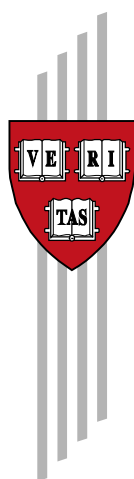


Of Knights and Squires: European Union and the Modernization of Albania

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Ermal Frasheri[†]

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I. Introduction

This paper is pertinent to the relationship between the European Union (“EU”) and Albania. Membership in the European Union, to candidate countries such as Albania, is presented and received as promising a state of prosperity and security. It is conceptualized and propagated as the ultimate modernization project.¹ The prospect of membership in the club is, as goes the Europeanization rhetoric,² the main driver and justification for democratization and

¹ See, e.g., Othon Anastasakis, *The Europeanization of the Balkans*, 12 BROWN J. WORLD AFF. 77, 78 (2005). In this paper, I claim that Albania has undergone three modernization projects since its establishment as an independent state in 1912—i.e., the first modernization project between 1912–1945; the second modernization project between 1945–1991; and the third modernization project from 1991 to present day. I use the term “modernization” in order to refer to a process that aims to overhaul the social, political and economic values, institutions, and norms of a country with the purpose of bringing it to a next, more advanced form of civilization.

² Thomas Risse and Tanja Börzel define Europeanization as a process of institution-building at the European level which affects Member States. Tanja A. Börzel & Thomas Risse, *When Europe Hits Home: Europeanization and Domestic Change*, 4 EIOF 1, 3 (2000). In a seminal work on the effects of Europeanization on domestic politics, Risse, Cowles and Caporaso define Europeanization as “the emergence and development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with political problem solving that formalize interactions among the actors, and of policy networks specializing in the creation of authoritative European rules. Europeanization involves the evolution of new layers of politics that interact with older ones.” THOMAS RISSE ET AL., *TRANSFORMING EUROPE: EUROPEANIZATION AND DOMESTIC CHANGE* 3 (Thomas Risse et al. eds., 2001). Radaelli defines Europeanization as “[p]rocesses of (a) construction (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies.” Claudio Radaelli, *Wither Europeanization? Concept Stretching and Substantive Change*, 4 EIOF 1, 3–4 (2000). However, I stand closer to Othon

economic development reforms.³ Therefore, the European integration process is one in which values and norms emanate from the center and are received by the periphery⁴ in a great effort to achieve transformation.⁵ This modernization project bears a resemblance to the mythical story of knights and squires, whereby squires used to enter into subservient relationships with knights in order to elevate themselves to knighthood one day. In this narrative, the European Union epitomizes the knights, and Albania, on the other hand, symbolizes the dreams of a squire.

However, rather than accepting the proposition that integration into the European Union results in prosperity and democratization for the periphery, I argue that this process of regional integration

Anastasakis's definition of Europeanization, according to which: "Europeanization, Southern style' has also been identified with a process of deep transformation and modernization of economies, politics, and societies. . . . For the Balkans, Europeanization means adjustment to advanced western models as well as security and prosperity for the future. Yet it is also a complicated and controversial struggle. For those countries[—]late developers on the post-communist transition scene still recovering from ethnic wars and extreme nationalism[—]it is a much more traumatic experience than earlier experiences of Europeanization in Central and Eastern Europe. . . . But a common defining denominator of Europeanization in South East Europe is that it as [sic] a process which is externally driven, coercive, and increasingly demanding." See Anastasakis, *supra* note 1, at 79–80.

³ See, e.g., European Commission Press Release SPEECH/12/943, Štefan Füle, Speech on Albania in the Plenary Session of the European Parliament (Dec. 12, 2012), http://europa.eu/rapid/press-release_SPEECH-12-943_en.htm?locale=en [<https://perma.cc/Y3SQ-HM6T>].

⁴ In this paper, I use terms such as "center" and "periphery" to denote respectively the European Union, and candidate countries for membership in, such as Albania, Bosnia and Herzegovina, Macedonia, Montenegro, and Serbia.

⁵ According to Ernst Haas, political integration is the process whereby actors shift their loyalties, expectations, and political activities toward a new center, whose institutions possess or demand jurisdiction over preexisting national states. ERNST HAAS, *THE UNITING OF EUROPE* 16 (1958), <http://www.europarl.europa.eu/100books/file/EN-H-BW-0038-The-uniting-of-Europe.pdf> [<https://perma.cc/QZZ3-9MVB>]. Walter Mattli defines regional integration as "the process of providing common rules, regulations, and policies for a region." WALTER MATTLI, *THE LOGIC OF REGIONAL INTEGRATION: EUROPE AND BEYOND* 44 (1999). Mattli argues that a union will have an interest in accepting poor peripheral economies typically only when the net cost of excluding them is greater than the cost of accepting them. An incentive for accepting these poor countries exists when negative externalities originating in these outsider countries threaten to disrupt the union's stability, security and prosperity. The sources of these externalities may reside in economic mismanagement, political instability, or social unrest. *Id.* at 95. The relationship between the EU and its periphery conforms with what Immanuel Wallerstein calls a world system: spatial/temporal zone which cuts across many political and cultural units, an integrated zone of activity and institutions, which obey certain systemic rules. IMMANUEL WALLERSTEIN, *WORLD SYSTEM ANALYSIS: AN INTRODUCTION* 17 (2004).

has served to entrench Albania in its peripheral place rather than sooth the tension between a prosperous North and a problematic South.⁶ The new order—integration in the EU—demands that potential candidate countries create legal and political institutions that would pave the way for future membership in the European Union.⁷ Since 1990, throughout twenty-five years of reforms, while invoking the name of progress, political institutions continue to anchor the alienation of the individual from power; economic underdevelopment persists, and to the present day, the newly established legal institutions continue to resemble sand castles. Ultimately, I argue that the net winners of this process are the domestic elite and the European Union itself.⁸

⁶ A conceptual problem in demonstrating progress is that usually the domestic elite and the EU policy use comparisons with the past in order to show that the integration process is bringing about prosperity. For instance, government cabinets during transitional periods always contrast their results (read: “successes”) either against anarchical situations, when the state apparatus is either non-existing or dysfunctional, against the destitute conditions during the last years of communism, i.e., 1987–1990, against EU reports (or for that matter, reports from other international organizations), even though they have been proven to be elusive. Such retrospective comparisons are not foreign to Albanians. For instance, between 1945 and 1990, the communist regime compared its achievements with the levels of socio-economic development from 1938. Although these types of analyses may capture an increase in welfare as compared with a different stage where the means of production were fundamentally different, they do not convey relative gains or progress *vis á vis* other countries. In this sense, comparisons with the past belong to the repertoire of rulership, they are methods of governing. They are disingenuous because they cannot conceal the fact that the more time passes, the gap between Albania and the West remains as wide as it ever was since the emergence of the modern Albanian state in 1912. *See, e.g.*, Vendim Nr.33, datë 11.3.1969, Mbi Shkrirjen e Kooperativave te Artizanatit si Organizata Ekonomike Masash dhe Kalimin e Aktivitetit te Tyre Sektorit Shteteror [Decision No. 33 dated 03.11.1969 On the Merger of Cooperatives Arartizanatit Measures as Economic Organizations and their Activities Over Public Sector].

⁷ The European Union uses a set of criteria—the Copenhagen criteria as they are colloquially called—to determine a country’s eligibility for membership in the club. They consist of the following elements: political—stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; economic—existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union; and legal—acceptance of the Community *acquis* (body of European Union law): ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union. *Glossary of summaries: Accession criteria (Copenhagen Criteria)*, EUR-LEX, http://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhagen.html [<https://perma.cc/94FZ-D5CA>].

⁸ For the purpose of this dissertation, with the term “elite,” I refer to political leaders and senior government officials. This conceptualization of the elite foregrounds a power perspective in identifying key political actors, but nonetheless, on specific examples, I also

In this paper, I claim that transition is not simply a process, but a painful journey that takes a country from state A to state B, a tunnel at the end of which there is light.⁹ Transition is a permanent state of limbo, a destination, a regime *per se*.¹⁰ And in that case, the march to the future remains long, blind, deaf and dogmatic. It is an excruciating journey in the desert of permanent transition. This paper, therefore, is an attempt to provide an alternative interpretation of the European integration process.

