towards the EU has occurred. This has often resulted in strategic compliance with the EU's reform agenda for reasons of economic interest. The primary imaginary mobilised in this period has been strategic accession, although Serbian nationalism has remained significant. Well up until 2008, key establishment figures linked to Milošević maintained their position in the judicial, government and security sectors, and exerted a significant degree of control over politics (Clarke, 2008, pp.117–119). Where elite actors have accepted the EU's reforms, they have done so on the basis that reforms do not undermine their privileged positions and are perceived to advance their interests (Fagan, 2012, p.112).

The EU and other international actors welcomed the election in 2000 of Zoran Đinđić as prime minister and the election of his reformist alliance. Đinđić himself had been speaking in favour of European integration since the early 1990s and an early priority for his government was to pursue reconciliation with the international community and a strategic reorientation towards the EU (Wichmann, 2007, p.96). The reformist alliance represented a political coalition of actors that ranged from those who embraced Europe culturally and politically, to those that wished to join the EU for economically motivated reasons. The former of these positions aligns closely with the normative Europeanisation imaginary and the latter with the strategic accession imaginary.

Despite the election of a reformist political alliance, Serbia's orientation toward the EU was not without its discontents both among the public and within the reformist political alliance

itself. The decision to shun nationalism in favour of European integration also challenged the position of many Milošević era political figures that remained active in government. These figures remained prominent despite the election of Đinđić. Vojislav Koštunica inherited the position of president from Milošević and as a conservative nationalist, often stymied the efforts of Đinđić and his party to dissolve the institutions that had survived the ousting of Milošević. Koštunica continued to oppose Đinđić despite actively participating within Đinđić's reformist alliance (Fraser, 2013, p.236). Consequently, Đinđić met stiff political opposition to his attempts to tackle the problem of corruption in high office and reform the state security services. This early interplay between EU integration and Serbian nationalism echoes in contemporary Serbian politics. Politicians who support complete European integration have had to work in the context of enduring political structures inherited from the Milošević era. Furthermore, a significant number of citizens continue to oppose any aspect of EU integration. This creates space for Serbian nationalism to remain a viable political project and imaginary to be mobilised.

#### **4.1.2 The consequences of compromised political reform**

In a contested environment, the EU operated a fine balancing act between reform and continuity during Serbia's early democratic transition from 2000 to 2008. To maintain this balancing act, the EU encouraged significant political reforms, but also tried to avoid antagonising political elites who could mobilise nationalist opposition against the EU's reform agenda. This made implementing the economic requirements for EU membership relatively straightforward. Meanwhile, more challenging rule of law reforms were difficult to instigate. Unlike political reform, economic liberalisation proved popular because the conflict of the 1990s and subsequent international sanctions had left Serbia economically disadvantaged.

The EU was therefore given the green light to heavily push free-market reforms whilst, simultaneously, Serbian elites managed to prevent widespread institutional change and rule of law reform. This is reflected in the view of some civil society actors, who argued that political elites have become adept at protecting their own patronage networks, while simultaneously promoting rule of law reforms. Elites have achieved this by limiting the capacity of rule of law institutions and finding ways to strike informal agreements that prevent them from being investigated:

*They [current politicians] are not as obvious as the previous ones. To be quite honest, they are not running away from the institutions that are supposed to be working on this. The institutions are on tight budgets and capacities or are working under very bad laws and are not allowed to inspect some things. If they can, they refer it to the court, prosecutor or parliament, and then they do nothing.<sup>1</sup>*

In sum, the EU has remained cautious and has tried to avoid appearing too intrusive in the promotion of reforms, for fear it will embolden opposition to democratisation (Straus, 2000). To prevent hostile political figures from framing democratisation as external interventionism, the EU avoided explicitly challenging entrenched political elites. This meant that reformists that supported normative Europeanisation struggled to mobilise resources and challenge issues, such as high-level political corruption (President, 2004, p. 31). During the early post-Milošević era, the EU tolerated partial compliance with its state-building agenda in the hope that initial reform would cascade into deep-rooted political reform.

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<sup>1</sup> Interview with a journalist from the Centre for Investigative Journalism (CINS), Belgrade. Interview conducted 22 March 2016.

Because Serbia failed to make an immediate and clear break from its nationalist past, the reformist factions in Serbia soon became isolated and found themselves contending with lingering nationalist figures. Continued opposition towards attempts to radically change the composition of key political institutions eventually resulted in a split amongst the reformist coalition. Consequently, nationalist politicians began speaking out against Đinđić and his more radical attempts to restructure the state (BBC, 2001). The emergence of an anti-EU bloc was further boosted by Đinđić's efforts to decouple the association of security service officials from elements of criminality. This resulted in the conspiring of powerful domestic actors against him. In 2003, Đinđić was assassinated in Belgrade in an attack believed to be carried out by organised crime figures who, since the late 1990s, maintained strong links with key actors within the Serbian security services (Telegraf, 2015). The assassination visibly demonstrated how the failure to purge criminal elements from the security sector could dramatically threaten Serbia's fledgling democracy and boost nationalist sentiment.

Despite attempts to prevent the formation of a pro-EU movement, popular outcry at Đinđić's assassination provided Serbia's pro-reform coalition with the political opportunity to push for a radical restructuring of state institutions and temporarily delegitimised anti-EU factions that collaborated with the responsible criminal networks. As a consequence, Serbia's reformist government under its leader, Zoran Živković, decided to crackdown on criminality in Serbia and attempted to dislodge the more radical figures active in its political institutions (Pare, 2003). Despite the welcomed crackdown on Milošević-era criminal networks in Serbia, fresh elections during 2003 saw nationalist politicians once more gain a potential mandate for government.

#### **4.2 Setting the tone: political and economic conditionality**

The 2003 parliamentary elections resulted in the Serbian Radical Party (SRS) achieving a plurality of the votes with 28 per cent of the vote. The next nearest party, the nationalist but pro-EU integration Democratic Party of Serbia, secured 18 per cent (OSCE, 2004). This event was concerning for the EU, given the SRS was led by Vojislav Šešelj, a Serbian nationalist who at the time of his election, was also indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY). Despite winning a plurality of the vote, the SRS was denied a route to power as a new government was formed through a coalition between the Democratic Party of Serbia (DSS) and Democratic Party (DS). In a move further welcomed by the EU, the new coalition government agreed to extradite a number of prominent Serbian nationalists to the ICTY to face war crime charges (Europa Publications, 2003). In response to clear efforts to restructure its political institutions and to secure the position of Serbia's pro-EU perspective, the EU announced Serbia as a potential Candidate State at the 2003 Thessaloniki summit (European Commission, 2003).

Although the EU welcomed a situation that denied Šešelj and the radical nationalists control of Serbia, to say the DSS and DS coalition represented the pro-democratic future the EU expected would be an overstatement. By 2006, the DSS was being accused by both domestic and international critics of turning Serbia into an illiberal democracy and rehabilitating Milošević-era personnel (Fagan, 2012, p.114). Increasingly frustrated, the EU asserted direct pressure on Serbia. This culminated in a threat to withdraw vital reconstruction funds if significant liberalisation did not occur (Radio Free Europe / Radio Liberty, 2006a). The response of the Serbian government was a refusal to cooperate any further with the ICTY. In response, the EU suspended Serbia's accession negotiations until the government complied

with the ICTY's extradition requests (Radio Free Europe/ Radio Liberty, 2006b). The stalemate that ensued brought the two perspectives of Serbian nationalism and pro-Europeanisation directly into conflict.

In response to the withdrawal of vital EU funds, the Serbian government reversed its position and resumed cooperation with the ICTY, despite domestic opposition. This resulted in the EU progressing the Stabilisation and Accession Agreement (SAA) with Serbia, with the agreement being initialled in 2008 (B92, 2008). A positive relationship between the Serbian government and the EU culminated in the eventual announcement of Serbia as an EU Candidate State in 2012 (European Commission, 2015e). Given the apparent success of political conditionality to reverse the political position of the Serbian government, officials in Brussels came to view political conditionality as the most effective tool to ensure compliance with the EU's reform agenda, as it had been in previous accession cases (Vachudova, 2005). The success of conditionality in this moment also helped reinforce a view among Serbia's political elites that pursuing a process of strategic accession and mobilising its associated imaginary was in their best interests. The effectiveness of conditionality to overcome obstacles saw the EU and Serbia evaluate strategic accession as a pragmatic political perspective. As the ICTY case reinforced, Serbians believed they could benefit from European integration whilst preserving their national interests through negotiation. Meanwhile, the EU saw conditionality as a tool to ensure compliance.

However, conditionality alone provided a superficial solution. It did not seek to change the normative framework of Serbian actors nor did it encourage the institutionalisation of rule of law norms. Conditionality led the EU to evaluate accession progress through compliance with specific and often legalistic criteria. In return for compliance with reform programmes, Serbia

continued to receive EU funding. Consequently, the Serbian government had little incentive to generate transformation from below, given that the EU programmes allowed politicians to remain in their position to oversee the reform process and gain from EU investment.

Furthermore, wider civil society remained poorly integrated into the political process as ruling political elites took credit for economic reforms that were enacted with EU financial and political support (Chandler, 2007, pp.593–607). The process of conditionality has set a precedent of intergovernmental interaction, which requires the EU to work with domestic political elites to enact reforms. The early exclusion of wider civil society reinforced popular feelings of disenchantment among these actors and cooperation between state institutions and civil society is lacking in Serbia, as well as the Western Balkans more generally (Fagan, 2013).

In summary, Serbia's early post-Milošević era has seen some political reforms take place, initiated through the tool of conditionality. This however has generated little incentive for Serbian political elites to adopt EU norms or follow EU practice. As the use of political conditionality required a round of calculated negotiations between the EU and Serbia, rule of law reform came to resemble a rather linear and elite driven process, not dissimilar from political conditionality programmes administered by other international organisations that have sought to achieve political change through economic conditionality (Bridoux & Kurki, 2014, p.58). Subsequently, Serbia's political elites maintained their position by acting as overseers of a largely superficial Europeanisation process. This process did little to encourage the inclusion of civil society in Serbia or improve the perceptions held by many citizens regarding the democratic practice of key political institutions (Noutcheva, 2009).

#### **4.2.1 Outcomes of conditionality and the failure to generate democracy from below**

The current constitution of Serbia was established in 2006 after the succession of Montenegro from Serbia. Article One of the constitution commits the Serbian state to the principles of rule of law, civil democracy, human rights and to European principles and values (Government of the Republic of Serbia, 2015b). The constitution makes significant provisions for the region of Vojvodina and grants the province and its capital city Novi Sad, a significant degree of political autonomy. This provision is a continuation of the autonomy granted to the region under the socialist system and the province has historically been an ethnically diverse region (Government of the Republic of Serbia, 2015a). The constitution outlines similar autonomy for the province of Kosovo Metohija but in truth, Kosovo's declaration of independence in 2008 has made this a constitutional claim and not a reality. The Serbian system of government has the National Assembly as the supreme representative and legislative body in Serbia. It is composed of 250 deputies. A president heads the Serbian state, but the prime minister officially acts as executive (Government of the Republic of Serbia, 2015c). The president of Serbia nominates a prime minister, but the head of the majority party always assume the position. Because elections to the National Assembly operate on a proportional list system, members from multiple political parties have often served in government. This has been less frequent in recent years with the political hegemony achieved by the SNS.

Events since 2006 are characterised by the compliance of Serbia with expected conditionality requirements and gradual steps towards EU membership. Whilst this process of Europeanisation has been conceptualised as democratisation, the continued presence of certain political actors who tightly control politics suggests civil society has little place in the process. The failure to encourage Serbian actors to include a broad array of pro-democratic

civil society actors in the reform process further compounded the negative perception of citizens about their government and the state of politics more generally.

Since 2009, the EU has attempted to break up elite actor networks that underpin the state. In particular, the EU has sought to remove politicisation from rule of law institutions by breaking the link between judges and politicians. To put this into context, preliminary evaluations indicate that a new approach adopted in 2011 has removed a significant element of politicisation from the judiciary. Further analysis is necessary to ascertain whether this depoliticisation results in a more transparent judiciary that responds to the needs of Serbian citizens and supports transparent democratic institutions (Fagan & Sircar, 2015, pp.13–16). In addition to asserting the need for more fundamental normative change in key institutions, the EU has further supported civil society in the hope that funded organisations can form an effective check on government action. However, the provision of capital to largely professionalised NGOs has led to questions about whether these groups truly represent the interest of Serbian citizens or whether they work to enforce EU policy (Fagan, 2013, pp.66–67).

Bringing this historical overview up to date with contemporary Serbian politics demonstrates the continued presence of key individuals linked to the Milošević's regime. The SNS were the governing party from 2012 to 2014 and are a breakaway party of the SRS. The SNS leader until 2012, Tomislav Nikolić, is a former nationalist who directly participated in Milošević's regime. Although adopting a much more pro-EU stance since 2008, much of his rhetoric on issues including Kosovo and closer ties with Russia would appear to contradict the EU's own position. The proposed alternative paths to EU integration, whilst perhaps not substantive or viable

alternatives to EU integration, still constitute alternative political projects that are referenced by elites to resist adopting reforms that threaten their long-term survival.

Social trends are also indicative of the lingering power conservative forces exert over the state. In terms of social inclusion, certain minority groups still report cases of violence and exclusion. Whilst Belgrade successfully held its first LGBT Pride parade in 2010, attacks against LGBT activists remain widely reported and public identification as LGBT is still discouraged (Mikuš, 2011, pp.834–851). Other minority ethnic groups, in particular the Roma, continue to report regular attacks, exclusion from democratic processes and are generally under-represented in Serbian politics (Human Rights Watch, 2015a). These cases suggest that EU reform has not resulted in a wholesale cultural shift among Serbian citizens and that liberal politics is highly contested (B92, 2015a).

Corruption is another issue. Figure 4.1 demonstrates that few citizens in Southeast Europe believe that their governments are doing enough to fight corruption. Many citizens continue to perceive corruption to be a key feature of government institutions. The SNS government came to power on the back of a platform that promised to eradicate corruption in 2012 (B92, 2013). However, citizens continue to question whether the government is fit for purpose to carry out the fight against corruption. Regardless, the issue of corruption has been mobilised and leveraged by the current government to win elections, boost support from the international community and create the illusion that progress is being made, even when public opinion data suggests this progress is not perceived by citizens.

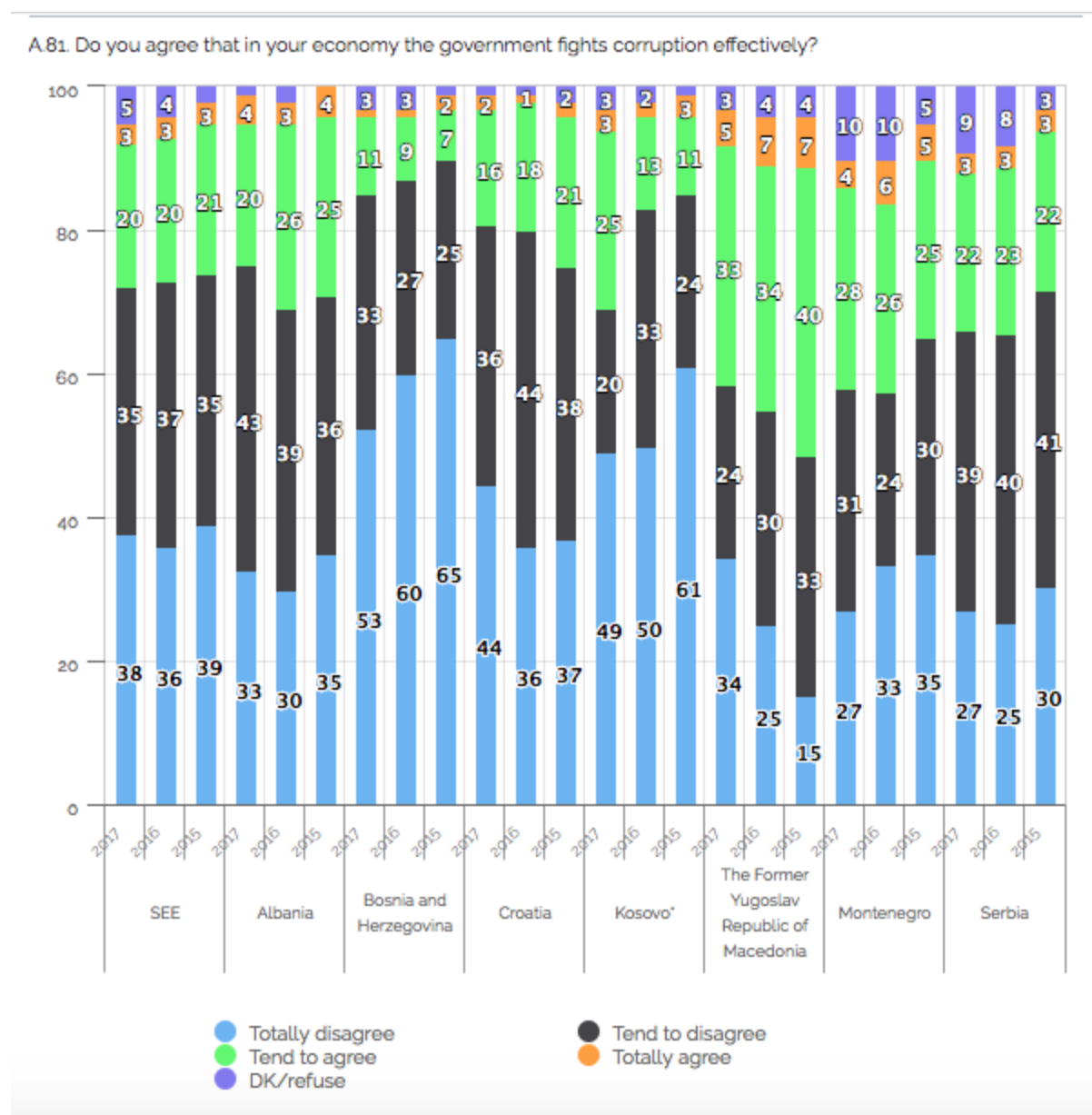


Figure 4.1: Balkan Opinion Barometer 2017. Source: (Regional Cooperation Council, 2017)

The attempts of the current Serbian government to prevent independent media from reporting corruption also demonstrate that freedom of expression is weakly enshrined. External evaluations suggest that the current government is increasingly resorting to threats of violence or financial sanctioning for media outlets which criticise the government (Freedom House, 2015b, 2017). A move away from press freedom is particularly controversial because

the Serbian president and SNS leader, Alexander Vučić, was the Minister of Information under the Milošević regime.

When the Serbian government has faced allegations of corruption or been accused of restricting social inclusion and freedom of expression, it has typically mobilised nationalist discourse to justify its actions and defend itself from criticism. Whilst Serbia agreed to abolish parallel institutions in Kosovo in 2013 after extensive EU facilitated dialogue, such issues are still prominent in Serbian politics (EEAS, 2015). Instead of seeking to persuade the public to abandon Serbian nationalism, the SNS government has strategically deployed nationalist imaginaries to challenge rule of law reforms which go against its interests. Critics of the government's actions are frequently labelled as pro-western interventionists, who seek to undermine the territorial integrity of the Serbian state (B92, 2015b). The EU recognises nationalist and socially conservative rhetoric remains powerful and is reluctant to push Serbia to remove entrenched political elites given these elites remain capable of mobilising popular opinion against the EU. In effect, Serbian nationalism provides a substantial imaginary and anti-EU narrative should the EU attempt to exert undue pressure on Serbia's elite. This provides the ruling elite with an effective strategy of resisting reforms.

To summarise, Serbia has complied with the EU's reform agenda. This process has been overseen and safeguarded by Serbian elites who have exerted a significant degree of control over the speed and direction of reforms. Because of the EU's inability to mitigate alternative politic projects, European integration remains the most significant but not the only game in town. Rule of law reforms have occurred largely in response to conditionality. By reducing enlargement to a series of negotiable arrangements that are reliant on the underlying promise of financial capital, the EU does little to challenge politically embedded elites in

Serbia. To the contrary, allowing elites to retain their privileged positions in overseeing what has been widely termed a 'flawed' political transition has allowed elites to further entrench their positions (Gheciu, 2015, p.301). An alternative to the process of conditionality would be a more systematic socialisation process that seeks to transform the conceptual and practical dispositions of elite actors through engagement between the EU, government and wider civil society (Ibid, p.305). In the absence of this, political elites continue to benefit from an approach that provides them with significant resources to capture, so long as they superficially comply with the EU's external demands.

#### **4.3 The EU's approach**

The EU has demonstrated a clear interest in Serbia's political development and many of Serbia's key political events since 2000 have been a reaction to the prospect of EU membership. This section discusses the key mechanisms through which the EU has delivered its reform agenda. This overview demonstrates the largely technocratic approach employed by the EU. By attempting to export EU-style institutions to Candidate States through programme specific instruments based on an enlargement blueprint, the EU has often neglected the local realities in Serbia. This encouraged Serbian actors to 'tick the boxes' of formal programme criteria to receive EU funds and comply with the accession process. Problematically, the EU's approach up until 2014 did not address the need to change the institutional culture underpinning rule of law institutions and did not offer a specific consultation procedure that allowed domestic actors to internalise EU rule of law norms and embed them in practice. Therefore, the EU's process of reform allowed domestic elites to comply with EU expectations without changing underlying institutional norms. This has reified the strategic accession imaginary as optimal for Serbian actors. Outlining the EU's delivery of

reforms since 2000 is important for ascertaining how rule of law reforms are delivered, as well as ascertaining whether there is anything the EU's new approach does differently, which will be explored in more detail in subsequent chapters of this thesis.

#### **4.3.1 The Stabilisation and Accession process (SAp)**

Since 2000, the EU's approach towards Serbia and the Western Balkans more widely has been characterised by efforts to promote regional stability. The Thessaloniki Summit in 2003 outlined the EU's reform agenda for the Western Balkans and produced the Stabilisation and Association process (SAp). Much of the EU's accession policy has been delivered via the SAp (European Commission, 2003). The SAp is designed to be implemented through individual Stabilisation and Association Agreements (SAA) signed with Western Balkan countries (European Commission, 2003). A partnership of actors is responsible for overseeing the SAp including the EU Commission's Directorate General for Neighbourhood and Enlargement (DG NEAR), national-level EU delegations, national governments and EU supported NGOs (European Commission, 2015e).

Two funding mechanisms have funded accession related projects and supported the SAp more broadly. The first funding mechanism was the now redundant Community Assistance for Reconstruction, Development and Stabilisation (CARDS). The programme was brought into action by Council Regulation (EC) no. 2666/2000. It had four main objectives (EUR-Lex, 2015; Fagan, 2012):

1. Stabilisation of the region
2. Institutional and legislative development, including harmonisation with EU norms
3. Sustainable economic development and structural reform

#### 4. Encouraging cooperation between the Western Balkan countries and the EU

The executive summary of the European Commission's final summary of the CARDS programme provides an overview of the key outcomes of the programme in Serbia. In total, the EU provided €1.15 billion to Serbia under CARDS between 2000 and 2006. Whilst the majority (31 per cent) of this funding was spent modernising the energy sector, 10 per cent was spent on government development, 8 per cent on border management and in total, 41 per cent of the programmes were orientated towards some form of technical assistance across various sectors to bring the Serbian public administration in line with the EU (Particip GmbH, 2009, p. 1). Whilst economic liberalisation has been the biggest priority for the EU in terms of allocated funds, the rule of law also received significant levels of support through technical assistance.

The CARDS programme has been criticised for denying domestic stakeholders a clear sense of involvement in the accession process (Fagan, 2012, p.46). Furthermore, CARDS programmes have primarily involved large-scale institutional reforms that rarely focus on micro level processes and practices which might need reforming. To give an example, a lack of involvement from national stakeholders in an initiative to democratise the Ministry of Justice has resulted in the rule of law being resisted or circumvented because significant efforts to reform current administrative practice have not taken place (Particip GmbH, 2009, p.2). In this case, the Serbian Judges Association (SJA) has contested much of the EU's reform agenda for not challenging Serbian ministries who wish to maintain control over the judicial process (Ibid, p.2). This is particularly visible in the SJA's initial resistance to the establishment of a Judicial Training Centre, given the Ministry of Justice had a role in its establishment (Ibid, p.11).

The CARDS programme found greater success in its attempts to create a legislative environment that facilitated harmonisation with EU rules. In the area of local and municipal development, CARDS programmes helped align Serbian law with EU law to facilitate the process of European integration (ibid, pp.16-17). In sum, CARDS was effective at helping enact legal harmonisation with EU rules. This helped reinforce accession as a process of legal compliance and not normative change. This was discussed in chapter 2 where it was argued that legal harmonisation and transposition of EU laws alone does not change the way in which actors understand rule of law issues and enact them in practice.

#### **4.3.2 Instrument for Pre-accession Assistance (IPA)**

In response to the limits of CARDS, the EU created the Instrument for Pre-accession Assistance (IPA) as a new mechanism for delivering the SAp. IPA is a mechanism that delivers large sums of money to Potential Candidate States and Candidate States to support accession-related activities and institution building (European Commission, 2015d). Specific sectoral level programmes are delivered through the IPA and are overseen by the EU and allied actors. Consequently, the IPA is not only administered, evaluated and monitored by the EU, but also key financial institutions including the World Bank, European Bank for Reconstruction and Development, and the European Investment Bank, who have worked alongside the EU in delivering the IPA (European Commission, 2015f). The money delivered via IPA to Serbia since the beginning of the programme up until 2014, is visible in table 4.2:

*Table 4.2: IPA funds delivered to Serbia from 2007-2013. Source: (European Commission, 2015d)*

| Year                  | 2007  | 2008  | 2009  | 2010  | 2011  | 2012  | 2013  |
|-----------------------|-------|-------|-------|-------|-------|-------|-------|
| Amount (EUR millions) | 189.7 | 190.9 | 194.8 | 197.9 | 201.8 | 202.0 | 208.3 |

In addition to the money received to date, table 4.3 outlines the planned delivery of funds to Serbia as well as a breakdown of funds by policy sector. These tables demonstrate the scale of the state-building project taking place in Serbia:

*Table 4.3: IPA Funding allocated to Serbia by sector for period 2014-2020. Source: (European Commission, 2015f)*

| INDICATIVE ALLOCATIONS (million EUR) per policy areas and sectors, per year                                     | Total        |              |              |              |              |                |
|---|--------------|--------------|--------------|--------------|--------------|----------------|
| Governance Area   | -2014-       | -2015-       | -2016-       | -2017-       | 2018-2020    | 2014-2020      |
| <b>a. Reforms in preparation for Union membership</b>   | <b>95.1</b>  | <b>61.4</b>  | <b>77.9</b>  | <b>78.4</b>  | <b>230.2</b> | <b>543.0</b>   |
| Democracy and governance  | 177.8        |              |              |              | 100.2        | 278.0          |
| Rule of law and fundamental rights  | 135.0        |              |              |              | 130.0        | 265.0          |
| <b>b. Socio-economic and Regional development</b>   | <b>85.0</b>  | <b>75.0</b>  | <b>85.0</b>  | <b>80.0</b>  | <b>240.0</b> | <b>565.0</b>   |
| Environment and climate change  | 85.0         |              |              |              | 75.0         | 160.0          |
| Transport   | 90.0         |              |              |              | 85.0         | 175.0          |
| Energy  | 80.0         |              |              |              | 45.0         | 125            |
| Competitiveness and innovation  | 70.0         |              |              |              | 35.0         | 105.0          |
| <b>c. Employment, social policies, education, promotion of gender equality, and human resources development</b> | <b>15.0</b>  | <b>40.0</b>  | <b>20.0</b>  | <b>27.0</b>  | <b>88.0</b>  | <b>190.0</b>   |
| Education, employment and social policies   | 102.0        |              |              |              | 88.0         | 190.0          |
| <b>d. Agriculture and rural development</b>   | <b>0</b>     | <b>25.0</b>  | <b>25.0</b>  | <b>30.0</b>  | <b>130.0</b> | <b>210.0</b>   |
| Agriculture and rural development   | 80.0         |              |              |              | 130.0        | 210.0          |
| <b>TOTAL</b>  | <b>195.1</b> | <b>201.4</b> | <b>207.9</b> | <b>215.4</b> | <b>688.2</b> | <b>1,508.0</b> |

IPA operates specific programmes in designated 'priority sectors'. For example, the IPA for Serbia has a democracy and governance priority sector that seeks to promote administrative reform through specific programmes (European Commission, 2015f). Despite the categorisation of priority sectors, programme delivery often cuts across priority sectors. For example, the EU administers its anti-corruption programme within the democracy and governance policy area. This programme also encourages investment in Serbia by increasing the trust investors place in the Serbian government. Whilst being allocated specifically to the democracy and governance priority sector, the EU's anti-corruption programme indirectly supports its competitiveness and innovation priority sector. This demonstrates how the IPA operates at the sectoral level in a way that integrates the various political and economic components of the EU's enlargement approach.

The EU's state-building agenda in the Western Balkans is clearly ambitious and supported with significant material resources. Ascertaining the effectiveness of IPA funding and its role in institution building is vital, but it is not the focus of this thesis. However, ascertaining the size and scope of the EU's state-building agenda is important because it demonstrates the scale of the EU's economic and political investment in Serbia. Rule of law is a priority for the EU and it is prepared to support it with significant funds. The EU has a clear stake in the success of its rule of law reform agenda and aims to ensure that it makes the most of its financial assistance. To what extent it has moved beyond formal institution building and has encouraged the institutionalisation of the rule of law in practice will be explored in subsequent chapters of this thesis.

In sum, the SAp seeks to stabilise the region by enforcing contractual bilateral relationships with and between Western Balkan countries, enhancing market integration and improving regional cooperation (European Commission, 2012a). Whilst the SAp clearly reduces the prospect of regional instability, it has not been concerned with creating a political environment where critical reflection and dialogue is encouraged. The continued prevalence of nationalist political views in Serbia remains a significant challenge to the EU's integration efforts. Instead of directly challenging nationalist discourse and associated imaginaries, the EU has attempted to mitigate contestation by offering economic development. It has therefore become EU strategy to link democratisation and market liberalisation as a mutually reinforcing and mutually beneficial process. This approach has been successful in creating economic interdependence but has also neglected a more explicit focus on rule of law reform (O'Brennan, 2014). Consequently, the EU's new approach has arisen to put rule of law at the heart of the accession process.

#### **4.4 Challenges to reform**

The following sections highlight two interrelated challenges, which particularly confound the EU's new approach. These are: the relationship between government and civil society and the continuation of political elites.

##### **4.4.1 Case study: BIRN**

While EU reforms must be delivered through government, the ability of domestic elites to pushback against reforms can undermine the rule of law. Serbian political elites can use different imaginaries to either promote or contest EU interventions, depending on whether they challenge their interests. Drawing from table 4.1, a case study of media freedom demonstrates the strategic use of political imaginaries by the government. Following the

release of a critical report from an EU funded civil society organisation, the government switched from a strategic accession imaginary to Serbian nationalism. The threat of mobilising a nationalist narrative appeared substantive enough to prevent the EU from challenging the government and whilst it did seek to defend the civil society organisation under attack, it largely sought to mitigate the mobilisation of nationalist forces. This case demonstrates how socially constructed political imaginaries can be deployed strategically, as well as the contested nature of rule of law reforms.

The Balkan Investigative Reporting Network is an organisation that seeks to analyse transitional issues in the Balkans and the process of European integration (BIRN, 2015a). BIRN is a not-for-profit organisation whose donors include the EU, National Endowment for Democracy (NED), Norwegian Ministry of Foreign Affairs and the Balkan Trust for democracy (BIRN, 2015b). BIRN seeks to hold the Serbian government to account and supports the development of a free media environment in Serbia. BIRN gained national and international prominence in 2014 after conducting an investigative report into the Tamnava mine. The Tamnava mine is located in Western Serbia and is critical to Serbia's fuel economy, providing 43 per cent of the fuel for three major power plants nearby (World Bank Group, 2015a).

Following the severe flooding that occurred in Serbia during 2014, the government distributed a World Bank financed project to two construction companies. The companies received contracts to pump water from the mine and restore its operations. BIRN's report concluded that the companies awarded the contract to undertake this were not well suited for the task, given neither company had any prior experience with dewatering mines. The final report revealed that €100 million had been disbursed through the project and that the companies who received the contracts also had connections to Elektromreža Srbije, the state-

run electricity utility company (BIRN, 2015c, pp.1–7). In effect, BIRN were claiming to have found evidence that government funds were distributed to the companies as a ‘kick back’ for the benefit of government elites (Ibid).

Despite the focus placed on corruption as part of rule of law reforms, corruption has largely been conceptualised in terms of its macroeconomic impact and as a product of administrative culture by the Serbian government and other important external actors the EU has tasked with supporting its enlargement programme (European Bank for Reconstruction and Development, 2015a, 2015b). Because of this, less emphasis has been placed on the political dimension of corruption. Consequently, the Serbian government defended its actions by stating that the case did not violate the World Bank’s procurement policy and in doing so, deflected attention away from its own actions (World Bank Group, 2015b, p.4). By referencing the World Bank, the Serbian government knew any challenge to its own position would require challenging the World Bank. As the World Bank is an advisory partner to the EU, the Serbian government appeared to anticipate that the EU could not directly challenge the case (European Commission, 2015c).

When the issues uncovered by BIRN were raised with the World Bank’s office in Belgrade, the World Bank responded by reiterating its stance that the procurement had occurred in accordance with their policy and they would not be investigating the issue (BIRN, 2015d). This verdict legitimised the actions of the government and failed to address the key issue raised by BIRN — that elite individuals at the centre of political and economic life in Serbia continued to be linked on the basis of informal personal connections and gain from the resources of the state (BIRN, 2015c). The EU did not push for any further investigation because it did not want

to undermine the judgement of a key partner, the World Bank. This lack of intervention encouraged the Serbian government to mobilise Serbian nationalist rhetoric against BIRN.

The Serbian government delegitimised the findings of the BIRN report by representing BIRN as an externally funded organisation who were interested in undermining Serbia's national sovereignty. By accusing BIRN of being 'EU-paid Liars', PM Vučić eventually sparked a direct intervention from the European Commission to speak in support of media freedom (B92, 2015b; European Commission, 2015g). Whilst this intervention resulted in Vučić reducing the hostility of his narrative, he was still able to mobilise nationalist support against BIRN. This led to a series of threats aimed at BIRN staff (Human Rights Watch, 2015b). It has been suggested that this case is indicative of the Serbian government's attempts to covertly silence media critics, while formally complying with the EU's rule of law agenda (European Fund for the Balkans, 2015, pp.9–13).

The case study of the Tamnava mine demonstrates two things. First, the case study demonstrates the EU's reluctance to challenge government elites, even when they mobilise rhetoric that undermines the freedom of the press, a key rule of law principle. Second, this case study demonstrates the presence of separate imaginaries in Serbia that can be utilised simultaneously by the Serbian government to preserve its interests.

This case study also demonstrates the tension between government and civil society within Serbia. Pro-reform actors question EU policy because it is delivered in cooperation with the government and mistrust between NGOs and government runs deep:

*I believe that whoever came to power in the last 180 years, it was never different. If you look at the discourse of the ruling elites, there was never a time to have either a*

*free-thinking people or politicians, or elite that will actually lead. It was always much easier and preferable to have the ones that will listen and the ones that will comply.*<sup>2</sup>

The high levels of social and symbolic capital elites have within the field of Serbian politics perpetuates a system of patronage, confounding corruption (Kleibrink, 2015). As substantive reforms potentially jeopardise the position of elite actors, deep reforms have been particularly difficult to induce. Attempts to break apart elite networks by encouraging the inclusion of civil society has only involved a small number of NGOs that represent a specific segment of civil society. This fails to encourage the participation of wider civil society as the EU only engages with civil society instrumentally to monitor the accession process (Wetzel & Orbie, 2015, p.109). Civil society actors have questioned their own role in the accession process and consider their involvement to be ‘tokenistic’ — they are often ignored in practice but included to demonstrate the accession process is inclusive of civil society actors (Fagan, 2013, p.13). This contestation defines the relationship between government and civil society. Subsequent chapters demonstrate the effect this has on the EU’s capacity to initiate the emergence of shared rule of law understandings.

#### **4.4.2 Case study: Security sector reform and entrenched public administrations**

A second dimension of contestation concerns the delivery of the EU’s approach. The EU’s enlargement approach has focussed on promoting institutional reform and technical assistance through its conditionality procedure. This use of conditionality and the provision of financial assistance to enact reforms has intertwined political objectives and economic incentives. This is problematic as it has produced a ‘surface level’ process of reform within

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<sup>2</sup> Interview with project coordinator for public policies, Civic Initiatives NGO, Belgrade. Interview conducted 9 March 2016.

key institutions. Security sector reform offers a good example of how the Serbian public administration remains entrenched and resilient to deep-rooted reform, despite EU interventions.

Security sector reform is necessary for Serbia to meet the requirements outlined in Chapter 24 of the EU *acquis*. The EU and other international actors have invested a great deal of time and energy trying to depoliticise the security sector, remove corruption and ensure transparency of the security sector (Edmunds, 2007). EU-related reforms have sought to disseminate New Public Management principles in Serbia's public administration (Vetta, 2009). This has been reflected in attempts to reorganise key security sector institutions, primarily the Ministry of Interior.