Part II of the paper examines economic policies embedded in the European Union's enlargement strategy in order to show their shortcomings as development strategies.¹¹

Part III brings to the front the rule of law reforms that underpin the third modernization project, and these are presented as

include intellectuals as part of the problem.

⁹ I use the term "transition" to denote a process of social, including political and economic, transformation through restructuring of the social order. In this case, the transition that I am discussing refers to the dismantling of the communist regime and the building of a capitalist, liberal democratic order.

¹⁰ I use the term "regime" in order to denote a set of principles, norms, rules, and procedures around which actors converge their expectations and behavior. Regarding this definition, see also Stephen D. Kasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, 36 INT'L ORG. 185, 185 (1982). As a case that illustrates the inherent transient nature of the European integration process, the EU approach towards Albania tends to be maddeningly ambiguous, lukewarm—encouraging but also reprimanding. For instance, the former Enlargement Commissioner Olli Rehn has analogized Albania's progress to a glass that is half empty and half full. According to that metaphor, one can simultaneously assess that whatever a government does at a given time is satisfactory but also falls short of what it should be doing. It is a metaphor that succinctly captures the diagnosis provided by many European Union technocrats and politicians. The metaphor suggests that progress is conceptualized to mean survival, and as long as a society is surviving by being hooked up to a life-supporting machine (in this case, the European Union), then the prospects of survival are optimal. However, getting hooked up to a life-support machine does not enable one to participate in the rat race for modernization. See Olli Rehn, Press Conference on the Progress Report on Albania (Nov. 2007), http://ec.europa.eu/enlargement/key_documents/reports_nov_2007_en.htm [https://perma.cc/B8DT-U74N]

¹¹ I use the term development according to what Dani Rodrik has defined as structural transformation, the rise of new industries to replace traditional ones that requires a mix of market forces and government support. If the government is too heavy-handed, it kills private entrepreneurship. If it is too standoffish, markets keep doing what they know how to do best, confining the country to its specialization in traditional, low-productivity products. See Franco Mosconi, *The Jacquemin-Rodrik Synthesis and the Design of a New European Industrial Policy*, JEAN MONNET INTERNATIONAL CENTRE OF EXCELLENCE (Nov. 2012), http://www.jeanmonnet-pv.it/Jean_Monnet_Centre_of_Excellence/publications_files/FMosconi_full_jm.pdf [https://perma.cc/856V-DM2C].

prerequisites for Albania's progress.¹²

Part IV traces the contours of the democratization process to highlight the political polarization among parties,¹³ the cult of personality that serves as their main form of identity,¹⁴ and the emergence of Europeanization as the dominant ideology.

Part V examines two different case studies—the EU accession process and the EU visa liberalization process in order to shed light on the dynamics of the relationship between international and domestic elites.¹⁵

¹² Security concerns are not that unusual for the EU. In *The Size of Nations*, Alberto Alesina and Enrico Spolaore say that: “European integration started in the 1950s when security considerations were an important factor.” ALBERTO ALESINA & ENRICO SPOLAORE, *THE SIZE OF NATIONS* 203 (2005). “The idea was that deepening economic cooperation, especially in the strategically important areas of coal and steel, was a way of preventing devastating intra-Economic conflicts.” *Id.*

¹³ In a sense, political parties are perceived as gangs competing for power while plundering public resources, which has led to a deep societal cleavage along party lines. This political cleavage is perceived by masses, and deliberately instrumentalized by the elite, as the resurrection of the class struggle. With the passage of time, the fault lines have continued to deepen. Between 1996 and 2001, the political system drifted towards a competitive authoritarian regime, which is particularly evident in the elections of 1996, 1997, and 2001, but also apparent, even nowadays, when one observes the general conduct of the government towards opposition parties, and media. It might not take a leap of faith to characterize the political system similar to what Levitsky and Way denote as competitive authoritarianism. Levitsky and Way describe competitive authoritarian regimes as formal democratic institutions are widely viewed as the principal means of obtaining and exercising political authority. Incumbents violate those rules so often and to such an extent, however, that the regime fails to meet conventional minimum standards for democracy. . . . In competitive authoritarian regimes, by contrast, violations of these criteria are both frequent enough and serious enough to create an uneven playing field between government and opposition. Although elections are regularly held and are generally free of massive fraud, incumbents routinely abuse state resources, deny the opposition adequate media coverage, harass opposition candidates and their supporters, and in some cases manipulate electoral results. Journalists, opposition politicians, and other government critics may be spied on, threatened, harassed, or arrested. Members of the opposition may be jailed, exiled, or—less frequently—even assaulted or murdered. Regimes characterized by such abuses cannot be called democratic. Steven Levitsky & Lucan A. Way, *Elections Without Democracy: The Rise of Competitive Authoritarianism*, 13 J. DEMOCRACY 51, 52–53 (2002).

¹⁴ See generally Xin Lu & Elena Soboleva, *Personality Cults in Modern Politics: Cases from Russia and China* (Ctr. Glob. Pol., Working Paper No. 1, 2014). The deep political cleavage stimulates, and is stimulated in turn by, the rise of charismatic leaders who are more interested in dominating through their personality cults rather than pursuing ideological contests amongst themselves. *Id.*

¹⁵ The specific forms of interaction that I discuss in these three cases, between domestic and the European Union are respectively: conditionality, persuasion, and acculturation.

I propose two critiques in this paper. The first is directed towards the domestic elite who have been complicit in the squandering resources and opportunities during these past two decades of transition. The second is directed towards the European Union's enlargement strategy, which, as an aspirational project for the periphery, only strengthens the position of the domestic elite at the expense of social mobility and democratization.¹⁶

The critics of this project might ask: But what is the alternative to European integration? Can Albania, or countries similar in nature, afford to stay in isolation and outside these great processes of transformation? Have the European Union and its Member States not done much to support Albania and other countries like it? I usually answer this type of critique by stating that my argument is not about denying, obscuring, or belittling the benefits that come, or might come, as a result of the European integration process; rather, it is about shedding light on the structure and dynamics of the relationship in order to transform it.

Why is this discussion important for the reader? Veblen famously coined the term, "the advantages of backwardness,"¹⁷ and,

¹⁶ Even under a minimalist, procedural definition of democracy, I claim that the process of Europeanization has not been successful in creating the conditions for social mobility. Adam Przeworski and Fernando Limongi have defined democracy as a regime in which some governmental offices are filled as a consequence of contested elections. What is essential to considering a regime as democratic is that two kinds of offices are filled by elections, whether directly or indirectly: the chief executive office and the seats in the legislative body. Adam Przeworski & Fernando Limongi, *Modernization: Theories and Facts*, 49.2 WORLD POL. 155, 178 (1997). Dankwart Rustow has defined it as "a system of rule by temporary majorities." Dankwart A. Rustow, *Transitions to Democracy: Toward a Dynamic Model*, 2 COMP. POL. 337, 351 (1970). Joseph Schumpeter famously conceptualized the democratic method as the institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote. Democracy does not mean and cannot mean that the people actually rule in any obvious sense of the terms "people" and "rule." Democracy means only that the people have the opportunity of accepting or refusing the men who are to rule them. JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY 269, 284–85 (1987). Seymour Lipset defined democracy as a political system, which supplies regular constitutional opportunities for changing the governing officials. It is a social mechanism for the resolution of the problem of societal decision making among conflicting interest groups, which permits the largest possible part of the population to influence these decisions through their ability to choose among alternative contenders for political office. Seymour M. Lipset, *Some Social Requisites of Democracy: Economic Development and Political Legitimacy*, 53 AM. POL. SCI. REV. 69, 70–71 (1959).

¹⁷ See BARRINGTON MOORE JR., SOCIAL ORIGINS OF DICTATORSHIP AND DEMOCRACY: LORD AND PEASANT IN THE MAKING OF THE MODERN WORLD (1993).

therefore, as we study the course that countries take to develop themselves and empower the individual, it is important to elucidate the implications of transnational agendas and map the power dynamics between the elites. As Barrington Moore argues, the methods of modernization chosen in one country change the dimension of the problem for the subsequent countries that take that step.¹⁸ Much can be learned from the lessons of regime change in Europe that could influence how development and democratization agendas are shaped.

While the focus of this paper is on the relationship between the EU and Albania, there are lessons, analogies and parallels for other countries as well. Although the last two decades have been a period of significant transformation for the former communist countries of Europe, unfortunately, the critique has been rather sporadic, particularistic, and rarely holistic. Furthermore, in recent discourses on stability and development, much emphasis is being given to regional solutions or regional integration as instruments for bringing about stability and prosperity.¹⁹

It is difficult to end this introduction on an optimistic note. However, I tend to think that in the interpretation of events, theories, institutions and power, therein also lies the potential for transformation.

II. The Entanglement of the Periphery: European Integration as a Development Strategy?

In this section, I examine the instruments that structure the relationship between the European Union and Albania in an attempt to debunk the myth that the current model of European integration brings about development.²⁰ Wizards of European integration

¹⁸ *See id.* at 414. Moore argues that the development of democracy is a long and certainly incomplete struggle to do three closely related things: to check arbitrary rulers, to replace arbitrary rules with just and rational ones, to obtain a share for the underlying population in the making of rules.

¹⁹ *See, e.g., East Africa Regional Integration Strategy Paper 2011–2015* (Sept. 2011).

²⁰ The first instrument of intervention—i.e., trade and humanitarian assistance—covered the period between 1991 and 1999. The second instrument—i.e., Stabilization and Association Agreement, which is essentially an expanded free trade agreement—covered the period from 2000 to the present. In May 1999, the European Commission laid out the rationale for restructuring the relationship with the Western Balkans. The relationship, branded “new” was based on a recognition that the main motivator for reform—i.e., establishing a rule of law society, democratic and stable institutions, and a free economy,

advocate that European integration is a linear road towards prosperity, towards becoming a “little Denmark.”²¹ However, I seek to expose the entrenched inequalities that permeate this asymmetrical relationship, and the shortcomings of the current model of regional integration.

Several moves have been made that seem to perpetuate the peripheral nature of Albania in relation to the European Union. The first is the ideological battle, through which the righteousness of Europeanization as the inevitable choice for modernization is ensured and internalized by the domestic elite and the masses.²² It silences, discourages, and displaces the politics of development in the name of Europeanization as the objective, necessary, scientific, and essential modernization paradigm.²³ This internalization of the ideological supremacy effectively delegitimizes attempts to restructure the relationship between the prospective members and the European Union.²⁴

is the relationship with the EU and the perspective of one day becoming Member States. The process is also accompanied by another one, an orientation to build a free trade area within the region as a way of harnessing the benefits of liberalization and market reforms. See Michael Kaser, *Economic Continuities in Albania's Turbulent History*, 53 EUR.-ASIA STUD. 627 (2001); but see Philippe C. Schmitter & Javier Santiso, *Three Temporal Dimensions to the Consolidation of Democracy*, 19 INT'L POL. SCI. REV. 69, 70–71 (1998) (arguing that transitions are cyclical rather than linear).

²¹ See, e.g., MORTON ABRAMOWITZ ET AL., THE WESTERN BALKANS AND THE EU: ‘THE HOUR OF EUROPE,’ CHAILLOT PAPERS (Jacques Rupnik ed., 2011), http://www.iss.europa.eu/uploads/media/cp126-The_Western_Balkans_and_the_EU.pdf [<https://perma.cc/CBD3-UJXN>]; EUROPEAN COMMISSION, ENLARGEMENT OF THE EUROPEAN UNION: AN HISTORIC OPPORTUNITY (2001), https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/archives/pdf/press_corner/publications/corpus_en.pdf [<https://perma.cc/7Q9G-PNZ3>].

²² See *Albania, the EU Integration Process Between Diplomacy and the Fight Against Corruption*, MEDITERRANEAN AFFAIRS (June 3, 2016), <http://mediterraneanaffairs.com/albania-the-eu-integration-process-between-diplomacy-and-the-fight-against-corruption/> [<https://perma.cc/2MDB-2799>].

²³ See *infra* Part IV.

²⁴ As in the previous modernization project—i.e. building of socialism—there is unanimity in the march towards the EU. From the poorest peasant to the elite, there is unanimity about the goal and also about the methods. There is also unanimity that the greatest benefit of integration is the free movement of persons. If one asks any of the domestic political actors about how would, or should the country develop, the answer is always the same: Albania would/should develop through the adoption of a market economy, building of civil society, ensuring the independence of the judiciary and the rule of law, fighting corruption, and all of the above by closely cooperating with Euro-Atlantic partners, period. See Blendi Kajsia, *Perception of and Knowledge of European Union and*

The second move is the application of a textbook neoliberal agenda consisting of liberalization, privatization and stabilization as a way of ensuring macro stability and growth. Often, in the assessments of the European Commission (the EU's quasi-executive branch), macroeconomic stability, inflation rate, liberalization, and endless privatization reforms are the indicators of prosperity. However, the term "development" is missing in the approach that the prosperous center takes in relation to its not-that-well-off periphery.²⁵ The attention to the above-mentioned

EU Integration for Albania, AIIS (2003).

²⁵ A few definitions on a finicky concept such as "development" are worthy and necessary. Seymour Lipset describes the economic development to mean increased income, greater economic security, and higher education. *See* Lipset, *supra* note 16, at 75. The general income level of a country, writes Lipset, affects the receptivity of democratic political tolerance norms. *Id.* The poorer the country, the greater the emphasis on nepotism, and the lower the opportunities to develop Weberian bureaucracies. *Id.* This is a condition, which has become entrenched in Albania. Another developmentalista, Dani Rodrik, writes that the essence of economic development is structural transformation, the rise of new industries to replace traditional ones. This process, according to Rodrik, requires a mix of market forces and government support, if the government is too heavy handed, it kills private entrepreneurship, if it is too standoffish, markets keep doing what they know how to do best, confining the country to its specialization in traditional, low-productivity products. Fostering structural transformation and innovation is a central public purpose, and hence governments cannot evade the challenge. They only debatable question about industrial policy is not "whether" but "how." *See* Dani Rodrik, *The Return of Industrial Policy*, PROJECT SYNDICATE (Apr. 12, 2010), <https://www.project-syndicate.org/commentary/the-return-of-industrial-policy?barrier=true> [<https://perma.cc/M28C-WV4C>].

The World Bank's rule of law ideologue, Ibrahim Shihata, takes a more expansive view, in a way that is matched by what Amartya Sen in his seminal work *Development as Freedom* calls "human flourishing." Shihata claims that: "[d]evelopment in the broad sense covers all forms of human progress and the enjoyment of a better quality of life. It is not limited to the material betterment of economic conditions (e.g. higher per capita income) or better physical standards of living; it covers human progress in all its aspects, including fair distribution of the fruits of growth and political rights under a form of government based on broad participation. . . . Economic growth is a narrower concept, usually expressed in terms of the annual increase of gross domestic product and gross domestic product per capita." Ibrahim F. I. Shihata, *Democracy and Development*, 46 INT'L AND COMP. L. Q. 635, 635-36 (1997); *see also* AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999). Historically, it has been demonstrated that the concept of "development," is an elusive one. Heinz Arndt has shown, for instance, how this term is contingent upon the rise and fall from grace of particular viewpoints in development discourse between 1945 and 1989. In this context, the EU uses integration to bring about development and security/stability, hence in the EU's perspective, integration stands in for a modernization, or development strategy. However, while on the one hand, the EU sees its relationship with the periphery, including Albania, as a transformative process for the recipient country, on the other hand, the scrutiny that economic development situation

indicators is often used to show that as long as there is no sudden systemic collapse, the economy is not doing badly.²⁶ Domestic actors use the above-mentioned statistics to indicate success where there is none. The center, on the other hand, is all too happy to keep the patient on life-support by transferring some funds to well-anointed pools called “transition assistance” and “institution building.”²⁷ After all, the ideology rests on the premise that this process is not only painful, but also a necessary transition towards a more prosperous future.

The third move is the systematic deindustrialization through looting, plundering, squandering of resources, privatization, and general economic restructuring.²⁸ At this stage, the state of the economy is firmly set to favor trade (i.e., imports) over production, buying over creating.