Reforms within the Ministry of Interior have struggled to change practices and existing institutional hierarchies have proved difficult to abolish. One key external actor active in this reform process outlined the problem with these entrenched public administrations and the persistent difficulties in trying to reform a hierarchical organisation:

*We have these institutions still from the old socialist times that have not been reformed enough, in terms of breaking these very tight hierarchical relations of authority and power. For them to understand that they need to cooperate more freely and understand that they're not working in some box and that this is their competency.<sup>3</sup>*

Part of the difficulty in achieving reform has been the reluctance of domestic actors to engage with reforms. There is a significant degree of contestation and reluctance to change work practices. In Serbia, part of the reason this has occurred is the lack of resonance new reforms

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<sup>3</sup> Interview C, OSCE Mission to Serbia, Belgrade. Interview conducted 21 April 2016.

have with existing organisational cultures. An interviewee working in the Ministry of Interior articulated this:

*Because, as a result of a 10-year period of this soft approach [of security sector reform], it has almost embedded into [the] organisation culture, that managers themselves think “oh, there is some project, whatever happens, it doesn’t really matter, it isn’t my priority.”<sup>4</sup>*

Path dependencies no doubt play a role in inhibiting reforms, as do capacity issues. However, it is also important to consider the effectiveness of the EU’s own interventions and its attempts to promote reforms. One reason why EU reforms have failed to enact substantive administrative restructuring is the phasing of the SAp process. One interviewee outlined how up until 2014, reforms had largely been promoted by the international community in an ad-hoc manner. This promoted ‘tactical’ change but not a ‘strategic’ change in thinking. Despite these criticisms, the interviewee stated that the opening of accession chapters might subsequently enact a deeper change and generate momentum for reform:

*I think the biggest change factor will be the EU negotiating process because it will enforce change. Just this morning I was explaining again to people that the EU is not just some project, it is de facto a contractual obligation, which the Minister both politically and from a legal perspective has taken to enforce, to enact.<sup>5</sup>*

The case of reform within the Ministry of Interior demonstrates the limits to date of the EU’s approach. The EU has worked with other international organisations to do what it can in terms of providing resources to enact institutional reform. However, previous rounds of reform

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<sup>4</sup> Interviewee A, Serbian Ministry of Interior, Belgrade. Interview conducted 7 March 2016.

<sup>5</sup> Ibid.

have not adequately considered the deep-rooted cultural structures and material factors that make it difficult to change the behaviour of public officials:

*The EU does not understand, you can't have a sustainable change in this area unless you have all these other things. You can build the additional specialist skills of financial investigators, you can bring some external experts, you can use TAIEX, but what happens with the next generation?*<sup>6</sup>

In sum, insights from the security sector suggest that a more effective method of rule of law reform would require greater bottom-up working, socialisation and information exchange to engage with points of contestation and reform the security sector. It remains to be seen to what extent the EU's new approach does this in other rule of law policy areas.

#### **4.5 Conclusion**

This chapter provided important insight into political developments in Serbia and its relationship with the EU since 2000. It made three key points.

First, developments in Serbia have seen the country clearly orientate toward the EU. Whilst this has placed Serbia on a path to EU accession, the extent of reform induced by this process is questionable. Serbia has complied with the EU's reform agenda based on conditionality. This has elevated an imaginary of strategic accession, which has framed the actions of domestic actors. However, the articulation and mobilisation of a nationalist imaginary has been used to reinforce domestic elites and undermine government critics.

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<sup>6</sup> Interview C, OSCE Mission to Serbia, Belgrade. Interview conducted 21 April 2016.

Second, the EU's approach has been characterised by its focus on ensuring Serbian actors comply with EU reforms and construct formal democratic institutions. It has relied on formal instruments such as the IPA to deliver pre-accession assistance. It is unclear how much the EU's approach has focussed on informal institution building. This raises important questions about whether the EU has tried to significantly advance corresponding rule of law norms alongside formal institution building.

Third, this chapter demonstrated the limits of rule of law reforms to date. The tension between civil society and government and the entrenched position of political elites are both significant issues, which will be explored in subsequent chapters.

The next chapter highlights the logics and imaginaries driving the delivery of rule of law reforms in Serbia. This chapter builds on significant themes outlined here and points to the role that previous experiences, perceptions of instability and contemporary politics all play in structuring the EU's own imaginary of the Western Balkans region and Serbia. This imaginary differs from the imaginaries constructed by domestic actors in this chapter. The EU's imaginary is significant because it determines the issues prioritised by the EU and the way it engages with Serbia. It has profound implications for how accession-related rule of law reforms are promoted in Serbia.



## **Chapter 5: What are the key logics and imaginaries driving the EU's contemporary approach to enlargement?**

### **Introduction**

This chapter addresses the question: What are the key logics and imaginaries driving the EU's regional engagement? Answering this sub-question helps answer the research question: What are the key logics, imaginaries and interactions driving the delivery of rule of law reforms in Serbia? This chapter focuses on how EU actors construct an imaginary of the Western Balkans region through structuration, and outlines the key logics driving its engagement. This imaginary differs from the imaginaries mobilised by domestic actors in chapter 4, although there is an interplay between EU politics, regional politics and domestic politics in Serbia. This chapter analyses enlargement policy in relation to the changing nature of European integration. Analysing enlargement policy in this manner demonstrates how the interplay between formal objectives and political concerns shapes the issues prioritised by the EU in Serbia. It is further demonstrated how this interplay produces contradictory responses that undermine the formal objectives of the EU's enlargement policy in Serbia and the Western Balkans more generally.

Analysing enlargement policy in the context of European integration overcomes the limits of existing theoretical approaches discussed in chapter 2. Existing approaches tend to eschew questions about the factors that drive integration and by extension, the impact these factors have on enlargement policy. In contrast to these approaches, this chapter will seek to identify the integration dynamics that effect the formation and application of enlargement policy. It does so by focussing on how the interplay between institutions, events, experience and actors, shapes the formation of understanding through a process of structuration. This chapter will make the argument that a 'strategic' logic drives the EU's enlargement approach. This

strategic logic is driven by the concerns of key Member States who seek to construct an enlargement approach that can reinforce an increasingly challenged hegemonic project at the European level. However, as this strategic logic is informed by the way in which actors make sense of EU enlargement, it differs from the strategic logic associated with rational choice.

This chapter first outlines briefly the formal criteria that is formally meant determine how the rule of law policies promoted by the EU. However, subsequent sections suggest that further considerations drive the formation and delivery of enlargement policy, subsequently circumventing this formal criterion. Second, this chapter places enlargement policy into the broader context of European integration to demonstrate how and why key Member States play an increased agenda-setting role in determining the political agenda of enlargement policy. At the same time, the European Commission plays a monitoring role and is eager to present enlargement policy as technocratic and apolitical. This has resulted in enlargement policy being increasingly shaped by the strategic input of key Member States concerned with mediating tensions within the EU. This section demonstrates the role that events and current experiences play in shaping the judgement of actors and the construction of an imaginary that prioritises stability.

The third section explores other reasons why this shift in enlargement policy has occurred. This section emphasises the key role past enlargement experiences have played in shaping enlargement policy. It also demonstrates how the 2007 enlargement was perceived as a warning against further 'rapid' enlargement. Placing contemporary enlargement policy in a comparative perspective demonstrates how previous enlargement experiences have shaped the EU's current enlargement approach. Key Member States are increasingly concerned with reinforcing a liberal political model in future Member States against the backdrop of concerns

about the poor institutionalisation of the rule of law, and persistence of organised crime and corruption in new Member States. The retrospective evaluation of both the 2004 and 2007 enlargement is shown to shape how actors frame contemporary enlargement policy. This demonstrates the importance of retrospective evaluation in shaping structuration and the construction of an imaginary that the EU's new approach should avoid past mistakes.

The fourth section demonstrates how the EU's enlargement approach plays out in practice and how the EU acts through enlargement policy. This section demonstrates the way contemporary challenges and perceptions of risk inform its imaginary and drive contemporary enlargement policy. This is demonstrated with three examples. First, the economic crisis has framed further enlargement as a risk. It is believed that the Western Balkan Candidate States are not economically competitive and as such, accession poses a risk to the EU's economy. Second, the perception of the Western Balkans as a perpetual region of instability frames enlargement policy towards the Western Balkans as an opportunity to secure the region and prevent conflict along the EU's border. Third, the use of enlargement policy to address the 'migration crisis' demonstrates how enlargement policy is used in an ad-hoc and instrumental manner to address an emerging crisis affecting Member States.

This chapter concludes by reiterating that the EU's enlargement policy is constructed through the interpretation of contemporary events, previous experiences and current crises of concern to EU actors. The way these challenges are framed and organised into a political imaginary of the Western Balkans region determines how the prospect of future enlargement is approached.

## 5.1 The EU's rule of law criteria

Table 5.1 outlines the key rule of law content the EU aims to promote through enlargement. These are primarily detailed in Chapter 23 of the EU *acquis*. The rule of law content outlined in table 5.1 informs the decision to analyse three rule of law policy areas relating to judicial reform, anti-corruption policy and fundamental rights in subsequent chapters. Chapter 24 is also included in table 5.1. This is because part of this Chapter supports the implementation of the rule of law criteria associated with Chapter 23. For example, by outlining the need for adequate law enforcement capacities, which can effectively enforce the rule of law. It thus plays a cross-cutting role in supporting implementation. However, the majority of Chapter 24 is focussed on the implementation of Schengen and cross-border cooperation:

*Table 5.1: Key aspects of the EU acquis concerning the EU's rule of law criteria. Source: European Commission, 2018.*

| Chapters of the Acquis                       | Key rule of law content  |
|--|--|
| Chapter 23: Judiciary and Fundamental Rights | <ul style="list-style-type: none"> <li>• The establishment of an independent and efficient judiciary.</li> <li>• Impartiality and integrity of the courts for safeguarding the rule of law.</li> <li>• Eliminating external influences over the judiciary.</li> <li>• Legal guarantees for a fair trial.</li> <li>• Effective engagement in the fight against corruption.</li> <li>• Solid legal framework and reliable institutions to prevent and deter corruption.</li> <li>• Respect for fundamental rights and EU citizens' rights, as guaranteed by the Fundamental Rights Charter.</li> </ul> |
| Chapter 24: Justice, Freedom and Security    | <ul style="list-style-type: none"> <li>• Strong and well-integrated capacity within the law enforcement agencies and other relevant rule of law bodies.</li> <li>• Schengen acquis to facilitate cross-border cooperation and support the fight against organised crime and terrorism.</li> </ul>  |

The policy issues associated with this part of the *acquis communautaire* are formally stated to be the key drivers of enlargement policy (European Commission, 2016b). However, the following sections show how intergovernmental dynamics, perceptions actors have of previous enlargements, and interpretations of contemporary events, inform the design and delivery of enlargement policy. This suggests that objective rule of law criteria are not the only drivers determining the EU's engagement with Candidate States and the development of enlargement policy.

## **5.2 The new intergovernmentalism of enlargement policy**

Arguably enlargement policy has always been driven by intergovernmental politics as the admission of new Member States must be unanimously approved. Since 2014 however, a further shift has taken place. During previous enlargements, the Commission had significant input in directing the speed of the enlargement process. In contrast, contemporary enlargement policy is driven by several key Member States, who have adopted a far more cautious approach to enlargement. This shift in competencies is demonstrated when two key events are considered in tandem. In 2014, the Juncker Commission announced a five-year freeze on enlargement stating that:

*The EU needs to take a break from enlargement so that we can consolidate what has been achieved among the 28. This is why, under my Presidency of the Commission, ongoing negotiations will continue, and notably the Western Balkans will need to keep a European perspective, but no further enlargement will take place over the next five years. (Juncker, 2014).*

Shortly before the formation of the Juncker Commission, the Berlin Forum was established. The establishment of a new informal intergovernmental forum prior to the announcement

that the Commission would be taking a step back from enlargement is interpreted as an attempt by Member States to reassert themselves as the agenda setting actors of enlargement.

Germany has played a key role in enlargement policy and was an early advocate of post-conflict reconciliation in the Western Balkans. The increased involvement of Germany in the enlargement process coincides with its emergence as a 'reluctant hegemon' in several policy fields since the 2008 financial crisis (Bulmer & Paterson, 2013; Krotz & Maher, 2016). Prior to the establishment of the Juncker Commission, German Chancellor Angela Merkel announced the Berlin Summit on the Western Balkans. The Summit was designed to demonstrate Germany's 'strong commitment' to the Western Balkans and that a 'clear prospect for the Western Balkan states' should exist if the criteria for accession is respected (Deutsche Welle, 2014). The other key Member States active in the Berlin Process are France, Austria, Italy, Croatia and Slovenia (Lilyanova, 2016, p.2). The first Berlin process summit was held in Germany, the second in France, third in Austria and fourth in Italy. The Berlin process includes current Candidate States and potential Candidate States in the Western Balkans region. It is designed to act as the key forum through which pro-enlargement Member States and Candidate States interact.

Intergovernmental bodies allow the Member States to define the political agenda of enlargement and the content of key reforms that are subject to the Commission's monitoring exercise (EurActiv.de, 2014; Lilyanova, 2016, p.2). The Commission's role in the enlargement process remains that of monitor and enforcer. Taken at face value, the Commission's insistence on benchmarking and measuring reform progress impedes the type of flexibility that a more experimental approach to enlargement policy might provide. This isn't the case

however when the competencies of the Commission are considered. During the enlargement process, the Commission seeks to monitor and evaluate progress made towards meeting benchmarked reform objectives. Action plans are drawn up by Candidate States to show how they will work towards meeting benchmarked objectives. This process remains technical and involves formally transplanting the EU's legal system into Candidate States. This formal process of monitoring and evaluation runs parallel to and is shaped by the political agenda of intergovernmental forums such as the Berlin Forum.

The Berlin Process not only demonstrates the important role played by Member States in driving the enlargement process, it also demonstrates the increasingly process-oriented approach favoured by the EU. A process-orientated approach allows for emerging issues facing the EU to be placed onto an enlargement agenda, while simultaneously a formal accession process based on fixed criteria is promoted. Moving the agenda setting aspect of enlargement from formal arenas to informal arenas allows for contemporary concerns to be reflected onto and embedded within the EU's enlargement approach. The EU's new enlargement dynamic is characterised by the formulation of policy through a process of deliberation between key agenda setting actors and the informalisation of the policy process through intergovernmental forums and ad-hoc bilateral relations (Sabel & Zeitlin, 2010, p.4). This has implications for how the EU's enlargement approach is constructed through structuration. It suggests that the interplay between the understanding of formal criteria and progress by Candidate States is not the only factor influencing EU actors. Ad-hoc and emerging concerns will shape the construction of the EU's enlargement agenda and inform various imaginaries of both the Western Balkans and EU politics. The following sections

demonstrate how this subsequently shapes the application of the EU's approach and determines the prioritisation of a socially constructed strategic logic.

### **5.2.1 The 2015 Vienna Summit**

Briefly analysing the Vienna Summit, Paris Summit and Trieste Summit statements demonstrates how contemporary events have shaped the EU's enlargement agenda. This analysis shows how the relationship between event and actors shapes the way they interpret enlargement policy. While this section does not focus on the actors themselves, it shows how policy statements reflect the judgement of actors and the ways in which they have made sense of enlargement policy. This is consistent with the concept of structuration — the process of sensemaking where the relationship between actors and their environment shapes the way they construct understandings of an issue.

The Final Declaration of the Vienna Summit in 2015 reaffirmed the Berlin Forum's commitment the key areas of reform in rule of law and good governance. In addition, the summit integrated new policy issues previously omitted from the enlargement agenda. These issues are not outlined as requirements for membership in the EU *acquis* but were nonetheless put onto the enlargement agenda. These issues were migration management and the fight against radicalisation (Chair of the Vienna Western Balkans Summit, 2015). Insights from Commission staff demonstrate how enlargement policy is increasingly shaped by the concerns of Member States through intergovernmental forums:

*So, with the migration crisis, there were the first [intergovernmental] meetings in October 2015, the Member States and Candidate Countries were on the same footing, so it means that there could be several paths to react to a specific crisis... I think the fact that the accession process puts the candidate country, Member States and*

*commission on the same track, also enables the stakeholders to find a solution on particular ad hoc issues when they pop up.*<sup>7</sup>

The insights of an interviewee present at the Vienna summit demonstrates how the Vienna Summit was conceptualised as a reactive forum for addressing emerging events and political concerns. It also demonstrates the role perceptions of crisis played in constructing a new enlargement agenda. The implications of this and the role crisis plays in constructing an imaginary of the Western Balkans region are analysed in detail in section 5.4. The key point to note here is how contemporary events feed into and shape the structuration of EU actors. This subsequently determines their prioritisation of a strategic logic for delivering EU reforms.

### **5.2.2 The 2016 Paris Summit**

Following the Vienna Summit, the Paris Summit in July 2016 emphasised the importance of enhancing regional cooperation between Western Balkan countries. Further emphasis was placed on the contingent relationship between stability in the Western Balkans and security within the EU. Rule of law and good governance criteria were reaffirmed from earlier summits as the key accession issues to be addressed. Once more, the need to engage with the Western Balkans countries to help resolve the migration crisis and the need for them to respond to issues of radicalisation in the Western Balkans region were emphasised. Finally, the summit made a point of emphasising that the outcome of the UK's referendum on EU membership should not undermine the European perspective of the Western Balkans participants (The French Ministry of Foreign Affairs, 2016). The Paris Summit further demonstrated that enlargement policy towards the Western Balkans is shaped by a need to react to challenges facing the EU. Increasingly enlargement policy is used to address challenges facing the EU and

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<sup>7</sup> Interviewee A, DG NEAR, Brussels. Interview conducted 6 June 2016.

is no longer about only ensuring the implementation of the EU *acquis* in Candidate States. This shows how contemporary events shape EU actors' formation of priorities, their understanding of what's important in the region and the issues they prioritise during enlargement.

The Berlin Process is designed to keep the enlargement process alive by facilitating engagement between Candidate States and those Member States supportive of further enlargement. The process is particularly important considering the increased scepticism towards the enlargement process by many Member States and growing Euroscepticism across Europe (Belloni, 2016). One key interlocutor confirmed that without the impetus of key Member States in the Berlin Forum to drive the enlargement agenda, the whole enlargement process could be unbound:

*[Concerning the Berlin Process] How else to push [enlargement] when the EU is in such a depressing situation? You cannot convince the Western Balkan politicians enlargement will happen tomorrow. Or to develop a new EU wide narrative on enlargement would not be audible these days. The best supporter, the UK in the fifth enlargement, doesn't even talk about enlargement these days. So, this is the only pragmatic approach I could think of to hopefully move them a bit further.<sup>8</sup>*

The impact the Berlin Forum has had on setting the political agenda of enlargement is further demonstrated when the annual Western Balkan Summits are considered in the context of the Commission's annual enlargement strategy reports. These reports do not only emphasise the 'objective' accession criteria that is claimed to drive enlargement. The reports also emphasise the issues raised as political priorities at each Western Balkans Summit. An overview of the

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<sup>8</sup> Interview with former head of the Western Balkans Unit, DG NEAR. Interview conducted 10 June 2016.

2016 enlargement strategy alone demonstrates that alongside rule of law, fundamental rights and public administration reform, the 'migration crisis', regional cooperation and anti-radicalisation efforts are mentioned in the strategy paper as priority issues (European Commission, 2016b, pp.1–8). These were all identified as significant political issues for the Member States at the Western Balkans Summit 2016. This demonstrates how actors' perception of events and their attempts to respond to events through enlargement policy, prioritises a strategic logic. Furthermore, it also shows how EU actors' understanding of events shapes their imaginary of the Western Balkans region. This determines the issues they prioritise when engaging with this region.

### **5.2.3 The 2017 Trieste Summit**

The Trieste Summit carried forward the themes raised in the previous summits, while also emphasising an increased focus on regional interconnectivity. This summit committed Member States and Candidate States towards a new roadmap for regional economic integration and promised additional EU funding to support the further development of regional infrastructure (Farnesina, 2017). The initiative to establish a Regional Economic Area at the summit was welcomed by Directorate-General for Neighbourhood and Enlargement Negotiations (DGNEAR) Commissioner Johannes Hahn who described this move as 'an important milestone on the path for EU accession' (Ristić, 2017).

As well as the new regional connectivity agenda, issues identified at previous summits were also reiterated. Rule of law was discussed, and a specific focus was placed on the fight against corruption. Other issues, such as the prevention of irregular migration, were readdressed. It was agreed that Candidate States should remain committed to safeguarding the EU's external borders (Farnesina, 2017):

*All the six partners in the Western Balkans clearly want to be more integrated in the EU, determined to have a future in our Union for all of them; once the right reforms are passed, we will be very consistent from our side. Secondly, many new practical projects were confirmed and a Transport Community Treaty was signed, opening new connections. So, practical steps and European perspective, a very successful summit (European Commission, 2017a)’ — Federica Mogherini, EU High Representative for Foreign Affairs.*

In sum, the Trieste summit emphasised the importance of regional connectivity alongside themes established at previous summits. The outcome of this increased focus on regional economic cooperation was to strengthen the economic dimension of enlargement and ensure that Candidate States were better prepared to undertake free market reforms. This prioritisation of connectivity was constructed because EU actors perceived the Western Balkans as underdeveloped. It was further shaped by ongoing EU discussions about the future of the single market and a need to ensure that further enlargements did not undermine the efficiency of the single market (Gotev, 2017). This demonstrates how contemporary political debates within the EU and existing understandings shape the way EU actors formulate their external priorities.

The Trieste summit emphasised and revisited the need for the accession process to consider economic factors, alongside established criteria including the rule of law. Four intergovernmental summits; the Berlin Forum, Vienna Summit, Paris Summit and Trieste Summit, have defined a new enlargement agenda. This agenda emphasises the importance of rule of law. It also emphasises key issues of interest to the EU and reflects these issues onto the enlargement agenda. The concept of structuration has been useful for understanding how institutions and events shape the understandings of EU actors, who in turn shape institutions

and events. The following section discusses how these understandings prioritise the application of a strategic logic for delivering accession reforms in Candidate States. This logic is strategic but socially constructed — actors prioritise certain interests based on their existing perceptions.

#### **5.2.4 The Strategic logic of enlargement policy**

The strategic logic outlined here differs notably from the strategic logic discussed in chapter 2, which is associated with rational choice theories. The reflection of contemporary concerns and interests onto the enlargement process by key Member States demonstrates that enlargement is an iterative process. Preferences are not fixed and are shaped by the way in which actors understand the world around them. Preferences are thus *constructed* in adaptive political contexts and pre-existing objectives are mediated through forums of intergovernmental interaction.

The following sections demonstrate the construction of political imaginaries in line with this strategic logic. These imaginaries of the Western Balkans are shaped by history, the context of contemporary events and the organisational experiences of EU actors. Section 5.3 also considers the role that power relations play in shaping the current enlargement agenda. It highlights the construction of a clear hierarchy between the EU and Western Balkans Candidate States. These sections further demonstrate how the prioritisation of a constructed strategic logic prioritises political interests, which may undermine the EU's efforts to promote the rule of law. The prioritisation of these political interests stems from the EU's imaginary of the region as one of persistent instability.

### **5.3 Explaining the new enlargement policy in comparative perspective**

This section outlines how experiences of previous enlargements have shaped the way the EU approaches contemporary enlargements. Pro-enlargement Member States now push enlargement in a more cautious manner. This is due to enlargement fatigue and the challenge new Member States have posed to the EU's liberal project, once admitted into the EU. Examining contemporary enlargement policy in comparative perspective further demonstrates a clear strategic logic underpinning the enlargement process. Whilst the existing literature has been keen to emphasise the rational character of the enlargement process, it has tended to overlook the complex ways in which actors construct an understanding of enlargement policy or define their interests within this process (Vachudova, 2005).

#### **5.3.1 The experience of the 2004 enlargement**

The 2004 enlargement was primarily driven by the economic interest of expanding the single market and by the political desire to complete the symbolic reunification of Europe. The fifth enlargement saw the rapid expansion of the single market into Central and Eastern Europe (CEE) and proliferated the spread of transnational capital towards the periphery of Europe (Bieler, 2002; Bohle, 2006). The expansion of the single market into the CEE and the influx of cheap labour into the European labour market were undoubtedly seen as a positive development by EU national governments and business elites across Europe that favoured neoliberal economic policy. The eastern enlargement alone brought some 100 million new consumers into the single market and encouraged the migration of low-wage labour to shore up industry in the economies of the EU-15 (Moravcsik & Vachudova, 2003, p.50). In sum, there were clear material interests driving the Eastern enlargement.

However, there were also strong ideational motives behind the 2004 enlargement. A rhetorical commitment compelled the EU to complete the symbolic reunification of Europe (Schimmelfennig, 2001). Liberal democracy was promoted during enlargement as a means of deepening the liberal internationalist order beyond Western Europe:

*I think the political circumstances were different. It was more about the symbolic reunification of Europe. That thinking prevailed. I think it was the right thing to do at that time. Now, whether it could have been done differently, with different tools in a less political way, sure.<sup>9</sup>*

Immediately following the Eastern enlargement, many scholars began emphasising the ‘transformative power’ of enlargement on the CEE countries (Grabbe, 2005). In hindsight, the Eastern enlargement did not result in the complete transformation of the post-communist space into liberal democracies. Alternative political projects have been emboldened in recent years and challenges to the liberal democracy status quo have come from both the left and the right of the political spectrum. However, it is the emergence of right-wing populist projects in the CEE countries that have caused alarm among the EU Commission and EU-15. The election of Viktor Orbán as Hungarian PM in 2010 directly challenged the hegemony of liberal politics that has come to define the EU. Orbán’s government has promoted a form of illiberal democracy that is grounded in social conservatism and ethnic politics (Simonyi, 2014, p.33). Despite vocal criticisms of Orbán’s regime by the Commission and Member States, few disciplinary measures have been taken to prevent Hungary from establishing an illiberal political model within the EU.

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<sup>9</sup> Interviewee B, DG NEAR, Brussels. Interview conducted 6 June 2016.

The election of Law and Justice (PiS) in Poland, the EU's sixth biggest Member State and one of the early success stories of the post-communist region, has further influenced how the EU frames its enlargement policy:

*[in the 2003 enlargement report] Poland's membership application in the area of rule of law, I mean there's nothing!... I think what is happening in Hungary and Poland touches not so much on rule of law in the real sense, but the illiberal democracy as they say goes beyond rules.<sup>10</sup>*

Based on the developments in Hungary and Poland, previous enlargements have been re-assessed and future enlargements reframed. Increasingly, actors feel that not enough effort was made to embed EU norms during the accession of the CEE countries and consequently, populist governments are now unpicking accession reforms ex post. There is a connection between way in which EU actors understand previous enlargements and construct their understanding of current enlargement policy. The shortcomings of previous enlargements are well understood in EU institutions. A reflection on previous enlargements shape actors' understandings and prioritises a more cautious but direct enlargement approach. This demonstrates the structuration between previous experiences and contemporary policy.

The experience of the 2004 enlargement and the subsequent developments in Hungary and Poland have resulted in the application of a more assertive and stringent approach to enlargement. The conditions necessary for joining the EU have increased, while the perceived benefits of membership are less tangible for Candidate States. This has reduced the credible prospect of any immediate accession for many countries in the Western Balkans. Consequently, the absence of an appetite for further immediate enlargement and the inability

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<sup>10</sup> Interview with former head of the Western Balkans Unit, DG NEAR. Interview conducted 10 June 2016.

of the current Candidate States to meet the EU's stringent conditions, has resulted in the accession process entering an interim period. In this interim period, accession talks have been repurposed to address immediate political and economic concerns raised by the EU. The overall objective of the EU has been to ensure that any further enlargement does not pose a risk to the EU's liberal democracy. It also aims to ensure that enlargement policy can be used reactively to address any immediate concerns of regional instability through the convening of intergovernmental forums.

### **5.3.2 The Experience of the 2007 enlargement**

The experience of Bulgaria and Romania's accession has also played a decisive role in convincing the EU to pursue a more cautious enlargement approach. Whereas concerns about the limits of the Eastern enlargement occurred much later, immediate doubts about the decision to admit Bulgaria and Romania were raised. Bulgaria and Romania's accession were technically part of the fifth enlargement and as such, the two countries were exposed to the same assessment criteria as the 2004 enlargement countries. Both countries were deemed to have inadequately addressed issues of corruption during the accession processes and Bulgaria was also seen to have not adequately tackled organised crime. Despite these concerns pre-accession, both countries were still admitted on the basis that they agreed to be subject to the Cooperation and Verification Mechanism (CVM) — a post-accession conditionality tool to ensure that Bulgaria and Romania are only able to obtain EU funding and integration into Schengen if progress is made on key rule of law issues (Spendzharova & Vachudova, 2012b, pp.55–56). Although the CVM is considered a successful conditionality mechanism, many within the EU now believe that the post-accession issues of rule of law and corruption should

have been addressed prior to enlargement. Therefore, the EU's new approach was devised as a new policy approach to avoid similar post-accession issues in future enlargements:

*Since the cases of Croatia and Bulgaria and Romania the EU has put Chapters 23 and 24 to the fore of negotiations as part of its "New Approach".<sup>11</sup>*

The experience of Bulgaria and Romania's accession also contributed to the formulation of an even more stringent form of accession conditionality for the current Western Balkans countries.<sup>12</sup> Chapter 23 concerning judicial reform, the fight against corruption and fundamental rights, must be addressed first and last during the accession process. Similarly, Chapter 24 on the enforcement of security and justice must be one of the first chapters opened and last ones closed during the accession process. As of 2013, Candidate States must develop a series of comprehensive action plans that are subject to EU Commission benchmarks and screening before the accession negotiations can begin. This procedural shift has also matched a political shift in the way the EU approaches enlargement. The current accession process emphasises the thorough implementation of the EU's formal criteria:

*Their [Candidate States] sovereignty and national pride should be taken into consideration, but it would be good to say let's stop talking about them during enlargement. Nobody wants to repeat Bulgaria and Romania where political considerations prevailed over technical criteria.<sup>13</sup>*

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<sup>11</sup> Interviewee A, EU Delegation to Serbia, Belgrade. Interview conducted 6 March 2016

<sup>12</sup> Although Chapters 23 and 24 existed in the accession of Croatia, the new approach did not apply. As such it did not open Chapters 23 first and last because it began its accession negotiations in 2007. The new approach was devised in 2013.

<sup>13</sup> Interviewee with MEP, EU-Serbia Stabilisation and Association Parliamentary Committee (SAPC), Brussels. Interview conducted 14 June 2016.

The EU's new approach is applied in consideration of previous enlargement experiences. Based on the experience of the 2004 and 2007 enlargements, the EU's contemporary enlargement approach seeks to ensure that Candidate States undertake comprehensive reforms in the rule of law field. This approach is constructed to ensure that future enlargement does not undermine the EU's liberal character or cause political discord.

This section demonstrated how previous experiences and contemporary political concerns are organised into an understanding of EU enlargement, which prioritises a strategic logic. It has been shown that different interests and previous experiences intersect in a process of social construction. The structuration between events, context and actors outlined here has been shown to result in the construction of an approach that is perceived to address previous policy shortcomings. The EU's interests are not purely rational because processes of social construction shape the formation of preferences within a distinctive historical and political context. In sum, the negative experience of previous enlargements, most notably the 2007 enlargement, have informed a distinctly new approach to enlargement. An understanding of previous enlargements is necessary to explain why this shift in enlargement policy has occurred. The final section of this chapter will further demonstrate how enlargement policy is increasingly designed to address issues of crisis and risk that are interpreted as a challenge to both regional stability in the Western Balkans and the EU's liberal democracy. The response to these perceived issues of risk is shown to manifest in a policy focus on stability related issues. Importantly, these ideas of instability stem from the way in which the EU constructs a political imaginary of the Western Balkans region.

#### **5.4 Contemporary enlargement policy in practice**

The concept of stability and its power as a driver over enlargement policy arises from the way in which historical perceptions and contemporary concerns of instability are associated with the Western Balkans region by EU actors. Previous military conflicts, perceptions of economic underdevelopment and the belief that the region is ill prepared to tackle emerging global challenges shapes the formation of an imaginary of the region. This imaginary informs a view that the Western Balkans is a region of perpetual instability. Consequently, it justifies the EU's application of a strategic logic to avoid instability in the EU's back yard. The shaping of these imaginaries and application of a strategic logic demonstrates how EU action is shaped by the way in which actors make sense of previous experiences, contemporary events and perceived issues of risk.

This focus on stability and risk mitigation can be mapped to three issues: economic stability, geopolitical stability and border stability. Enlargement policy is increasingly used as a strategic instrument to address challenges in these areas. Consequently, enlargement policy is not only driven by the objective criteria outlined in the Commission's monitoring and benchmark programmes, but also by the way in which EU actors understand and respond to perceptions of instability through enlargement policy. The purpose of this section is not to explore the three themes in depth. Rather, the purpose is to show how ideas of instability and risk frame the prospect of further enlargement. The first example demonstrates that the EU has pursued a more cautious and arm's-length approach to enlargement in the aftermath of the 2008 financial crisis. The second example illustrates how perceptions of geopolitical instability and insecurity in the Western Balkans determine engagement with the region. The third example

shows how an emerging global challenge, the migration crisis, can affect the way in which the EU understands and engages with the region.

#### **5.4.1 Enlargement in a changing political economy**

The EU's enlargement strategy papers from 2003 to 2016 demonstrate a clear discursive shift from 2008 onward. Analysing these documents demonstrates the effect the financial crisis has had on the way the EU approaches enlargement. A concern for economic stability and the perception that further enlargements would involve taking on underdeveloped economies increasingly frames enlargement as a risk for EU actors. From 2008 onward, the need to consider enlargement in the context of Europe's economic crisis was emphasised. This consideration resulted in the EU understanding its commitment to the Western Balkans region in the context of the economic crisis and the region's prospective integration was evaluated in light of the crisis:

*The European Union's current enlargement process takes place against the background of a deep and widespread recession. The crisis has affected both the EU and the enlargement countries (European Commission, 2009, p.2).*

In addition to the more cautious approach towards enlargement justified in the context of the financial crisis, the crisis has been used to justify a more stringent set of economic reforms in Candidate States:

*The recent global financial crisis and the present difficulties in the Eurozone have highlighted the interdependence of national economies both within and beyond the EU. These events underline the importance of further consolidating economic and financial stability and fostering growth, also in the enlargement countries. The enlargement process is a powerful tool to that end (European Commission, 2011, p.2).*

The economic crisis has had three effects. First, enlargement is framed as a risk in its aftermath, resulting in a more cautious and pessimistic approach to enlargement. Second, an imaginary of the Western Balkans region has been shaped in this context. This means perceptions of the region are shaped by events beyond its borders through the structuration of events and actor sensemaking. Third, it has resulted in the reconfiguration of relationships between actors. Collaboration between EU actors and various international financial institutions (IFIs) has increased. The empowerment of new actors and creation of new working relationship has resulted in enlargement policy taking a distinctly economic direction. In the aftermath of the financial crisis, the EU has increasingly collaborated with the IFI advisory group during the enlargement process (European Commission, 2013). These actors now play an increased role in monitoring the accession process through their own evaluations and their evaluations also feed back into the EU's own evaluation reports. The ability of the IFI advisory group to impact enlargement evaluations has elevated the importance of reducing Serbia's public debt and national deficit throughout its accession process.

Specific interventions in Serbia demonstrate the increased role played by IFIs in the aftermath of the financial crisis. For example, the IMF has had an increasing role in shaping the reform process in Serbia through its Stand-By Arrangement. Whilst the involvement of IFIs was a key feature of previous enlargements, the coordination between their work and the EU has increased. Most significantly, the EU is prepared to adjust its expectations and accession requirements in response to the actions of IFIs like the IMF. In Serbia, the IMF has insisted that in exchange for loans, Serbia must reduce the 'drain on public resources' by state owned enterprises (IMF, 2016). This has had a significant impact on the extent and speed of Serbia's

accession related public administration reforms. By insisting Serbia achieve ambitious public administration reforms whilst cutting public spending; the capacity of Serbia to enact significant public administration reform has been reduced. Consequently, the EU has provided additional funding through IPA programming to address public spending shortfalls. The EU has also encouraged private sector actors and NGOs fill to gap left by public service cuts.<sup>14</sup>

Other institutions established to facilitate European integration such as the Regional Cooperation Council (RCC) have also played an increased role against the backdrop of the economic crisis (Regional Cooperation Council, 2016). Regional cooperation bodies are increasingly used to facilitate economic integration in the Western Balkans. These forums can be used to tackle a range of regional specific issues such as social inclusion, economic sustainability and state ownership. The EU sees these issues of increased importance because the prospect of integrating the Western Balkans when it constitutes an economic risk is undesirable. While the region is economically underdeveloped, a broader understanding of economic instability shapes the way in which actors understand and engage with Serbia and the other countries in the region. Further regional integration is perceived as necessary to improve the economic outlook of the region before European integration is once again feasible. EU actors understand that enlargement can be used as a strategic opportunity to avoid further economic crisis. This is based on a perception that Candidate States with liberalised markets, high employment rates and budget surpluses will not pose a future risk when accession occurs:

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<sup>14</sup> As one interviewee from the UNDP stated, in this context, the EU has increased its support to NGOs that act almost like service delivery bodies rather than civil society organisations responsive to the needs of citizens. Interview conducted in Belgrade, 11 April 2016.

*Doing more on the economic front. A bit like Ukraine in that sense...at some point those enlargement countries are a risk due to unemployment etc. in their countries and if on the EU side there is a risk of taking them too quickly, that [expansion of the CEFTA free trade area] could be a way out on the economic and social front. Otherwise, one thing is sure, we cannot continue just like that. It's impossible. Unemployment is too high.*<sup>15</sup>

In summary, the idea of economic risk has justified the need to ensure Candidate States enact economic reforms that reinforce economic stability. Despite the rhetoric of the EU's new approach, rule of law reform is not the single most important driver of the accession process or even the most significant driver at any one time. A constructed imaginary of the Western Balkans region around the issue of economic instability and risk has, since 2008, increasingly shaped what Serbia's accession process looks like. In response to this imaginary of risk and instability, IFIs have played an increased role in prioritising austerity policies alongside public administration reforms. The logic that the expansion of the single market would produce self-equilibrium has been replaced with the view that future Member States must be engineered to avoid undermining the EU's internal market. This consideration is a key factor currently driving the strategic logic of enlargement.

#### **5.4.2 The Western Balkans and the Perception of Persistent Instability**

The second example shows how geopolitical perceptions of risk inform an imaginary of the Western Balkans region and drive enlargement policy towards it. As discussed in chapter 4, a focus on regional stability has always in-part driven the EU's approach towards the Western Balkans. However, increased emphasis has been placed on other security issues in recent years. Most notably, the Berlin Forum has placed increased emphasis on the risk of religious

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<sup>15</sup> Interview with former head of the Western Balkans Unit, DG NEAR. Interview conducted 8 June 2016.

radicalisation in the region. The frequency with which the need for regional stability is evoked in enlargement reports is evident given its presence in every single enlargement strategy and country specific enlargement report for the region since 2003. Often the EU's concern for regional stability is invoked in tandem with the need to institutionalise post-reconciliation processes and democratic state-building:

*The Western Balkans are today confronting a number of testing issues which could affect security, stability and prosperity in the region. Reform and reconciliation have yet to become entrenched. In much of the Western Balkans, state-building, consolidation of institutions as well as better governance constitute priority concern (European Commission, 2008, p.3).*

The narrative of regional stability is however increasingly linked to a wide array of security issues and threats. As such, the discourse of enlargement often constructs the image that insecurity is a perpetual feature of the region. In challenging this perception, it can be argued that the relevance of regional stability constitutes a discursive usage, designed to legitimise different types of intervention and policy priorities. By frequently choosing to invoke regional stability as a legitimate reason for justifying intervention, the EU uses enlargement policy to tackle security issues that pose a threat to the EU, which are not necessarily endogenous to the Western Balkans. This is visible when considering developments in the EU's neighbourhood. Whilst conflict in the Middle East may not be a priority issues for the government in Belgrade, it is an issue of paramount concern for the EU. Based on reasoning in relation to events, EU actors conclude that unless liberal democracy is thoroughly entrenched in the Western Balkans, the type of instability seen in its distant neighbourhood could spread across South East Europe:

*Through the enlargement policy, the EU extends its zone of peace, stability, democracy, and prosperity; concepts that have gained renewed relevance, in the light of recent developments: The dramatic events in the Southern Mediterranean and the Middle East, as well as the fragility of the ensuing situations, underline the importance of a pole of stability and democracy in South-East Europe, solidly anchored in the EU's enlargement process. (European Commission, 2011, p.2).*

Enlargement policy has allowed perceived security issues to be addressed on an ad-hoc basis. All three Western Balkan Summits since 2014 have highlighted the issue of radicalisation as a security issue. The integration of anti-radicalisation programmes into its enlargement agenda correspond with the EU's attempts to address the issue within the EU. Perceptions of insecurity have a powerful framing effect. Consequently, the EU tends to push security issues through its enlargement policy and actors tend to frame enlargement in security terms:

*Looking at enlargement, because of Moscow's attitude with Serbia and Republika Srpska. Turkey as well in Bosnia. Radical Islam as well in places like Kosovo and Bosnia, well these issues are why Merkel organised this Berlin Forum. Understanding it was a time to look a bit more closely at the Western Balkans. We don't need another instability region. We have enough with neighbourhood. <sup>16</sup>*

*If we neglect this region it can at any time endanger the whole situation in Europe. <sup>17</sup>*

The issue of Kosovo typifies how perceived security risks drive state-building in the region and how perceptions of instability shape EU imaginaries of the region. Key Member States continue to emphasise the importance of dialogue between the authorities in Belgrade and Pristina. The need for normalisation of relations between Serbia and Kosovo may be pushed

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<sup>16</sup> Interview with former head of the Western Balkans Unit, DG NEAR. Interview conducted 09 June 2016.

<sup>17</sup> Interviewee with MEP, EU-Serbia Stabilisation and Association Parliamentary Committee (SAPC), Brussels. Interview conducted 14 June 2016.

for normative reasons and the feeling among key Member States that they failed to do enough to address the conflict that ravaged the country in 1999. However, as one interviewee from the EU delegation in Serbia stated:

*Germany made the main priority Kosovo. This was not meant to have a role in the accession process, but it is now the number one condition.*<sup>18</sup>

The need to prevent conflict between the two governments may also be perceived as a necessary requirement to prevent armed conflict in a region that is prone to a flare up in tensions. For example, the riots that erupted in 2004 further exacerbated ethnic divisions within Kosovo. This aided the call from then Serbian Prime Minister Vojislav Kostunica that Serbian enclaves should be given autonomy within Kosovo and once again pushed the issue of geopolitical instability to the fore of the EU's engagement with the region (BBC, 2004). Whilst one interviewee from the OSCE stated that the region now remained 'largely pacified', it remains difficult to predict whether conflict may once more erupt in the region.<sup>19</sup> Provocations of the type enacted by the Serbian government in January 2017 when it tried to send a 'nationalist train' over the border into to Kosovo, ensure that the region remains a perceived source of instability in the EU's backyard (BBC, 2017).

The continued perception of instability has driven how key actors approach the region. Domestic actors are argued to play up perceptions of regional instability when it is seemingly politically useful to do so. While regional stability can be enhanced through the solving of contentious security issues alongside rule of law reform, this requires both being promoted in tandem. It is unclear to what extent this is the case in Serbia or whether these security

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<sup>18</sup> Interviewee A, EU Delegation in Serbia, Belgrade. Interview conducted 7 March 2016.

<sup>19</sup> Interviewee A, OSCE Mission to Serbia, Belgrade. Interview conducted 10 March 2016.

concerns are considered separately as a driver of accession. The existing evidence suggests that in Serbia's case, geopolitical considerations and security threats divert attention away from substantive reforms that are focussed on enacting normative change in key policy areas, such as the rule of law (Economides & Ker-Lindsay, 2015, pp.1038–1039).

In sum, an imaginary of the Western Balkans as a region of persistent geopolitical risk and insecurity acts as an important driver of enlargement policy. The continued perception of the Western Balkans as a zone of perpetual insecurity, has only been heightened by internal conditions within the EU, and the growing number of external threats the EU perceives in its neighbourhood. As with the previous example, the consequence of this is that a focus on the rule of law is often neglected in favour of strategic considerations that resonate with constructed imaginaries of the region. Accession related reforms tend to be driven by the EU's perceptions of security and less by the rule of law needs of Candidate States.

#### **5.4.3 The migration crisis and border security: an example of an emergent security issue**

The migration crisis <sup>20</sup> and its impact on perceptions of border security and stability provides a third example of how contemporary challenges and perceptions of risk drive the enlargement process. The Western Balkan Summits have emphasised the need for the Western Balkan countries to play an active role in managing migration and to prevent further irregular migration into the EU. It has been emphasised that the countries of the Western Balkans need 'to fully assume their responsibilities in the field of migration, asylum and border management with a view to their European perspective' (Chair of the Vienna Western Balkans Summit, 2015). The 2015 Western Balkans Summit in Vienna coincided with the second

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<sup>20</sup> Whilst the crisis in South East Europe has been recognised by some organisations as a refugee crisis, the term migrant crisis is used here because most interviewees understood the crisis to be a migration crisis.

implementation package of the European Agenda on Migration. The European Agenda on Migration had a distinct impact on the integration prospects of the Western Balkans Candidate States by emphasising the role Candidate States should play in securing the EU's own borders (European Commission, 2015h).

Because the EU lacked a single coherent external policy on migration that could deal with the crisis, it attempted to manage the crisis through existing policy tools, one of which was enlargement policy. This proved pragmatic because it provided existing mechanisms to support the countries of the Western Balkans to manage migration, through the distribution of financial support. The use of enlargement policy in this manner demonstrates that the EU's regional engagement is not a policy only driven by the need for Candidate States to sufficiently internalise the rule of law. It is also driven by Member States' understandings of contemporary events. The perceived risk migration posed to the EU's internal character and security shaped its understanding of the Western Balkans countries. It did so because these countries were increasingly viewed as important actors who could help solve the migration crisis. Consequently, the EU's strategic logic was modified to ensure that the countries of the region would act as key partners in preventing further migration into the EU.

Because of these perceptions of instability caused by the migration crisis, cooperation on migration has become an additional issue on the enlargement agenda. As an example, in its 2016 Enlargement strategy, the EU placed addressing the issue of irregular migration to the front of its report. Much of its comments on the migration crisis praised the Candidate States for collaborating with the EU 'to effectively close the Western Balkans route' (European Commission, 2016b, p.4). The report further praised the impact collaboration between Member States and Candidate States has had on reducing 'migratory pressures on the Union'

(Ibid, p.4). Intertwining the process of accession with action on migration pragmatically utilised existing mechanisms of cooperation between Member States and Candidate States. Candidate States are rewarded financially for managing migration through the disbursement of additional IPA funding (European Commission, 2015i). Candidate States are also rewarded politically through the unlocking of accession chapters for negotiation that might otherwise remain locked. In sum, by adding the migration crisis onto the enlargement agenda, accession has become less contingent on fundamental reforms and more contingent on the capacity of countries to reinforce the stability of the EU's border regime. It demonstrates how perceptions of instability shape the way in which the EU constructs an understanding of the accession process and the role it ascribes to the countries of the Western Balkans region during this process.

Often responses to the management of migration, such as the rapid processing of asylum claims, undermine the formal requirements outlined in the EU *acquis*. For example, Chapter 24 asserts that Candidate States must build robust asylum systems in line with international law. These standards have been substantially eroded in the context of the migration crisis. Similarly, the fundamental rights criteria Candidate States should support through alignment with Chapter 23 cannot be supported in tandem with adhering to the EU's border policy. This demonstrates the contradictory outcomes sought by the EU. This new focus on reinforcing the EU's external border is particularly problematic in the context of Western Balkans as countries like Serbia do not have the capacity to adequately process asylum applications. As one interviewee from the United Nations High Commissioner for Refugees (UNHCR) UNHCR stated in contradiction to the EU's recommendation:

*Serbia does not have a fair and functional asylum system. UNHCR has issued its position paper not being a safe country of asylum from 2012 and this remains valid.*<sup>21</sup>

Despite vocal opposition to the EU's approach by some international organisations, the message communicated by the Member States to Candidate States is that further integration can be offered in exchange for securing the EU's external borders. To this extent, the instrumental and strategic use of enlargement policy may produce policy contradictions and disseminate a contradictory message to Candidate States. As one interviewee in the Serbian Interior Ministry emphasised concerning the EU's attempt to promote human rights: 'It becomes difficult to take human rights seriously in the face of EU double standards. Look at the migration crisis'.<sup>22</sup>

There exists a clear tension between the imaginaries of instability prioritised by Member States and the promotion of rule of law standards. Incorporating the migration crisis into the enlargement agenda rewards Candidate States with further integration for assistance in managing the migration crisis. This makes accession informally contingent on the extent to which Candidate States cooperate with Member States to prevent irregular migration. It also shows how contemporary political events and crises shape the way in which the EU understands the region. The occurrence of refugee movement through the region reinforced existing perceptions that the region was unstable and posed a threat to the EU's own stability. This shows how the EU's interpretation of events shapes its understandings through the sensemaking process of structuration, and how this shapes its engagement with the Western Balkans region. It shows that while the EU's new approach aims to make rule of law the driver

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<sup>21</sup> Interviewee A, UNHCR, Belgrade. Interview conducted 1 March 2016.

<sup>22</sup> Interview conducted with a senior official for Cooperation and Border Management, Ministry of Interior, Belgrade. Interview conducted 10 May 2016.

of enlargement, ultimately the interpretation of other concerns, namely the stability of the EU and its neighbourhood, drives enlargement policy.

## **5.5 Conclusion**

This chapter demonstrated that a socially constructed strategic logic drives the EU's approach to enlargement. In doing so, it demonstrated how key actors within the EU are increasingly concerned with using enlargement as an instrument, to address issues of perceived risk and uncertainty facing contemporary European integration. This more cautious approach to enlargement considers issues of security and stability to be paramount to the enlargement process. This enlargement perspective is further reinforced by the experiences of the 2004 and 2007 enlargements, in which the failure to pursue a more cautious and rigorous approach to key enlargement related reforms resulted in unexpected post-accession outcomes in some new Member States. The final section demonstrated that enlargement is increasingly shaped by a need to address key issues of risk and uncertainty that are seen to exacerbate problems within the EU.

In terms of imaginaries, this strategic logic is underpinned by an imaginary of the Western Balkans region as an inherently unstable entity. The construction of imaginaries occurred through a process of structuration — actors constructed understandings in relation to their interpretation of contemporary events and retrospective interpretations. The focus on this mode of sensemaking at the policy formation stage helped demonstrate the role that interpretation plays in shaping policy understandings.

The contribution of this chapter has been to show how formal policy objectives do not necessarily drive EU external action. Instead, constructed interpretations of the Western

Balkans region and political events lead to the prioritisation of policies focussed on stability and risk reduction. This means the region's rule of law needs are surpassed by those of EU actors. Rule of law may help meet the priorities of EU actors, but other policies are promoted to address issues of risk and instability. These policies may not necessarily support the rule of law and may detract from the EU's focus on rule of law reforms in Serbia and other Candidate States. There is a clear tension between transformation and stasis in the EU's approach. This stems from its understanding of stability and the need to work with regional elites to support stability. The following chapters will build further on the findings of this chapter and demonstrate how the tension between transformation and stasis inherent within the enlargement process, limits the EU's ability to promote rule of law reforms in Serbia.

## **Chapter 6: Socialisation and its role in shaping understandings and action**

### **Introduction**

This chapter establishes the role that socialisation plays in shaping the delivery of rule of law reforms in Serbia. This focus on socialisation corresponds with the structuration mode of sensemaking as it is concerned with how policy network interaction — a type of social structure — shapes interpretation. While the previous chapter looked at how events and institutions shape the construction of understandings, this chapter focuses on how relations between actors shape understandings and subsequently, the delivery of rule of law reforms.

In addition to addressing the second sub-research question and by extension, the first research question, three chapter-specific questions drive this chapter's analysis. First, how do we conceptualise different modes of socialisation? Second, how do actors respond to different socialisation mechanisms? Third, which socialisation modes and corresponding mechanisms are dominant and what are the implications? Guided by these questions, this chapter conceptually and empirically explores the role socialisation plays in the case of Serbia's rule of law reform process.

The EU states that rule of law reforms should not just follow a procedural model. They should also ensure that enlargement countries 'embrace the necessary reforms' and make it their political agenda (European Commission, 2016b, p.2). Such statements by the Commission suggest the need for a deep change in the beliefs and practices of actors in Candidate States. This is particularly important in the priority policy fields related to rule of law reform. This chapter suggests, however, that despite these aims, a strategic form of procedural socialisation is still characteristic of the EU's engagement with domestic actors in Serbia. This

fails to achieve widespread or substantive socialisation that may foster a change in understanding and subsequently practice.

The chapter begins by outlining four modes of socialisation that fall along a continuum: 'deep socialisation', 'substantive intergovernmental socialisation', 'procedural intergovernmental socialisation' and 'instrumental NGO socialisation'. Each mode of socialisation is broken down into its range of actors, transmission mechanisms, content of interaction, outcomes and corresponding political project. Conceptually defining different modes of socialisation allows this chapter to construct a typology of socialisation and assess the prevalence of different socialisation modes in the analysed policy network.

Second, the different actors active in the examined network are outlined. The examined policy network incorporates actors taking part in the reform process concerning Serbia's alignment with Chapters 23 and 24 of the EU *acquis*. The transgovernmental policy network that forms around these reform topics constitutes the key site of actor socialisation. The EU delegation in Serbia is identified as a key focal point in the network around which socialisation occurs. This demonstrates the power of the EU to drive the reform process.

Third, the scope for substantive intergovernmental socialisation is assessed. This mode of socialisation is characterised by epistemic linkage and communicative interaction between external actors, who are mostly international organisations and external state actors,<sup>23</sup> and domestic actors, who are mostly governmental actors. This chapter shows the limited application of this mode and prevalence of a socially constructed strategic logic in processes

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<sup>23</sup> These actors are also interchangeably referred to as bilateral actors, because of the bilateral relationships they form with the Serbian government.


of socialisation, which means the substantive intergovernmental socialisation mode finds limited applicability.

Building on this, it is shown that strategic calculation is a dominant transmission mechanism between external actors and governmental actors to support a procedural intergovernmental form of socialisation. This is demonstrated by analysing the content and outcomes of interaction between external and governmental actors.

Finally, the role played by civil society in the policy network is explored. A mode of instrumental NGO socialisation best corresponds with how NGOs socialise in the network. The prevalence of strategic calculation as a dominant transmission mechanism again points to a process of procedural socialisation. The instrumental involvement of NGOs fails to facilitate a convergence in perspective between different actors. This chapter concludes by reflecting on how the key actors involved in promoting rule of law reforms are external actors and governmental actors. Consequently, governmental actors do adopt some change in understanding which aligns with external actors. This change is limited however and enacted for reasons of perceived interest.

## **6.1 Towards a typology of socialisation**

Figure 6.1 demonstrates four proposed modes of socialisation located upon a continuum of socialisation. Each mode has a corresponding range of actors, corresponding mechanisms, content of interaction, outcomes and a corresponding political project. The dimensions outlined in figure 6.1 will be used to help discern how different actors engage in the network and the continuum of socialisation that interactions reflect. It will further be elaborated on how these interactions shape the formation of understandings through sensemaking.



| Mode of Socialisation                       | Range of Actors                            | Transmission Mechanisms               | Content of Interaction  | Outcomes  | Corresponding political project                             |
|---|--|---------------------------------------|---|---|---|
| Deep socialisation                          | IOs, bilateral, governmental, NGOs, INGOs. | Communication, epistemic linkage.     | Significant engagement through multiple instances of interaction.                           | Practical change and integration of epistemic communities.  | Bottom-up Normative Europeanisation                         |
| Substantive intergovernmental socialisation | IOs, bilateral, governmental.              | Communication, epistemic linkage.     | Regular engagement with external actors and substantive engagement between domestic actors. | Limited socialisation of elites into transnational epistemic communities.                         | Top-down Normative Europeanisation                          |
| Procedural intergovernmental socialisation  | IOs, bilateral, governmental.              | Strategic calculation, communication. | Strategic engagement between external actors and domestic actors.                           | Sporadic compliance with integration and attempts to resist reforms within domestic institutions. | Strategic accession with preservation of domestic hegemony. |
| Instrumental NGO socialisation              | IOs, bilateral, governmental NGOs, INGOs.  | Strategic calculation                 | Professional engagement between NGOs and external actors to achieve donor objectives.       | Functional use of NGOs to implement donor programmes.   | Strategic accession with preservation of domestic hegemony. |

*Figure 6.1: Different modes of socialisation located along a continuum of socialisation. The continuum ranges from norm driven modes of socialisation to instrumental modes of socialisation. Source: Author generated.*

These modes of socialisation are not mutually exclusive. Locating different modes upon a continuum avoids the pitfalls of bracketing off different transmission mechanisms exclusively with one mode of socialisation. This can allow the interplay between different mechanisms to be explored and the outcomes of this interplay to be analysed. At the same time, proposing distinct modes of socialisation can help further identify, differentiate and analyse the dominant form socialisation takes within the network.

### **6.1.1 Defining mechanisms**

The following section briefly specifies three mechanisms of socialisation that can be deployed to change the understanding of actors. 'Communication' can be defined as an extensive process of dialogue between one or more actors. Actors engage in argumentation and can persuade others to adopt specific practice (Checkel, 2005, p.812). Communication occurs in instances of structured dialogue between actors but also informally. For example, meetings between external actors and domestic actors can provide an opportunity for external actors to employ argumentation and persuasion to ensure domestic actors reform their understandings and subsequently, practice.

Epistemic linkages are the connections made between various actors through shared membership of organisations or shared expertise. Epistemic communities share knowledge and produce 'best practice' as a standard of expected behaviour. For example, international organisations (IOs) run training programmes to socialise domestic actors into new forms of practice. This mechanism conceptually builds on Checkel's notion of 'role playing' but broadens the definition to focus on practical change (Ibid, pp.810-811). This practical change means actors do not only conform to a 'logic of appropriateness'. Actors are also socialised into new practices because they make sense of reforms in relation to existing practice and adopt new practices that are perceived to be beneficial and conducive to self-betterment.

Strategic calculation primarily refers to a form socialisation that orientates around perceived interests. For example, external donors provide money to domestic actors and in exchange, domestic actors ensure reforms focus on certain issues. Strategic calculation also encompasses the use of rhetorical action to communicate negative consequences and 'shame' target actors (Ibid, pp.808-809). For example, the EU conditionality process communicates

that if reform compliance is not forthcoming, EU funds will cease. Rhetorical shaming can also make use of normative legitimacy to ensure compliance. For example, rhetorical arguments may be used to show that Serbia's non-compliance with EU norms and standards circumvents regionally legitimised rule of law standards.

The presence of these transmission mechanisms alone does not guarantee certain outcomes. For example, deep socialisation and substantive intergovernmental socialisation share two transmission mechanisms. However, deep socialisation requires the involvement of all actors and involves significant engagement between actors that results in practical change. The limited presence of these two dynamics in the studied network means this mode is not widely applicable.

## **6.2 The formation of a network around the EU**

Prior to an examination of network socialisation, the network itself must be identified. It is crucial to consider the role of the EU as a focal point in the network. Many of the actors subsequently analysed are central to processes of socialisation due to their relationship with the EU. Figure 6.2 visualises the constellation of actors that form the policy network implementing rule of law reforms in Serbia. Figure 6.2 details the node degree of each actor in the network. Node degree demonstrates which actors have the highest number of connections in the network. Darker nodes have a higher node degree. The higher a node degree, the more relations (both inward and outward) a node has.<sup>24</sup> The darkest node visible in figure 6.2 represents the EU Delegation. The high number of connections between other

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<sup>24</sup> In relations are a form of relationship where another network actor identifies a selected actor as significant. Out relations are a form of relationship in which the selected actor identifies another actor as significant. The network visualised in Figure 6.2 includes both types of tie as it was important to ascertain whether relationships were seen to be mutually important or whether actors differed in their interpretations of how valuable a network relationship was.

actors and the EU Delegation in Serbia is to be expected because the EU delegation monitors EU related reforms in Serbia and acts as the EU's 'eyes and ears' on the ground.

Figure 6.3 visualises the EU Delegation's 'ego' network.<sup>25</sup> Many of the actors identified here have the capacity to shape and influence the rule of law reform process. The EU Delegation's ego network acted as an entry point for actors to engage in processes of socialisation. Figure 6.3 is significant because many of the visible actors are key network actors and will be frequently referenced in the subsequent sections.

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<sup>25</sup> An ego network is the actor network of a specific actor that is embedded within a larger set of network relations.

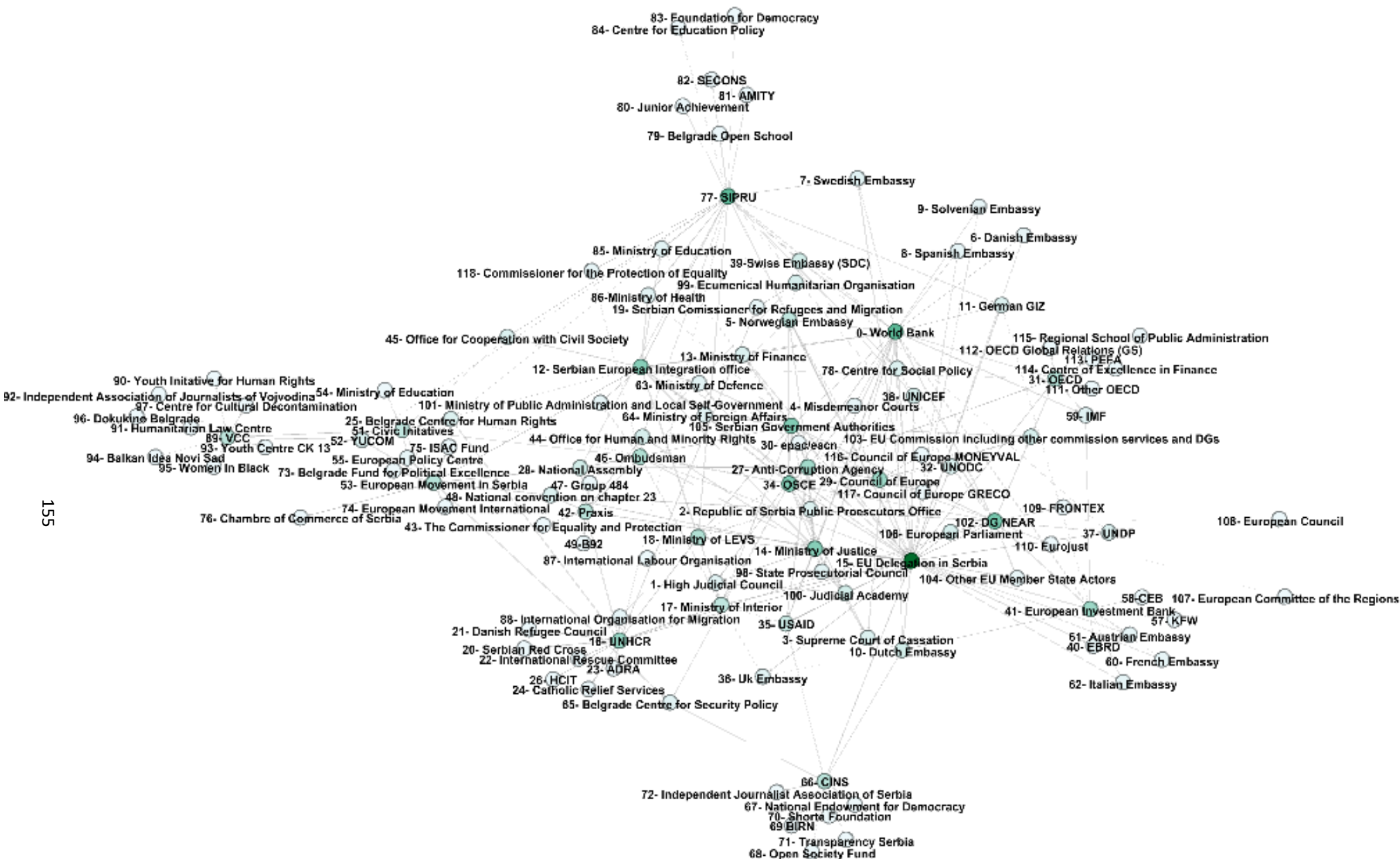


Figure 6.2: Actor network of significant organisations involved in rule of law reforms. Source: Author generated.

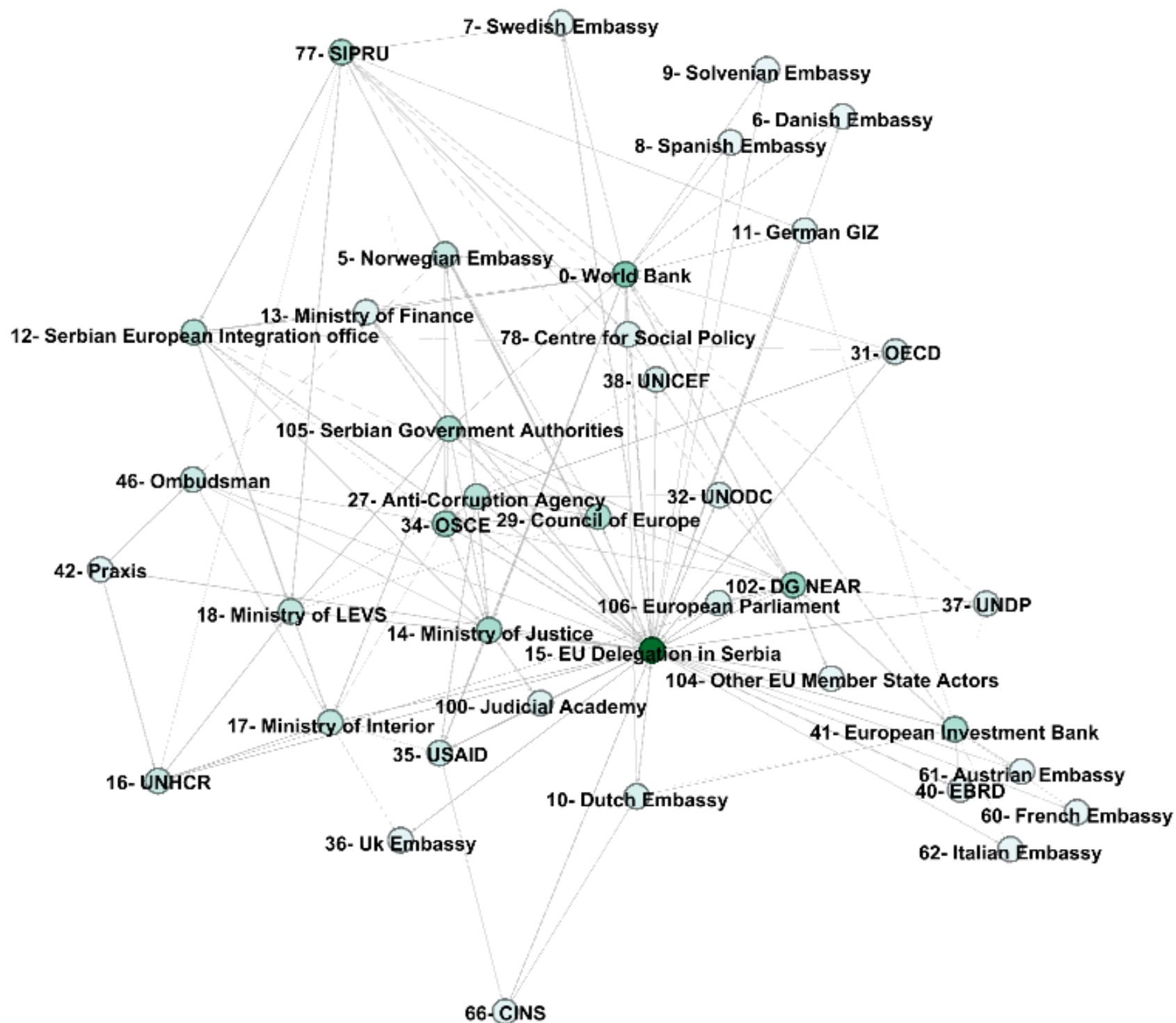


Figure 6.3: The EU Delegation in Serbia's ego network. Source: Author generated.

The actors present in the EU Delegation's ego network are primarily a mix of key domestic institutions that are the target of reform and other external actors. Among the other international organisations located in the EU's ego network, the Council of Europe (CoE) and the Organisation for Security and Co-operation in Europe (OSCE) were the most significant external actors enacting complementary reforms to the EU. These actors and other external state actors were particularly significant in the examined network and could influence the network due to their extensive ties with the EU delegation. The delegation in this sense acted as an entry point for other actors to access accession related reforms and achieve their perceived objectives through the network. Overall, the network was considered to have three key fissures composed of different actors. First, external actors, including international organisations and external state actors, were close to the EU and central to the process. Second, domestic institutions tended to interact more extensively with one another and were guided by domestic institutional logics. Third, IOs, external state actors and governmental actors treated NGOs instrumentally. These three fissures will be explored subsequently and analysed along the conceptual dimensions of socialisation outlined in figure 6.1. Figure 6.4 visualises the network with actor type coded for reference.



### **6.3 The limited scope of deep socialisation**

The first mode of socialisation to consider is deep socialisation. Deep socialisation was limited to a select few actors. These actors reported a fundamental change in their beliefs due to socialisation with other actors. Many of these actors were also NGOs. Given the orientation of these prominent NGOs as pro-European, it seems unsurprising that they were open to deep socialisation and further integration into epistemic communities. The organisational studies literature highlights how existing pre-dispositions, the perceived positive and negative consequences of enacting change, and ideological beliefs, all contribute to how actors respond to socialisation and change (Erwin & Garman, 2010, pp.43–47; Lamm & Gordon, 2010, pp.433–434; Williams, 2001, p.69). Based on this literature, it can be suggested that actors who are already predisposed to a belief that European integration and the rule of law are good, are likely to be included in modes of deep socialisation.

The distinguishing characteristic of the deep socialisation mode is the presence of all actor types in instances of socialisation. However, the involvement of all actors in processes of communication and epistemic linkage did not occur. Whilst the Serbian government has attempted to introduce new forums that include NGOs in the same dialogue processes as governmental actors, international organisations and external state actors, these were often perceived negatively by those who participated. As these negative responses are outlined in section 6.6, this section only outlines the positive experiences.

One domestic actor did suggest that the domestic ‘konvents’ could act as a key site where deep socialisation could occur (EU Konvent, 2014). Their perspective was difficult to triangulate with other responses that supported their claims about the konvents’ capacity to

facilitate change. Consequently, the evidence for deep socialisation in comparison to other modes of socialisation is lacking:

*I think we have more than 100 [groups] dealing with Chapter 23 and we have extremely fruitful cooperation with them because every three or four months we have meetings with representatives of national konvents. We use this to discuss all relevant issues that are important for implementation of the action plans. For example, when the Ministry of Justice was working on the strategy for war crimes proceeding we received comments from civil society and we included more than 80 per cent of suggestions from civil society...Our intention is to continue that practice with regular meetings and public calls.<sup>26</sup>*

Two interviewees countered praise for the konvents by arguing that they had a limited impact in promoting authentic socialisation. One interviewee from the EU Delegation reflected on the konvents scope and conceded that they were not fully inclusive and tended to empower key NGOs at the expense of other non-professionalised civil society actors. This interviewee also raised the curious point that despite often disagreeing, these konvent actors often interacted extensively. This suggests that social contact alone cannot be indicative of a convergence in understandings or conducive to constructing new understandings. Existing predispositions appear to remain extremely influential in determining the type of dialogue and linkage that occurs during socialisation:

*The main power lies with NGOs involved in the feedback and consultation process for the working groups and each chapter. These NGOs have huge say and often close links with the political elite, at least in terms of their contacts, even if they don't agree on issues. These NGOs provide feedback and help draft the chapter action plans.<sup>27</sup>*

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<sup>26</sup> Interview with senior official, Ministry of Justice, Belgrade. Interview conducted 20 April 2016.

<sup>27</sup> Interviewee B, EU Delegation to Serbia, Belgrade. Interview conducted 6 March 2016.

The EU Delegation was also keen to stress that civil society actors were sometimes deliberately prevented by government actors from engaging fully in the conversations around rule of law reforms. However, civil society could mobilise externally to government networks and raise the public profile of political battles and change policy:

*Civil society continues to do its job but it is often blocked by the administration. For example, the new gender equality law had lots of issues with its name, politicians didn't want to call it a gender equality law. Women organisations raise their voice and halted the process and now the law must be revisited.* <sup>28</sup>

The capacity of network socialisation to induce a deep change in understanding would appear to be limited by the absence of interactions aimed at facilitating deep socialisation. This is particularly problematic given senior staff at DG NEAR recognised that European integration required a high degree of social cohesion among all actors and a sincere commitment to enacting fundamental change to be truly transformative:

*You cannot have the government pulling in one way and the opposition completely against [on rule of law reforms] so you need to have a critical mass of political and social actors that are pulling towards the same direction.*<sup>29</sup>

Some NGO groups expressed the belief that they were included in inclusive processes of communication and knowledge sharing. However, the instances in which this occurred were limited and NGOs felt it was extremely difficult to systematically change the practice of domestic actors through dialogue. Among NGO actors interviewed, one interviewee did give an example of interaction with the government that did produce positive change. In this case, NGOs could use persuasion to elicit change. Persuasive argumentation could only take place

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<sup>28</sup> Ibid.

<sup>29</sup> Interviewee A, DG NEAR, Brussels. Interview conducted 6 June 2016.

under the right conditions and through the careful construction of a dialogue processes between government and NGOs:

*We made a conscious effort not to be critical of them when we started meeting these people... After establishing that they started working with us and implementing things we suggested, they changed their understanding of certain problems in their organisational scheme because we showed them the statistical data they had never seen before.*<sup>30</sup>

However, due to the hierarchical nature of government institutions and the formation of political activity around elite political interests as opposed to public interests, the same interviewee was sceptical about the capacity of this one instance to be replicated in the future due to the structure of domestic politics:

*I think the entire political sector in Serbia isn't formed around public interest, it never has been. The government will deal with issues in a PR crisis. They will manipulate everything in their power like the media to show that they care, but they don't care.*<sup>31</sup>

In sum, deep socialisation was reflected in only a select few instances by actors during network interaction around rule of law reforms. The instances of deep socialisation that occurred were not reflected among a wider range of actors in multiple instances of interaction. Consequently, whilst some individuals may have felt they had experienced deep socialisation that resulted in a change in understanding, many interviewees did not report system wide instances of deep socialisation. This suggests that other modes of socialisation are more prevalent in the network.

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<sup>30</sup> Interview with a journalist from the Centre for Investigative Journalism (CINS), Belgrade. Interview conducted 22 March 2016.

<sup>31</sup>Ibid.

#### **6.4 Instances of substantive intergovernmental socialisation**

The limited presence of deep socialisation is partly a consequence of limited epistemic linkage between network actors. However, epistemic linkage between international organisations (IOs) was a significant network feature. IOs did significantly engage with one another in transnational epistemic communities and did attempt to integrate domestic actors into transnational epistemic communities. The results of these attempts are, however, mixed.

IOs tended to share common political objectives and deployed the full range of transmission mechanisms to achieve these political objectives. The political objectives of IOs converged due to their functional similarities and shared membership. This is particularly the case with the EU, Organisation for Security and Co-operation in Europe (OSCE) and Council of Europe (CoE). A large majority of CoE and OSCE member states are also Member States of the EU. As such, the organisational norms underpinning these institutions are similar and promote a liberal internationalist vision of global politics (Panke et al., 2017, pp.105–106). This is reflected in the work these organisations carry out in countries like Serbia. For example, the promotion of human rights, rule of law and minority inclusion. These issues are intrinsically linked with liberal democracy.