The fourth move consists of technological decline and a downward spiral towards intellectual peripheralization. For instance, Gunnar Myrdal argues that new inventions increase the demand for capital.²⁹ Hence it is in the industrialized countries where capital gets invested; whereas in underdeveloped countries, capital formation and investments generally tend to be smaller, even relative to their lower incomes. This vicious cycle functions in such

receives from the EU leaves something to be desired. Therefore, rather than a story of progress, I argue that the story of this third modernization project has been one of deindustrialization and stagnation. David Kennedy, *The “Rule of Law”, Political Choices and Development Common Sense*, in *NEW LAW AND ECON. DEV.: A CRITICAL APPRAISAL* 95 (David M. Trubek & Alvaro Santos eds., 2006); see HEINZ W. ARNDT, *ECONOMIC DEVELOPMENT, THE HISTORY OF AN IDEA* (1989); GERALD M. MEIER, *BIOGRAPHY OF A SUBJECT: AN EVOLUTION OF DEVELOPMENT ECONOMICS* (2006); see also MAURICE SCHIFF & L. ALAN WINTERS, *REGIONAL INTEGRATION AND DEVELOPMENT* (2003). In the list of motives as to why regional integration happens, the authors list the desire to help neighboring countries stabilize and prosper, both for altruistic reasons and to avoid spillovers of unrest and population. One of the most fundamental causes is attributed to the collapse of the Soviet hegemony, which led the countries of Eastern Europe and the Baltic to embrace democracy and capitalism and those of Western Europe to seek ways of cementing and accelerating their transition.

²⁶ See *supra* note 25.

²⁷ *Instrument for Pre-Accession Assistance (IPA) Multi-annual Indicative Financial Framework for 2008-2010*, at 5, COM 92006, 672 final (Nov. 8, 2006).

²⁸ DAVID STARK & LASZLO BRUSZT, *POSTSOCIALIST PATHWAYS: TRANSFORMING POLITICS AND PROPERTY IN EAST CENTRAL EUROPE* (1998); see also Michael McFaul, *State Power, Institutional Change, and the Politics of Privatization in Russia*, 47 *WORLD POL.* 210 (1995).

²⁹ GUNNAR MYRDAL, *ECONOMIC THEORY AND UNDERDEVELOPED REGIONS* (1963).

a way that a country is poor because it is poor.³⁰

The fifth move consists of the emergence of trafficking, and the birth of the security state. The birth of the security state does not indicate the emergence of a strong state. On the contrary, it is a dysfunctional security state, characterized by a predatory behavior towards individuals, but quite powerless when confronted with organized structures capable of using force.

The transition from a totalitarian communist system to a capitalist liberal democracy is often presented as one of the success stories of peaceful regime changes; yet this transition is anything but peaceful. It is an inherently violent social transformation. The “velvet” blanket that ensured the swapping of regimes in 1989 is a myth that insidiously hides the traumas of transition, and swiftly locates them in the private sphere.³¹

A. *How it all Began*

This is the third modernization project since Albania's independence in 1912.³² This project is riddled with dualisms in the way it is presented and perceived by the elites, whether domestic or international. For instance, in the early 1990s, one could have argued that the political and economic systems established in Albania were the incarnation of the Marxist-Leninist version of

³⁰ Gunnar Myrdal is an economist, largely absent from mainstream economic textbooks, but an author whose analytics weigh in illuminating the relationship between leading and lagging regions and countries. *Id.* Series after series of statistics after 1991, demonstrate the decline in the industrial production and technological innovation. There were 432 applications for new patents in 2006, and 347 in 2010. The overall number of valid patents in 2010 was 1504. GENERAL DIRECTORATE OF PATENTS AND TRADEMARKS, ANNUAL PATENT STATISTICS FOR THE PERIOD 2006–2010 (2010), <http://www.dppm.gov.al/> [<https://perma.cc/GR9F-2DU2>]. Trademarks fair slightly better, there were 622 applications for new trademarks in 2006, and 611 in 2010. *Id.*

³¹ In 20 years, it is reported that approximately 8,000 people are killed as a result of property disputes going astray. Nga Kryesia e Shoqates, *Bregdeti*, GAZETA TELEGRAF (Dec. 27, 2011), <http://telegraf.al/aktualitet/cili-eshte-sovrani-dhe-cfare-kerkon-shoqata-bregdeti-nga-sovrani> [<https://perma.cc/9QHS-VAFP>].

³² I consider the reforms taken between 1912 and 1945 as the first modernization project. The second modernization project, between 1945 and 1991, was patterned after the Soviet and Chinese societal models with whom Albania was closely linked respectively from 1949 to 1960, and from 1960 to 1979. And the period starting from 1991 to present day is what I call the third modernization project. In this context, transition embodies modernization, or what I call the “third modernization.” In this paper, I also refer to “waves” of modernization, and by that I mean the various theories on economic development and democratization within the third modernization paradigm.

brutal capitalism with a twist, because rather than fostering industrialization, there was systematic deindustrialization.³³ At the same time, Albania was also the poster child of the International Monetary Fund for its dogmatic pursuit of neoliberal policies.³⁴ It is perhaps the irony of fate that while Albania experienced the most extreme form of communism in Europe, it also experienced a radical and brutal transition to capitalism and democratization. It was during this time when the European destiny of the country materialized not only as an inherent desire of Albanians, but also as a policy option following the European Union's rapprochement with the former socialist countries.

There are at least three elements in this story of enchantment with regional integration. First, Europeanization is seen as the perennial national aspiration of Albanians, dating back to the resistance against the Ottoman invasion in the Fifteenth century and to the Albanian renaissance in the second half of the 1800's.³⁵ Hence, embracing the EU is like returning to the long lost family. Second, the European Union is projected as the embodiment of prosperity, and that prosperity stands in juxtaposition to the underdevelopment of Albania. Third, the only objective and reasonable way out of backwardness is to progress, as the EU says.

There are also three sources of tension in the relationship between the EU and Albania. First, there is a regional approach by the EU towards the Western Balkans, but there is also an individual assessment of each country's progress towards the EU.³⁶ Second,

³³ Between 1991 and present day, Albania experienced political, economic, and social changes. The focus of such social reforms was twofold: democratization and economic liberalization, and the danger that the reforms might be reversed loomed large. While on the one hand, political changes created the semblance of a democratic regime, on the other hand, the collapse of the socialist economic model and the ensuing privatization led to the de-industrialization of the country.

³⁴ Chris Jarvis, *The Rise and Fall of the Pyramid Schemes in Albania*, 47 IMF STAFF PAPERS 1 (2000); DANIEL VAUGHAN-WHITEHEAD, ALBANIA IN CRISIS: THE PREDICTABLE FALL OF THE SHINING STAR (1999); see Volker Treichel, *Stabilising Policies in Albania and their Efficiency*, BANK OF ALB., https://www.bankofalbania.org/web/pub/volker_ang_167_1.pdf [<https://perma.cc/T6UD-UQTA>].

³⁵ See CONSTANTINE A. CHEKREZI, ALBANIA, PAST AND PRESENT 36—39, 45—46 (1919).

³⁶ See *Trade: Western Balkans*, EUR. COMM'N, <http://ec.europa.eu/trade/policy/countries-and-regions/regions/western-balkans/#footnote-1> [<https://perma.cc/B7ZH-KHZ7>] (explaining that the Western Balkans is term used by the European Union that includes Albania, Bosnia and Herzegovina,

there is governance by exporting norms, values and conditions, but there is no accountability. Third, there is integration without development.

This third theme is based on an argument advanced by Gunnar Myrdal, according to which forces in the market normally tend to increase, rather than decrease the inequalities between regions.³⁷ If things are left to market forces unhampered by any policy interference, according to Myrdal, then industrial production, commerce, banking, insurance, shipping and, indeed, almost all those economic activities which in a developing country tend to give a greater than average return would cluster in certain localities and regions, leaving the rest of the country more or less in a backwater.³⁸ So, in the case of Albania and the European Union, this means that resources would tend to flow towards the latter in the absence of an endogenous development strategy.³⁹

The existence of an industrial base along with a trained and skilled labor force,⁴⁰ which were built during the first and second

Croatia, Kosovo, Macedonia (FYROM), Montenegro, and Serbia).

³⁷ See MYRDAL, *supra* note 29, at 26.