The common membership of IOs resulted in significant epistemic linkage between IOs. IOs collaborate extensively on the programming of 'liberal' reforms and this resulted in extensive social learning and interaction between epistemic communities within these IOs (Adler & Haas, 1992; Faleg, 2017; Galbreath & McEvoy, 2013; Wenger, 1998). Interview data shows that experts from one organisation may have had experience working in another organisation or would have contacts at another IO. This is evident when a specific reform issue outlined in Chapter 23 is examined. Based on input from the CoE, the EU has sought to produce a more

uniform approach to the fight against corruption that applies across Member States and Candidate States. The EU's new anti-corruption standards further align with the common norms outlined in the UN convention against Corruption and the OECD's Anti-Bribery Convention (European Commission, 2016c). These norms and standards are well communicated in some cases when IOs interact with domestic institutions in Serbia. The Serbian government's anti-corruption agency gave one example of how they fit into this network of anti-corruption practitioners through epistemic linkage and how they have come to see the value in integrating professional experience and education into practice:

*The agency and myself are part of the ACN OECD network. I participated in the advisory group in the drafting of the prevention of corruption advisory group for SEE. These are platform for exchange of information and professional experience and best practice. You know, mechanisms that work in practice and show some results.*<sup>32</sup>

In other cases, however, the linkage between external actors and domestic institutions was weaker. The extent to which epistemic linkage occurred appeared to be highly dependent upon how new knowledge and new forms of practice were communicated to domestic actors. This suggests the importance of communication alongside epistemic linkage. An interviewee working in the judiciary articulated how attempts to disseminate new forms of knowledge and practice failed in the absence of effective communication:

*When you mention Chapters 23 and 24, my colleagues have heard about it but they don't know what's in it. There was no proper education on EU membership in terms of what it is, what we would gain and what we would lose from membership and what the judges role is in the process. We are not an isolated case.*<sup>33</sup>

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<sup>32</sup> Interview with official from the Serbian Anti-corruption Agency, Belgrade. Interview conducted 2 March 2016.

<sup>33</sup> Interview with a judge, Serbian Supreme Court of Cassation, Belgrade. Interview conducted 6 April 2016.

The mixed experience of domestic actors suggests that an epistemic linkage mechanism is applied with varying success in the network. The discussion in section 6.4 and analyses presented in chapters 7 and 8, highlight the continued resistance of domestic actors to new sources of knowledge and subsequently, new understandings. This resistance demonstrates that substantial epistemic linkage across a range of actors is low. Whilst a form of linkage between different external and internal practitioners does exist in some cases, it is not widespread enough to suggest the emergence of a general trend towards epistemic linkage.

In terms of communication, external actors are increasingly pushing a uniform policy narrative. For example, interviewees from the OSCE emphasised the extensive interaction between themselves and the EU in the field of judicial reform. On the issue of norms and standards, interviewees rhetorically emphasised that the OSCE's rule of law criteria was similar to the EU's criteria and this naturally led to collaboration on a whole range of issues including post-conflict reconciliation, democratisation, Roma inclusion and judicial reform.<sup>34</sup> The extent to which the formation of shared narratives remains a communicative tool is questionable however. Often narratives are used strategically to 'name and shame' non-complying actors. Interviewees highlighted the rhetorical power of narratives for rhetorically naming and shaming domestic actors to act:

*I can say this was useful tool [EU accession] for influencing decision makers because they would be exposed to the public and naming and shaming, and with the elections they gave up and accepted [reforms].<sup>35</sup>*

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<sup>34</sup> Interviewee A, Organisation for Security and Cooperation in Europe, Belgrade Office. Interview conducted 10 March 2016.

<sup>35</sup> Interviewee B, Serbian Government Social Inclusion and Poverty Reduction Unit, Belgrade. Interview conducted 31 March 2016.

The use of communication in a strategic manner may elicit a response from actors but this is problematic. As discussed in chapter 2, socialisation must result in a change in practice based on belief and not strategic pressure if it is to be meaningful and devoid of power relations. In sum, the sporadic linkages between domestic communities of practice and external actors, as well as the infrequent presence of a communicative process, means that the substantive intergovernmental socialisation mode is not widely applicable.

The next section explores the role of strategic interaction. This type of interaction encourages sporadic engagement between external and domestic actors. It exacerbates domestic resistance to outside socialisation and promotes a form of procedural intergovernmental socialisation. Based on the presented evidence, procedural intergovernmental socialisation is the dominant model of socialisation within the network. This mode of socialisation supports a process of strategic accession and reifies its associated imaginary.

### **6.5 Procedural intergovernmental socialisation**

Despite the presence of epistemic linkage and communication between IOs, strategic considerations tended to influence actor socialisation. IOs in figure 6.4 had a strong material linkage with one another. The CoE, OSCE and the OECD all stated in interviews that whilst not reliant on EU funds, often the EU helped fund their reform programmes. For example, the EU funds the OECD SIGMA public administration reform programmes in neighbourhood and enlargement countries. This programme uses OECD expertise, but the OECD works towards training public officials to enact EU reforms (OECD, 2017). This means that reform programmes will be orientated to EU objectives as a pre-requisite to secure program funding.

The use of strategic mechanisms to induce change is well documented in previous EU accession cases (Schimmelfennig, 2005; Schimmelfennig & Sedelmeier, 2005; Spendzharova

& Vachudova, 2012b; Vachudova, 2005). This still appears to be the dominant mode at play in Serbia's accession despite the assertion that the EU's new approach represents a qualitative shift that is focussed on securing the fundamental transformation of Candidate States (European Commission, 2016b, p.2). Based on the evidence presented in this section and further evidence presented in chapters 7 and 8, this thesis critically challenges the claim that the EU's new approach has put rule of law 'fundamentals first' and that its new approach encourages a change in practice. Instead, perceived interests still drive socialisation between actors.

Examining the role of external state actors further demonstrates the dominance of strategic calculation in the network. Two case studies of active actors in the policy network elaborate how external state actors engage in the network primarily through strategic calculation.

The Dutch embassy in Belgrade is active in promoting rule of law in both Serbia and neighbouring Montenegro. The rule of law programmes promoted by the embassy fall under the wider umbrella of the Matra Rule of Law programme (Netherlands Ministry of Foreign Affairs, 2016). This programme aims to promote *maatschappelijke transformatie* (social transformation). Underpinning these reform efforts are considerations shaped by the Dutch domestic context. There exists a rhetorical commitment to promoting rule of law as something 'fundamental' to social progress. There also exists an interest-based imperative to advance rule of law as a means of creating a regulatory environment that safeguards Dutch investment and foreign direct investment more generally in countries like Serbia. Dutch rule of law reforms thus creates an enabling businesses environment in Serbia for Dutch companies and serves to promote principles of governing associated with positive social transformation:

*The Dutch approach pre-dates the fundamentals first approach...Rule of law is needed for foreign direct investments (FDIs). Companies want guarantees when investing. Rule of law isn't trying to do it all at once. It is a chain reaction. By focussing on the judiciary, Ombudsman, Anti-Corruption Agency and data protection, wider social processes follow. The priority is making the institutional framework. From there the criminal justice chain can follow.* <sup>36</sup>

There are two ways in which the Dutch network to achieve their objectives. First, the EU accession process is the key external factor driving reforms. In the absence of this, there is not a substantive internal driver for reform. A credible accession prospect is used to frame Dutch reform programmes. This framing process is a strategy designed to legitimise the need to comply with Dutch reforms. Dutch reforms are presented in Serbia as part of the process of becoming an EU Member State (Netherlands Ministry of Foreign Affairs, 2016). This is used to foster domestic engagement by communicating an implicit threat that not complying with Dutch interests would damage Serbia's EU accession prospects. There is also symbolic legitimacy attached to the accession process by the public and politicians. This means that not cooperating with Dutch interests as part of the accession process may result in negative political consequences.

Second, the Dutch mission also links heavily with other external actors, including the EU, to achieve its objectives. To this end, the aim of creating a secure investment environment for Dutch business sees the Dutch collaborate with the World Bank and a series of other external state actors in the Multi Donor Trust Fund for Justice Sector Support (MDTFJSS). The MDTFJSS is a World Bank donor fund designed to promote the rule of law in Serbia (World Bank Group,

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<sup>36</sup> Interview with a Dutch diplomat, Belgrade. Interview conducted 1 April 2016.

2016). Its rule of law reform programmes take place in partnership with the EU, who also supports the MDTFJSS. The MDTFJSS aims to improve the efficiency and perception of judicial institutions in Serbia, enable business security and increase investment in Serbia. These objectives overlap with Dutch interests in promoting the rule of law. Both institutions advance the interest of European businesses and wish to see a more secure business environment for investment in Serbia. However, the MDTFJSS acts as an amplifier for Dutch interests. It does so by coordinating the resources of likeminded donors so that these actors can influence government strategy more effectively:

*Its hand holding, basically what the Bank is doing and what the donors are doing through this trust fund is encouraging government to make decisions.<sup>37</sup>*

This imperative is even more important amidst the ongoing structural changes inflicting global capitalism that are encouraging advanced economies to seek new investment opportunities in countries like Serbia. The case of the Dutch Matra programme shows how Dutch actors engage strategically to promote reform processes in Serbia that can benefit Dutch interests.

A second external state actor, the UK, is also focussed on creating an enabling business environment in Serbia. The UK government favours an issue specific approach that applies across multiple regions and emphasises bilateral engagement. This is demonstrated when examining the Good Governance Fund (GGF) launched by the Department for International Development (DFID) in 2015. It covers several countries including Ukraine, Moldova, Georgia, Bosnia and Herzegovina and Serbia (UK Government, 2015). These countries are targeted for

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<sup>37</sup> Interview with senior management, World Bank Multi Donor Trust Fund for Justice Sector Support, Belgrade. Interview conducted 1 March 2016.

development assistance on the basis that they are developing democracies that remain susceptible to significant external and internal shocks. The development of good governance is argued to build resilience and inoculate these societies from further shock. Furthermore, the UK government claims good governance reforms support poverty reduction, growth and stability. The overriding characteristic of this approach is promoting economic resilience and improving the business climate. The GGF claims that open and accountable governments support the creation of market-based societies built on the rule of law. This explains the inclusion of judicial reform and media freedom support in the programme alongside market reforms (UK Department for International Development, 2016b).

Whilst the UK government has its own foreign policy objectives in the Western Balkans, it recognises that ‘good governance’ in Serbia can be leveraged through the EU accession process:

*This initiative complements the UK’s broader objectives to support a prosperous and stable region in the European neighbourhood. Georgia, Moldova and Ukraine have signed Association Agreements (AAs) and Deep and Comprehensive Free Trade Agreements (DCFTAs) with the EU and the EU has committed to support the implementation of reforms. The GGF complements this support. Serbia opened accession negotiations with the EU in 2014. Bosnia and Herzegovina is a potential candidate for EU accession — (UK Department for International Development, 2016a, p.3)*

Harmonisation with the accession process helps increase the impact of development programming by embedding UK foreign policy objectives in a wider set of political reforms. Overall, the UK approach to Chapter 23 and 24 related reforms orientates around the need

to create a safe investment environment for business, a concern for ensuring Serbia remains resilient to internal and external shock and a desire to increase partnership between state and non-state actors in the delivery of public services to promote ‘innovation’.

The examples of Dutch and British bilateral action demonstrate how different actors use accession related rule of law reforms as a means through which to achieve their perceived objectives. This requires seeing EU external policies as an outcome of the way different multilevel actors shape policy and project their own interests onto the accession process. The complex way in which EU reforms are communicated: sometimes by the EU Delegation, sometimes by EU Member States, and even sometimes by none EU actors, means the EU can struggle to create a coherent and unified reform narrative. The diverse communication of rule of law reforms on the ground by different actors means Serbian actors often struggle to make sense of the reform process in a meaningful way. This is visible when EU Technical Assistance and Information Exchange (TAIEX) and Twinning programmes — two programmes designed to socialise Candidate States with Member States — are considered.

Technical Assistance and Information Exchange (TAIEX) programmes are designed to support public administrations in their alignment with the EU *acquis* and facilitate the sharing of EU best practice. They occur at the request of Candidate States and allow for a secondment of experts to deliver training in Candidate States or for domestic actors to learn from peers in EU Member States and institutions (European Commission, 2016a). TAIEX programmes are normally implemented at short notice to address emerging issues related to the reform process. As such, they are primarily used as a short-term instrument for facilitating the exchange of expertise and knowledge on a specific reform topic. The exchange between Candidate State and Member State actors normally occurs through the format of workshops,

expert missions or study visits (European Commission, 2016a). Rule of law is a policy field in which TAIEX is frequently used and therefore many of the actors visible in the network had some experience with TAIEX.

TAIEX programmes were generally considered as the most beneficial form of social learning available to domestic actors through the accession process. In the case of TAIEX, the instrument itself was considered beneficial for procuring short-term expertise. Some interviewees subsequently reported that they had ‘excellent experiences with TAIEX’, felt it helped them keep up with sector specific practices occurring elsewhere in Europe and that the instrument acted almost as an ‘expert task force’.<sup>38</sup>

The possibility for TAIEX to facilitate substantive socialisation and changes in understanding is however limited due to the programme’s scope. TAIEX is peer-group specific and therefore does not contribute to changing institutional practice beyond a select group of paired actors. This means that skills learned in TAIEX tend not to spread within domestic institutions through domestic actor socialisation and long-term planning is not built into TAIEX programmes. In the words of one interviewee: ‘What happens with the next generation?’<sup>39</sup>

The short-term and fragmented nature of TAIEX means that it struggles to promote sustained change and the quality of expertise received via TAIEX is heavily dependent on the quality of national experts that domestic actors are paired with. Even in instances where pairings are suitable and domestic actors perceived the experience as positive, the type of change it promoted tended to be short-term. One interviewee argued the short-term nature of TAIEX

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<sup>38</sup>Interview with official from the Serbian Anti-corruption Agency, Belgrade. Interview conducted 2 March 2016. Official from the Ministry of Labour, Employment, Veteran and Social Affairs, Belgrade. Interview conducted 8 April 2016. Interview conducted with interviewee from Serbian European Integration Office, Belgrade. Interview conducted 11 March 2016.

<sup>39</sup> Interview C, OSCE Mission to Serbia, Belgrade. Interview conducted 21 April 2016.

would appear to promote a more short-term ‘tactical’, as opposed to long-term ‘strategic’ form of thinking in domestic institutions.<sup>40</sup>

The second EU programme is Twinning. This is a mid-term mechanism that pairs domestic institutions in neighbourhood countries and Candidate States with a similar institution in a Member State. This programme is designed to educate actors and facilitate the exchange of practice. Like TAIEX programmes, Twinning projects are embedded in a wider set of accession related reforms (Roch, 2017, p.72). The impact of Twinning is variable. Much depends on the internal enthusiasm of Candidate State actors to engage with the process. When enthusiasm is high and partners are carefully selected, interviewees reported good experience of Twinning programmes:

*It [the positive Twinning experience] involved the Greeks, Slovenians and Austrians and they made time to understand the national context. This is not always the case with Twinning however.* <sup>41</sup>

However, the more common experience of Twinning was negative. The more mid-term nature of Twinning was not seen as adequate for enacting fundamental change in practice. The process was undermined by an incoherent reform narrative with different Member State actors emphasising different aspects of the reform process. Interviewees reiterated the need for a long-term process of social learning. This process should ideally be facilitated through unilateral mechanisms that were focussed less on the individual experiences of Member States and more on recognised best practices endorsed by international bodies:

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<sup>40</sup> Interviewee A, Serbian Ministry of Interior, Belgrade. Interview conducted 7 March 2016.

<sup>41</sup> Interviewee A, State Ombudsman, Belgrade. Interview conducted 29 April 2016.

*There is no uniform approach. Twinning should be learning on mistakes not by telling people to do what you think they should be doing...At the operational level, it requires more than just exchange. It requires a hands-on approach and working with that person or institution for some time. So, the Spanish project should send five people from the high judicial council in Spain to work with the high judicial council in Serbia to change their business practice. Because I just don't think they will employ the Spanish experience simply by learning how it's done in Spain.<sup>42</sup>*

Overall, interviewees were reflective that even the most effective Twinning programmes were no substitute for long-term processes of social learning that could help motivate actors to enact reforms on their own initiative and translate EU rule of law principles into practice:

*It [reform] should come from the inside... it's difficult to learn from Scandinavians as they are far ahead. Some of the Baltic countries can serve as good examples. Because we share the same history. They have been EU Member States for 12 years however and have very developed ICT and infrastructure. I can't imagine a productive Twinning with them.<sup>43</sup>*

In sum, the fragmented nature of the reform process and the preference given to bilateral as opposed to multilateral forms of socialisation, means a uniform set of rule of law understandings and practices are not communicated by external actors to domestic actors. It also means substantive epistemic linkage is absent because interactions tend to promote Member State specific know-how. This varies depending on the Member State's own institutional structure and its own experiences with a certain topic. In contrast, a more joined-

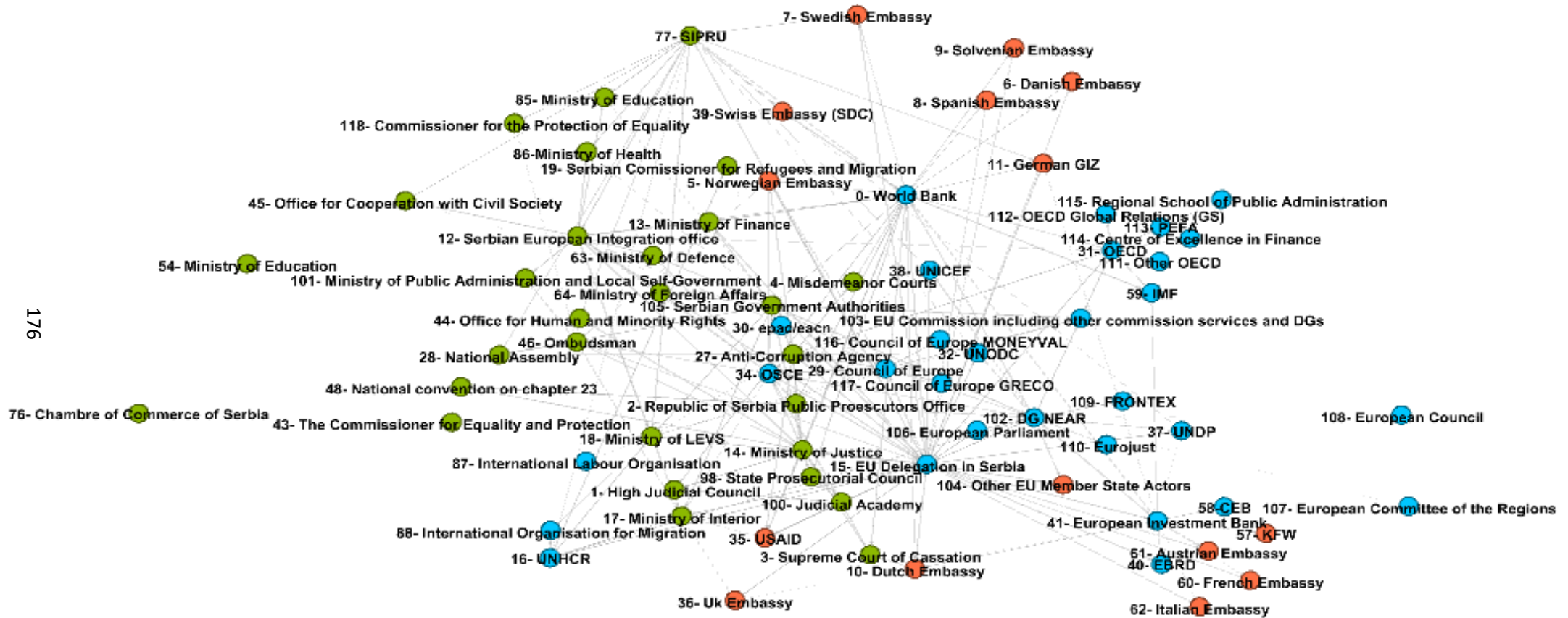
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<sup>42</sup> Interview with senior management, World Bank Multi Donor Trust Fund for Justice Sector Support, Belgrade. Interview conducted 1 March 2016.

<sup>43</sup> Interview with a judge, Serbian Supreme Court of Cassation, Belgrade. Interview conducted 6 April 2016.

up multilateral approach might lead to the implementation of uniform practice that could then be contextualised in rule of law policy fields. This may overcome the shortcomings of the fragmented socialisation processes that occurred within the analysed network.

The fragmented nature of network socialisation between external and domestic actors means that domestic actors continue to implement their work in-line with existing institutional understandings. In the long-term, this may undermine the EU's ability to not only ensure compliance with its rules and norms, but also ensure they are meaningfully enacted in practice. Figure 6.5 emphasises that domestic governmental actors tended to socialise more with one another. Figure 6.5 filters the network by IOs, external state actors and governmental actors. This demonstrates how domestic governmental actors tend to cluster with one another in a network clique. This clique produces its own socialisation dynamics. These dynamics are more substantive than external actor socialisation.



In the configuration of domestic government institutions highlighted in green in figure 6.5, justice sector institutions are particularly central. The key domestic actors in this configuration are ‘Serbian Government authorities’—a generic label for important executive officials— the Ministry of Interior, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Justice, Supreme Court of Cassation, State Prosecutors Office and Anti-corruption Agency. These actors are strategically motivated to socialise with external actors. Key domestic actors tended to use their network connections to access new sources of funding and technical assistance. This resulted in the extensive application of strategic calculation as a transmission mechanism and reinforced the network’s procedural intergovernmental character.

The strategic engagement of domestic actors with external actors means epistemic linkage rarely occurs. This was also recognised to be the main feature of engagement by external actors. The EU Delegation in Serbia even went so far as to concede that it ‘could not change hearts and minds’. Rather, it could only use the ‘carrot and the stick to ensure reform compliance’. <sup>44</sup> This process of relying on incentives to reward or punish domestic actors for compliance does little to promote a change in practice. The absence of epistemic linkage means that domestic actors struggled to understand and adopt an ‘EU mindset’.

Despite the presence of socialisation between domestic institutions and external actors, interviewees suggested that many domestic actors are engaged in a procedural mode of intergovernmental socialisation. The EU’s approach is viewed by domestic actors as a top-down process, focussed on lesson drawing from the EU. Interaction with the EU was not seen

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<sup>44</sup> Interviewee A, EU Delegation to Serbia, Belgrade. Interview conducted 6 March 2016.

as organic but formulaic. The entire accession process was seen to follow a ticking the boxes approach and little space was provided to build bridges between existing practice and outside examples of EU best practice. The limited opportunity to contextualise and produce context specific reform solutions was also exacerbated by the sporadic nature of interaction as well as the externally driven nature of the reform process. The EU failed to encourage network actors to enact change from the bottom-up. This could have been achieved by employing argumentation and persuasion more consistently or by showing the benefit of new practice via epistemic linkage. In the absence of these mechanisms, the EU returned to its default conditionality instruments of material linkage. Domestic actors felt this promoted superficial change:

*In summary, I think much of the reforms required for EU membership should be driven because they are good in and of themselves and should also change practices. I'm not sure this is the case currently as EU membership is the major incentive.*<sup>45</sup>

Some interviewees felt that external actors poorly communicated with domestic actors. Poor communication between external actors and domestic practitioners meant that external actors often failed to appreciate the context of reforms. For example, when it comes to the issue of fighting corruption in Serbia, one interviewee felt the EU needed to pay closer attention to the internal political dynamics impeding reforms in Serbia to understand the limits of existing reforms:

*The experts they send often misrepresent things as they see certain things and don't understand the national context of Serbia.*<sup>46</sup>

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<sup>45</sup> Interviewee A, State Ombudsman, Belgrade. Interview conducted 29 April 2016

<sup>46</sup> Ibid.

The EU's new approach aims to place fundamental rule of law issues at the centre of accession reforms and ensure that reforms are implemented in practice. The Serbian case suggest that this new focus has not yet facilitated a systematic change in mindset across the justice sector. Part of this failure may lie in the way outside actors interact with domestic actors. If the EU and other external actors involved in the network fail to appreciate the contextual specificities of the Serbian case and fail to engage with actors to understand the rule of law issues that are important to them, a change in practice seems unlikely to occur.

Another interviewee from the Ministry of Interior spoke about the difficulty of achieving change through the accession process. In comparison to routine interaction, engagement with external actors by domestic actors was 'ad-hoc' or 'soft'.<sup>47</sup> The same interviewee from the Ministry of Interior supported this by providing insight into how the turbulent nature of post-democratic transition in Serbia and its historically tense relationship with Western actors has made domestic government actors cautious towards outside socialisation. For this reason, he thought engagement between outside actors and domestic actors would eventually change understandings but this would take many years:

*The depth of what's gone wrong over the past 20 years is so extensive you just can't fix it in a year or two or five years, I think it will take a good 5-10 years to fix things such as, again going back to this culture thing. And that is almost at the core of the problem I think. That is this lack of willingness to change, to do something better...people are so fearful, they don't know what's going to happen, they don't trust politicians, it is a transition country... There's a lack of trust in the West in general. Which again you could say is understandable. So, you could say*

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<sup>47</sup> Interviewee A, Serbian Ministry of Interior, Belgrade. Interview conducted 7 March 2016.

*what is this British, what is this French adviser doing here. They don't really want any good for this country, why are they here. So, you get that type of resistance as well.* <sup>48</sup>

In sum, insight from interviewees in combination with an analysis of the transnational policy network, highlights the dominance of procedural intergovernmental socialisation. Whilst a communicative component is present, a coherent reform narrative is fragmented. The overwhelming presence of strategic calculation employed by different actors contributes to this fragmentation. Furthermore, the dominant presence of strategic interaction prevents substantial epistemic linkage forming between external actors and domestic actors. This is reflected in the inability of external actors to fully engage with domestic actors to understand the institutional conditions in the justice sector that inhibit reforms. Domestic actors feel an understanding of these conditions is important to help address reform challenges in a meaningful way and produce contextualised and appropriate responses to the key issues that must be addressed to achieve EU membership. Overall, the mode of socialisation that seems most dominant between different actors is procedural intergovernmental socialisation. This results in a process of top-down lesson learning and 'thin' socialisation. Dominant actors use the reform process and engage in the network to achieve perceived interests and objectives. This is problematic, as it does not facilitate a process of dialogue which attempts to change understandings and contextualise rule of law reforms.

## **6.6 Instrumental NGO socialisation**

The final mode of socialisation present in the network is the instrumental NGO socialisation mode. Figure 6.4 demonstrates the peripheral location of NGOs and other professionalised

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<sup>48</sup> Ibid.

civil society groups in the network. Of the NGOs present in the network, nearly all are highly professionalised advocacy groups. Figure 6.4 shows that civil society actors tended to interact more extensively with each other than with actors of another type. Governmental actors tended to treat NGOs sceptically. When they did interact with NGOs, it was usually to obtain knowledge on an issue when they lacked expertise. When NGOs socialised with external actors, external actors tended to use them instrumentally to carry out work on donor programmes or to lobby the government on an issue. Interestingly, despite the increased resources available to INGOs, they occupied a similarly peripheral position in the network. NGOs tended to be given second-order status behind governmental actors. This impeded the construction of a broader socialisation process and reinforced the intergovernmental character of the network. As for why intergovernmental interactions are dominant, one interviewee felt this was a functional outcome of the integration process:

*It is a valid argument from the civil society in that they are not included in this huge transformation process of accession to the EU. On the other side, if you look at it from a legal perspective, the accession negotiations are a negotiation between an international organisation and a state so by its nature it is between the state and the EU. But I do think the EU has come a very long way in trying to include civil society.<sup>49</sup>*

This suggests that there is a dominant intergovernmental character to the network and that governmental actors are likely to be the focus of external actors who engage in rule of law reforms in Serbia.

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<sup>49</sup> Interviewee B, Organisation for Security and Cooperation in Europe, Belgrade Office. Interview conducted 10 March 2016.

Domestic NGOs stated they tended to work with other small organisations and larger INGOs because these collaborations were effective in achieving their day-to-day organisational objectives. For example, whilst the Centre for Investigative Journalism (CINS) advocates for greater media freedom, its day-to-day work is focussed on securing funds from donors to carry out its journalistic activity. Beyond a select few NGOs that were primarily working in the field of social inclusion or migration issues, contact between domestic NGOs and governmental actors was low. When the government consulted NGOs, interviewees described the experience negatively. For example, one interviewee stated that the dialogue with government often felt forced and tended to go in circles:

*I mean when we approach the government, we are talking about the same things for years. Things are moving so slowly.*<sup>50</sup>

This suggests that a sustained process of dialogue is not a feature of NGO interaction with governmental actors. Communication is not characterised by features of argumentation and persuasion. NGOs felt that consultations were used to window dress the government's limited rule of law reforms:

*I find them [government meetings] boring. I find them demeaning and meaningless and you basically feel like a puppet of the state over there as they are going to put in their report that they have had consultations with the NGOs with this and that.*<sup>51</sup>

Many NGOs working on rule of law issues have been active in Serbia since the 1990s and were particularly instrumental in the early democratisation period. Many of the key actors in

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<sup>50</sup> Interview with a legal analyst from Praxis NGO, Belgrade. Interview conducted 4 March 2016.

<sup>51</sup> Interview with project coordinator for public policies, Civic Initiatives NGO, Belgrade. Interview conducted 9 March 2016.

government made their political careers in the same period. As such, their political careers were born in the context of an adversarial relationship between government and civil society. The Milošević government articulated a narrative that many NGOs were foreign agents. This narrative remains salient amongst the public. A survey funded by the EU and published in 2014 demonstrated the continuation of this trend, with only 30 per cent of the public expressing confidence in civil society organisations (TACSO, 2014, p.14). An interviewee from the government's Office for Cooperation with Civil Society aptly summarised the way NGOs are perceived:

*By the public, they [civil society] are not seen to vocalise citizens' views and our main issue in the past 20 years is that the public does not stand with civil society organisations...they see those elite couple of organisations [NGOs] that are doing the EU job here or even worse the American job.<sup>52</sup>*

Given the low level of public trust in NGOs, the lack of substantive socialisation involving these actors in the network is neither controversial nor difficult for government actors to justify. The arm's length approach of government towards NGOs also impacts the way external actors approach NGOs. Whilst external actors do fund NGOs, their collaboration is often limited to the instrumental level. This may be a result of external actors not wishing to sacrifice good intergovernmental relations for the sake of supporting NGO groups that are unpopular with the government. Interviews suggested that external actors tended to approach civil society as a vehicle for achieving their own objectives. One interviewee reflected on how external actors understood NGOs in liberal market terms and used them instrumentally:

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<sup>52</sup> Interviewee A, Office for Cooperation with Civil Society, Belgrade. Interview conducted 7 March 2016.

*A neoliberal understanding... virtually a Cameronite big society view. What you have is low cost, high skilled service delivery from NGOs<sup>53</sup>*

Another interviewee demonstrated that their organisation approached NGOs as a type of market agent who could deliver donor programmes in a low-cost manner:

*One area, which is one of the current babies we are working on, is that the state is also using civil society organisations to carry out specific functions. This is a thing we are doing in the corrections area, specifically when it comes to rehabilitation. We are working on establishing a group of NGOs that could carry out these care services, but this is a new idea in Serbia.<sup>54</sup>*

The instrumental socialisation between NGOs and other actors is problematic for two reasons. First, it utilised strategic calculation as its primary transmission mechanism. This strategic mechanism was not useful for generating substantive socialisation between actors, which can begin to help mediate differences and construct shared understandings. Second, this instrumental approach favoured large domestic NGOs who have an existing capacity to engage with external actors and apply for donor funding via grant bids and project calls. This dynamic seems likely to exacerbate the representation gap between NGOs and wider civil society in Serbia. The failure of prominent NGOs to frame their work against local issues has been shown by other scholars to proliferate a perception that NGOs are 'self-righteous' and pursue a 'Western agenda' (Danković & Pickering, 2017, p.15; Obradović-Wochnik, 2013). As such, even those NGOs that are included in the network and can shape the reform process

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<sup>53</sup> Interview with a social inclusion policy consultant, Belgrade. Interview conducted 11 April 2016.

<sup>54</sup> Interviewee B, OSCE Mission to Serbia, Belgrade. Interview conducted 10 March 2016.

represent what has been termed a 'narrow slice' of the civil society cake (Danković & Pickering, 2017, p.4).

In sum, a mode of instrumental NGO socialisation characterised the way in which NGOs engage in the network. Whilst on the surface there may appear to be a communicative mechanism present, often consultation processes simply created the illusion that rule of law reforms involved constructing shared understandings and agreeing mutual objectives. NGO actors felt communication with the government was superficial and that external actors instrumentally used them. Despite this, NGOs felt mistrusted by government actors and government actors felt able to legitimise the lack of substantive NGO inclusion in the reform process. External actors, whilst more supportive of NGOs, tended to view them instrumentally. The focus of interaction with NGOs was determined by what function they could serve and whether they could advance donor interests. Strategic calculation is the key mechanism guiding socialisation with NGOs because interaction generally served an instrumental end.

## **6.7 Conclusion**

This chapter conceptually outlined four proposed modes of socialisation that fell along a continuum of socialisation. It then outlined and analysed a relevant actor network to ascertain the prevalence of these different modes. Of the outlined modes, the substantive intergovernmental socialisation mode appeared to be visible in some instances of network interaction. It was not, however, consistent and was not a general characteristic of network socialisation. A combination of network analysis and interview material found that a mode of procedural intergovernmental socialisation best characterised the type of socialisation that was dominant in the network. The instrumental NGO socialisation mode supported the procedural network dynamics and interviews conducted with NGOs visible in the network

further emphasised the procedural and intergovernmental character of network socialisation. This type of socialisation was previously argued in chapter 4 to contribute to the preservation of Serbian elite actor networks, whilst ensuring Serbia's strategic integration into the EU. Overall, the dominant transmission mechanism through which socialisation occurred was strategic calculation.

The EU's capacity to diffuse rule of law reforms is undermined due to the limited presence of deep socialisation and the sporadic presence of substantive intergovernmental socialisation in the network. As was outlined in chapter 2, a rich body of literature suggests successful 'translation' of diffused policy reforms is only possible through meaningful interactions that contextualise policy reforms. A form of socialisation which focused on dialogue to help overcome contestation and construct mutually amicable understandings was not dominant. Overall, this chapter demonstrated that the key actors involved in rule of law reforms are international organisations and governmental actors. It showed that interaction orientated around actors attempting to advance their perceived interests. This chapter further elaborated on how structuration occurs. In line with the concept of structuration, the analysed network acted as a structure that determined actions, shaped perceived interests and actors' interpretations of reform processes. This chapter further demonstrated the important role social relations play in shaping the way actors understand European integration and rule of law reforms. Ultimately, it showed that social relations between actors can enable and constrain certain actors to undertake certain actions and engage in the policy network.

In sum, the socialisation that occurs in relation to Serbia's rule of law reforms is strategic in nature. It overwhelmingly corresponds with the procedural intergovernmental mode and is

also characterised by the instrumental use of NGOs to achieve strategic outcomes. The subsequent chapters will outline the significance of this in terms of the institutional reforms taking place in Serbia. Chapters 7, 8 and 9, focus on specific rule of law policies to ascertain the effectiveness of the EU's new approach in changing understandings. Emphasis is placed on the contradictions and contestations inherent in the EU's approach and how these confound attempts to induce deep-rooted change in Serbia.

## Chapter 7: Understandings of judicial reform

### Introduction

This chapter is the first of three focussing on the semiosis mode of sensemaking. The previous chapters focussed on the role that institutions, events, social relations and socialisation play in shaping the EU's regional engagement and the delivery of rule of law reforms in Serbia. The remaining chapters of this thesis focus on the way that delivered reforms are interpreted by actors in the domestic context of Serbia. As these chapters focus on the way diffused policy reforms are interpreted, the semiosis mode of sensemaking is considered appropriate. This is because structuration focuses on the 'structural' aspects of complexity reduction and the way institutions, events and social relations shape the construction of imaginaries and determine the actions of actors (Jessop, 2010, p.338). In contrast, semiosis focusses on the role that discourse, semantic images and ideology play in shaping understandings. For this reason, semiosis is considered appropriate for understanding how diffused reforms are interpreted and enacted in practice, as opposed to the previous chapters that focussed on how the relationship between social structures and agency shaped the formation of an approach for diffusing rule of law reforms.

This chapter opens the 'black box' of the EU's reform process by analysing how actors understand and make sense of judicial reforms taking place in Serbia. It is the first of three chapters focused on one of the policy areas detailed in Chapter 23 of the EU *acquis*. Focussing on three rule of law policy areas allows for a detailed examination of different rule of law reforms in Serbia. It also allows for comparisons to be drawn across different policy areas.

To answer the second research question of this thesis, this and the following two chapters engage directly with the final three sub-research questions: How do actors construct an

understanding of rule of law reforms — in this case judicial reform — through semiosis and what informs these understandings? To what extent do we find convergence, divergence and contestation between different understandings and why? What do the different understandings of actors tell us about rule of law reforms in Serbia and European integration more generally? In answering these questions, this chapter demonstrates the importance of semiosis for explaining rule of law reform outcomes. It further demonstrates that the organisational context, as well as the relationship actors have with other actors, is crucial for explaining how understandings are constructed and reform actions pursued.

Examining how actors make sense of reforms in Serbia can advance our understanding of how EU reform processes are shaped in the domestic context of Candidate States. A focus on semiosis helps move beyond the Europeanisation paradigm and its problematic tendency to focus on macro level functional explanations, as well as the methodological individualism evident in rational choice approaches. In contrast, CPE demonstrates how situated actors understand and make sense of rule of law reforms, how these understandings lead to the construction and evolution of EU reforms and examines what these understandings reveal about rule of law reforms and European integration in Serbia.

This chapter proceeds as follows. First, this chapter identifies a dominant understanding that emerges among actors in relation to judicial reform. This section shows how some actors select and retain a discursive *variation* that focuses on the relationship between judicial reform, efficiency and state development. This understanding reflects an emergent neoliberal political project being constructed in Serbia, which is partly being supported by the understandings that external actors diffuse into Serbia. Second, alternative understandings are presented that partly conflict with this ‘efficiency’ understanding. These understandings

emphasise independence and ownership. Third, the significance of these different understandings is related to European integration more broadly in a discussion section. Finally, this chapter concludes by reflecting on the importance of actor semiosis for explaining divergent reform outcomes and the possibility for cohesive rule of law reforms in Serbia.