³⁸ *Id.*

³⁹ In 1987, Albania's agriculture sector employed 52 percent of the workforce, the industrial sector employed about 22.9 percent, construction employed about 7.1 percent, trade about 4.6 percent, education and culture about 4.4 percent, and transportation and communications about 2.9 percent. By the end of 1991, unemployment was up to fifty percent. Average employment levels were about 700 workers per enterprise in 1989, and some of the largest enterprises employed more than 4,000 workers. The GDP dropped from 9.8 percent in 1989 to -13.1 percent in 1990 and to -30 percent in 1991. FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, ALBANIA: A COUNTRY STUDY (Raymond Zickel & Walter R. Iwaskiw eds., 2d ed. 1994) [hereinafter FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS]; MARIO I. BLEJER ET AL., ALBANIA: FROM ISOLATION TOWARD REFORM (1992). In this context, emigration became the safety valve. Like zombies, tens of thousands people, approximately half a million, took to the mountains and the Adriatic Sea to cross over to Greece and Italy, in the following years after 1991. Gazmend Kapllani, a writer living in Greece, recalled his own journey across the mountains to Greece. Greeks shepherds were astonished to seeing waves of people crossing mountains on foot, in all seasons, and asked Kapllani whether all Albanians intended to cross over to Greece. By the end of 1991, approximately about 115,000 to 130,000 employees were inactive, although, formally, in employment relationships with existing enterprises. The number of registered unemployed jumped from 33,200 at the end of 1990 to 78,500 at the end of 1991. See Kapllani, *A Short Border Handbook*, Granta UK (May 1, 2011).

⁴⁰ One of the paradoxes of the socialist modernization was that despite a low income per capita, health and education standards were quite high. In 1994 the average longevity was seventy-three years. See FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, *supra* note 39, at 26. Following the dismantling of the industrial base, workers turned into *lumpenproletariat*, their dignity was stripped away from them. *Id.*

modernization projects in Albania, could have served as a launching platform for the third modernization project.⁴¹ According to Alice Amsden, the creation of large-scale firms that are experienced in manufacturing and income distribution are required to bring about development.⁴² So, for instance, in 1991, Albania had about 60 years of experience with manufacturing and had an industrial base that could have been technologically upgraded to cope with the demands of entering the global markets.⁴³ The industry accounted for approximately forty-five percent of the Net Material Product and absorbed about forty-two percent of the gross investment.⁴⁴ Manufacturing represented roughly eighty percent of the total industrial production, in which the food and light industries accounted for about forty-eight percent, and the heavy industry represented about thirty-one percent of the total industrial production.⁴⁵ The mineral sector alone accounted for fourteen percent of the gross industrial production and provided much needed foreign currency.⁴⁶

⁴¹ During the 1980s, the agricultural sector accounted for about thirty-three percent of the country's net material product, the industrial sector accounted for about forty-four percent, and the rest was taken by the services, in which construction was the most important sector. Between 1980 and 1985 the gross industrial production was kept at a steady pace (2.6 percentage change), it fluctuated from 5 to 1.5, 2.1, and 5 percent in 1986, 1987, 1988, 1989, and then it dropped to -7.5 percent in 1990 and -37 percent in 1991. The agricultural output also declined sharply after 1989, by 1991 it had decreased -24 percent. The account balance deteriorated from 7.8 million USD in 1987 to -23.5 million USD in 1988, -70.4 million USD in 1989, -95.1 million USD in 1990 and -250 million USD in 1991. After a 30 percent increase from 1986 to 1989, respectively from 95.5 million USD to 132.7 million, exports dropped to 72 million USD in 1991, whereas imports increased almost 300 percent from 96.1 million in 1986 to 281 million in 1991. Throughout the 1950s, the USSR had financed the construction of hydroelectric power stations, textile and sugar mills. The fallout with the Soviets in 1961, gave the Chinese the front seat in financing the construction of the industrial base. Chinese aid was instrumental in building the extraction industry and refineries, hydroelectric power stations, cement mills, steel plants. See BLEJER, *supra* note 39; FRANK DIKÖTTER, *MAO'S GREAT FAMINE: THE HISTORY OF CHINA'S MOST DEVASTATING CATASTROPHE, 1958–62* (2010).

⁴² ALICE H. AMSDEN, *THE RISE OF "THE REST": CHALLENGES TO THE WEST FROM LATE-INDUSTRIALIZING ECONOMIES* 287 (2004).

⁴³ See Robert Elsie, *Historical Dictionary of Albania* 3 (2d ed. 2010).

⁴⁴ See BLEJER, *supra* note 39, at 17.

⁴⁵ The light industry sector met about eighty-five percent of the domestic demand for consumer goods and provided about twenty-two percent of the state's revenue. BLEJER, *supra* note 39, at 20.

⁴⁶ Albania is very rich in natural resources, it has the third largest deposit of chromium in the world, which is used to produce stainless steel, copper, bauxite, ferronickel, oil, natural gas, and coal, just to name a few. See GLOBAL BUSINESS PARTNERS,

Additionally, apart from industrial privatization, the domestic elite promoted tourism and construction as engines of growth. Unfortunately, the use of tourism as a means of spurring growth is a fallacy brilliantly captured by Frantz Fanon as “the bordellization of the third world by the local bourgeoisie,” whereby the local societies degrade to the position of servants to the affluent classes of more advanced societies.⁵⁴

Even if one is to ignore the frontal critique of the shock therapy reforms, the loss of the labor force alone, due to deindustrialization and massive emigration, is a bad economic policy.⁵⁵ Albanian policymakers are mostly to blame for the failure to reinvigorate and technologically upgrade industries,⁵⁶ but this breakdown also

of the Albanians abroad. See James P. Korovilas, *The Albanian Economy in Transition: The Role of Remittances and Pyramid Investment Schemes*, 11 POST-COMMUNIST ECONS. 399, 415 (1999).

⁵⁴ FRANTZ FANON, *THE WRETCHED OF THE EARTH* 101–02 (Richard Philcox trans., 2005) (1961).

⁵⁵ Dani Rodrik claims that although productivity within the manufacturing sector can be stellar, when an economy loses its labor force, the economy-wide productivity performance will be disappointing. This has proven to be the case in the case in Albania. Dani Rodrik, *The Most Telling Chart I have Seen in a Long Time*, DANI RODRIK’S WEBLOG (June 17, 2010),

http://rodrik.typepad.com/dani_rodriks_weblog/2010/06/the-most-telling-chart-i-have-seen-in-a-long-time.html [<https://perma.cc/98LL-G7X5>].

⁵⁶ Scholars of Albanian studies usually start from the *fait accompli* that Albania was an arid economic landscape, while conveniently forgetting or neglecting to mention that the economic collapse was a product of neglect, deliberate destruction as much as a result of ruthless displacement of alternatives. ELEZ BIBERAJ, *ALBANIA IN TRANSITION: THE ROCKY ROAD TO DEMOCRACY* 316, 319 (1999); ALEKSANDËR MEKSI, *DHJETOR ‘90: DOKUMENTE & MATERIALE* (2010); MIRELA BOGDANI & JOHN LOUGHLIN, *ALBANIA AND THE EUROPEAN UNION: THE TUMULTUOUS JOURNEY TOWARDS INTEGRATION AND ACCESSION* 47, 51 (2007). The “fathers” of the Albanian transition, particularly Gramoz Pashko, an economist who was closely related to the regime (his father had been a general at the Ministry of Interior) and one of the founders of the first opposition party (the Democratic Party), propagated the argument that whatever was constructed during communism was not good enough and that a clean slate was needed in order to turn the page and prosper. Gramoz Pashko, *Obstacles to Economic Reform in Albania*, 45 EUR.-ASIA STUDS. 908, 921 (1993). It followed that the clean slate was meant to dispense with whatever was built in forty-five years. Hence, plunder was systematically applied to strip industrial plants to their bare bones. Precious metals, high caliber tools, engines, pipes, tiles, and even bricks became prey to the collective madness that followed the call for renewal. The organized plunder shook all segments of the industrial sector, and like a tornado left wreckage and devastation in its trail. Elez Biberaj writes that the first agents of capitalism were the Communists and Sigurimi agents because of their former positions, networks of personal contact and experience with corruption they flourished under the new system and controlled nearly all the new businesses. ELEZ BIBERAJ, *ALBANIA IN*

highlights the neglect on the part of the European Union, as Albania's largest economic partner, to foster endogenous economic development; this especially rings true when one takes into account the general conditions existing throughout these last two decades that have perpetuated the sentiment that salvation must come from abroad.⁵⁷ The inability to counter the downward spiral of the economic situation created conditions for the continued decline and peripherization of the country. At the end, this is a story of promises and engagements that have fallen short in improving Albanian citizens' quality of life.

B. The Knight Enters: European Union and the Politics of Integration and Economic Development

It is important to put into perspective the position that the larger geographic region—Western Balkans—occupies in relation to the European Union. The region represents 6.27 percent of the EU's territory, 5.57 percent of the population, but only 1.5 percent of the EU's GDP estimated over its purchasing power.⁵⁸ Furthermore, the average incomes of Western Balkan nations do not exceed 28.3 percent of the EU average.⁵⁹ Although economic development is

TRANSITION: THE ROCKY ROAD TO DEMOCRACY 150, 151 (1999).

⁵⁷ The rush to adopt the Washington consensus according to the shock therapy was justified in order to seize the "window of opportunity." The structural transformations that took place in the aftermath of the political metamorphosis were motivated by the neoliberal paradigm according to which there was a dire need of drastic reforms in order to invigorate the economic sector via liberalization, deregulation, privatization of state owned enterprises, and a low inflation rate. Leszek Balcerowicz, one of the architects of Poland's economic liberalization was said to have argued that there is a short period of extraordinary politics that follow the initiation of reforms when the population is more receptive to change. See John E. Jackson et al., *Democratic Institutions and Economic Reform: The Polish Case*, 33 BRIT. J. POL. SCI. 85, 108 (2003). Gramoz Pashko, the key architect of the industrial dismantling, blamed the communist mentality for the adoption of a gradual process of reforms in lieu of a much-needed shock therapy. See Pashko, *supra* note 56. Together with Aleksander Meksi, the first Democratic Prime Minister, they did not shy away from stating that the shock therapy was the cure for the Stalinist model on which the Albanian economy was based. ALEKSANDER MEKSI, DHJETOR '90: DOKUMENTE & MATERIALE (2010).

⁵⁸ ARBEN MALAJ, SFIDAT E BALLKANIT PERENDIMOR NE INTEGRIMIN EUROPIAN 10 (2009).

⁵⁹ See *id.*; see also Eurostat Press Release, GDP Per Capita in Purchasing Power Standards: GDP Per Capita in the Member States Ranged from 44% to 271% of the EU27 Average in 2010 (Dec. 13, 2011), <http://ec.europa.eu/eurostat/documents/2995521/5028862/2-13122011-BP-EN.PDF/84e9adf1-c27c-4697-821d-18a93684563e> [<https://perma.cc/7B6Q-B9U4>].

well behind that of the EU, the EU remains its major trading partner.⁶⁰ The region's main exports are labor intensive and of low added-value, and while exports of capital goods are minimal, those of unfinished products abound.⁶¹

The first agreement the EU concluded with Albania—the Agreement on Trade, Commercial and Economic Cooperation—outlined all those issues that would later constitute and structure their advanced relationship.⁶² It referred to the need for stabilizing the nascent democracy, highlighted the commitment to the rule of law, and paid eulogies to the protection of human rights and minorities.⁶³ Trade and economic cooperation were firmly situated in the apex of economic reforms.⁶⁴ The Agreement promised to be the nexus of development and the path towards a more advanced civilization.

The choice for a preferential trade agreement with the Union, at a time when Albania was opening its gates wide to global trade, is indicative of a sense of timidity on the part of the Union, along with

⁶⁰ See *Trade: Western Balkans*, *supra* note 36.

⁶¹ ARBEN MALAJ, SFIDAT E BALLKANIT PERENDIMOR NE INTEGRIMIN EUROPIAN 23 (2009).

⁶² Stabilisation and Association Agreement Between the European Communities and Their Member States, of the One Part, and the Republic of Albania, of the Other Part, Agreement on Trade and Commercial and Economic Cooperation, European Community-Albania, Nov. 25, 1992, 2709 U.N.T.S. 47958, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A0630\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A0630(01)) [<https://perma.cc/6RGB-2CDH>] [hereinafter *Stabilisation and Association Agreement European Community-Albania*].

⁶³ *Id.*

⁶⁴ *Id.* The agreement attempted to create a base for both parties to foster a broad economic cooperation, particularly including the strengthening of economic links, economic development, the creation of new markets, encouraging cooperation among market operators, encouraging scientific and technological progress, encouraging the participation of small and medium sized enterprises in trade and cooperation, and also supporting structural changes in the Albanian economy with a view of increasing the diversity of goods and services that were supposed to be part of the trade with the Community. Both parties granted each other the MFN status, and Albania pledged to grant non-discriminatory treatment to imports from the Community regarding the application of quantitative restrictions, the granting of licenses and access to foreign currency. One of the provisions of the new agreement obliged Albania to take measures guaranteeing an effective and adequate protection of intellectual, industrial and commercial property, at a level similar to that which exists in the Community, and to adhere to international conventions on intellectual, industrial and commercial property. A Joint Committee for ensuring the functioning of the agreement was tasked with examining the overall trade patterns, rate of growth, structure and diversification, trade balance, improving import opportunities in both of the parties, exchange of information on macro-economic plans and changes to the legal system, public procurement of goods and services.

confusion and puzzlement. It demonstrates a sense of timidity, because, when compared to the rest of the countries emerging from the Soviet Bloc,⁶⁵ the Union did not offer Albania a straightforward association agreement with the prospect of membership in the club. Rather, it opted for a lukewarm, watered-down relationship. This illustrates a sense of confusion, because it shows the degree of uncertainty the European Union faces when it comes to structuring the relationship with its “other”—the Western Balkans in general, and Albania, in particular.⁶⁶ Finally, it exhibits a sense of puzzlement and tension, because at a time when Albania was, and still is to this day, encouraged to open its doors to global markets, the EU itself had, and still does, embraced a policy of deeper integration.⁶⁷ The turn to global and regional trade mechanisms, in addition to the shock therapy, was part of the “normalization” of Albania’s position with the rest of the world.

The insistence to normalize or liberalize relations *via* trade went hand in hand with the offering of technical and humanitarian assistance; two tools intended to extricate Albania from its “socialist induced backwardness” into modernity.⁶⁸ But instead of reinvigorating the existing industrial base to recover from the losses inflicted during the first two years of transition, between 1991 and 1992, the Union determined that the best form of intervention was to provide humanitarian help and highly paid experts to teach Albanians the miracles of the invisible hand of supply and demand.⁶⁹ Only at the time when Albania was considered the IMF poster child for its zeal and dogmatism in adopting and

⁶⁵ Council of the European Union Press Release, *Visa Liberalization for Albania and Bosnia and Herzegovina* (Nov. 8, 2010), https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/117555.pdf [<https://perma.cc/FMW4-VC9R>].

⁶⁶ For instance, it took the intervention of the United States in the Yugoslav wars to demonstrate the fallibility, weakness, and unreliability of the European project in securing peace in its own neighborhood. This legacy is still very much present to this day when comparing the genuine feelings of admiration and support for the United States with the perception of the European Union as a weak and unreliable partner.

⁶⁷ See also David Kennedy, *Turning to Market Democracy: A Tale of Two Architectures*, 32 HARV. INT'L L. J. 373, 377 (1991).

⁶⁸ See *Stabilisation and Association Agreement European Community-Albania*, *supra* note 62, at 107/167.