### **7.1 Modern judiciaries, economic development and the importance of efficiency**

What does judicial reform mean to those actors tasked with implementing it on the ground in Serbia? The dominant understanding that emerged among actors emphasised efficiency. Efficient judiciaries are commonly emphasised in modern (neo)liberal democracies in which judicial bodies and the bureaucracy more broadly, are encouraged to operate on business management principles (Duggan, 2012, p.10). A common narrative that emerged among both domestic and external actors was the need to address Serbia's problematic backlog of court cases (European Commission, 2012b, p.4; Serbia Ministry of European Integration, 2017; US Embassy in Belgrade, 2017; World Bank Group, 2015c). This backlog, according to a World Bank interviewee, stymied foreign investment in Serbia and limited economic growth.<sup>55</sup> Domestic actors understood this and were aware that their organisation's work would also be increasingly judged in relation to efficiency. As a result, the first key *variation* that emerges in terms of discourse reflects the concept of efficiency. The concept of efficiency is reflected in the way important domestic and international justice sector actors understand justice sector reform. These actors include the Judicial Academy, Ministry of Justice, World Bank, EU and USAID. How then was this narrative constructed and how did a semiotic process of *variation, selection and retention* help lead to its enactment in organisational action?

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<sup>55</sup> Interview with senior management, World Bank Multi Donor Trust Fund for Justice Sector Support, Belgrade. Interview conducted 1 March 2016.

The Judicial Academy is a key institution tasked with training and retraining judges. The academy was established in-part due to the financial support of the EU, United Nations Development Programme (UNDP) and the United States Agency for International Development (USAID). The academy was initially designated the Judicial Training Centre before being formally recognised in Serbia's constitution as an integral part of its judicial framework through the Law on Judicial Academy (Government of the Republic of Serbia, 2016, p.2). In terms of *variation*, the Judicial Academy focussed on a discourse of efficiency. This *variation* of judicial reform reflects a neoliberal state-building paradigm that is concerned with increasing investment in Serbia and constructing a market-based society (Visoka & Richmond, 2017, pp.114–115). The intertwining of judicial efficiency and market efficiency are visible in this *variation*. Issues of judicial efficiency are related to arguments about economic growth and development in Serbia. For example:

*For me though if you don't have rule of law, if you don't have knowledge in the judiciary and execution of cases in commercial courts is long, over five years. In that case, of course that foreign investor won't invest in Serbia. Or if you have high corruption and protectionism you are not attractive for investors.* <sup>56</sup>

The *selection* of efficiency was considered to help the Judicial Academy demonstrate it was making progress with reforms. This is because efficiency could be easily measured. For example, by observing the time it takes for a case to pass through the court system. However, efficiency was also set as a goal by external actors. The Academy's own organisational objectives were partly constructed and perceived in relation to how external actors would

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<sup>56</sup> Interview with senior staff of the Serbian Judicial Academy, Belgrade. Interview conducted 9 May 2016.

judge the Academy. This is because external actors were important advocates for the existence and expansion of the Academy. Therefore, social pressure and existing social relations played a role in shaping selection:

*At the beginning, from 2002, we spoke too much about rule of law and independence [at] the beginning of [the] process, but we changed the opinion in the judiciary and the academy because according to the new reform strategy, we put the knowledge and efficiency as [the] basic ground for [the] judiciary.* <sup>57</sup>

Efficiency was also selected because reforms were understood sequentially. That is, once efficiency was achieved, the Judicial Academy believed that other aspects of judicial reforms could be implemented. Therefore, efficiency was selected on the basis that it could serve as a gateway to achieving other reforms and start a snowball effect:

*If you speak about independence, yes, it's a crucial part in the judiciary, rule of law, independence. But, it's a theory and philosophy. If you speak about independence there must be results but before that you must have knowledge and efficiency.* <sup>58</sup>

The judicial Academy's *selection* of efficiency as a dominant *variation* appeared logical to its staff. Interviewees suggested that it seemed sensible and practical to understand efficiency as a necessary pre-requisite for achieving judicial knowledge and independence. Through the construction of an internal narrative linking knowledge and independence to efficiency, the Judicial Academy came to understand efficiency and knowledge as necessary prerequisites to achieving judicial independence:

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<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

*Especially as a judge, if you have good knowledge and finish a case on time you are on safe ground to be independent.* <sup>59</sup>

The *retention* of the efficiency narrative was visible in the way the Judicial Academy constructed its training programme for judges. Judicial training was designed to communicate to judges the importance of efficiency, both in terms of improving judicial practice and for advancing Serbia's European integration more generally. As such, organisational training and institutional rules helped reinforce the idea of efficiency and convince domestic actors of its importance for achieving judicial and state-level objectives. It was subsequently implemented in practice and codified in the way the Judicial Academy communicated reforms to the judicial community through training and personal interactions:

*Judiciary and execution of cases in commercial courts is long, over 5 years. In that case, of course that foreign investor won't invest in Serbia. Or if you have high corruption and protectionism you are not attractive for investors. Sometimes I explain to judges it is important to have investment because if we do we will have income into the state and our salaries and court rooms will be better.*<sup>60</sup>

A second key domestic actor also prioritised efficiency in its reform efforts. Like the Judicial Academy, the Ministry of Justice understood judicial reforms in relation to efficiency. Efficiency reflected a desire to create a modern and effective set of state institutions. The narrative of judicial efficiency subsequently emerged within the Ministry of justice because it was perceived as important for constructing a well-functioning state:

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<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

*Chapter 23 is probably the most important chapter because when it comes to judiciary you cannot imagine efficient state authorities at all if you don't have efficient judiciary.*<sup>61</sup>

Efficiency was selected because it was seen to help meet objectives and was considered performance enhancing. The Ministry of Justice emphasised how reforms could provide new ideas that helped staff do their jobs better and administer justice more effectively. Efficiency was once again legitimised because it was seen to resonate with the Ministry of Justice's objectives and its desire to reinforce reforms and align the ministry's work with 'effective' practice:

*But it's hard to make people understand the benefits of a training when they're swamped by day to day work. And often it happens that we have to remind them they know they are aware of different business practices which they should be employing in their day to day work and not to do things in the way they did the past 10 years to help reinforce our reforms.*<sup>62</sup>

*Retention* of efficiency in the Ministry of Justice occurred through its embedding in new organisational routines and technological innovations that reinforced the importance of efficiency and the need to do work quickly and effectively. Focussing on new practices and introducing new technologies was beneficial in helping to ensure that the ministry's staff were aware of the need to be efficient. New technologies also helped speed up existing work flows in a way that would reinforce efficiency sub-consciously. These methods of *retention* were

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<sup>61</sup> Interview with senior official, Ministry of Justice, Belgrade. Interview conducted 20 April 2016.

<sup>62</sup> Interview with senior management embedded in the Ministry of Justice, World Bank Multi Donor Trust Fund for Justice Sector Support, Belgrade. Interview conducted 1 March 2016.

viewed positively in helping push ministry staff to reform and as a means for measuring reform progress:

*That concept [efficiency] requires a lot of patience and to step out of our comfort zones. But when you became part of an institution in that way you honestly want to change something. And when you see results, when you see completely new mechanisms, practices, the website with all the relevant information, when you see new ideas coming from all civil servants, that's a good result.*<sup>63</sup>

Efficiency has found pertinence among reform actors because its *selection* and *retention* is legitimised and encouraged by other external actors active in Serbia. A form of 'stupidity management' exists in this sense, whereby external actors in collaboration with some domestic actors seek to block communicative action to ensure adherence to organisational edicts and prevent substantive reasoning beyond the efficiency paradigm. While this improves cohesion between these actors, it limits reflexivity by cutting short conversations about what judicial reform might mean beyond the dominant discourse of efficiency. Through their reinforcement of the efficiency paradigm, external actors seek to legitimise the concept of efficiency. This ultimately leads to the decline of 'open' social conditions as efficiency-orientated reforms are justified through reform edict and not internal dialogue or appropriateness (Alvesson & Spicer, 2012, pp.1199–1200).

For example, efficiency is reflected in the way USAID engaged with judicial actors, primarily through their JRGA programme, which engages directly with the Supreme Court of Cassation, Serbia's highest judicial body. The JRGA programme aims to improve efficiency, promote transparency and consistency, and reduce opportunities for corruption in judicial institutions

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<sup>63</sup> Interview with staff, Ministry of Justice, Belgrade. Interview conducted 20 April 2016.

to improve the investment environment in Serbia and its attractiveness to foreign business (USAID, 2013, p.28, 2016b, p.1). Judicial reform is a sub-component of USAID's Mission Strategy in Serbia. This is to support Serbia in its Euro-Atlantic integration, the construction of democratic structures and to create a competitive market economy (USAID, 2013, p.31). USAID has its own mission agenda but in seeking to enhance Euro-Atlantic integration, it tries to ensure its reforms complement EU accession reforms. It does not seek to initiate a process of dialogue about the appropriateness of such reforms and in the words of one critic:

*To give an example, the USA is active and likes to transplant its system. However, this has no tradition here so is likely to experience difficulties.*<sup>64</sup>

Despite criticisms, USAID remains a significant actor in shaping judicial reform both in partnership and independently from the EU. For example, while the EU contributed €2 million to a programme of 'Capacity Building of the Judicial Academy' (British Council, 2016a),<sup>65</sup> USAID funded its own parallel programme, the 'Judicial Academy Support Project' (USAID, 2016a). The idea of efficiency it promotes can therefore be viewed as a *variation* of judicial reform discourse that corresponds with USAID's core interests.

In terms of *selection*, USAID focussed on efficiency as it was seen to complement and help support Euro-Atlantic integration. The disposition of USAID to promote efficiency is reflective of its overall mission to 'create a democratic and prosperous Serbia that is a full member of the Euro-Atlantic community' (USAID, 2012, p.16). Efficiency thus resonated with existing objectives and the identity USAID attributed to itself as a reform actor. For USAID, improving

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<sup>64</sup> Interview with a Dutch diplomat, Belgrade. Interview conducted 1 April 2016.

<sup>65</sup> This project is designed to run alongside a larger €3.8 'Judicial Efficiency Project' funded by the EU in Serbia through pre-accession funding (British Council, 2016b).

the efficiency of the state and its ability to manage politicians through the establishment of checks and balances is an important part of transforming Serbia into a fully functioning market-based democracy. Efficiency was subsequently legitimised as it could help achieve these objectives.

In terms of *retention*, USAID engaged with key judicial stakeholders to introduce new techniques such as record keeping and ICT innovation. These were designed to improve the efficiency of Serbia's judicial sector and embed efficiency in practice. The introduction of new technologies is well noted to change the way practitioners understand their role (Orlikowski, 2008; Orlikowski & Scott, 2008). In simple terms, this means that USAID anticipates that new practices and technologies of judicial management will emphasise the idea that efficiency matters and reinforce the construction of efficient state institutions. One interviewee suggested new technologies helped embed efficiency because it gave domestic actors the opportunity to see how new work processes could achieve the goal of backlog reduction:

*A lot could be done with very simple changes in work processing. That's what I was doing with USAID... The USAID project I worked with, the component I was leading was really focussed on backlog reduction.* <sup>66</sup>

We see USAID effectively embed a focus on efficiency within the judicial sector through the deployment of new work practices as well as through its funding of various reform programmes.

The final significant actor that helped reinforce the efficiency paradigm was the World Bank. The World Bank Multi Donor Trust Fund for Justice Sector Support (MDTFJSS) committed itself

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<sup>66</sup>Interview with a judge, Serbian Supreme Court of Cassation, Belgrade. Interview conducted 6 April 2016.

to improving rule of law through a large trust fund targeted primarily at the Ministry of Justice. In terms of *variation*, its reform agenda is focused on ‘improving the capacity, efficiency, integrity, accountability and professionalism of justice sector officials’ (World Bank Group, 2015d). These concerns are reflected in the reform strategy of the World Bank, which clearly demonstrates the presence of the efficiency discourse in its reform agenda:

*All the donors are interested in is efficiency, quality and its access. So, these are the three elements that the Serbian judiciary needs to improve.*<sup>67</sup>

In terms of *selection*, efficiency is emphasised because it supports the World Bank’s organisational objective of creating a competitive and inclusive economy and through this, further European integration (World Bank Group, 2017). This objective aligns closely with USAID’s objective of improving Serbia’s Euro-Atlantic integration. This shared objective is unsurprising given the close relations between the two organisations outlined in chapter 6. This objective reflects an interest in ensuring the expansion of free market capitalism in Serbia and the construction of a state that successfully demarcates the boundaries between state and market through judicial bodies. This in the words of one interviewee is their ‘main priority’ in Serbia.<sup>68</sup> *Selection* occurs because it conforms to existing beliefs and objectives, and reinforces existing World Bank interests, while also legitimising its reform programmes to its donors.

Regarding *selection*, it is also important to note that like the Judicial Academy, the World Bank believes its focus on efficiency was important for achieving other objectives, primarily

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<sup>67</sup> Interview with senior management, World Bank Multi Donor Trust Fund for Justice Sector Support, Belgrade. Interview conducted 1 March 2016.

<sup>68</sup> Ibid.

independence. *Selection* therefore also occurred because efficiency helped actors understand and interpret reforms sequentially. This makes reforms seem more manageable and allows actors to interpret judicial reforms as a procedure, whereby efficiency precedes independence:

*It's [efficiency and independence] interlinked... Independence is more about professional dignity and independent court budgets and being able to justify why you are doing something and how you are doing something.* <sup>69</sup>

*Retention* occurred through the construction of rule of law reform processes and new institutional rules in Serbia. The World Bank's functional review of the judiciary is designed to foster alignment with Chapter 23 of the EU *acquis* and the World Bank seeks to encourage further European integration (World Bank Group, 2014, pp.1–2, 2015e, p.40). Its reform programmes are explicitly supported by the EU Commission and aggregated into accession related reforms. Support for the World Bank's work is evident in the link drawn between judicial reform, free market reforms, democratisation and EU integration in EU enlargement strategy (European Commission, 2015a, pp.2–5, 2016b). This means that common understandings of efficiency are retained and reinforced through the strategic coordination of judicial reform in new reform processes that occur as a sub-component of European integration. This leads to *retention* because it associates World Bank reforms with the European integration agenda and makes compliance with World Bank reforms a necessary requirement for domestic actors to advance accession negotiations:

*We asked the World Bank to prepare a functional review, which we co-financed on the judiciary to highlight the main challenges and difficulties in this area. This was the basis*

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<sup>69</sup> Ibid.

*for Serbia to develop its action plan for Chapter 23. We asked them to fully incorporate this study from the World Bank to reflect on the challenges that were highlighted to ensure synergies.*<sup>70</sup>

In sum, efficiency was selected when it was perceived to help achieve organisational objectives, conform to existing identity structures and legitimised existing and planned action. Its *retention* is visible in several reform processes, including new technologies, work processes, institutional rules and routines. Efficiency understandings represent a rather economic understanding of the accession processes. This is unsurprising given that European integration is a fundamentally political and economic process, in which political concepts of the market inform the establishment of functioning market-based democracies. *Variations* of this market terminology permeate the discourse of judicial reform processes and the discourse of actors who are active in the policy field. However, the following section suggests that the myopic focus on achieving this goal limits dialogue between these actors and other actors that raise contestation with the reform process. This leads to ignorance about the broader actions needed to undertake judicial reform in a holistic manner. This ultimately frustrated the wider institutionalisation of rule of law understandings and prevented dialogue between actors.

## **7.2 Contestation I: Independence**

While an approach to reforms that focused on efficiency was viewed positively by some actors, it was problematic for others. Contesting actors argued that efficiency-based understandings

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<sup>70</sup> Interviewee A, DG NEAR, Brussels. Interview conducted 6 June 2016

are problematic when they conflate independence with efficiency. This leads to independence being poorly engaged with as an independent and important concept. Consequently, contesting judicial actors, argued that government actors do not place independence at the heart of the reform process when they focussed heavily on efficiency. These contesting actors did not understand judicial reform sequentially and did not believe that efficiency would enable greater independence. They argued that independence should be the key factor driving reforms and should, therefore, be focussed on first. Some civil society actors also advocated this contesting perspective. Frequently, these actors defined themselves in contrast to governmental actors who they felt wished to control the reform process and accommodate judicial reforms so far as they advanced the accession process but did not harm their own positions of power. They felt that this prevented wider change within the judiciary and undermined substantive reforms that could more effectively institutionalise the rule of law in practice.

In terms of the construction of alternative understandings that sought to prioritise independence and not link it sequentially to efficiency, an alternative process of semiosis was visible. A *variation* of reform discourse that emphasised judicial independence was evident among some interviewees. One actor appeared to place judicial independence at the centre of their work and sought to communicate this concept to their colleagues within the justice system. This *variation* of this judicial reform narrative focussed less on efficiency and more on the freedom of judges to undertake their work independently from ministerial oversight. This is particularly visible in the way this interviewee discussed the World Bank and other actors that supported the intertwining of efficiency and independence. They argued that

these actors, in prioritising efficiency as a means of achieving independence, did not fully support the concept of independence as they understood it:

*But how the Multi Donor Trust Fund for Justice Sector Support (MDTFJSS) is run, unfortunately, I'm not very happy with it. It doesn't fully support the principle of independence.* <sup>71</sup>

This interviewee expressed their belief that efficiency has become such a dominant understanding in the context of Serbia's judicial reforms that it was now intertwined inexorably with judicial reforms. This, it was argued, marginalised the focus placed on judicial independence because it was subsumed with a focus on efficiency. They felt that this made reform actors less likely to engage with the issue of independence directly. Consequently, their discursive and practical *variation* of judicial reforms focussed more concretely on independence.

In terms of *selection*, a discourse that prioritises independence is selected in response to the dominant understanding of efficiency-orientated reforms. Some actors were critical of the way in which reforms neglected meaningful engagement with a full range of judicial actors and instead prioritised governmental justice sector actors. This perspective was communicated by an interviewee who highlighted how current reforms empowered ministerial bodies that had sought to curtail judicial independence in the past. They also went further and argued that judicial reforms empowered justice sector ministries and not judges. This demonstrates how existing institutional competition and tension influences the *selection* of discourses in organisational settings:

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<sup>71</sup> Interview with a judge, Serbian Supreme Court of Cassation, Belgrade. Interview conducted 6 April 2016.

*What I'm concerned about is the inclusiveness of the process. They [Ministry of Justice] are the ones driving the process but they are the ones behind the wheel, no one else is in the car. And then they have to go back and correct it as the process is not inclusive.<sup>72</sup>*

*Selection* was further reinforced because the interviewee had pre-existing negative experiences with EU-led judicial reforms in Serbia. The EU was seen to emphasise other concepts such as efficiency and accountability at the expense of independence. The interviewee argued that this demonstrated the EU's interest in promoting its own interests through judicial reforms at the expense of judicial independence. It was argued that this had resulted in the failure of reform projects to improve judicial integrity. The interviewee's internal narrative of events appeared plausible because it resonated with their existing experiences and interpretation of events:

*The least successful projects when it comes to rule of law in the judiciary were EU projects. It's difficult to comprehend and then it's awful because the EU keeps on insisting on efficiency, accountability and other bullshit and then on the other hand they are not offering meaningful assistance.<sup>73</sup>*

*Selection* also occurred in this case because the interviewee could relate judicial independence to their own personal identity. The interviewee had spent many years in Serbia's judicial sector and had worked at different levels. For them, independence was central to their professional identity and any attempt to subvert independence or associate it with other concepts was resisted. Their personal identity helped retain and reinforce the discourse that independence should structure reforms first and efficiency should follow.

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<sup>72</sup> Interview with a judge, Serbian Supreme Court of Cassation, Belgrade. Interview conducted 6 April 2016.

<sup>73</sup> Ibid.

Historical events and circumstances also confirmed the need to focus decisively on independence. Serbia's previous poor track record on judicial reforms, its historical illiberalism during the 1990s and protracted nature of its democratisation process, reinforced the belief that any *variation* of judicial reform that did not prioritise independence would enable judicial politicisation. Identity, context and retrospection are clearly important in this case:

*As of 2001, that is a crucial year for Serbian judiciary as crucial laws were introduced in 2001. There was a separate law on judges, a separate law on prosecutors, the law on court organisation was significantly changed. That was the first milestone for the judicial reform process in Serbia. Ever since then, that was the start but also the peak in terms of judicial independence. Ever since then we have been losing it bit by bit. Or it has been restricted from different sides so it's an on-going battle. I think 2001 is when I felt most freedom in the judiciary and in the courts as a judge.<sup>74</sup>*

In terms of retention, the independence discourse was retained through the actions of the interviewee to try and make sure their own organisation's procedure fully adhered to independence. This meant that the interviewee tried where possible to prioritise and promote reforms that they felt supported independence. This was perhaps most visible in the institutional culture they had helped co-construct within their institution. One way in which they did this was through extensive internal consultations and the construction of everyday work practices that occurred alongside and separately from externally driven reforms. These, they argued, helped the institution stay ahead of the reform curve and embed the concept of

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<sup>74</sup> Ibid.

independence in everyday work practices. It also demonstrated how rule of law reforms grounded in independence could be effectively institutionalised in practice:

*That's why I'm very happy the [Supreme] Court is probably always one or two steps ahead of everyone else [in terms of judicial reform]. They are planning very much in advance. They are getting criticised in the sector and among colleagues that they are hurrying compared to the others and are not respecting the pace of the rest of the sector. Luckily, they have very good leadership now and people who are progressive thinkers.<sup>75</sup>*

Another way in which *retention* occurred was through the mobilisation of institutional staff to produce a domestically driven reform agenda. By using the experiences of staff and looking inwards as opposed to looking outwards to understand how independence could be prioritised, the interviewee argued that their institution had successfully reached an internal consensus that would safeguard and enhance judicial independence wherever possible. Having done this, the institution could then begin to construct their own reform strategy. This reinforced the *retention* of independence by codifying independence as an institutional rule, as well as by allowing the institution to reach out and communicate the importance of judicial independence to other institutions:

*I'm working now with judges who have been judges for 40 years already. They can estimate how the system behaves when certain things occur. In that sense, I don't think that kind of intellectual and institutional memory exists anywhere else in the sector. At this moment, I think that when it comes to proactive thinking that newly created chambers are also very proactive in reaching out to partners [to support independence].*

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<sup>75</sup> Ibid.

*They want to exchange, they want to meet, they want to discuss problematic issues and issues of common interest, but I don't see that anywhere else unfortunately.*<sup>76</sup>

This alternative understanding of judicial reform demonstrates how different understandings can act as a driver of judicial reform. In this case, independence is constructed as a competing focus to efficiency. While its proponents would argue this is important to safeguard the judiciary from other influences, the narrow-minded focus of these contesting actors also reinforced the limited dialogue between different actors. In this sense, it reinforced the same atomised dynamics as efficiency because it prioritised a single concept and drew limited links between independence and efficiency. This further demonstrates the fragmented nature of the reform process and the failure of different reform actors to break out of their institutional silos to create a cross-sectoral reform dialogue. In turn, this frustrated attempts to construct shared understandings and institutionalise the rule of law in practice.

While both groups of actors adopt a singular dominant understanding that limits cognitive capacity and the ability to construct a holistic reform agenda, the presence of these differences are telling of the integration process. The differences in discursive *variation*, *selection* and *retention*, demonstrate that EU accession reforms are far from a linear process. Actor semiosis shapes how accession reforms are interpreted. Reforms are understood and reconstructed differentially, depending on how actors understand reforms within their organisational context. Different understandings impact reform strategies and influence the extent to which distinct discourses become embedded within institutional rules and norms.

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<sup>76</sup> Ibid.

This impacts the institutionalisation of the rule of law in practice when different understandings are not reconciled and related to one another effectively.

### **7.2.1 Contestation II: Ownership**

A second understanding emerged as an alternative understanding to efficiency. This understanding focussed on the need for reform 'ownership'. Its discursive *variation* highlights how accession-based reforms are perceived as difficult to implement because they are overly complex. Consequently, it constructs an alternative understanding that contests outside reforms and calls for the construction of more parsimonious and domestically derived reform solutions. This *variation* is interesting in that unlike the previous discourses, its proponents tried to initiate cross-sectoral dialogue that was based on substantive reasoning and sought to be 'stupidity-disturbing' (Alvesson & Spicer, 2012, p.1212).

In terms of the discursive *variation* of ownership, its origins lie in the belief among some actors that current reforms are too complex and over-emphasise information. These actors were again peripheral to the previously outlined policy network. This suggests that part of the reason that reforms were seen as too complex, lacked domestic ownership and did not resonate, is because they were not adequately communicated towards actors who were not central to the policy network. The idea of complexity and its association with judicial reforms was communicated by one interviewee. For them, judicial reform was likely to occur only if domestic actors were given space by the EU and the international community to construct their own reform strategy. This *variation* emphasised the idea of ownership and the need for Serbia to develop its own strategy of reform. The emphasis placed on the ownership concept

stood in contrast to the other concepts of efficiency and independence because it concerned the practice as opposed to the content of reform processes:

*The EU needs to let Serbia pick its own ways to its goals.<sup>77</sup>*

Another interviewee that shared this perspective provided insight into why the ownership *variation* was selected. The failure of the efficiency narrative to reflect the interviewee's organisational reality meant that accession reforms were deemed too complex to effectively implement. They referenced their organisation's lack of resources and expertise as significant barriers that blocked the implementation of efficiency-orientated judicial reforms. Consequently, the interviewee felt that reforms should consider these limitations if they were to be successfully implemented and their complexity reduced:

*For other colleagues, European integration is seen as some sort of additional pressure on them. Maybe the way of functioning has changed slightly as we are more efficient in some communication, but I can say we can only talk about efficiency only when we have to do something in regard to EU integration as we are given strict deadlines.<sup>78</sup>*

*Selection* of this ownership discourse also emerged in response to externally driven reforms that had taken place in Serbia. One interviewee explained how they focussed on the need for ownership based on their own experience of working in Serbia over the past decade. Their experiences had convinced them that authentic reform would only occur if reforms were domestically driven and domestic actors had true ownership. They argued that when it came

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<sup>77</sup> Interviewee A, State Ombudsman, Belgrade. Interview conducted 29 April 2016.

<sup>78</sup> Interview with official from the Ministry of Labour, Employment, Veteran and Social Affairs, Belgrade. Interview conducted 8 April 2016.

to judicial reform, 'ownership' was used as a buzzword by external actors to legitimise reforms. In terms of strategy that embodied ownership, they felt bottom-up approaches were largely neglected. Despite its current absence, they argued ownership was important for achieving true judicial independence. The viability of the ownership *variation* was thus sustained because it was perceived to be an effective strategy for achieving other organisational objectives such as independence:

*The key buzzword is local ownership, but it doesn't really seem like they care about local ownership. But in Serbia, there doesn't really seem to be local ownership or faith that reform can be generated from the bottom up.... local ownership is really important [for improving independence] but unfortunately it is rare.<sup>79</sup>*

In terms of *retention*, ownership appeared to be a poorly institutionalised concept and was thus weakly retained. This lies in contrast to the previous *variations* that could be retained through their reproduction in organisational rules, routines and technologies. While weakly retained in comparison to the other *variations*, one interviewee gave an example of how ownership could be retained as an organising principle for judicial reforms:

*Reforms often lack ownership and there is a lack of authentic political desire. Therefore, accession often follows a 'ticking the boxes approach' for enlargement. Countries need to be able to produce their own strategies.<sup>80</sup>*

This demonstrates that providing domestic actors with the agency to devise their own reform strategies and empowering them to pursue these strategies, could serve to translate the

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<sup>79</sup> Interview with a judge, Serbian Supreme Court of Cassation, Belgrade. Interview conducted 6 April 2016.

<sup>80</sup> Interview with a Dutch diplomat, Belgrade. Interview conducted 1 April 2016.

concept of ownership from discourse to practice. This highlights the important role that the construction of new organisational routines plays in retaining selected discursive *variations*.

Another interviewee gave an example of how ownership had been successfully retained, all be it in a comparatively limited manner to the other *variations* discussed in this chapter. This external actor argued that they had supported ownership by changing the way in which they engaged with domestic actors in Serbia. They highlighted how new institutional procedure that reduced some of the complexities that surround reforms — such as tendering processes for selecting domestic partners — had opened the possibility for new forms of ownership.

*We can also turn around and have a dialogue to change programmes when things aren't working. I think that makes us a good partner. We are also not bound by this tendering in Europe. We leave it to the institution here to do the tendering, which has been very challenging by the way, and has been the cause of delays, but it creates ownership and interest.* <sup>81</sup>

This approach improved the institutionalisation of the ownership concept by enabling domestic actors to select their own strategy to achieve reform outcomes. This helped embody the idea of ownership in practice and translate an at times abstract concept into a functional outcome. The interviewee argued that facilitating ownership in practice helped the concept resonate by demonstrating its practical benefit:

*When we focus on disciplinary mechanisms in courts we invite people who work on that, but that's not enough. You need the Supreme Court judges, you need the ownership elsewhere, so we try to have a mix.* <sup>82</sup>

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<sup>81</sup> Interview with diplomat A, Norwegian embassy, Belgrade. Interview conducted 29 March 2016.

<sup>82</sup> Ibid.

In sum, interviewees felt that current reform complexity increased the organisational pressure placed on institutions tasked with undertaking reforms. They felt that domestic institutions often had to implement complex reforms that tried to communicate too much information, with limited knowledge and resources. The idea that more information is good was challenged by these actors who felt it could not be put to good use. This is an important point as successful organisational change is not only the result of available information, but also organisations having the capacity to be able to understand and apply information effectively (Alvesson & Spicer, 2012, pp.1201–1202). The failure of current reforms to find resonance not only led to poor understanding, it also reinforced calls for ownership. While embryonic, calls for more ownership have the potential to help create a holistic reform process, because it calls for open dialogue between actors and enhanced domestic agency. The more effective institutionalisation of the rule of law in practice would require a necessary reconciliation of ownership with efficiency. Instead of thinking about efficiency as it is defined by external actors, one way this might come about is through the bottom-up generation of efficiency concepts which are grounded in domestic ownership and simultaneously support judicial independence. This shared understanding would overcome contestation and more effectively support the internalisation of shared rule of law understandings.

### **7.3 What do these understandings tell us about the state of European integration?**

Four points of discussion emerge from the analysis of how actors understand judicial reform. First, it is evident that different understandings of the judicial reform process exist. Interviewees that emphasised efficiency tended to view the outcomes of current reforms positively. Those that prioritised independence expressed concern that judicial reforms would

empower government actors at the expense of judicial actors. Interviewees that emphasised ownership were rather indifferent to the outcome of reforms and instead focussed on the extent to which reforms achieved their intended outcomes. This cross-section of different understandings demonstrates the contested nature of EU reforms. Chapter 2 outlined how the existing literature tends to underemphasise contestation and views actors as conforming to a set 'logic', whether it consequential or normative, during their enactment of EU reforms. A CPE approach has demonstrated that this is too simplistic. Looking at the organisational context in which actors are situated demonstrates the different factors that shape how they interpret reforms and subsequently the different understandings that emerge. The role occupied by actors, their interactions with other actors, their experiences past and present of reforms and their perceived interests are all significant in shaping their understanding of an issue. These understandings have been shown to be significant because they shape the type of judicial structures that are being reformed and constructed in Serbia.

Second, in terms of what this tells us about the EU's new approach, despite trying to create a more coherent approach that puts rule of law first, reforms seem to be inevitably multifaceted. This is exemplified by the different meanings that actors attach to EU reforms. Given that the data presented here represents only a cross-section of actors, albeit a significant cross-section, it is reasonable to assume that different understandings are likely to permeate multiple levels of governance. This lack of coherence is not a failure of the EU's approach per-se, but rather an organisational reality that makes the implementation of reforms challenging. The EU's new approach aims to create a clear and identifiable reform agenda for Serbia and other Candidate States to follow. However, reforms are multifaceted and coherence unlikely. The emergence of different understandings and the limited dialogue

between actors who hold these contrasting understandings demonstrates how actors tend to lack a holistic approach when it comes to organisational reform. The myopic thinking, evident in the cases of efficiency and independence, suggest that current reforms would benefit from more open dialogue between actors.

Third, it is important to note that different understandings are not necessarily mutually exclusive. As the case of efficiency shows, often actors believe the prioritisation of a specific discursive *variation* will enable them to achieve other objectives and reform goals such as independence. However, the evidence presented here suggests that actors struggle to reconcile multiple reform narratives. Furthermore, they fail to successfully draw links between contesting reform concepts and reconcile them. Consequently, this proliferates myopic thinking as actors tend to prioritise a specific discourse. This is subsequently reflected in their implementation of reform programmes that may at times include the language of other discursive *variations*, while in practice, reinforcing only one *variation*. This suggests that the sheer scope of the EU's reform agenda makes complete implementation a challenging and long-drawn process.

Finally, the presented data demonstrates how rule of law reforms intersect with domestic and supranational politics. For example, the idea of efficiency reflects a neoliberal discourse and is promoted by actors that explicitly adhere to a neoliberal project of state-building. Independence tended to be prioritised by domestic actors that feared a return of Serbia's illiberal past and sought to safeguard its fledgling democracy. Finally, actors that emphasised ownership tended to not have a political project in mind but rather, expressed their desire to formulate their own reform strategy, regardless of what that might entail. These insights demonstrate the value of ascertaining how actors organise their experiences. Not only do

actors' understandings tell us something about judicial reform in Serbia, they also tell us about the character of European integration and the type of polity being constructed in Serbia. These bottom-up insights can complement the existing literature on state-building by demonstrating how actors tasked with state-building understand political projects and construct new governance structures in practice.

#### **7.4 Conclusion**

This chapter applied a CPE framework to explore how actors understand judicial reform. In doing so, it opened the 'black box' of a key EU accession reform related to the rule of law. By focussing on how actors understand and make sense of judicial reforms, it was shown that reforms are organised in Serbia in different ways. This differentiated organisation among actors is important because it shapes how reforms evolve within Serbia. Organisation also flows outwards as different understandings shape the way domestic actors engage with outside actors. This demonstrates that far from being a process of linear diffusion or rule transfer, EU accession reforms occur dialectically. They are shaped not only by the EU's accession strategy but, perhaps most crucially, by the way domestic actors understand and selectively implement different understandings in practice.

This finding is important as it has implications for the thesis' second research question. Analysis suggests that the effectiveness of the EU's new approach is contingent on the domestic environment through which EU reforms are mediated. This suggests that successfully constructing the rule of law and robust democratic institutions in Serbia is not only a question of 'good' EU strategy. It is also a question of ensuring reforms are coherently interpreted and accepted by domestic actors.

This chapter also suggested that if the EU is to be successful in constructing robust rule of law institutions, it must produce more localised forms of state-building. It must seek to avoid simply imposing external logics and understandings into the domestic context of Serbia and instead engage with the domestic dimension and support the co-construction of new institutions. The evidence presented here suggests that external reform actors need to pay closer attention to the organisational contexts, institutional limits and differences of opinion which need to be resolved within Serbia.

The findings of this chapter further echo the findings of chapter 6, where it was argued the EU's current approach remains exclusionary and has favoured the empowerment of complicit actors, at the expense of other contesting actors. While understandings of efficiency have found much external support, understandings of independence and ownership were less enthusiastically supported. This was visible in the prioritisation of the efficiency discourse among external actors. This was shown to be problematic in this chapter, as it reinforced blinkered reform processes and failed to generate broader support and legitimacy for reforms within the judicial sector. This reinforces the claim made earlier in this thesis that open dialogue between actors is important for generating legitimate and inclusive reform processes that do not exacerbate existing power imbalances between actors. It also shows that reforms need to support the construction of shared understandings that can enable the wider institutionalisation of the rule of law in practice.

The next chapter applies a CPE approach to anti-corruption policy in Serbia. It demonstrates how some of the general characteristics of semiosis highlighted in this chapter are also applicable in explaining the emergence of actors' understandings in a different policy area. For example, existing beliefs, organisational objectives and biases all play an important role

in enabling the *selection* of discursive *variations* regarding the fight against corruption in Serbia.



## Chapter 8: Understandings of (anti) corruption

### Introduction

This chapter analyses anti-corruption reforms in Serbia. It is the second of three chapters forming a comparative analysis of three key rule of law policy areas. This chapter addresses several specific questions: How do key actors construct an understanding of anti-corruption policy through semiosis and what informs these understandings? To what extent do the understandings of different actors converge, diverge or conflict and why? What do these understandings tell us about rule of law reforms in Serbia and European integration more generally? These questions help this chapter contribute to an understanding of the thesis' second research question by ascertaining whether the EU's new approach allows for multiple understandings of anti-corruption reforms to be reconciled and institutionalised. This chapter's analysis unfolds as follows.

First, drawing from the analytical framework already established, this chapter identifies instances of *variation*, *selection* and *retention*, which leads to the emergence of a dominant understanding. Its discursive *variation* of anti-corruption reforms emphasised the importance of administrative and institutional culture. In focussing on this type of culture, this discourse suggested that the target of anti-corruption policy should be individual officials whose actions and behaviour contribute to the creation of deviant institutional culture. The ideas of 'good governance' permeate the discourse. This *variation* was *selected* in relation to actors' objectives, identity, function and the feasibility of being able to address corruption by changing the behaviour and practices of individuals. Its *retention* occurred through socialisation processes, work routines and the construction of reform agendas that emphasised that corruption could be rectified by changing institutional routines and the

individual behaviour of public officials. It further emphasised the need for Serbia to improve the integrity of its public administration through the construction of 'good governance'. This understanding was prevalent among newly established domestic institutions in Serbia and a range of key external actors.

Second a number of divergent understandings, which contest this dominant understanding, are presented. These understandings all contest the idea that corruption can be reduced to an issue of culture and subsequently emphasise an alternative perspective of how anti-corruption policy can be constructed. In terms of *variation*, contesting perspectives emphasised the role of the economy, history and political elites as significant causes of corruption. The *selection* of these contesting discourses was shaped by the objectives, identity and organisation where an interviewee is based. Organisational routine, work procedures and processes of dialogue led to the *retention* of these understandings.

Third, some inferences are made about the state of anti-corruption policy in Serbia, the EU's attempts to combat corruption and the transformative impact of EU rule of law reforms. This section highlights how the presence of multiple understandings challenges the ability of the EU and allied actors to implement a cohesive reform programme in Serbia. This multiplicity of understandings is argued to reflect different visions of state-building in Serbia. While the dominant understanding —with its focus on good governance— reflects the EU's current neoliberal state-building paradigm, contrasting understandings suggest some actors seek a more radical change in politics to combat corruption.