⁶⁹ In the crucial years between 1991 and 1993, when the industrial sector was at its most dire state, the Union provided €318 million in emergency and food aid (€198 million through Phare and €120 million through FEOGA, the agricultural program for guidance and guarantee). Council Regulation 2666/2000, 2000 O.J. (L 306) 1 (EU).

implementing the shock therapy reforms, as compared to the other former socialist countries, did the Union start to pump funds into the economy's restructuring.⁷⁰ The allure of the poster child image was so strong that even after a devastating collapse of the financial sector in 1997, which came in the footsteps of the shock therapy reforms, the Union still considered the economic transformation in Albania a success story.⁷¹

The second agreement, called the Stabilization and Association Agreement, came about in the aftermath of the Yugoslav wars.⁷² In the late 1990s, determined to showcase its transformative power as a gentle civilizer, the Union sought to reengage with the Balkans by offering them the prospect of membership in the Club.⁷³ The prospect of membership was mentioned explicitly in the Feira European Council in June 2000, according to which, the objective was the full integration of the countries of the region into the political and economic mainstream of Europe through the Stabilization and Association Process ("SAA").⁷⁴ The name of the agreement itself is telling; it aimed to "stabilize" the regional countries and put them on the membership track by granting them access to EU markets. Whereas the Europe Agreements with the other former socialist countries of the "Center" and "East" of Europe aimed to symbolically assert the common interest with the EU; the SAA emphasized the role of the EU as a peacekeeper,

⁷⁰ From 1994 to 1996, Phare provided €190 million in support of the economic reform. *Id.*

⁷¹ *Id.*

⁷² *Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part*, at 4, COM (2006) 8164 final (May 22, 2006).

⁷³ See *European Neighborhood Policy*, EUR. COMM'N, https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/overview_en [<https://perma.cc/57LK-QY64>]. This new attitude drew parallels with the EU initial approach *vis á vis* the Central and Eastern Europe in early 1990s when it concluded with them association agreements while offering them the prospect of membership in the Union. The previous waves of enlargement are telling with regard to the meaning of membership in the Union. Membership in the Union has meant a different thing for United Kingdom, Ireland and Denmark when they joined in 1973, a different thing for Greece, Spain and Portugal when they joined in 1979 and 1986, as well as for Austria, Sweden, and Finland when they joined in 1995, a different set of conditions applied for the 2004 and 2007 enlargement, and new conditions are applied to the next wave of candidate countries from the Western Balkans.

⁷⁴ Conclusions of the Presidency, Santa Maria Da Fiera European Council (June 19–20, 2000).

stabilizing and civilizing the unruly mobs of the Balkans.⁷⁵ The trade component of the SAA was based on the model offered in the Europe Agreements.⁷⁶ The EU makes a great deal out of the contractual nature of this relationship, it frames it in the following way:

A Stabilization and Association Agreement embodies the choice for Europe made by the Western Balkan countries and the membership perspective offered to them by the EU. The EU's political strategy towards the Western Balkans relies on a realistic expectation that the contract it enters into with individual countries will be fulfilled satisfactorily. . . . The Stabilization and Association Agreements are tools which provide, much as the Europe Agreements did for the candidate countries in Central Europe, the formal mechanisms and agreed benchmarks which allow the EU to work with each country to bring them closer to the standards which apply in the EU. . . . The Stabilization and Association Agreements are the means necessary to encourage these countries to adopt real reforms towards the immediate objectives of the agreements and beyond.⁷⁷

The most important aspect of the agreement was the promise to put an end to the dreary transition by supporting Albania's efforts to become a functioning market economy and gradually develop a free trade area between the Union and Albania.⁷⁸ Two specific articles could have been used to stimulate an economic revival of the country. Article 87 provides for the cooperation between the parties in order to improve the understanding of the fundamentals of their respective economies and the formulation and implementation of economic policy in market economies.⁷⁹ Article 92, more pointedly and ambitiously, attempts to commit the EU to cooperate with the goal of promoting the modernization and

⁷⁵ Stabilisation and Association Agreement European Community-Albania, *supra* note 62, at 15.

⁷⁶ *Id.*

⁷⁷ EUROPEAN COMMISSION REGIONAL COOPERATION IN THE WESTERN BALKANS: A POLICY PRIORITY FOR THE EUROPEAN UNION 4 (2005), https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/nf5703249enc_web_en.pdf [<https://perma.cc/DBH7-82YE>].

⁷⁸ Stabilisation and Association Agreement European Community-Albania, *supra* note 62, at 8.

⁷⁹ *Id.* art. 87. Cooperation between the two included the 'usual suspects'—i.e., cooperation regarding rule of law and non-discrimination in trade. *Id.*

restructuring of the Albanian industry.⁸⁰ However, despite an institutional basis for deeper cooperation on all economic fronts, there is a troubling trend in the relationship between the EU and Albania, and in particular about the perspective for development as a result of the integration process.

On the one hand, there are calls for waves and waves of privatization and liberalization, which have continued unabashedly to this day.⁸¹ On the other, there is a conspicuous absence of discussion regarding Albania's connection to European or global value chains, or linkages between Albanian lagging sectors or regions with leading regions or sectors in the EU.⁸² Repeatedly, the European Union, when assessing Albania's progress towards full membership, zooms in on the political and rule of law criteria rather than on economic development. The lofty goal of putting an end to the transition, even in the *longue durée*, has proven elusive, to say the least.

A series of policy papers from the Commission, as well as the EU's financial assistance, are emblematic in the way the EU views progress towards modernization.⁸³ The core elements in the EU's

⁸⁰ *Id.* art. 92.

⁸¹ Marta Muo, *Income Policy and Labor Market Development in Albania: Some Distribution and Living Standard Implications*, N. AM. TREATY ORG. (1996), <http://www.nato.int/docu/colloq/1996/96-2-2.htm> [<https://perma.cc/3QDN-ME3W>].

⁸² See David Kennedy, *Law and the Political Economy of the World*, 26 LEIDEN J. OF INT'L L. 7, 8 (2013).

⁸³ The Community Assistance for Reconstruction, Development and Stabilisation ("CARDS") program, established as an instrument of the Stabilization and Association Process to provide financial assistance to the Western Balkans, laid out the priorities in favor of rule of law and institutional reforms, including: strengthening of the judiciary; ensuring public order; fight against corruption, fraud and organized crime, enhancing the implementing and enforcement capacity of the public administration to honor SAA and WTO commitments; supporting economic and social development through trade, education and transport; monitoring pollution and improving urban planning; and supporting democratic stabilization through electoral system and civil society. Council Regulation 2666/2000, 2000 O.J. (L 306) (EC); EUROPEAN COMMUNITY CARDS PROGRAMME, ALBANIA COUNTRY STRATEGY PAPER 2002–2006 (2001). In 2001, CARDS allocation for Albania was in the amount of 37.5 million euros, of which 43 percent were destined to go to Justice and Home Affairs, 24 percent to institutional reforms, and 27 percent to local development. *Id.* at 60. The last CARDS program for 2005–2006, rearranged the priorities by putting democratic stabilization followed by good governance and institution building first. *Id.* at 29. Towards the end of the decade, other instruments emerged, such as Instrument for Pre-Accession Assistance ("IPA") in 2007, which took over for the CARDS program, with the aim to prepare Albania for fully meeting the Copenhagen political and economic criteria as well as adopting and implementing the EU

assessment of Albania's progress are political stability, which is interpreted as a consensus for adopting EU-demanded reforms; rule of law; macroeconomic stability; non-discrimination in public procurements strengthening property rights and the legal framework on privatizations; and the formalization of the grey economy.⁸⁴ The content of these policy papers, or "progress reports," as they are referred to by the European Commission, is repeated year after year with the same numbness.⁸⁵ There is always "progress to be made" and signs that "progress has been made."⁸⁶ Phrases such as "stability" and a "need for consensus" are frequently used to indicate that the reformatory process should not be subjected to critical scrutiny.⁸⁷ Hence, instead of diagnosing the causes of

acquis. Council Regulation 1085/2006, 2006 O.J. (L 210) 82 (EC). The financial assistance after 2006 would average approximately 77 million euros per year. *Overall - Instrument for Pre-accession Assistance*, EUR. COMM'N, https://ec.europa.eu/neighbourhood-enlargement/instruments/overview_en [<https://perma.cc/TGV8-T3VM>]. Between 2007 and 2011, the EU planned sixty-three projects in the framework of the Instruments of Pre-Accession (IPA). *Id.* Out of these sixty-three projects, only five directly target either human capital or broadly defined developmental goals: vocational training; Kukes regional development project; rural development; and fisheries. *Id.*

⁸⁴ *Enlargement Strategy and Main Challenges 2006–2007*, at 25, COM (2006) 649 final (Aug. 11, 2006). In the first policy paper after the SAA was signed in 2006, the Commission noted that Albania had broadly achieved macroeconomic stability and progressed towards a functioning market economy. *Id.* at 26. The Achilles's heel for the Commission was the fact that economic reforms needed political consensus. *Id.* at 12. The theme on political consensus is a recurring one. *Id.*

⁸⁵ *Enlargement Strategy and Main Challenges 2007–2008*, COM (2007) 663 final (June 11, 2007). A year later, in 2007, the Commission spun the wheels again. Macroeconomic stability in the region that had propelled growth and low inflation was again praised. The flat tax rates adopted throughout the region were considered prudent fiscal policies. The fast pace of liberalization and restructuring were considered a success story. Privatization was again at the forefront of the critique, the Commission called on the regional countries to implement all privatization plans. In order to end with a grand slam the call for continued reforms, the Commission called on the regional government to reduce the red tape, strengthen the rule of law, ensure reliable land registration and transparent procedures for privatization. These elements, it was stated by the Commission, would stimulate economic activity and reduce the high levels of informality in the economy. *Id.*; see also *Western Balkans: Enhancing the European Perspective*, COM (2008) 127 final (May 3, 2008); *Enlargement Strategy and Main Challenges 2009–2010*, COM (2009) 533 (Oct. 14, 2009); *Enlargement Strategy and Main Challenges 2011–2012*, COM (2011) 666 final (Oct. 12, 2011); *Enlargement Strategy and Main Challenges 2010–2011*, COM (2010) 660 (Sept. 11, 2010).