This chapter concludes by reflecting on the degree of fit or contestation between the understandings of different actors and what this tells us about the effectiveness of the EU's approach for ensuring the institutionalisation of the rule of law in Serbia. In reflecting on this,

the conclusion substantiates an argument made throughout the thesis; that the EU has successfully secured the support of key domestic actors for its rule of law agenda in Serbia. This has successfully institutionalised key rule of law criteria, as reflected in the understandings of key actors. However, in prioritising a narrow understanding of the issue, the EU and government actors have not integrated legitimate divergent and contesting understandings that reflect a concern about the role that elites play in politics into their reform agenda. In Serbia, this has resulted in the construction of competing understandings and related political projects. Contesting actors can block the wider institutionalisation of the rule of law in practice and a process of dialogue is not initiated to overcome and resolve contestation.

### **8.1 Corruption, institutional culture and ‘good governance’**

The fight against corruption is an integral part of Serbia’s rule of law reforms. The European Commission defines corruption generally as the abuse of power for private gain (EUR-Lex, 2011). In the context of EU accession, corruption is spoken about in relation to democratic institutions and the need for reliable institutions ‘to underpin a coherent policy of prevention and deterrence of corruption’ (European Commission, 2015b). This means the type of corruption of concern to the EU is instances of state-level corruption and the use of public office for private gain. This concern has led to the establishment of several new anti-corruption institutions in EU Candidate States. In Serbia, the key institution in this area is the Serbian Anti-Corruption Agency (ACA) (Republic of Serbia Anti-Corruption Agency, 2017). A large part of ACA’s work is focused on trying to change Serbia’s administrative culture. It seeks to educate public officials, monitor their conduct and identify institutional gaps in the public administration that may enable corrupt practice. ACA’s strategy for fighting corruption is informed by a perspective that

corruption is a consequence of institutional culture. This perspective focuses on an individualistic understanding of corruption heavily associated with a neoliberal characterisation of corruption, which emphasises that competent public servants manage their affairs well; the implication being corruption stems from the incompetence of public officials (Hilgers, 2012, p.86). This characterisation represents corruption as an individual phenomenon that occurs in institutions which lack clear boundaries, adequate training processes and appropriate institutional norms. Strategies to fight corruption are subsequently focussed on changing individual conduct and instilling principles of integrity within institutions. As Ashforth et al. (2008b) note, this 'micro view assumes that bad apples make bad barrels' (2008b, p.678).

This understanding emerged in ACA's organisational setting through socialisation and was shared by several external actors that interacted closely with ACA. External CoE bodies, OECD, United Nations Office on Drugs and Crime (UNODC) and EU actors, were some of the most notable and central network actors that shared this perspective.<sup>83</sup> These actors in their official discourse advocated this individualist, institutionally bound and neoliberal perspective of corruption. For example, in its 2014 Anti-corruption report relating to corruption within the EU, the European Commission emphasised the importance of good governance and how 'improving the efficiency of public administration, especially if combined with greater transparency, can help mitigate corruption-related risks' (European Commission, 2014, p.3). In the first instance, external actors agreed that institutional culture is a significant cause of corruption. In the second instance, this understanding emerged in domestic institutions through interaction and socialisation with external actors. ACA's own views of corruption and

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<sup>83</sup> The close relationship between ACA and these organisations was captured in the network diagrams in chapter 6 and was also communicated directly by an interviewee at ACA. Interview with official from the Serbian Anti-corruption Agency, Belgrade. Interview conducted 2 March 2016.

its procedures were heavily shaped through EU TAIEX and Twinning programmes, as well as interaction with other external actors.<sup>84</sup>

In terms of *variation*, ACA argued that at the beginning of its work, corruption was not taboo in the public administration and that a sense of ‘appropriateness’ did not exist among individuals about the potential for practices to lead to corruption. They believed there was not enough discussion about the inherent ‘wrongness’ of engaging in corruption within public institutions (Abbott & Snidal, 2002, pp.s146–s148):

*In the beginning of the agency, public officials were not aware of their obligation. It was much more a case or there were more cases when they were in delay of submitting the reports. They didn’t understand their obligations. Now, the majority of them, they’re submitting their reports within the timelines. They know that they have a duty.* <sup>85</sup>

The *selection* of this discourse occurred for two reasons. First, its *selection* made sense to ACA in terms of its organisational remit. Most of ACA’s work is focused on changing mentalities and behaviour within the public administration. Unlike other justice sector bodies, ACA does not have the capacity to enforce compliance with an anti-corruption agenda through prosecutions. The idea that corruption within the government was a product of institutional conduct and individual behaviours, allowed ACA to make use of the tools it had at its disposal. It also gave new impetus to its mission to improve the integrity of public sector administration through the development of integrity plans (Republic of Serbia Anti-Corruption Agency, 2017). By focussing

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<sup>84</sup> The impact of TAIEX and Twinning on was communicated by the interviewee: ‘We are going to ask for EU experts and they will come. There are going to be some experts like peer reviews and workshops.’ Interview with official from the Serbian Anti-corruption Agency, Belgrade. Interview conducted 2 March 2016.

<sup>85</sup> Interview with official from the Serbian Anti-corruption Agency, Belgrade. Interview conducted 2 March 2016.

on the administrative culture components of corruption, ACA could make best use of its tools such as public education schemes and 'soft' methods of auditing. This was visible in interview responses where ACA staff spoke about the importance of constructing robust legal frameworks that prevented deviant behaviour and educational programmes that stigmatised corruption. Making sense of corruption as an outcome of administrative culture reinforced the view of the interviewee that ACA's existing focus on changing the mentalities and behaviour of officials would subsequently change collective administrative culture and therefore reduce corruption:

*That means the agency has competencies to monitor the implementation of the national anti-corruption strategy, dealing with conflict of interest cases, detection and resolving cases of conflict of interest, controlling the asset and declaration operations of public officials, dealing with different educational issues and with the prevention of sector corruption, this includes also analysis of draft laws and laws, integrity plans, monitoring of implementation of integrity plans, training and education of public officials, primarily designing the programmes and tailor made trainings, mostly related to ethics and integrity.*<sup>86</sup>

*Selection* also occurred because ACA understood reforms sequentially. It was argued that tackling the culture of corruption would hopefully reduce the number of cases sent to the State Prosecutor and other enforcement bodies, thereby reducing their workload and increasing their efficiency. ACA believed that if they could change the administrative culture and the behaviour of public officials, corruption would become less widespread. In this sense,

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<sup>86</sup> Ibid.

a focus on culture allowed ACA to make the most of its institutional tools and support other justice sector bodies in their fight against corruption.

*The fight against corruption is a strategic priority of the government and the whole country. We all are working together, we are all on the same page. Judiciary, Prosecutors Office, national assembly, NGOs- who we cooperate with in the prevention sector, a very important part of our work.* <sup>87</sup>

Another reason for ACA's *selection* of 'corruption as institutional culture' lied in its extensive socialisation with external actors. In terms of the socialisation dynamics that were explored in chapter 6, ACA had close ties with several actors. Domestically, this included the Serbian State Prosecutor, Misdemeanour Courts and the Ministry of Justice. In addition to these actors, ACA socialised extensively with external actors that included the OSCE, CoE anti-corruption bodies and the UNODC. The socialisation of ACA with other actors appeared to shape its understanding of corruption issues. ACA saw itself as part of a coalition of international actors engaged in the fight against corruption. ACA noted that it was a member of various anti-corruption networks and was keen to emphasise its extensive interaction with international bodies in the fight against corruption. The concept of corruption as culture resonated with objectives set by external actors and its *selection* allowed ACA to meet the expectations of external actors, construct a dialogue with these actors and allowed ACA to be viewed positively by these actors. It also helped reinforce the identity of ACA as an emerging institution that could play an important role both nationally and internationally in the fight against corruption. This socialising effect and the consequences of European integration on the identity formation and

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<sup>87</sup> Ibid.

learning processes of domestic actors is well documented by social constructivists (Checkel, 1999, pp.548–551). For all these reasons, the cultural *variation* was selected:

*I believe you are aware of GRECO. So, in that sense we are participating in all kinds of professional reports and of course regulations... We are cooperating and members of Serbian delegation in GRECO [CoE], in the working group for prevention, we are also participating and are national coordinator for the OECD anti-corruption network... we all want to see the system is functional.*<sup>88</sup>

*Retention* occurred through the construction of anti-corruption programmes that focussed on the proposed cultural roots of corruption. ACA's evaluation procedures and work processes were influential in reinforcing the notion that corruption was largely an issue of institutional culture among ACA staff. By making sure public officials become familiar with the practice of openly declaring assets and conflicts of interest, ACA hoped that new procedures would change institutional conduct and disincentivise public officials from engaging in corrupt practice. ACA hoped that the administrative culture could be changed by attaching penalties to corrupt practice and creating taboos that discouraged appropriating public office for private gain. These fixes and recommendations reflect the belief that corruption is a product of institutional culture and can be rectified by changing the practice of individuals within institutions. This is an individualist as opposed to structural perspective of corruption, associated with a neoliberal or even libertarian view of the state (Bedirhanoğlu, 2007, p.1241; Hodgson & Jiang, 2007, p.1047):

*According to the new strategy, there will be changes in our law and the methodology will be obligatory meaning that each proposer of the law is to be obliged to apply our methodology when drafting the law. Then, they will send to us such a report on risk of*

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<sup>88</sup> Interview with official from the Serbian Anti-corruption Agency, Belgrade. Interview conducted 2 March 2016.

*corruptions and then we are going to check that... so this is a self-estimation of institutions, so each institution has to fulfil questionnaires and detailed models, there are several areas like public procurement area, HR area, integrity area. We are also teaching in a governmental institution tasked with training civil servants.*<sup>89</sup>

The understanding of corruption as a product of culture emphasised the importance of institutional culture. This perspective understood corruption to arise when institutions lack a sense of appropriateness and individuals within institutions make a conscious *choice* to engage in corruption. This perspective was also reflected in the way that several other actors, primarily external actors, understood corruption and constructed an anti-corruption paradigm in Serbia. These actors emphasised ‘good governance’. Good governance is commonly associated with neoliberal concepts of the state and its associated managerial issues (Joseph, 2013, p.44; Mungiu-Pippidi, 2015). Analysing how actors construct understandings of corruption demonstrates the underlying political project that informs an imaginary of this key rule of law issue.

The organisational setting of these actors and the identification of the ideas informing their perspective on corruption, explains why their work to tackle corruption focused on the relationship between culture and corruption in Serbia. The promotion of good governance has traditionally been associated with a neoliberal discourse of state efficiency and restructuring the state in line with ‘entrepreneurial’ values (Mungiu-Pippidi, 2015, pp.10–12). In this case, good governance advocates emphasised the need to change the conduct of public sector officials to better reflect values of integrity and accountability.

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<sup>89</sup> Ibid.

The OECD is one important actor that articulated good governance principles through its public administration reforms in Serbia. These good governance principles reinforced the importance of integrity and asserted the cultural origins of corruption. In terms of *variation*, this was clearly visible in the way the OECD structures its public administration and anti-corruption programmes. Programmes such as OECD SIGMA aim to combine strategies for reducing corruption with efforts to improve public administration practice and efficiency in accession countries like Serbia. This was visible in the way the OECD understood current administrative deficiencies in accession countries like Serbia to be a consequence of culture and the mindset of individuals within institutions:

*When we say to them that appointments have to be objective, they look at you and say I have to get my son a job. It's my duty as a father to make sure that my family is looked after. If I don't do that [get my son a job], I get no respect from my family or my peers. People look at me and say, who is this weird man who won't look after his family? That's the cultural thing. Again, it won't be broken down over night.<sup>90</sup>*

This *variation* also hints that the interviewee in question believed that individual attitudes to corruption were almost shaped by national specificities. This ethnocentric perspective would constitute a significant cultural bias and its validity has been dismissed in the academic literature (Gupta, 1995, p.397; Harrison, 1999, pp.211–212). The interviewee's response however hinted that it may be a factor informing their judgement and if this were the case, it should be considered a significant cognitive bias.

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<sup>90</sup> Interview with regional expert, OECD SIGMA, Paris. Interview conducted 13 June 2016.

The *selection* of good governance as a fix for corruption occurred because good governance concepts underpinned much of the OECD's existing work. Framing corruption in these terms was useful as it appealed to existing understandings among OECD employees and allowed new anti-corruption initiatives to be integrated within existing OECD programmes. *Selection* also occurred because it helped support wider OECD objectives in Serbia, as well as internationally where the OECD has been promoting good governance in tandem with globalisation since the early 1990s (Patomäki, 1999). Addressing individual conduct and mismanagement that contributed to cultures of bad governance was perceived to help 'improve the governance and management' in accession countries like Serbia (OECD, 2017). Changing administrative culture and discouraging corruption was further perceived to improve the efficiency and integrity of public administrations and support EU institution building in Serbia. As in the other cases of *selection* examined thus far, we find further support for the notion that organisational function, including constructed objectives and interests, determine the *selection* of *variations* that plausibly correspond with existing ways of working, interests and beliefs:

*SIGMA was set up about 20 years ago. The guy who came up with the idea felt that at the time they knew there was a movement for countries to accede to the EU, the opening up of the late 1980s of the CEE. They knew that the administrative systems were completely incapable of coping with the challenges of accession. And from what I understand, as I wasn't involved at the start, the EU Commission was struggling as it wanted to bring the countries in but they weren't at a stage where they could be brought in... We knew there had to be ownership, so we had to create the change and partnership with these people.<sup>91</sup>*

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<sup>91</sup> Ibid.

In terms of *retention*, the OECD sought to construct good governance through its various reform programmes. These were designed to change the administrative procedure and practice of public officials, while reinforcing the importance of good governance principles among OECD staff. One interviewee gave an example of how reform programmes could help reinforce the notion of good governance both externally and internally within the OECD. They argued that working in partnership with domestic actors towards good governance principles not only disseminated them and embedded them locally; it also reinforced the good governance agenda among OECD staff:

*But what you hope is that sometime in the future those people will be in a position of power again and secondly, if you have a local champion for a number of years, they can do far more in terms of persuading colleagues than you can as an outsider. So that's why we focus on key individuals. Some have become local experts for us after.*<sup>92</sup>

Another key external actor that emphasised the cultural determinants of corruption and emphasised good governance in its anti-corruption strategy was the CoE. The CoE has two primary anti-corruption bodies, the Group of States Against Corruption (GRECO) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). The perspective of MONEYVAL will be explored in section 8.2.3 as its understanding of corruption differed from GRECO.

GRECO's discursive *variation* had two components. First, it acknowledged that effective legal frameworks and government structures must allow law enforcement bodies to pursue and prevent corruption. However, this interviewee spent more time communicating the importance of the second component, institutional culture. The interviewee emphasised the

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<sup>92</sup> Ibid.

importance of GRECO's principles and the importance of embedding these principles within public institutions:

*And the key thing is that more and more, is not only legislation and implementation but location and culture. I would say that is key and maybe we need to be working a bit more and I think about anti-corruption institutions in a number of countries that have been put together recently and are starting to integrate anti-corruption programmes in the framework of civic and ethical education, to integrate this kind of approach because what I see in many Balkan or Mediterranean countries is a different [changing] culture.<sup>93</sup>*

This discourse was *selected* based on GRECO's previous experiences of fighting corruption. Specifically, GRECO sought to address deficiencies in the CoE's anti-corruption approach, which the interviewee argued had overlooked the importance of culture in the past. In overlooking culture, they argued that the CoE had placed too much focus on robust legal frameworks and formal institutional changes. This, they argued, had led to the construction of institutions that had the capacity to fight corruption, but in practice were not underpinned by corresponding institutional norms. Lesson learning is a well-documented and significant factor informing organisational action (Levitt & March, 1988). Lesson learning was visible in this case and had reshaped the way GRECO approached the problem of corruption. The interviewee gave an example of how lessons had been learned from previous enlargement cases:

*[Things changed] Probably 2007 when Bulgaria and Romania joined and they had the verification mechanisms. There was a document after that which said enlargement is not only about peace and democracy in Europe but also about making it workable and*

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<sup>93</sup> Interview with official from GRECO, Strasbourg. Interview conducted 3 June 2016.

*our capacity to accept certain practices and grow in a positive way rather than decrease our standards by taking more on board.* <sup>94</sup>

This *selection* demonstrates that actors actively draw lessons from previous experiences and apply these lessons to try and best achieve current objectives.

*Retention* of this variation occurred through changes in GRECO's work practice. These changes better reflected its focus on culture. This is visible in the new dialogue, consultation and evaluation procedures it holds with accession countries like Serbia. These procedures are increasingly designed to communicate at the country level the importance of reforming administrative culture. In carrying out evaluation processes that emphasise administrative culture, the notion that culture matters is reinforced among CoE staff:

*I think our evaluation process is key [for preventing corruption]. Our cooperation with institutions is key as we carry out visits to see compliance so whilst we use statistical data, we need sources of information from site visits and that's what we, the EU and OSCE have with the local offices.* <sup>95</sup>

The final actor that reinforced the corruption as culture paradigm was the EU. The EU is taken as an aggregated actor, meaning that several EU actors communicated this understanding. These actors were EU Commission officials, the EU Delegation in Serbia and MEPs. Despite working for different institutions within the EU, these actors shared the same perspective on corruption. This is because all actors were working towards a common objective: the successful establishment of the EU's rule of law agenda in Serbia and its successful European integration.

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<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

This demonstrated the important role that ‘dominant coalitions’ within organisations play in setting shared objectives and shaping understandings (W. R. Scott & Davis, 2015, pp.186–188). For example, the EU delegation in Serbia spoke about how a ‘culture’ of corruption permeated politics in Serbia:

*Politics in Serbia is quite corrupt, there needs to be a new political order from the top down. Civil society can only assist, it cannot make the changes occur at the top of the political structure. This is important because rule of law must come from the top down. The culture among political elites needs changing. There needs to be a proper cleaning of the administration.*<sup>96</sup>

*Selection* of this variation was reinforced by a sense of group-think within the different EU bodies engaged with Serbia and other accession countries. Different actors within the EU reiterated the idea that corruption had cultural roots. This led to the establishment of a coalition of actors who shared a common understanding. This understanding was further reinforced by socialisation between these actors (Sabatier, 1988, pp.147–148). A second cause of *selection* was the compatibility of this corruption understanding with the EU’s broader state-building agenda in Serbia. Addressing the cultural causes of corruption was seen to meet the EU’s long-term objectives of constructing liberal democracy in Serbia. *Selection* was thus objective orientated. This was reflected in the multiple responses of EU actors that linked cultures of corruption to accession reforms and state-building more generally. All these responses demonstrated a clear reference to the idea that corruption was a product of institutional culture and as such, anti-corruption strategy should address these cultural deficiencies within the

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<sup>96</sup> Interviewee A, EU Delegation to Serbia, Belgrade. Interview conducted 7 March 2016.

Serbian public administration by changing the behaviour of individual public officials that helped construct this culture:

*The fight against organised crime and corruption, it's everywhere and it's really necessary to change everything, and to even change the mind-set and it is a very difficult issue to achieve this in these negotiations.*<sup>97</sup>

*Corruption and organised crime are widespread in the region... [there is a] need to build a track record on investigations... and the need to coordinate and monitor the full implementation of the anti-corruption strategy in all key institutions*<sup>98</sup>

*Retention* occurred through the modification of the EU's accession approach. This modification concerned a change in procedure and practice. These changes increasingly sensitised EU officials to the importance of administrative culture and enlargement evaluations were increasingly focussed on whether EU officials had observed a change in Serbia's administrative culture. DGNEAR has prioritised the need for Candidate States to construct a track record of change to prove that the desired change in practice had occurred:

*That there is ownership of the reforms that are being driven through and that [among] Serbian judges and citizens there is an actual interest for them to see what is going on and the third pillar is we need to see track record. Where there are investigations, where there are cases of high level corruption, here again it helps us in entrenching these reforms.*<sup>99</sup>

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<sup>97</sup> Interviewee with MEP, EU-Serbia Stabilisation and Association Parliamentary Committee (SAPC), Brussels. Interview conducted 14 June 2016.

<sup>98</sup> European Parliament resolution of 4 February 2016 on the 2015 report on Serbia (2015/2892(RSP)). Transcript provided by the office of David McAlister as representing his views on rule of law reforms in Serbia.

<sup>99</sup> Interviewee A, DG NEAR, Brussels. Interview conducted 6 June 2016.

In sum, a dominant understanding implied that corruption is derived from poor administrative culture. This understanding linked culture, institutions and individual conduct together to explain the causes of corruption. It can thus be characterised as a distinctly neoliberal understanding of corruption. This is reflected in the construction of anti-corruption strategies that reinforce this focus on the individual level conduct of officials, who are the directors of administrative culture. For this reason, focus is placed on changing their behaviour and practice by introducing principles of good governance. In the Serbian context, the dominant understanding of corruption, much like the dominant understanding of judicial reforms, is permeated by a neoliberal discourse and promoted by actors who hold similar views and objectives. While Serbia retains its own specificities, the actors promoting this dominant understanding, such as the OECD and EU, have an international agenda that seeks to promote neoliberal governance globally (Jessop, 2002, pp.457–459). This has also seen these actors pursue similar forms of state-building across South East Europe where good governance has played a central role in reinforcing the EU enlargement process (Chandler, 2007, pp. 606–607).

The following sections outlines how divergent and resistant strategies contest this dominant understanding. These contrasting understandings subsequently inform a different anti-corruption perspective that focuses on the economic causes of corruption, the role historical legacies play in reproducing corruption and the role that Serbian politics plays in proliferating corruption.

### **8.2.1 Contestation I: The absence of a systemic approach to corruption**

Actors that emphasised a relationship between culture, institutions, public officials and corruption in the previous section, did show an awareness of the political economy of Serbia

and the role it plays in producing corruption. However, they emphasised it far less than contesting actors, who saw it as the key factor explaining corruption. Furthermore, the previous actors emphasised the need for an anti-corruption strategy to change cultures of governance and reflect good governance. Unlike the actors in this section, they emphasised less the need to address both the economic and political causes of corruption. The following section explores these alternative understandings and their construction.

In terms of economic causes, a *variation* emerged that emphasised the role economic inequalities and underdevelopment played in proliferating corruption. This perspective corresponds with a structural view of corruption. Such a view focusses on the material circumstances, relationship between the formal and informal aspects of the economy and social relations that produce systemic forms of corruption. Such perspectives are well articulated in the literature concerning transitioning economies and their tendency to construct informal rules and practices to overcome resource limitations and access issues (Jancsics & Jávör, 2012; Wallace & Latcheva, 2006).

An interviewee from a key public institution argued that external actors often failed to understand the economic factors that allowed corruption to proliferate. Consequently, anti-corruption strategy and efforts to fight corruption failed to address the underlying causes of corruption. This interviewee further took issue with corruption being reduced to dimensions of culture, as they argued this overlooked the actual economic causes of corruption:

*Corruption is not a 'Serbian value'. It emerges in an environment of limited resources and institutional inefficiency. This is even visible in the salaries of officials and doctors.*

*As pay is low, it creates parallel work and parallel financial systems to compensate for poor wages.*<sup>100</sup>

By disputing the idea that corruption was a ‘Serbian value’ and placing emphasis on the economic conditions and social structures that allowed corruption to persist in transitioning contexts, this interviewee sought to challenge the notion that corruption had cultural causes. Instead, they focussed on how compensation for poor wages and resource limitations in the public sector encouraged informal work practices and corruption to proliferate. These causes of corruption have been documented in other transitioning contexts and suggest that Serbia is not unique (Graf Lambsdorff, 2005; Sandholtz & Taagepera, 2005). Transitioning countries like Serbia often struggle to erase the embedded norms that sustain economic structures and the interviewee communicated their support for this perspective. This understanding contrasted with the view that anti-corruption policy should target a change in administrative culture. It demonstrated resistance to the institutionalisation of anti-corruption policy that emphasised administrative culture and advocated an understanding that considered the contextual specificities and material impediments to reforms in Serbia.

The *selection* of this divergent understanding was reinforced by the interaction of this interviewee’s institution with the EU and other external actors in Serbia. Past experiences had reinforced the belief that the EU does not have the tools in its rule of law evaluation process to properly account for the economic causes of corruption identified by the interviewee. The interviewee criticised the entire enlargement reporting process and argued that the type of evaluations favoured by the EU and other international actors did not take enough time to

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<sup>100</sup> Interviewee A, State Ombudsman, Belgrade. Interview conducted 29 April 2016.

understand how issues of corruption are inexorably linked to broader economic structures in Serbia, nor how these shape the actions of public officials. Past experiences and ongoing engagement with the EU accession process had at times been negative for this actor and this made them sceptical of externally derived strategies of addressing corruption. Retrospection is thus crucial in this case of *selection* (K. Weber & Glynn, 2006, p.1646).

*It is difficult for the EU to understand the complexity of factors that lead to issues like corruption. It relies on the screening reports and sends experts here to submit progress reports. These reports are often foggy and vague and do not say much about the issues. It is literally a sentence on our institution in the progress report and when discussing specific issues like corruption, maybe a paragraph or so. How can you summarise everything in such little space?* <sup>101</sup>

*Retention* occurred through the construction of work processes and reform agendas that tried to prioritise within-institutional knowledge and their organisation's subsystem over the recommendations of external actors (Barzelay & Gallego, 2006, pp.547–548). These work processes involved the formulation of internal institutional practices that while remaining complicit with accession reforms, tried to acknowledge and engage with the causes of corruption identified by the interviewee. In constructing its own reform agenda, this actor still engaged with the EU and other external actors. However, as they believed external actors did not adequately understand how corruption affected their organisation's work, they did not substantively integrate external recommendations into their work practice. This resulted in the partial institutionalisation of the EU's agenda but primarily resulted in the internalisation of the Ombudsman's own agenda. The actor sought to respond to the

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<sup>101</sup> Ibid.

challenges of corruption by addressing what they perceived to be the root causes of corruption. This meant that their own anti-corruption practice focussed on improving the capacities of their institution and where possible, tried to put forward their own plans for addressing corruption and other rule of law issues in Serbia. This was further visible in the interviewee's call for the 'de-expertisation' of their own institution from external actors.

*There is also an argument for the de-politicisation and de-expertisation as a means to save Serbia. OECD SIGMA, OSCE, UNDP, there are too many projects and institutions are often overwhelmed with too much information that is sometimes conflicting.*<sup>102</sup>

The perspective of this actor highlights a recurring tension in the EU's rule of law agenda. The presence of different understandings demonstrates the difficulty in ensuring the cohesion of domestic reforms in Serbia. Despite extensive socialisation which has constructed a dominant reform paradigm on many issues, some actors still take issue with the EU's state-building approach and the perceived lack of ownership or input provided to domestic actors. This is an important point as it has been argued that 'institutions of governance can only be effective and legitimate if people have a sense of ownership' (Clements et al., p.51). As the EU's own reforms do not resonate with the way in which some actors experience corruption in Serbia, their compliance with the EU's reform agenda is less likely and the possibility for mediating contestations and constructing shared understandings reduced. Consequently, the institutionalisation of the rule of law in practice is partial.

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<sup>102</sup> Ibid.

### 8.2.2 Contestation II: Underestimating the challenge

A second alternative understanding emerged that emphasised how the current anti-corruption strategy in Serbia did not fully address the historical legacies that had contributed to corruption. This perspective put forward the view that the historical legacies of conflict had made corruption worse. Consequently, anti-corruption strategy should consider these issues and seek to address the institutional structures that had emerged in the post-conflict era. While this perspective does emphasise the importance of culture, it can be considered a contesting understanding because its advocates felt that current anti-corruption strategy did not consider the persistence or gravitas of historical legacies in domestic institutions. Such perspectives put forward by the interviewees in this section resonate with a body of literature highlighting the difficulty of constructing democratic institutions and fighting corruption vis-a-vis the post-conflict legacies in the Western Balkans (Groß & Grimm, 2014, p.916; Le Billon, 2008).

This discursive *variation* emphasised how historical legacies had set in place specific path-dependencies that inhibited the fight against corruption. The interviewee emphasised how the conflict of the 1990s had two consequences. First, it had disastrous economic consequences. The years of sanctions, slow economic growth and depletion of the public sector had in their view, significantly reduced the capacity of Serbia's public sector to fight corruption. Second, the conflict and its consequences had affected the mentality of Serbian public officials and had made them less inclined to challenge existing organisational routines that could allow corruption to proliferate:

*I think very often when they [the international community] analyse things, it's like a switch. The war is over, you press the switch and everything is nice and shiny. Well it's not. I think the turbulence that conflict and 10 years of sanctions have caused in this*

*region are underestimated by the international community in general... It's created resistance [to change], bad business practices, it's created corruption, it's created all the negative things that any war in any country will create by default.*<sup>103</sup>

While this discourse highlights the plausible relationship between culture and corruption, its emphasis on historical legacies was notably absent from the discourse of those actors profiled in section 8.1. Conflict in the Western Balkans had produced corruption in many ways, not least through the path dependency of power relations that favour political elites and allow them to construct sophisticated patronage networks (Belloni & Strazzari, 2014; Brinkerhoff, 2005, p.6) The interviewee's communication of this perspective suggests that among domestic actors, the consequences of conflict are still influential in shaping how they organise their experiences.

*Selection* of this variation occurred because it reinforced the interviewee's existing experiences, prior-held beliefs and internal narrative about the reform process. The interviewee in question had worked within a major international organisation before taking up their current position in the Serbian public administration. Their experience of how international organisations worked, coupled with their view of the historical legacies affecting the Serbian public administration, reinforced their belief that current anti-corruption reforms would fail if they did not sufficiently address post-war legacies. For the interviewee, a long-term perspective and strategy was needed. The fight against corruption to them was part of a long-term state-building process that needed to focus not only on institutional reform but also on economic growth and social change. While they believed EU accession could support

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<sup>103</sup> Interviewee A, Serbian Ministry of Interior, Belgrade. Interview conducted 7 March 2016.

this transformation, they emphasised the process would take far longer than the EU and other pro-reform actors had anticipated:

*And I think this is something where I blame the international community and I think blame is possibly too strong a word, but I certainly think the international community thinks things can be fixed in a click and they just cannot. You can counter that argument and say but the war stopped in 2000 so we've been waiting for it for 15 years. To which the government will then say well yes, but we haven't had any real change up till 2014. There's been lots of talk but no real change.*<sup>104</sup>

*Retention* of this perspective was reinforced through engagement between colleagues within the interviewee's institution. By increasing the amount of horizontal cooperation between ministerial staff, the interviewee hoped their organisation would be able to contextualise the EU accession process in a way that also considered the difficult historical legacies inherited by their institution. This process of *retention* required translating EU expectations into achievable objectives and relating general reforms to specific institutional challenges. By relating reforms to challenges perceived from within their institution, the interviewee sought to ensure that reforms engaged with historical legacies. The interviewee argued that constructing a dialogue with colleagues around these historical legacies helped challenge the more enduring patterns of administrative practice that caused corruption:

*You've had 10 plus years of nothing basically happening. The degradation almost of a system. And now we're trying to build it up but you're not building it up from scratch. Which would be much easier. You are rebuilding it with lots of [historical] weight and that's more difficult. You have an embedded culture and practices, practices that people are not changing. Viewpoints, culture loosely defined, it includes all of these things. So, in order to change all of that I think it will be a process of new legislation enforcement,*

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<sup>104</sup> Ibid.

*a process of education, communication, awareness raising and I think the biggest change factor will be the EU negotiating process because it will enforce change.*<sup>105</sup>

For this interviewee, internal experiences and institutional legacies shape how their organisation understood the issue of corruption. Serbia's status as a transitioning country had for them constructed networks of patronage and informal norms that allowed corruption to persist, despite the country undertaking substantive reforms to address corruption (Kleibrink, 2015). The limited impact socialisation had on changing this understanding is interesting considering the Ministry of the Interior has been cooperating extensively with a range of international organisations since 2002. In this case, the embedded institutional logics and historical practices of the institution remained persistent. This implies that socialisation has clear limits for diffusing new ideas in a highly historicised environment and in this case has struggled to change core policy beliefs (Sabatier, 1998, pp.104–105). The salience of this contesting understanding and its grounding in historical legacies are issues that the EU's current approach need to consider. By emphasising an individualistic understanding of culture, the dominant understanding resonates poorly with contesting actors. This results in resistance to reforms, the construction of alternative understandings and limits the institutionalisation of anti-corruption reforms in practice.

### **8.2.3 Contestation III: Superficial compliance**

A third notable contesting *variation* of anti-corruption discourse concerned the relationship between political elites and corruption. This discourse was particularly prevalent among civil society actors who considered the government's engagement with anti-corruption reforms

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<sup>105</sup> Ibid.

and EU reforms generally as a superficial process. Part of the reason these actors took issue with the current anti-corruption agenda in Serbia was because they defined corruption differently. MONEYVAL for example is an institution whose remit is focussed on addressing organised crime, money laundering and the relationship between organised crime and corruption (Council of Europe, 2017). This means that the focus on administrative culture embodied by the EU's understanding of corruption and subject to the programmes of other organisations like the OECD, is not the focus of their work. Similarly, civil society actors were focussed on salient cases of political corruption, which the EU may be less eager to address in its definition of corruption for fear of politicising the issue. This demonstrates how some conceptualisations and social constructions are difficult to reconcile through learning and socialisation (May, 1992, p.334). The actors in this section emphasised their feelings of exclusion from the current reform process and that their recommendations were frequently ignored. This context of exclusion reinforced their contesting perspectives.

This *variation* emphasised that political networks of patronage were a significant cause of corruption. Interviewees emphasised how corruption would continue if existing political elites continued to monopolise politics. While one interviewee did concede that public institutions should strive to fight corruption and that culture within these institutions played a role, they emphasised the need to address issues such as covert privatisations and political patronage networks. In their view, these were not being considered or significantly addressed by the government or the EU through current reforms:

*Anti-corruption measures are only adopted as some sort of declaration that's nice to present to the public or the EU but, it is not seriously treated by politicians when making*

*concrete decisions and that's why a huge number of strategies from the measures aren't implemented.*<sup>106</sup>

*Selection* of this view was reinforced by the interviewee's interaction with government actors and their frustrated attempts to tackle the issue of corruption in Serbia over many years. Current events reinforced their pre-existing beliefs about Serbian political elites and the ineffectiveness of the EU to push these elites to reform. They believed that current anti-corruption reforms would not push political elites to tackle high-profile cases of corruption.<sup>107</sup> Having identified the socially systemic nature of corruption and its facilitation through enduring networks of political patronage, this interviewee argued that the focus of current reforms on institutional reform and the prosecution of small-scale corruption cases did not go far enough:

*But still, they [the EU] are failing to spot problematic issues like dubious privatisations, which are really a problematic thing in Serbia. They are not addressing that issue as it is not part of the *acquis*.*<sup>108</sup>

Relating contemporary reforms to previous experiences further demonstrates how actor semiosis is inclined to construct understandings that reinforce their existing internal narratives of policy reforms (Mumby, 1987, p.118). This demonstrates how existing biases, which are shaped by previous experiences, determine the way that actors engage with contemporary reforms.

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<sup>106</sup> Interview with head of office, Transparency International, Belgrade. Interview conducted 5 May 2016.

<sup>107</sup> For evidence on the difficulties of establishing anti-corruption agencies and policy in poorly governed states, see Meagher (2005).

<sup>108</sup> Interview with head of office, Transparency International, Belgrade. Interview conducted 5 May 2016

*Retention* was visible in the way this actor's organisation sought to construct their own external evaluations of corruption in Serbia. This actor's organisation did still liaise with EU experts. However, they also contributed to the construction of independent reports. These reports encouraged the *retention* and reinforcement of an alternative anti-corruption strategy focussed on challenging political elites and identifying their role in corruption cases. This codified their understanding and helped increase the salience of an alternative narrative in political and public discourse. This narrative emphasised the need to prevent political corruption and large-scale corruption:

*For example, if you look at action plan on Chapter 23, it is not very ambitious, we criticise it a lot. Even if fully implemented it wouldn't resolve some big problems. It would help things improve but some big problems would not be tackled. Furthermore, politicians quite often abuse EU accession.* <sup>109</sup>

Another civil society actor put forward a similar understanding of corruption as the previous actor. This demonstrates the emergence and presence of a substantive bloc in Serbia that continues to understand corruption in relation to the country's political elites. These actors are hostile to the EU's engagement with elites and instead argue that corruption will not be eradicated unless a profound political change occurs. This is visible in the *variation* of this interviewee. Like the previous interviewee, they focussed heavily on the role political elites had played in proliferating corruption, particularly in terms of their misuse and abuse of the country's privatisation process. <sup>110</sup> Their anti-corruption perspective subsequently

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<sup>109</sup> Ibid.

<sup>110</sup> On the relationship between illiberalism, corruption and privatisation in Serbia, see: Hadžić (2002); Gould and Sickner (2008).

emphasised the need to prosecute political elites and better regulate the privatisation of public assets:

*These 24 privatisations were large and had a huge effect on the Serbian economy. They went wrong because of the systemic corruption, which is much harder to battle than small time corruption. There was a firm promise and the PM was adamant it would be resolved. And not even one was resolved.... I think the corrupt system just changed the actors. The new guys took the places of the old guys that were conducting corruption. The new guys basically figured out more discreet ways of hiding what they did, that's basically it.* <sup>111</sup>

The *selection* of this variation occurred because it reinforced the actor's previous experience of politics in Serbia and their own interaction with politicians. The actor's own understanding of anti-corruption was thus selected and integrated into their existing narrative about the state of Serbian politics. The interviewee referred to how previous politicians and current politicians had engaged in corrupt practice. They also outlined how their own organisation had been demonised and attacked by successive government for trying to uncover and report on cases of corruption (Spaic, 2016). Previous experiences and pre-conceived notions of the political landscape in Serbia thus played a significant role. Anti-corruption strategy promoted by the government was thus seen as ineffective given that the politicians promoting anti-corruption measures were perceived to be corrupt:

*I'm not idealistic about that, I've been a journalist here since the beginning of Milošević's rule. I'm very pragmatic about these things. The corruption is so systemic that business people in this country are put in a position where they can't make money if they don't*

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<sup>111</sup> Interview with a journalist from the Centre for Investigative Journalism (CINS), Belgrade. Interview conducted 22 March 2016.

*engage in some form of corruption. And then the economy is so weak, that the only major and only sources of money is the state and you run on state contracts. And small businesses are dependent on state contracts. And then the political parties in the weak economic system need money and where can they get it from?... It's a clientelistic system now, not a normal economy.*<sup>112</sup>

*Retention* occurred through this interviewee's wider work as an advocate for greater transparency in Serbian politics and work as an investigative journalist. The integration of an anti-corruption agenda into these existing work practices allowed them to further link their understanding of corruption with their ideas about politics. The subsequent promotion and articulation of an alternative political agenda helped reinforce their belief that the fight against corruption required challenging the current political system, rebuilding the economy and undertaking a deeper process of democratisation:

*The pre-requisite for everything here is for the country to economically prosper. The other thing is the judiciary, but I don't know how it will be fixed. One of the major issues for being a Member State is a stable economy. It makes sense with democracy. Some rich countries aren't democracies, but no poor countries are a democracy. You need a lot of money to be a democracy... if you don't have a population prepared to engage collectively and confront corruption and things like that, it's hard to expect a decisive and significant change in society. It's a problem, that's what I'm working on and we try and do in this little centre. We try to bring important hidden facts to citizens.*<sup>113</sup>

A final interviewee supported this perspective that the interests of political elites sustained corruption. As per the other actors, they also called for an anti-corruption strategy that

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<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

focussed on preventing politicians from abusing office for private gain. Interestingly, MONEYVAL as an international organisation, held a rather different view than the other international organisations. This is a result of their focus on the relationship between organised crime and corruption, which is less emphasised by other actors. It is also a result of the interviewee's own perspective and the personal connections they had with the Western Balkans region. This demonstrates that organisational contexts are fluid and dynamic. Whilst an interviewee might not speak for all their colleagues, their perspective suggests that at the very least, organisations are not monolithic structures and that individual experiences shape the work of organisations and help construct collective understandings.

In discussing the EU's current anti-corruption strategy and Serbia's compliance with it, they highlighted how the EU's current approach overlooked the systemic nature of corruption and did not address the issues they perceived to be important:

*In my opinion, the EU has become so concerned with stability in the region that it just wants things to go ok and things to look good on paper. So, you can trade these rule of law issues for other political issues, normalise relations with Kosovo etc.... you aren't encouraging the people who control the system to fundamentally change their attitude towards the system and because of that you are really going to struggle to change the system level.*<sup>114</sup>

*Selection* in this case occurred due to the interviewee's own personal experience being from and working in the Western Balkans region. This demonstrates how the identity of an

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<sup>114</sup> Interview with MONEYVAL official, Strasbourg. Interview conducted 3 June 2016

individual, both personally and professionally, can shape their susceptibility to specific discursive variations of EU reform narratives:

*I'm not far from the common cultural or legal or any other heritage we share there [the Western Balkans]. It smells the same if I may use the term. It was challenging as I came from the CoE to the region to work in the field and implement technical assistance in the field. I must say I have mixed feelings in the end there are some positives and negatives.<sup>115</sup>*

Another factor which determined their *selection* was the experience they had working to implement reform programmes in Serbia and elsewhere in the Western Balkans region. They had seen the limited impact anti-corruption reforms have without appropriate political support or without a focus on changing the systemic nature of political corruption. This reinforced their perspective that reforms would only be effective once they were systemic in nature and moved beyond a focus on public administration culture to address issues of clientelism:

*We had a good experience with some technical assistance, which involved some institutions that I can't say are underdeveloped, but still the system overall, there you may identify issues which are system wide in general. Not at the level at the system functions itself. But of course, this is apparently the situation with more or less the whole region and when I say region I include Croatia, which is an EU Member State, so I don't think it's much difference in that sense.<sup>116</sup>*

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<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

*Retention* of this understanding was limited due to the remit of the interviewee's organisation. An alternative anti-corruption strategy to that of the EU was not implanted in practice by the interviewee's organisation. Consequently, wider retention was limited and this discourse remained largely selected at the individual level. However, certain technical assistance programmes run by the interviewee had resulted in the variation being reinforced by their colleagues and with partners in Serbia. They believed because of this, Serbian actors were increasingly prepared to address the systemic causes of corruption. This shows how technical assistance and organisational learning between actors can lead to wider retention. It is also important to note that the interviewee contrasted these positive experiences with more negative experiences. This negative lesson learning further reinforced their belief that systemic change was needed (James & Lodge, 2003, p.181):

*Extremely good experience I had with the disciplinary prosecutors of the judicial councils... On the other hand, you have these ruling bodies like the High Judicial Council, High Prosecutorial Council, Ministry of Justice which are, and of course this is my personal opinion, are still, I can't call it communist heritage but are still somehow still have a notion of listening or echoing what is going on at the political level, they have to be loyal.* <sup>117</sup>

In sum, whilst a dominant understanding of anti-corruption reforms is identifiable, multiple understandings exist. The limited dialogue between actors with different understandings fails to overcome contestation. This limits anti-corruption reforms as their wider institutionalisation is contested in their current form. The following section ascertains what the different understandings tell us about the state of European integration in Serbia.

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<sup>117</sup> Ibid.

### 8.3 What do these understandings tell us about the state of European integration?

Several important points about the nature of anti-corruption reforms and European integration in Serbia can be inferred from the responses of interviewees. First, as was the case with judicial reforms, there are multiple ways in which anti-corruption reforms are understood, supported and resisted. In the case of anti-corruption, similar cleavages emerged to those identified in chapter 7. There is a relative contrast between the perspectives of external actors and domestic actors, particularly civil society actors. External actors tended to emphasise that anti-corruption policy should work to change the culture of Serbian public administration. They subsequently promoted a reform narrative that emphasised the need to change administrative culture. While many domestic actors did concede this was a factor, they argued that this did not represent the full picture. Contesting actors emphasised the role that economic realities and enduring political structures played in proliferating corruption. Lived experiences and the way in which interviewees understood Serbia's post-conflict history reinforced the *selection* and *retention* of this discursive *variation*. The presence of these different understandings suggests that like judicial reform, anti-corruption strategy has its dissidents. The lack of consensus between actors likely undermines the effective implementation of anti-corruption policy more widely and the ability to construct a coherent policy regime (O'Toole, 2000, pp.276–279).

Second, in terms of why certain *variations* were *selected* and *retained* by different actors, organisational setting played a decisive role. Of those actors that promoted the perspective that administrative culture was a significant cause of corruption, many tended to either be external actors or new institutions set up specifically at the behest of the EU to combat corruption. Among contesting actors, many were domestic institutions or civil society actors

who had an intimate experience of how corruption had affected Serbia's democratic development. These actors tended to relate current reforms to previous experiences and concluded that anti-corruption efforts did not tackle the root causes of corruption.

Third, the difficulty the EU and its supporters have in reconciling multiple reform narratives are indicative of more fundamental tensions in the EU's reform agenda. With its focus on administrative culture, the EU and allied actors do not explicitly or at least formally, focus on the role current political elites are alleged to play in (re)producing corruption in Serbia (Vachudova, 2009, p.46). Some actors argued that this was unsurprising, given that EU supported privatisation programmes had exacerbated the situation (Elbasani & Šabić, 2017, p.8). Resistant domestic actors saw the EU's agenda as complicity reinforcing domestic elites and their political hegemony. This demonstrates the difficulty the EU has in striking a balance between engagement and alienation. This raises questions about the feasibility of a truly consensual reform agenda emerging in Serbia given the historical roots of corruption. In sum, there is a belief that EU integration has potentially exacerbated corruption by prioritising short-term political and market gains over long-term development and democratisation.

#### **8.4 Conclusion**

This chapter engaged with the thesis' second key research question concerning the effectiveness of the EU's new rule of law approach for ensuring the institutionalisation of the rule of law in practice. It also engaged with a set of sub-research questions outlined in the introduction. It showed how several important actors, including the EU, understood the fight against corruption in relation to culture. In terms of contestation, several actors challenged this position and understood the fight against corruption differently. These understandings tell us that anti-corruption reforms in Serbia are widely accepted as important. However,

disagreement about whether reforms are tackling the correct causes of corruption leads to contestation. The insights of interviewees showed that the EU's rule of law agenda and European integration in general, is increasingly shaping the understanding of actors. However, it is also generating substantial discontent which is not addressed. These findings were related to the wider literature on policy learning, state-building and EU enlargement to demonstrate the wider significance of these findings for how we understand policy changes and politics in transitioning contexts vis-à-vis EU accession. It demonstrated that European integration is not necessarily perceived positively when it is seen to exacerbate corruption, fails to tackle its root causes and sacrifices long-term transformation for short-term gains and cooperation with elites. The evidence presented here also supports two key points raised elsewhere in this thesis.

First, despite the presence of contestation, the emergence of a shared understanding among external actors and some domestic institutions suggests that the EU's new approach has had some effect in terms of changing the way actors understand rule of law issues and the way these actors implement these understandings in practice. This suggests that the EU's new approach, whilst not having a systemic impact, can change the way in which domestic actors understand and practice the rule of law.

Second, despite increased coordination and socialisation between the EU, international organisations and governmental actors, substantial disagreement persists about the right policy approach needed to boost the rule of law in Serbia. This disagreement is more common among peripheral policy actors. Often these actors do not reject the need for rule of law. They do however reject the current mode through which rule of law is pursued. A common criticism of the EU's approach was the lack of dialogue between the EU and contesting actors.

Furthermore, contesting actors perceived the EU to favour the governmental angle of reforms and believed the EU neglected the wider participation of other actors in the reform process. As this has produced substantial contestation, an approach focussed on wider inclusion would appear necessary to resolve contestation. However, as the findings of this chapter suggest, dialogue alone may not be able to fix the problematic relations between different actors. This means the EU may have to accept that engaging more with some actors will alienate others.

The next chapter will look at the policy area of fundamental rights, a sub-component of the rule of law and the final policy area to be examined.

## Chapter 9: Understandings of fundamental rights

### Introduction

This chapter analyses fundamental rights reform in Serbia. It is the final chapter forming a comparative analysis of three rule of law policy areas. As with the previous two chapters, the key questions answered in this chapter are: How do key actors construct an understanding of fundamental rights through semiosis and what informs these understandings? What convergences, contestations and divergences in understandings exist and why? What do these understandings tell us about the EU's rule of law reform agenda in Serbia and European integration more generally?

The chapter proceeds as follows. First, drawing from the CPE framework, this chapter identifies a dominant understanding of fundamental rights. Its *variation* emphasised the relationship between fundamental rights and relations of power between citizens and the state. It also emphasised the relationship between citizen-state relations and socio-economic development in Serbia and suggested that fundamental rights should focus on improving the rights of citizens and their ability to access the state. Interlocutors advocating this discourse argued that the rolling back of state power aided socio-economic development by improving social inclusion. Like other cases of semiosis examined in chapters 7 and 8, *variation* is *selected* in relation to actors' objectives, identity, function and the need to bring disparate policies together under a common theme of 'access'. Its *retention* occurred through socialisation processes, work routines, the need to find common ground across a range of fundamental rights issues and the desire to ensure fundamental rights supported political and economic liberalisation. This understanding was prevalent among new governmental actors

and was pushed by a range of actors who promote the parallel democratisation and liberalisation of the state in Serbia.

Second, relevant points of contestation are presented. These contestations centre on the perceived lack of debate about the normative content of fundamental rights. Issues of media freedom are demonstrated to be a particularly contentious source of opposition, which reinforces calls for accession-related reforms to ensure freedom of expression and other fundamental rights are supported in practice. The *selection* of these contesting discourses was favoured by 'outsider' actors, such as civil society groups and more critical external actors. *Selection* was heavily shaped by organisational experiences. *Retention* successfully occurred through the construction of collaborative networks. These networks helped promote an alternative reform paradigm that seeks to avoid the instrumental use of fundamental rights and generate debate about the normative content of accession-related reforms.

Third, some inferences are made about fundamental rights reforms and what they tell us about EU integration and Member State-building in Serbia. This section highlights the fragmented nature of fundamental rights policy and, due to the many policy issues it covers, the difficulty the EU and reform actors have in constructing an overarching narrative that appeals to all actors. To rectify this, the EU frames fundamental rights in a functional way, emphasising how it can improve the rights of all citizens and contribute to social inclusion. However, contesting actors perceive this framing to reinforce the strategic dimension of the EU accession process. Subsequently, an 'implementation gap' is considered to exist among contesting actors because reforms lack a strong normative foundation.

This chapter concludes by reflecting on these findings. It further emphasises the perceived strategic element of reforms, the permeation of reform discourse with neoliberal vocabulary

and the contestation reforms generate. It also offers some reflections on the EU's overall reform strategy and its effectiveness.

### **9.1 Fundamental rights as an everyday issue**

Fundamental rights policy is broadly defined and covers many issues ranging from Roma inclusion to LGBT rights. The EU defines fundamental rights in relation to its Fundamental Rights Charter (European Commission, 2015b). This means it expects Candidate States to secure the rights of citizens by supporting dignity, freedoms, equality, solidarity, citizens rights and justice (Official Journal of the European Communities, 2000). This leads to an overarching focus on ensuring that citizens are protected from the arbitrary actions of the state and other individuals and have access to equal opportunities in all areas of life.

Despite the broad scope of fundamental rights, a salient understanding of fundamental rights did emerge in Serbia. This understanding emphasised how a range of minority issues could be addressed through readjusting the relationship between citizens and the state. This understanding emphasised the importance of increasing social inclusion. Social inclusion is typically characterised by attempts to reduce poverty and increase employment (Atkinson, et al., 2002, p.3). In Serbia, understanding fundamental rights through social inclusion policy has allowed actors to draw together dispersed rights issues, substantiate more abstract human rights activities and ensure that fundamental rights also support a liberalising economic agenda.<sup>118</sup> Second, fundamental rights and social inclusion activities emphasised the importance of empowering the citizen vis-à-vis the state. Interviewees outlined how together,

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<sup>118</sup> While social inclusion has traditionally been presented as a counterweight to policies that empower the market, critical political economy perspectives outline its role in supporting embedded neoliberalism and other varieties of capitalism (Apeldoorn, 2009; Palier, 2010; Porter & Craig, 2004). For example, in the context of EU enlargement, see Bohle and Greskovits (2007, pp.447–450) and Adam et al. (2009).

fundamental rights and social inclusion promoted new legal structures. These were argued to secure citizens' access to the state and make the state more responsive. The relationship between social inclusion and fundamental rights outlined in the understandings of actors varied slightly, but all actors in this section did make a connection or form an association between the two concepts. The first three interviews presented in this section show actors emphasising the importance of protecting citizens from the arbitrary power of the state and preventing the state from excluding citizens. The final two interviews presented in this section show how some actors argue that the protection of citizens from arbitrary powers is best achieved through the empowerment of market forces. The narratives of this second group of actors reflected more clearly a neoliberal discourse. These differences are an outcome of actor type, with the first three being domestic actors and the final two being external actors. The slight differences in their understanding further suggested that fundamental rights and social inclusion can support different 'varieties' of state-building outcomes, as noted in previous accession cases in CEE (Bohle & Greskovits, 2007, p.456).

The first key actor that communicated an understanding of fundamental rights that focussed on the relationship between citizens and the state was an interviewee representing the state Ombudsman. The Ombudsman was established in 2005 with the Law on the Protector of Citizens ("Official Gazette of RS", No. 79/2005 and 54/2007) (OSCE, 2005). Since its establishment, one of its key roles has been to protect citizens from cases of exclusion or discrimination instigated by state authorities and other bodies exercising public authority (Ombudsman of Serbia, 2012). A discursive *variation* was communicated that articulated the role fundamental rights could play in advancing the rights of citizens in relation to the state:

*Human rights in relation to EU integration is mostly political. When you have human rights indicators from the EU perspective, they can be a part of the political game. National minorities have never been an issue in post- Milošević Serbia, to the extent as before... The legal provisions for protecting minorities are in place in Serbia. We receive more complaints as an institution when official documents aren't written in Cyrillic than we do of violations of minority rights.*<sup>119</sup>

In terms of *selection*, the Ombudsman's own experience of trying to respond to citizens' complaints influenced the interviewee's *selection*. Having to respond to the complaints of citizens on a day-to-day basis, of which most complaints concerned administrative procedure, led to the Ombudsman understanding fundamental rights in relation to maladministration issues. This demonstrates how organisational experiences and objectives (the need to respond to citizens) shape understandings. This confirms the importance of experiences and objectives in determining *selection* (Sum & Jessop, 2013, pp.64–65):

*In summary, most of the complaints we get are not gross violations of human rights but maladministration issues which are a question of efficiency in the public administration...There is a lack of staff and bad procedures in certain public institutions. There are also laws in place that are far from perfect.*<sup>120</sup>

*Retention* occurred in this case through the organisation's construction of institutional principles. These were designed as a point of reference for Ombudsman staff and established an internal institutional logic (Thornton et al., 2012). These principles provided an overarching

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<sup>119</sup> Interviewee A, State Ombudsman official, Belgrade. Interview conducted 29 April 2016.

<sup>120</sup> Ibid.

objective and helped ensure that human rights provisions were implemented in Serbia. They also ensured that public administration officials understood these provisions. These principles constituted what the interviewee termed the 'spirit' of public administration. For the interviewee, these principles helped enshrine a focus on promoting citizens' rights as part of Serbia's EU accession process:

*The staff here [at the Ombudsman] are generally very good and understand the 'spirit' of public administration. The ombudsman plays a key role in the EU process by ensuring that the human rights provisions Serbia are enacted.* <sup>121</sup>

This focus on ensuring that fundamental rights provisions served a 'practical' function for citizens is visible in the discourse of other actors. These actors made explicit reference to the role that social inclusion policy could play in upholding fundamental rights on an everyday basis. They also believed social inclusion could support Serbia's broader socio-economic transformation in the context of EU accession. One such actor was the Serbian Government's Social Inclusion and Poverty Reduction Unit (SIPRU). Their *variation* emphasised that embedding fundamental rights required the construction of necessary social provisions and increased social inclusion in Serbia. They emphasised the need to have social inclusion as a pre-condition for fundamental rights so that citizens' rights could be reinforced on an everyday basis:

*It's a constant struggle, to strengthen the social dimension of EU accession process. This is our mission... you have ever present crisis like refugee crisis, floods, everything. Public policies are simply becoming too weak to deal with the enormous scope of challenges. We believe that if you want to eradicate terrorism for example, social inclusion is a pre-*

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<sup>121</sup> Ibid.

*condition to eradicate these challenges... it's also soft measures like dealing with people that really make a difference at the end of the day.*<sup>122</sup>

The *selection* of this *variation* was a product of SIPRU's function and the objectives the organisation prioritised. As well as fundamental rights issues, the work of SIPRU is focussed explicitly on improving social inclusion conditions and boosting employment in Serbia. The interviewee's *selection* was further determined by their awareness that EU accession was important for Serbia's development and that their institution was established to improve Serbia's accession prospects by tackling poverty and social inclusion. They subsequently talked about how SIPRU's reforms 'mirrored' the EU and responded to the EU's interest of Serbia by constructing a new social and economic model through EU accession. This suggests the need to meet the positive appraisal of the EU is also influenced *selection*:

*Our reforms are mirroring European thoughts and policy developments. There is a direct link. Even more so speaking about the social dimension. Even a small step at the EU level could be a major step at level of Serbia or other acceding countries so that is defiantly so because we react.*<sup>123</sup>

*Retention* occurred through the production of social inclusion policy that reflected SIPRU's own beliefs about how social inclusion could boost fundamental rights and economic development in a complementary manner. Their organisational work was focussed on drafting social inclusion and employment strategies for the Government of Serbia. This enshrined their beliefs in work practice and procedures. For example, the process of

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<sup>122</sup> Interviewee A, Social Inclusion and Poverty Reduction Unit, Belgrade. Interview conducted 31 March 2016.

<sup>123</sup> Ibid.

producing written documents reinforced the relationship between fundamental rights and social inclusion among SIPRU staff. It also created a formal point of reference for other policy actors and contributed to the policy debate on fundamental rights and social inclusion:

*At the operational level, we are formal members of six negotiating groups ranging from statistics to fundamental rights so we are there and are trying to influence and follow...we managed to produce a very good economic reform programme, the ERP, so it was adopted by the government. It's not the first document of that kind but it's the first document we influenced so it has clear measures related to social development.* <sup>124</sup>

*Retention* was also possible through the extensive engagement SIPRU had with other actors and the strategic links it drew between different policy areas to enact change in fundamental rights. The interviewee gave an example of how the rights of the Roma had been improved through Roma inclusion programmes. The success of these programmes in reinforcing fundamental rights was argued to hinge on the way SIPRU connected them to accession reforms and used the prospect of EU integration to reinforce the relationship between different policy areas among other actors. This helped them reinforce reforms and link fundamental rights, social inclusion and economic development, with the EU accession process:

*Roma inclusion is a good example of EU accession being a trigger... [accession prospect] was a useful tool for influencing decision makers because they would be exposed to political pressure.*<sup>125</sup>

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<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

This intertwining of fundamental rights and economic reforms by SIPRU demonstrates how rule of law issues can be understood in relation to Serbia's political economy. Like judicial reform, which sought to increase the 'efficiency' of the state, or anti-corruption reforms, which focussed on the relationship between corruption and administrative culture, the discourse of fundamental rights is closely associated with economistic discourses (Türkes & Gökgöz, 2006, pp.659–660). While the discourse on fundamental rights and social inclusion could support a variety of political projects due to its focus on inclusivity, its focus on unfettering citizens from the state conveys a view that fundamental rights reforms not only require adjusting the mentality of governmental actors, but also reducing the state's capacity to restrict the individual freedoms of its citizens.

Addressing fundamental rights through social inclusion and appropriate economic reforms was also communicated by another interviewee. This interviewee's narrative was close to SIPRU's. This is a consequence of the close personal relationship the interviewee had with officials working in SIPRU. A *variation* that emphasised the relationship between fundamental rights, social inclusion and human rights, was visible when the interviewee discussed the role fundamental rights played in supporting development and social change in Serbia:

*The most logical thing you can do if you are an LGBT person, Roma person, is to move somewhere where there is more normal life... Despite the fact that social inclusion and social protection are part of the soft acquis. Despite that we need to find a way to control this aspect of social development.*<sup>126</sup>

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<sup>126</sup> Interview with senior staff, Centre for Social Policy, Belgrade. Interview conducted 12 April 2016.

The interviewee's subsequent mention of the EU Commission suggested that their organisation's own work was set up to respond to the EU's approach of blending fundamental rights, human rights and social rights together. This demonstrated that the EU's approach changed the way this actor understood rule of law reforms and had shaped their actions. This resulted in the *selection* of a discourse that intertwines the organisation's work objectives with the EU's objectives:

*Now there are specific benchmarks in Chapter 23 dealing with Roma inclusion. But not only for Roma inclusion, it's about the LGBT person, there are also some measures Serbia needs to undertake there...we have seen that European Commission has been looking at more and more and more into those issues of social rights and also human rights I have to say.* <sup>127</sup>

Cooperation with the EU and the engagement of the interviewee's organisation with other international organisations and civil society led to *retention*. This was because other organisations supported the view that fundamental rights can be interlinked with economic development. This gave the understanding wider social legitimisation as it was perceived as 'expert' knowledge within the policy community (Boswell, 2008, p. 472). The interviewee outlined how their organisation contributed to policy coalitions on social inclusion issues and highlighted their involvement in wider policy networks. The codification of these beliefs in draft strategies and policy documents further contributed to the *retention* of this understanding:

*Serbia has developed a poverty reduction strategy in 2003 that was evaluated as an excellent document by World Bank and other international organisations. As well as by*

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<sup>127</sup> Ibid.

*civil society in Serbia which strongly participated in its development. So, it was kind of the first document we had developed after Milošević era... It mobilised a lot of resources from different parts of society for its implementation and I would assess the nature of the poverty reduction strategy as giving importance to social policy development.*<sup>128</sup>

The linkages made between fundamental rights and social inclusion were also visible in the understandings of key international actors active in Serbia. These understandings are particularly interesting as these actors further expanded the discourse to highlight the positive role market mechanisms could play in enhancing social inclusion and by extension, fundamental rights. The Swiss Development Agency (SDC) was particularly proactive in promoting this understanding and establishing programmes in Serbia built upon this understanding. Its discourse was close to the previous actors but more explicitly deployed a neoliberal vocabulary to communicate its perspective. For example, through references to accountability and good governance:

*Guaranteeing the accessibility of public services [for citizens], which means social inclusion paths, access to education, inclusion of vulnerable groups into everyday life and society and reforms of the judicial system to make them more accountable. But if you ask me what the main issue would be, it would be good governance and the accountability of local government towards the citizen.*<sup>129</sup>

This interviewee also emphasised the good governance component of fundamental rights when the importance of accountability was discussed. Their explicit reference to good

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<sup>128</sup> Ibid.

<sup>129</sup> Interview conducted with senior diplomat, the Swiss Agency for Development and Cooperation (SDC), Belgrade. Interview conducted 25 April 2016.

governance demonstrated the permeation of the social inclusion discourse with a neoliberal vocabulary. This is similar to the way neoliberal vocabulary permeated dominant understandings in chapters 7 and 8, and reflected calls for a ‘rational’ government (Hilgers, 2012, pp.85–86).

*Selection* occurred because the interviewee’s organisation understood reforms in relation to their broader objectives. While previous actors highlighted the importance of using social inclusion to support fundamental rights in the context of accession, this interviewee drew a direct link between European integration, democracy and social inclusion. For them, promoting good social inclusion policy — which reinforced the rights of citizens and provided citizens with access to the state — was seen to bolster liberal democracy in Serbia:

*What we are actually doing is promoting these European paths of reforms which will help Serbia join the EU. From the standards, to the values, to the different skills. To democracy to processes, and we define in this part of the world of shared values, so this is exactly what we are doing.*<sup>130</sup>

*Retention* occurred through the implementation of development portfolios that emphasised the importance of key fundamental rights issues in relation to European integration. Devising development portfolios resulted in the formulation of new organisational strategy and work practices that emphasised the importance of social inclusion for economic prosperity. The implementation of these portfolios through engagement with domestic stakeholders provided staff with the opportunity to put ideas into practice. This reified key fundamental rights concepts and reinforced understandings:

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<sup>130</sup> Ibid.

*We have been here since 1992. In 2001/2002 we started working within the development portfolio...We are contributing to that portfolio with specific funds for specific topics. Which is good governance and includes gender, as well as Roma inclusion.*<sup>131</sup>

The intertwining of fundamental rights with a social inclusion agenda showed that external actors aligned with the EU made a clear link between economic prosperity and fundamental rights. For example, interviewees representing the European Commission and EU Delegation in Serbia were keen to emphasise that fundamental rights helped support liberal democracy. Their intertwining of fundamental rights with ideas of inclusive growth reflected a belief that fundamental rights can be used to empower citizens, roll back the state and improve economic development:

*These values include democracy and human rights but since the economic crisis, economic reform is more of an important part of the process too. The new Commission under Junker has put these fundamentals, that means Chapters 23 and 24, at the fore of the enlargement process.*<sup>132</sup>

*Selection* occurred because of the way EU actors made sense of European society and how they understood the EU's enlargement process. A pre-existing belief among EU interviewees was that it was necessary to reorganise societies in the Western Balkans, if they hoped to join the EU and adopt EU norms (Singh, 2015, pp.465–466). *Selection* was thus influenced by existing environmental cues, which elicited a focus on using fundamental rights to restructure all aspects of society:

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<sup>131</sup> Ibid.

<sup>132</sup> Interviewee A, EU Delegation to Serbia, Belgrade. Interview conducted 6 March 2016

*Chapters 23 and 24 are very important as they contain key values like fundamental rights and the independence of judiciary, which are at the basis of how European societies are organised.*<sup>133</sup>

*Retention* occurred by ensuring work practices made the link between fundamental rights, social development and economic growth. The strategic coordination of different instruments was argued to put this thinking into practice by providing economic uplift, civil society support and fundamental rights support in tandem. This helped EU actors increasingly understand these different concepts and instruments in relation to one another. The use of these instruments was perceived to help construct a rational state, based on strong principles of individual and market freedom (Singh, 2015, p.466):

*IPA, Civil Society Forum and the European Instrument for Democracy and Human Rights, are three 'blended' and interlinked elements despite constituting separate instruments.*<sup>134</sup>

The association of fundamental rights with other EU objectives demonstrates that the EU's new approach, while focused on specific rule of law criteria, represents a more fundamental overhaul. Insights from interviewees suggest the EU is increasingly thinking about how it can transform its enlargement agenda by drawing links between different instruments and topics to ensure a more thorough transformation of Candidate States into ideal type Member States. This further supports the notion that the EU's engagement with the Candidate States of the Western Balkans is distinct from previous enlargements, in that it emphasises a more complete transformation and substantive process of Member State-building (Keil, 2013,

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<sup>133</sup> Interviewee A, DG NEAR, Brussels. Interview conducted 6 June 2016.

<sup>134</sup> Interviewee B, EU Delegation to Serbia, Belgrade. Interview conducted 6 March 2016

pp.346–350). However, the presence of contestation suggests that such an approach struggles to consider and incorporate contrasting understandings about key issues. This is reflected in the outlined division between actors in the policy network analysed in chapter 6. While the contestations that emerged need not be irreconcilable, the lack of dialogue between actors and limited attempts to construct shared understandings through mediation between contesting actors is problematic. It is problematic because it does not address raised concerns and results in a reform process where the understandings and actions of a dominant group steer rule of law reform within Serbia. This further implies that while key rule of law issues are partly institutionalised, they are differentially understood. The EU's approach results in the institutionalisation of a dominant understanding but does not adequately address points of contestation and does not encourage reconciliation between different understandings of the key issues associated with fundamental rights reform. This prevents effective wider institutionalisation. Greater dialogue between actors to construct shared understandings is not enabled due to limited socialisation and the presence of contestation. This is further confounded by the presence of hierarchies between actors, which was discussed in chapter 6. These hierarchies limit the inclusivity of none-elite actors to help co-construct rule of law understandings. This dynamic was articulated and acknowledged by the EU:

*Civil society continues to do its job but it is often blocked by the administration... The deputies will do as the party says hence you need to change the perspective of those politicians at the top. People in Serbia like strong leaders in Serbia and this is the same with civil society. This often results in certain dominant NGOs unduly influencing the*

*agenda. If you are a small grassroots NGO you can forget about it in terms of providing input.* <sup>135</sup>

### **9.2.1 Contestation I: What are fundamental rights?**

The first dimension of contestation concerned the perceived politicisation of fundamental rights issues. Civil society actors — who were peripheral within the policy network analysed in chapter 6 — argued that fundamental rights were increasingly used instrumentally to leverage policy change in some areas, whereas less focus was placed on thinking about what a corresponding normative fundamental rights framework would look like. These actors did not socialise extensively with governmental or external actors and consequently, adopted a contesting discourse. Their understanding can be seen to primarily reflect the concerns of civil society actors who argued authentic change had not occurred, despite the immense focus placed on fundamental rights reforms.

A consultant for a major international organisation articulated a *variation* of fundamental rights reforms that emphasised changing the way minorities are treated in practice. They used the example of the Roma minority to make this point about how legislative change was often decoupled from a change in practice (Zucker, 1987, p.445). Consequently, they argued that the normative framework on fundamental rights was weak:

*That [Roma education] is your policy objective and then you say how do we do that and then maybe you test some things and then you go to legal change and all the way you have resources going through. That doesn't happen here. What happens here is that someone says the law has to change, lets change the law and hope its gets better...It's*

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<sup>135</sup> Ibid.

*just an exercise in changing the law so the ministries are really stuck. They don't have the mechanisms to translate and think about the policy.*<sup>136</sup>

*Selection* was reinforced by the interviewee's own experience of working on the issue of Roma inclusion for over a decade. They concluded retrospectively that little progress had been made in addressing fundamental rights in practice. Personal experiences affected their current engagement with Serbian authorities and produced contestation towards the government's current approach. To make this point, the interviewee gave an illustration of a typical EU-funded assistance programme, outlined its unrealistic expectations and argued that it did not produce the necessary normative change. Sharp criticism was further directed towards the failure of reforms to achieve evolutionary policy change:

*You can't get institutional change in two years. The teaching assistant programme I spoke of is a good way you can get change but that change took 15 years. I think if you talk to the SDC they'll tell you how it happened as they were engaged in it for 12 years and the Swiss have a much longer-term approach to these things and have a rather better understanding of how institutional change happens. The EU doesn't. They'll fund a two or three-year project and then will ask the question: why aren't they sustainable?*<sup>137</sup>

This case of *selection* demonstrates the importance of experience, retrospection and existing beliefs in shaping the adoption of different policy narratives and the construction of contesting policy paradigms by dissident actors.

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<sup>136</sup> Interview with consultant, UNDP, Belgrade. Interview conducted 11 April 2016.

<sup>137</sup> Ibid.

*Retention* of this perspective occurred through the interviewee's everyday engagement with government actors and the EU. They argued that these interactions reinforced his belief that fundamental rights reforms were used instrumentally to achieve other objectives, primarily further European integration. The interviewee believed this eroded a focus on the normative change that should accompany fundamental rights. He further reflected on his engagement with the EU and government officials, and pointed to alternative reforms strategies he believed could lead to more effective policy change:

*One [alternative reform strategy] is the development aid model, which is the long-term engagement, outside-in type of engagement. Where you are an external actor with money and you want to make a long-term engagement. The EU delegations here are established to mirror future EU funding. And future EU funding is predicated on governments knowing what they want to do. And governments applying and getting the resources to make those changes. The problem here is that you don't have within government any understanding of institutional change or how that takes place. Partly because the institutional change has been, over a number of years, externally driven by projects and so there hasn't been any learning or the learning has been negative.<sup>138</sup>*

This discursive *variation* was reiterated by other civil society actors located at the periphery of Serbia's reform process. They argued that the government of Serbia's current reform agenda did not construct an appropriate normative or legal framework that demonstrated its commitment to addressing post-war legacies. One actor argued these issues should be addressed not only because they 'unlocked' the prospect of European integration, but also because facing the crimes of the past could help build a more open and tolerant society. This interviewee further emphasised how fundamental rights should be detached from the

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<sup>138</sup> Ibid

European integration process. For them, fundamental rights were about building a progressive society based on clear values and were not simply about achieving EU membership:

*I think we lost a lot and, in a year, we won't join the EU. But because of political things and the political approach of the EU, maybe some things will happen which will make the process faster. But also, I think that it doesn't mean it will be a quality process.... [In Croatia] I see because they are members of the EU some strong questions on the heritage of the war is just a topic they don't want to participate in any more since joining the EU and nobody is pushing them to face that heritage.<sup>139</sup>*

*Selection* was aided by the interviewee's own experience working for an outsider NGO (Tarrow, 2005, p.45). Their exclusion from the consultation processes being held between NGOs and governmental actors enabled them to adopt a critical position without fearing exclusion from important decision-making processes. Their perspective thus formed a contrasting public discourse, which was designed to put pressure on the government to include a wider range of civil society actors in discussion and change the way fundamental rights were viewed in Serbia:

*[There is a] weak civil society. And somehow that's the tradition in Serbia. Politicians see civil society as something that can jeopardise their success in the election and don't see what they could get from cooperating with civil society, both in EU negotiations and other domestic aspects. I don't think civil society is recognised as a partner by the state of Serbia.<sup>140</sup>*

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<sup>139</sup> Interviewee, Vojvodina Civic Centre, Novi Sad. Interview conducted 19 April 2016.

<sup>140</sup> Ibid.

The interviewee outlined how he constructed different internal understandings of fundamental rights through the construction of new concepts. Instead of accepting fundamental rights as a 'European value', the interviewee argued that 'civic values' were a more appropriate concept. The conscious reconceptualization of fundamental rights as a civic value allowed the interviewee and their organisation to contextualise fundamental rights. This reinforced their resistance to the current association of fundamental rights with EU accession and led to the *retention* of this contesting perspective:

*I have a personal issue with European values. We have interesting discussions in the office about the term, so we use the term citizens values instead or something like that. I think authorities in Serbia understand the need for improving in some areas, but they are aware of the fact it's better for them if they don't do anything there or just pretend to do something.*<sup>141</sup>

In sum, one type of contestation outlined the problematic conceptualisation of fundamental rights as an instrumental, as opposed to normative issue. Contesting actors believed that superficial compliance with the EU's fundamental rights agenda had occurred and that this is reflective of the government's strategic alignment with the EU, as opposed to normative alignment. The following section outlines a contesting perspective that also takes issue with the perceived superficial nature of the reform process.

### **9.2.2 Contestation II: Simulating change?**

When reflecting on fundamental freedoms, some contesting actors argued that reforms were designed to present Serbia as a rehabilitated state within the international community. They

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<sup>141</sup> Ibid.

argued that deep democratisation had not occurred in Serbia and progressive change was limited. They reflected on how the current reforms were a simulation, designed to communicate that Serbia was becoming a progressive and liberal society. This concept of simulation was articulated by other interviewees who were keen to highlight the continuity between the Milošević government and current government, particularly in the way the current government sought to attack its detractors through government-friendly tabloid newspapers:

*But what I see as a big issue here is that we have an authoritarian state that is pretending not to be one. They are simulating all the processes and you are required to participate in this simulation. We all kind of know it is a simulation but no one is saying it is.<sup>142</sup>*

*Selection* in this case was an outcome of the interviewee's previous experiences. The interviewees who emphasised Serbia's ongoing decline in fundamental freedoms and who used the example of media freedom to make this point, felt excluded from government decision-making and had been targeted and attacked as 'Western agents' by government-friendly newspapers. They also noted how critical media outlets had been attacked by the government-friendly tabloid newspapers (Freedom House, 2017). These attacks reminded an interviewee of the Milošević era where freedom of expression was considerably curtailed. The inaction of the EU to address allegations that media freedoms were being curtailed also reinforced a view that reforms were a simulation. This demonstrates that contemporary understandings are also constructed in relation to past and current events:

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<sup>142</sup> Interview with project coordinator for public policies, Civic Initiatives NGO, Belgrade. Interview conducted 9 March 2016.

*We have reports from the local media that similar things are happening and an increased number of attacks on journalists not in Belgrade but in the south of Serbia and central Serbia... I think Brussels isn't reacting is because as long as you are a really good partner to them and as long as you are nodding your head and doing what they are saying, of course they are going to ignore censorship as they don't really care about it....*<sup>143</sup>

*Retention* was aided through different types of engagement. The first form of engagement with government actors in meetings reinforced the belief that the government was not sincere about reforms:

*I find them [meetings with the government] demeaning and meaningless and you basically feel like a puppet of the state over there as they are going to put in their report that they have had consultations with the NGOs with this and that.* <sup>144</sup>

Alternative collaboration with similarly disenfranchised NGO actors also aided the interviewee's organisation in constructing a parallel reform agenda, enabling *retention*. The interviewee outlined how their organisation had worked together with other NGOs to try and enact policy change and influence media reforms (Cullen, 2010). While they felt the EU was still unresponsive to their complaints, the reinforcement of their understanding through collaboration and socialisation with other NGOs, reaffirmed their belief that media freedom was being restricted and that this should be addressed:

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<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

*From the civil society point of view, we always think we can make some changes whilst applying pressure to the state and taking the issue to the EU. The EU does take some of those issues into consideration, but only when they are politically comfortable with it.*<sup>145</sup>

Another interviewee also pointed to the role the regional networks could play in helping to raise the profile of their concerns regarding the state of fundamental rights. These networks involved regional collaboration with other NGOs and provided the opportunity to feedback concerns to the EU and other international organisations. These external actors were keen to sponsor these networks. Despite praising the discussions that took place in these networks and acknowledging the role of the international community in facilitating these networks, the interviewee believed that the EU could do more to reflect the concerns raised in these networks back towards government actors:

*Some of our projects were financed by EU so that's one way of cooperating with them and we have good contacts with the EU delegation and we always contribute with our comments to progress reports which is a very important way to express our advocacy... but I really don't think [the] government understand these [fundamental rights] issues.*<sup>146</sup>

Another interviewee, an investigative journalist, also communicated a similar discursive variation. They argued Serbia's current reforms do not represent a fundamental change in politics and reflected on the limited progress that had been made in advancing fundamental rights and freedoms. They communicated how they would differentiate between the current state of democracy in Serbia and a 'functioning' democracy. They argued that the current

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<sup>145</sup> Ibid.

<sup>146</sup> Interview analyst, Praxis NGO, Belgrade. Interview conducted 4 March 2016.

model of democracy in Serbia lacked media freedom, which for them was an important fundamental right. They argued that reforms should better account for media freedom and contribute to the construction of a more substantive form of democracy:

*Freedom of media and professionalisation of media is an integral part of functional democracy. It doesn't happen outside of functional democracy. Functional democracy is incredibly expensive, and it doesn't really happen without significant economic power of a country.*<sup>147</sup>

*Selection* in this case was reinforced by the interviewee's personal experience. In particular, their experience of being attacked by government supporting tabloids. This had hardened their resolve to strengthen the media environment in Serbia and improve its fundamental rights dimension. For the interviewee, this required going beyond formal compliance with the EU accession process and the passing of legislation which enshrines fundamental rights only on paper. It required ensuring that political changes were made to allow respect for social freedoms to be instantiated in practice. The interviewee also drew parallels between the current media environment and their experiences under Milošević's rule. These past experiences helped the interviewee evaluate current reforms and conclude that in over two decades of working as a journalist, media freedom had not been significantly improved. Their perspective and advocacy position was thus an outcome of their ongoing experience of trying to improve media freedom and advance a more pluralistic and accountable form of democracy in Serbia. It was also an outcome of the way in which they made sense of the past:

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<sup>147</sup> Interview with a journalist from the Centre for Investigative Journalism (CINS), Belgrade. Interview conducted 22 March 2016.

*I'm not idealistic about that, I've been a journalist here since the beginning of Milošević's rule. I'm very pragmatic about these things.... our other investigative journalist colleagues are accused very often that we work for the EU against our own government. I was on the front line of a tabloid as a foreign mercenary. For Christ sake, I'm just the editor in this very shabby office. If I'm your enemy you're very weak. If I can get to you, that's ridiculous.* <sup>148</sup>

Retention occurred through the interviewee's collaboration with NGOs and governmental actors in civil society *Konvents*. *Konvents* are a form of working group. They bring together civil society actors and government actors to discuss the issues covered under the chapters of the EU *acquis*. Although the previous interviewee outlined their negative experience with the *Konvents*, the experiences of this interviewee were more positive and appeared to improve *retention*. While these *Konvents* played a role in the accession of Slovakia, they have been increasingly utilised by civil society actors in Serbia to shape accession negotiations, reinforce their own understandings and help convince governmental actors to adopt their perspective (National convention on the EU, 2014). The interviewee gave an example of how instances of socialisation during *Konvent* meetings had focussed governmental actors on improving fundamental rights in practice, by persuading them that these issues were important. The interviewee further argued that this substantive change could take place when governmental actors were able to interact with NGOs away from the watch of ministry officials and political elites:

*We made a conscious effort not to be critical of them when we started meeting these people. Some in the working group persuaded the others the people we were meeting weren't independent and work under strict hierarchies. After establishing that they*

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<sup>148</sup> Ibid.

*started working with that and implementing things we suggested. They changed their understanding of certain problems in their organisational scheme because we showed them the statistical data they had never seen before.* <sup>149</sup>

A final actor also supported the perspective that fundamental rights reforms resembled a simulation and did not support deep rule of law reform. This actor was also important in the field of judicial reform. They argued that media freedom was an important issue because a politicised media harmed the independent exercise of justice. The interviewee believed that judicial reforms could not be separated from fundamental rights. They further argued that the structuring of EU accession around the combination of judicial reform, anti-corruption and fundamental rights, meant that all three should be interlinked to support a functional democracy. The interviewee's variation however indicated that this perspective on enlargement reforms was not shared by government actors who saw compliance with reforms as necessary only to secure accession:

*Media freedom is also a priority area. Democratic deficit is a factor effecting rule of law and there remains a need to depoliticise rule of law. In our view, the media should be a cornerstone of government alongside, democracy, rule of law and respect for minorities.* <sup>150</sup>

*Selection* in this case was influenced by the interviewee's experience working in the region. The interviewee argued that the way in which government actors approached reforms was common across the region. As the interviewee had spent more time working to promote the rule of law regionally, this belief had been reinforced through their interaction with political

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<sup>149</sup> Ibid.

<sup>150</sup> Interview with a Dutch diplomat, Belgrade. Interview conducted 1 April 2016.

elites and through observed political outcomes. Previous experiences appeared to be the key factor determining *selection* in this case:

*In Serbia and the region more generally, there is too much trial by media. Reporting on issues like corruption tends to be pervasive and assumes guilt in a way that can influence judicial outcomes. There is a lack of accountability in the media and it lacks a true investigative tradition.*<sup>151</sup>

Retention was influenced by their engagement with alternative indicators to measure things like media freedom, fundamental rights and the rule of law more generally. They argued that the EU relied too much on its benchmarking procedure and that benchmarking exercises often overlooked the importance of perceptions and change in practice. The interviewee argued that more focus could be placed on what fundamental rights and other rule of law outcomes mean in practice for citizens. This reinforced their belief that a change in practice would only occur once the EU and other actors recognised the importance of engaging with peoples' perceptions of issues and not only measuring formal change in terms of legal transposition of the EU *acquis*:

*The EU focuses too much on benchmarking. It needs to back these benchmarks up with further and deeper evidence. Laws do take time but there is also a desire in Candidate States to move forward quickly. I also think perception indexes matter. They are helpful as indicators and can be part of this bottom-up change.*<sup>152</sup>

In sum, the perspective of contesting actors emphasised how fundamental rights reforms do not consider the current media environment in Serbia. They argued that this is a product of

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<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

the reform process being superficial and enacting formal change in the absence of more normative and practical change. For contesting actors, fundamental rights reforms should not be used to advance socio-economic development or support other state-building processes. Instead, they should be about ensuring a change in practice occurs and that fundamental rights support an open society. Media freedom was used as one example to demonstrate how this contention arises in the policy area of fundamental rights. The contesting perspectives once more pointed to a lack of engagement between the EU, Serbian government and contesting actors who were usually civil society actors. This further supports the findings of the previous chapters that the EU's approach struggles to initiate dialogue between actors that could reconcile contestations and produce shared understandings. Consequently, it is only partly effective in institutionalising the rule of law.

### **9.3 What do these understandings tell us about the state of European integration?**

To summarise the findings of section 9.1 and 9.2, two clear perspectives exist. The first engages more proactively with the current fundamental rights reform agenda in Serbia. Broadly speaking, the actors' perspectives outlined in section 9.1 saw fundamental rights reforms as an opportunity to advance rule of law and restructure relations between citizens and the state. These actors outlined the importance of using fundamental rights to improve the access of citizens to the state and to support economic growth through social inclusion. In comparison to the other policy areas, the vocabulary of neoliberalism is less present in this policy area. However, the emphasis placed on the individual, economic notions of access and accountability, and the occasional reference to good governance, suggest neoliberal ideas do play a role in structuring fundamental rights reforms.

The second perspective outlined in section 9.2 demonstrated that contesting actors diverged from this understanding on the basis that they did not consider the current approach to lead to a change in practice. Contesting actors expressed concern that fundamental rights were only advanced as part of the accession process. This raised important questions about the possible erosion of fundamental rights as a key norm after accession and the ‘superficial’ nature of the reform process. Another perspective used the example of media freedom to articulate how freedom of expression, a key fundamental right, was not respected in practice. From these understandings, several key observations can be made about the nature of EU integration in Serbia.

First, of the policy areas examined that correspond with Chapter 23 of the EU *acquis*, fundamental rights appeared to be the most fragmented in terms of discourse and understanding. This was communicated by actors, who recognised the broad topics which fall under fundamental rights, ranging from LGBT rights to post-conflict reconciliation. To make sense of such a range of policy issues, many actors focussed on how fundamental could be advanced by restructuring relations between citizens and the state. This explains why actors focussed on improving access to the state and improving social inclusion. It also demonstrated how fundamental rights were made sense of by individuals in relation to broader socio-economic reforms. This further demonstrates the power economic ideas have in shaping understandings of the reform process.

Second, while the dominant reform paradigm allowed actors to link fundamental rights reforms to a broader reform agenda, this undermined an explicit focus on the normative content of fundamental rights. The contesting perspectives of actors highlighted how current reform approaches reduced the focus placed on the normative content of fundamental rights.

These actors argued this has resulted in an implementation gap, whereby new laws designed to protect fundamental rights are not matched by a change in practice. The 'functional' use of fundamental rights reinforced a superficial reform agenda. Other scholars have highlighted the problems of this and how superficial compliance leads to the reproduction of political elites in new quasi-liberal or neoliberal state forms (Economides & Ker-Lindsay, 2015; Pawelec & Grimm, 2014). Contesting actors provided evidence to support the argument that Serbia's reforms lack an authentic commitment to progressive social transformation. There is clearly a strategic dimension to the government of Serbia's reform agenda and its strategic selectivity favours a managed reform approach. It favours enacting reforms to secure support from the EU and consents to surrendering some power to other social forces in new configurations of government. However, it is eager to ensure that its political power is not completely eroded and is maintained throughout the accession process.

Third, the scope of topics covered under fundamental rights and the increased framing of fundamental rights in relation to other reforms designed to empower citizens and enhance social inclusion make it difficult for external actors to monitor the policy area effectively. In seeking to ensure that EU integration remains general enough to be tangible without becoming overwhelming, small scale transgressions on fundamental rights are often overlooked. The freedom of expression cases concerning media freedom are a good example of this. By focussing too much on the big picture, the EU and allied actors overlook the role attacks through pro-government tabloids play in undermining fundamental rights. Interviewees associated the current media climate with the Milošević era. For these actors, this association reduced their affection for EU accession reforms and supported their belief that the EU is only interested in working with the government of Serbia and not broader civil

society. It also supported claims of an implementation gap and raised important questions about the sincerity of the Serbian leadership in their commitment to the normative content of fundamental rights, as opposed to the more 'functional' role fundamental rights can play in changing citizen-state relations and enabling socio-economic development. This suggests that European integration is a contested venture in Serbia. It also suggests that European integration remains an elite driven, governmental process. By failing to facilitate social dialogue between contesting actors, European integration in Serbia fails to result in the type of 'complete' political transformation and change in political culture that proponents of liberal democracy advocate.

#### **9.4 Conclusion**

This chapter examined fundamental rights, a key rule of law policy area. It first outlined how key actors understand fundamental rights. It demonstrated how a dominant understanding of fundamental rights is constructed in relation to empowering citizens vis-à-vis the state, and in relation to socio-economic reforms centred upon inclusion. It also demonstrated how this construction of reforms generated contestation and divergence between actors. This was because some actors believed that the current reform paradigm did not adequately focus on the implementation of fundamental rights in practice. This raised concerns about how substantive fundamental rights reforms are and was reflected in section 9.3, which explored what these differences in understandings tell us about European integration in Serbia. This section further emphasised how a lack of dialogue between actors to resolve points of contestation results in rule of law reforms and EU accession being a highly contested venture, which is predominantly driven by the interactions between external actors and government elites. This is visible in the emergence of shared understandings between domestic elites and

external actors. Their understandings however lack broader resonance. This was demonstrated through an analysis of actor semiosis.

The findings of this chapter also highlight the inevitable challenge of the EU's ambitious reform agenda in Serbia. While the EU's new approach is far more thorough and results in a more attentive accession process (in comparison to previous enlargements), it also struggles to consider the complexity of reforms and the myriad understandings held by different actors. To overcome contestation and construct a more harmonious and consensual process, increased communication, collaboration and localised solutions to key rule of law issues should be promoted.

This thesis now moves to its conclusion. It reflects on its key findings, summarises the answers to its key research questions, acknowledges the limits of this research and suggests some avenues for future research.

## **Chapter 10: Conclusion**

### **10.1 Core argument and achievements**

This thesis offered comprehensive new insights into rule of law reforms in Serbia. Detailed empirical analysis showed that the way in which rule of law reforms unfold through EU enlargement policy is more nuanced than the existing literature suggests. This thesis showed how understandings of the rule of law and EU enlargement shaped how different actors engaged with rule of law reforms. These understandings were shaped by a range of factors including relationships between actors, previous experiences, organisational culture and salient discourses. Overall, this thesis showed that a focus on actors and the factors which shape their interpretations, is crucial for understanding how effective current rule of law reforms are in institutionalising the rule of law in practice.

The application of a CPE approach demonstrated that successful rule of law reforms will require more than the promotion of narrowly defined rule of law concepts from EU actors to governmental actors in Candidate States. It showed how the contestations articulated by a range of external, dissident governmental and civil society actors, resulted in everyday resistance to current reforms. These contesting actors raised legitimate concerns about the limited impact rule of law reforms had when they were delivered primarily through partnerships with existing governmental elites. This thesis showed that more substantive rule of law reforms should embrace a broader range of concepts and issues to enact further change. This could help facilitate dialogue between a range of actors and resolve existing contestations.

The application of an alternative approach to examining rule of law reforms advances the study of EU enlargement and European integration more broadly. Cases of contestation and

exclusion from EU reform processes can be missed through analytical approaches that take formal compliance with EU rules and norms to be the key measure of success. Such approaches overlook how different actors construct an understanding of EU reforms and how these understandings inform engagement with the EU accession process, as well as how interpretations shape European integration more generally. More broadly, the successful application of a CPE approach showed how the application of new methodologies in European Studies can provide novel insight.

The following section presents a breakdown of the key findings of this thesis in more detail. It addresses directly the research questions posed in section 1.3 and summarises the findings of this thesis. Following this, the significance of these findings is elaborated, including its policy and political implications. Section 10.3 highlights the distinctive contribution this thesis makes as a focussed piece of empirical research on rule of law reforms in Serbia. It also highlights how this thesis advances our understanding of European integration and provides a case for the wider use of CPE approaches in the study of politics. Finally, the thesis addresses its limitations and outlines some avenues for future research.

## 10.2 A breakdown of the key findings

*Table 10.1: Research questions. Source: Author generated.*

|   |
|---|
| <i>RQ1: What are the key logics, imaginaries and interactions driving the delivery of rule of law reforms in Serbia?</i>                        |
| <i>SQ1: What are the key logics and imaginaries driving the EU's regional engagement?</i>   |
| <i>SQ2: Who are the key actors involved in the delivery of rule of law reforms in Serbia and how do they interact?</i>                          |
| <i>RQ2: How effective is the EU's approach for ensuring the institutionalisation of the rule of law in practice?</i>                            |
| <i>SQ3: How do actors construct an understanding of rule of law reforms through semiosis and what informs these understandings?</i>             |
| <i>SQ4: To what extent do we find convergence, divergence and contestation between different understandings and why?</i>                        |
| <i>SQ5: What do the different understandings of actors tell us about rule of law reforms in Serbia and European integration more generally?</i> |

The first research question — and its sub-research questions — focussed on the logics, imaginaries and interactions driving the delivery of rule of law reforms in Serbia. In answering the first sub-research question, this thesis demonstrated how EU actors constructed a political imaginary of the Western Balkans region as a place of perpetual instability. A process of structuration, whereby actors' relationships with institutions; their broader social environment; their interpretation of previous events; and interpretation of contemporary problems, informed the construction of this imaginary. This imaginary informed the prioritisation of a socially constructed strategic logic, which drove the EU's engagement with Serbia and its regional engagement with the Western Balkans. In this context, enlargement policy is designed to reinforce stability and reduce the risk the region poses to EU security. In this process of imaginary construction, a core group of key Member States played an integral

role in reinforcing the EU's contemporary approach and reproducing the constructed political imaginary. This resulted in the application of an enlargement strategy designed to reinforce the EU's strategic interests and address the perceived shortcomings of previous enlargements. This finding is significant as it demonstrates that EU-Western Balkans relations cannot be reduced to a question of interests or ideas. Instead, a complex interplay between the two characterises EU enlargement policy and informs the EU's delivery of rule of law reforms through the accession process.

Answering the second sub-research question required analysing the interactions between key actors in Serbia who promoted rule of law reforms within a policy network. This was done through social network analysis. First, a typology of socialisation was outlined. In applying this typology, it was demonstrated how a strategic mode of socialisation supported actors in their attempts to advance perceived interests and objectives. This process of strategic socialisation was argued to result in a procedural form of interaction and produced important network divisions. In the network, key groups of international organisations, external state actors and domestic governmental actors tended to interact with one another more than with civil society actors. This reinforced the intergovernmental dynamics of the accession process and made it difficult for civil society actors to raise legitimate concerns about the state of rule of law reforms in Serbia. This strategic interaction between actors did not facilitate an authentic process of social learning and consigned civil society actors to a peripheral position in the policy network.

The second research question addressed the effectiveness of the EU's approach for institutionalising the rule of law in practice. In answering this question, this thesis focused on the capacity of the EU's new approach to shape understandings among key rule of law actors

within Serbia. It explored three important sub-research questions across three rule of law policy areas. First, in answering the third sub-research question in the case of judicial reform, a dominant understanding anchored around the concept of efficiency was identified. This was constructed through a process of semiosis, which focussed on the relationship between judicial reform, liberalisation and efficiency. Regarding the fourth sub-research question, this understanding was contested by actors who argued it did not adequately consider judicial independence or consider the need for greater domestic ownership of rule of law reforms. In each case, initial discourses were selected and retained in relation to context, previous experiences and the role performed by actors. In terms of the fifth sub-research question, which asked what this tells us about European integration more generally, the emergence of contestation in this policy area demonstrated the multifaceted nature of reforms. The lack of reconciliation between different understandings suggested that rule of law reforms would benefit from dialogue that resolves contestation and facilitates the construction of shared understandings.

Anti-corruption policy in Serbia demonstrated a similar dynamic. A dominant anti-corruption understanding conceptualised corruption to be a product of administrative culture. This conceptualisation occurred through a process of semiosis that linked corruption to individual behaviours and a lack of good governance. In terms of contesting perspectives, the first perspective took issue with the dominant approach for lacking a systemic understanding of corruption. The second contesting perspective argued that the current approach underestimated the challenge of eradicating corruption and did not reach beyond the issue of administrative culture. The final contesting perspective focussed on the issue of superficial compliance by government actors. The case of anti-corruption policy demonstrated the lack

of consensus between the government and the EU on one side, and civil society on the other. It again pointed to the need for dialogue between actors if rule of law reforms and EU integration are to support the bottom-up development of democracy, which is anchored in the rule of law.

Regarding fundamental rights, these were primarily conceptualised as an everyday issue. Through semiosis, actors related the issue to social inclusion and framed fundamental rights as an issue of citizens' access to the state. In contrast to this understanding, contesting actors argued that fundamental rights were being used instrumentally and the current rhetoric did not match the implementation of fundamental rights in practice. Another group of contesting actors argued that this resulted in the 'simulation' of change. The issue of fundamental rights demonstrated that EU integration has tended to lack an open dialogue about what important foundational values mean in different contexts and their practical benefit. Again, this chapter showed that in regards to EU integration in Serbia, dialogue is an underused but important tool for creating shared understandings. This suggests that EU integration in Serbia lacks a meaningful process of dialogue beyond the governmental level.

Reflecting on the second research question, it is evident that the EU's approach is *partly* effective. However, it fails to encourage the widespread institutionalisation of the rule of law in practice. While the EU's new approach does place rule of law at the heart of the accession process, it does not equally include all actors in the reform process. The central role played by governmental actors and the peripheral role occupied by civil society and other contesting actors, resulted in the formation of parallel understandings. This created divergent expectations about what rule of law reforms should achieve. This process allowed domestic elites to institutionalise some reforms, while avoiding the implementation of deep-rooted

reforms that challenged their interests. The EU appeared to accept this dynamic as it is reliant on these actors to deliver its reforms.

### **10.3 Significance**

In chapter 1, it was anticipated that the effective institutionalisation of the rule of law required both formal rule of law institutions and the construction of shared understandings to underpin these institutions. The analysis presented in this thesis supports this assumption by demonstrating how the construction of an approach grounded in perceived interests and delivered through partnership between external actors and governmental actors, resulted in the emergence of legitimate contestations that are not adequately addressed through rule of law reforms. By adopting a novel analytical approach, this thesis has opened the black box of EU accession-related rule of law reforms and demonstrated that despite some success, they fail to fully support the institutionalisation of the rule of law in practice.

It has been demonstrated how rule of law reforms privilege dominant understandings of judicial reform, anti-corruption policy and fundamental rights respectively. These understandings emerged as an outcome of the interaction between some international actors and governmental actors within the examined policy network. The imaginary driving the reform process prioritised a socially constructed strategic logic that was perceived to secure the interests of EU actors and address the shortcomings of previous enlargements. However, the emergence of contesting understandings suggests that this approach failed to focus on the substance of rule of law reforms, prioritised certain understandings over others and contributed to a belief amongst contesting actors that rule of law reforms only partly address the rule of law deficit in Serbia.

The limited effectiveness of the EU's new approach to promote rule of law has important policy implications. The contestations raised by actors about the current reform process are grounded in legitimate concerns about whether rule of law reforms will really hold domestic elites to account and address the important issues that currently undermine democracy and development within Serbia. The voices of judges, public institutions and humanitarian NGOs to name a few, must be heard if rule of law reforms are to address the concerns of Serbian society. If the current dynamics of the enlargement process do not change and no significant attention is paid to ensuring that rule of law reforms address the issues raised by different actors, the rule of law will remain weakly embedded in Serbia. This would result in democracy remaining fragile and exposed to actors who might wish to advance their own interests through political office.

The findings of this thesis raise important political questions. The EU faces a challenge in ensuring its rule of law reforms resonate beyond a narrow governmental level. The EU faces a significant dilemma. It needs to guarantee rule of law reforms promote important specificities, while also resonating more broadly. Can the EU plausibly amalgamate contesting understandings of the rule of law and facilitate dialogue between actors without undermining the coherence or integrity of its rule of law promotion efforts? This thesis suggests that any effort to resolve this dilemma requires a new strategy of engagement that is anchored in greater dialogue between a broad cross-section of actors. The imperative that the rule of law survives and thrives in an enlarged EU is clear. If the regimes in Hungary and Poland find willing allies to help them transform the EU in their image, liberal democracy could be further discredited and superseded by the proliferation of illiberal democracies.

#### **10.4 Limitations and avenues for future research**

It is important to acknowledge several limitations of this research. While the application of a CPE approach was novel in that it provided much needed data on the way in which key actors make sense of rule of law reforms, it is characterised by its highly qualitative focus. This makes it difficult to replicate and reproduce interviewee responses, which may be shaped by relationships between the interviewee and interviewer. This is a general limitation of interview methods. Cases of none-response, while partially mitigated through the research design outlined in chapter 3, do ultimately leave some perspectives unaccounted for. This is significant given the centrality of actor perspectives for explaining cases of convergence and divergence in relation to understandings of rule of law policy. While this thesis has sought to capture, categorise and analyse the key perspectives, it's important to acknowledge that other voices may have been omitted. Future research could address this by conducting an even broader examination of the narratives surrounding rule of law reforms in Serbia and what these tell us about EU integration and politics more broadly.

Analysing rule of law reforms in Serbia had heuristic value and the insights generated from this case help advance a theory of sensemaking in EU politics. Future research that is well-resourced could deploy a similar CPE methodology to further analyse the EU's promotion of the rule of law externally. Such an approach could retain the processual focus of this thesis while widening its scope to focus on rule of law reforms in other countries in the EU's neighbourhood. This would help test the core hypothesis that rule of law reforms are only successfully institutionalised when they resonate widely and allow for a convergence of different understandings through dialogue. Similar applications of the CPE approach could help refine a theory of sensemaking and the role it plays in EU politics.

This thesis deployed a more qualitative form of social network analysis. This type of network analysis does not allow for the type of statistical analysis that can be achieved by large scale network analysis. However, the use of a more qualitative form of network analysis allowed this thesis to not just capture actor interaction, but also ascertain why interactions occurred and their significance. This was a labour-intensive approach that would be challenging to replicate in a larger network. A similar study across multiple Candidate States would again require significant time and resources but would be beneficial and advance our understanding of the role that socialisation plays in policy networks by identifying, analysing and comparing multiple networks. It is also important to note that in this thesis, the analysed network may remain partial and incomplete, even if the key actors have been captured. However, the primary purpose of the SNA was to ascertain how processes of socialisation shape understandings and subsequently reform outcomes. Consequently, the network analysis was useful and highlighted the role social relations between key actors played in shaping rule of law reform outcomes.

In terms of future research on EU enlargement, the insights provided by a CPE approach show there is value in moving beyond current methodological approaches. While political science and IR scholarship has increasingly sought to expand its repertoire of methodologies and theories, the EU enlargement literature has remained focussed on applying the same methodologies and presenting the same theories of change. A CPE approach has shown that unorthodox approaches can complement and expand our existing understandings of the enlargement process. Future research on EU enlargement should consider the value added by new methodologies like CPE and embrace the potential new insight their application can yield.

More generally, studies of European integration continue to favour established theories, which have achieved a dominant position in the field. The approach adopted in this thesis, however, shows that new light can be shed on European integration by moving beyond these established theories. Across a whole range of other European integration issues, novel contributions could be made to the field through an application CPE. The most obvious place for its future application would be European political economy. However, the role sensemaking plays in shaping a host of other policy areas such as migration or its role in informing diplomatic action, remains underexplored. There is value in scholars who are interested in European integration and EU politics adopting CPE approaches and other underutilised methodologies, which might provide an alternative perspective and new evidence on established research topics.

Beyond European integration, there is also scope for the CPE approach applied here to be used in other research projects. Cultural approaches, including interpretivism and CPE, remain underutilised in political science research. Increased focus on the way in which actor interpretations shape outcomes can advance our understanding of politics and policy. By focussing on the drivers of policy, identifying the relationships which sustain policy reforms and outlining how policy is reconstituted through interpretation, CPE and similar approaches can provide alternative explanations and access important but often overlooked empirical detail. There is scope to apply CPE approaches to a whole range of other political or policy studies beyond the field of European Studies.



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## **Appendix A: List of interviewees**

### **List of cited interviewees**

Senior Manager, World Bank Multi Donor Trust Fund for Justice Sector Support, Belgrade.

Interview conducted 1 March 2016.

Interviewee A, UNHCR, Belgrade. Interview conducted 1 March 2016.

Official from the Serbian Anti-corruption Agency, Belgrade. Interview conducted 2 March 2016

Interviewee A, Centre for European Policy, Belgrade. Interview conducted 3 March 2016.

Interview with a legal analyst from Praxis NGO, Belgrade. Interview conducted 4 March 2016.

Interviewee A, EU Delegation to Serbia, Belgrade. Interview conducted 6 March 2016.

Interviewee B, EU Delegation to Serbia, Belgrade. Interview conducted 6 March 2016.

Interviewee A, Office for Cooperation with Civil Society, Belgrade. Interview conducted 7 March 2016.

Interviewee A, Serbian Ministry of Interior, Belgrade. Interview conducted 7 March 2016.

Project coordinator for public policies, Civic Initiatives NGO, Belgrade. Interview conducted 9 March 2016.

Interviewee A, Organisation for Security and Cooperation in Europe, Belgrade Office. Interview conducted 10 March 2016.

Interviewee B, OSCE Mission to Serbia, Belgrade. Interview conducted 10 March 2016.

Interviewee A from Serbian European Integration Office, Belgrade. Interview conducted 11 March 2016.

Journalist from the Centre for Investigative Journalism (CINS), Belgrade. Interview conducted 22 March 2016.

Interview with diplomat A, Norwegian embassy, Belgrade. Interview conducted 29 March 2016.

Interviewee A, Serbian Government Social Inclusion and Poverty Reduction Unit, Belgrade. Interview conducted 31 March 2016.

Interviewee B, Serbian Government Social Inclusion and Poverty Reduction Unit, Belgrade. Interview conducted 31 March 2016.

Dutch diplomat, Belgrade. Interview conducted 1 April 2016.

Judge, Serbian Supreme Court of Cassation, Belgrade. Interview conducted 6 April 2016.

Official from the Ministry of Labour, Employment, Veteran and Social Affairs, Belgrade. Interview conducted 8 April 2016.

Social inclusion policy consultant, Belgrade. Interview conducted 11 April 2016.

Consultant, UNDP, Belgrade. Interview conducted 11 April 2016.

Senior staff, Centre for Social Policy, Belgrade. Interview conducted 12 April 2016.

Interviewee, Vojvodina Civic Centre, Novi Sad. Interview conducted 19 April 2016.

Senior official, Ministry of Justice, Belgrade. Interview conducted 20 April 2016.

Interview C, OSCE Mission to Serbia, Belgrade. Interview conducted 21 April 2016.

Senior diplomat, the Swiss Agency for Development and Cooperation (SDC), Belgrade. Interview conducted 25 April 2016.

Interviewee A, State Ombudsman, Belgrade. Interview conducted 29 April 2016.

Interview with head of office, Transparency International, Belgrade. Interview conducted 5 May 2016.

Senior staff of the Serbian Judicial Academy, Belgrade. Interview conducted 9 May 2016.

Senior official for Cooperation and Border Management, Ministry of Interior, Belgrade. Interview conducted 10 May 2016.

Official from GRECO, Strasbourg. Interview conducted 3 June 2016.

MONEYVAL official, Strasbourg. Interview conducted 3 June 2016

Interviewee A, DG NEAR, Brussels. Interview conducted 6 June 2016

Interviewee B, DG NEAR, Brussels. Interview conducted 6 June 2016.

Former head of the Western Balkans Unit, DG NEAR. Interview conducted 10 June 2016.

MEP, EU-Serbia Stabilisation and Association Parliamentary Committee (SAPC), Brussels. Interview conducted 14 June 2016.

Interview with regional expert OECD SIGMA, Paris. Interview conducted 13 June 2016.

#### **List of interviews not cited**

Interviewee B, European Policy Centre, Belgrade. Interview conducted 3 March 2016.

Researcher, Internal and Security Affairs Centre, Belgrade. Interview conducted 10 March 2016.

Interviewee A, Serbian Prosecutors Office, Belgrade. Interview conducted 11 March 2016.

Interviewee B, Serbian Prosecutors Office, Belgrade. Interview conducted 11 March 2016.  
Interviewee C, Serbian Prosecutors Office, Belgrade. Interview conducted 11 March 2016.  
Interview with country official, European Investment Bank, Belgrade. Interview conducted 14 March 2016.

Interviewee A, Standing Conference of Towns and Municipalities, Belgrade. Interview conducted 15 March 2016.

Interviewee A, Department of Spatial Planning, Belgrade. Interview conducted 16 March 2016.

Interviewee B, Department of Spatial Planning, Belgrade. Interview conducted 16 March 2016.

Activist, Ne da (vi) mo Beograd, Belgrade. Interview conducted 28 March 2016.

Diplomat B, Norwegian Embassy, Belgrade. Interview conducted 29 March 2016.

Interviewee A, Ministry of Labour, Employment, Veteran and Social Affairs, Belgrade. Interview conducted 8 April 2016.

Consultant, Urbanizm, Novi Sad. Interview conducted 19 April 2016.

Senior official, Ligue of Roma Preševo, Belgrade. Interview conducted 20 April 2016.

Consultant, GIZ Serbia, Belgrade. Interview conducted 22 April 2016.

Director, Ecumenical Humanitarian Organisation, Novi Sad. Interview conducted 27 April 2016.

Senior official, Cross Border Cooperation, Ministry of Interior, Belgrade. Interview conducted 10 May 2016.

Party official, Doste Je Bilo, Belgrade. Interview conducted 10 May 2016.

Interviewee A, Council of Europe Venice Commission, Strasbourg. Interview conducted 3 June 2016.

Interviewee B, Council of Europe Venice Commission, Strasbourg. Interview conducted 3 June 2016.



## **Appendix B: Information sheet and consent form**

### **Information sheet**

**Research Project Title:** *Assessing the EU's 'new approach' to enlargement policy: The case of rule of law reform in Serbia*

You are being invited to take part in a research project analysing the process and consequences of EU integration. It is important you understand the purpose of this research before agreeing to participate. Please read the following information carefully and if necessary, discuss it with others. Please ask if you require more information on the research project.

**Project Scope:** The purpose of this project is to identify and analyse the outcomes that arise from Serbia's integration into the European Union and in particular, the implementation of rule of law reforms. The project aims to ascertain how effectively rule of law reforms have been institutionalised in Serbia.

**Your Involvement:** You have been invited to participate and provide qualitative material for this research project. You have been selected on the basis of your expertise. Your participation is voluntary. At any time, you are free to withdraw from the interview process and request the termination of any data you have provided. If you decide to take part, you will be given this information sheet to keep and be asked to sign a consent form.

**Data Collection Process:** The research project is based on the use of semi-structured interviews and supplemented with a short questionnaire. You are free to not answer questions and may withdraw from the interview and the subsequent questionnaire at any time. The interviews will be recorded. If you do not want to be recorded but still take part in an interview, a written transcript will be taken instead. At any moment you are entitled to request termination of recordings/ transcripts related to your participation. Recordings, transcripts and questionnaire material will be stored securely and will only be accessed by the principle researcher, Jonathan Webb.

**Expected Outcomes** Interview and questionnaire data is expected to provide evidence

on the relationship between EU integration, rule of law reform and institutional change. Your participation will provide insight into an important process shaping Serbian society and generate data that ascertains the transformative effects of EU integration.

**Confidentiality:** All information generated for this project will remain confidential. Your responses will be anonymised and the data you provide stored securely. If at any time you have complaints regarding the nature of this project, please submit a complaint to: [j.webb@sheffield.ac.uk](mailto:j.webb@sheffield.ac.uk) If you wish to raise complaints

through a third party, the Politics department at the University of Sheffield can be contacted at: [politics@sheffield.ac.uk](mailto:politics@sheffield.ac.uk)

**Use of Data:** The data you provide for this project will be used complete my PhD thesis. The information you provide may also be reproduced in academic publications or policy reports. You will not be personally identifiable in any of these publications. Some of the data generated may be used in subsequent research. This is indicated on the participant consent form.

**Project Funding:** This project is funded by an Economic and Social Research Council (ESRC) +3 PhD funding grant. It is taking place at the University of Sheffield. This project has been reviewed by the University of Sheffield Department of Politics ethics review procedure.

**Contact:** To find out more about this project, the principle research Jonathan Webb can be reached via email: [j.webb@sheffield.ac.uk](mailto:j.webb@sheffield.ac.uk)

This project is supervised by Andrew Geddes who can be contacted via the following: [a.geddes@sheffield.ac.uk](mailto:a.geddes@sheffield.ac.uk)

Telephone: +44 114 222 1700

The Department of Politics

University of Sheffield

Elmfield

Northumberland

Sheffield

United Kingdom

S10 2TU

**Thank you for your participation.** This information sheet is yours to keep, along with your participant consent form.



## Consent form

Title of Research Project: *Assessing the EU's 'new approach' to enlargement policy: The case of rule of law reform in Serbia*

Name of Researcher: Jonathan Webb

Participant Identification Number for this project: \_\_\_\_\_ Please initial box

1. I confirm that I have read and understand the information sheet dated 1/03/16 explaining the above research project and I have had the opportunity to ask questions about the project. ☐

2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason and without there being any negative consequences. In addition, should I not wish to answer any particular question or questions, I am free to decline. ☐

3. I understand that my responses will be kept strictly confidential. I give permission for members of the research team to have access to my anonymised responses. I understand that my name will not be linked with the research materials, and I will not be identified or identifiable in the report or reports that result from the research. ☐

4. I agree for the data collected from me to be used in future research ☐

5. I agree to take part in the above research project. ☐

\_\_\_\_\_  
Name of Participant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

(or legal representative)

\_\_\_\_\_  
Name of person taking consent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

*(if different from lead researcher)*

*To be signed and dated in presence of the participant*

\_\_\_\_\_  
Lead Researcher

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

*To be signed and dated in presence of the participant*

Copies:

*Once this has been signed by all parties the participant should receive a copy of the signed and dated participant consent form, the letter/pre-written script/information sheet and any other written information provided to the participants. A copy of the signed and dated consent form should be placed in the projects main record (e.g. a site file), which must be kept in a secure location.*