⁸⁶ See *Enlargement Strategy and Main Challenges 2011–2012*, *supra* note 85; see *Enlargement Strategy and Main Challenges 2009–2010*, *supra* note 85.

⁸⁷ See *Enlargement Strategy and Main Challenges 2011–2012*, *supra* note 85; see

underdevelopment and proposing clues to unleash growth, the so-called “progress reports” resemble incantations used to induce the domestic elites and masses into a lethargic state.⁸⁸

C. *The Aftermath*

The story of these modernization experiments suggests that the periphery is the terrain for implementing textbook policies. It seems that only the center has the luxury to experiment and carve out a space for endogenous growth strategies, whereas the periphery can only dogmatically adhere to ideas that emanate from the core. In this third modernization project, the experiences of industrialization, financial revival, and technological innovation as causes of development, and which had underpinned the previous modernization experiments, have been shuffled aside to the detriment of the country.⁸⁹ In this context, the decline of the Albanian economy is a story foretold.

Between 1992 and 2004, the volume of industrial input had steadily decreased.⁹⁰ The extracting industries have seen a thorough deterioration in their volume output.⁹¹ Throughout the 1990s, the

Enlargement Strategy and Main Challenges 2009–2010, supra note 85.

⁸⁸ In turn, the domestic elite uses the European integration process as a legitimating basis for its actions. Hence, legitimacy is not sought from domestic constituents, but from external actors, and in this case, from the European Union.

⁸⁹ See MEHDI FRASHERI, *PROBLEMET SHQIPTARE* 150–51(2001).

⁹⁰ Banka e Shqiperise citing Ministria e Ekonomise, Tregtise dhe Energjitikes. Even in the agricultural sector, from 2001 to 2009, there is a steady decline in the number of farms (including farms with cattle, pigs, goats, horse/donkey, poultry, sheep). Ministry of Agriculture, Food and Consumer Protection. The number of livestock has followed this declining trend (with the exception of the number of pigs, poultry and beehives that has seen an increase), however the livestock production has increased slightly over the same period. After the first rush to disband cooperatives, as a hated symbol and form of organization of the communists, the agricultural land was simply left destitute. Farmers did not have the necessary mechanized support, many of them left to work the lands in Greece, and the imports suffocated the local markets. *Id.*

⁹¹ *Id.* The extraction of ferrochromium, concentrate chromium, chromium, crude oil, coal, and copper, has been slashed by at least half of what was the volume output in 1992. Copper and chrome reserves constitute respectively 1.59 billion and 3.2 billion USD. In 1984 there were extracted 2,010,000 tons of coal, whereas in 1993 about 75,000 tons, and in 2001 about 28,000 tons. The minerals extraction index shows a steady decline over the years, 88.6 in 1994, 86.5 in 1995, 75.8 in 1996, 47.1 in 1997, 74.5 in 1998, 35.5 in 1999, 31.0 in 2000, 27.0 in 2001. The metallurgical, mechanical, chemical (including glass, porcelain, and rubber), textile, and timber processing industries have followed the general decline observed in the extraction industries by having their total production in the Albanian currency (lek) slashed from 500 percent to 1100 percent between 1992 and 2004.

move towards decentralization and dissemination of the industrial base led to the concentration of labor-intensive, small-scale manufacturing.⁹² Once the big industrial enterprises were destroyed, there was no turning back. The shift away from industrialization can also be observed in the distribution of foreign aid in the economic sector.

Even trade, the focal point of the modernization drive, shows clearly deteriorating signs from 1993 to 2010. The trade deficit was 509 million USD in 1993 but progressively declined over the following years to approximately 2.7 billion USD in 2010.⁹³ According to a report from the Albanian Center for Competitiveness and International Trade in 2010, textiles, mineral products, base metals and footwear constituted the main groups of exports.⁹⁴

Trade with the region is a topic worth a few remarks considering

The only exception is the production of the electrical energy, which is based on hydropower plants. Interview with Alfred Frasheri, Agjencia Kombetare e Lajmeve (May 27, 2009); Alfred Frasheri, Nje Kujtese Jo Vetem per Vendimmarresit qe Perparimin e Shqiperise Nuk e Shohin si Domosdoshmeri per te Patur Ekonomi te Balancuar Shumedegeshe (unpublished notes, 2009).

⁹² ALBANIA'S ECONOMY IN TRANSITION AND TURMOIL, 1990-97 153, 154 (Anthony Clunies-Ross & Petar Sudar eds., 1998).

⁹³ *Time Series Database of the Bank of Albania*, BANK OF ALB., https://www.bankofalbania.org/web/Time_series_22_2.php?evn=agregate_detaje&evb=agregate&cregtab_id=541&periudha_id=5 [<https://perma.cc/2UZZ-DDZR>]. The peak in the trade deficit was in 2008 when it reached 3.5 billion USD. While the trade volume has increased almost 900 percent over the same period, the ratio of exports to imports has been a steady 1 to 4. On average, the trade patterns have remained consistent over the years. *Id.*

⁹⁴ ALBANIAN CENTRE FOR COMPETITIVENESS AND INT'L TRADE, ALBANIA 2010 TRADE REPORT (2010). In the list of imports, Italy and Greece have the undisputed duopoly. *Id.* Germany, from occupying the third position in 1993 has been relegated to the fifth position in 2010, replaced by China. *Id.* Turkey has always figured high in the ranks until 2008 when China overtook it. *Id.* The prominence of Chinese imports is quite interesting considering the oscillations in the relationship between the two countries. *Id.* Between 1961 and 1978, China was Albania's greatest contributing external actor, particularly in the industrial sector. Dependence on China, 1961-78, <http://countrystudies.us/albania/69.htm> [<https://perma.cc/NXT3-TKV9>]. Between 1979 and 1991, the relations with China were minimal, and the trade statistics mirror that tendency. Imports from China in 1993 were about three million USD, compared to seventeen million from Turkey. In 2010, imports from China were 289 million USD, and that is a drop from 385 million USD in 2008. As a point of comparison, imports from Italy in 2010 consisted of 1.3 billion USD and from Greece approximately 613 million USD. *Bank of Albania Statistics*, https://www.bankofalbania.org/web/Statistika_230_1.php?evn=agregate_detaje&evb=agregate&cregtab_id=698&periudha_id=5 [<https://perma.cc/5E2Y-7779>].

the importance that the EU devotes to CEFTA and regional cooperation. Although Albania's trade flows with the countries of the region have increased on average, it is still a minority in proportion to the overall trade.⁹⁵ Despite the free trade arrangements among all regional countries, more industrially advanced countries, such as Italy, Greece, China, Turkey, and Germany dominate the trade flows with Albania.⁹⁶

Domestic attempts to counter the economic degradation have been feeble, to say the least, and illustrate how a dogmatic periphery receives and appropriates the dominating paradigm that emanates from the center. The obsession with privatizing all state owned enterprises as quickly as possible, along with placing rule of law reforms front and center of development strategies, is manifested in all attempts to generate growth in Albania.

In the first national development strategy, the complete privatization of small and medium-sized enterprises and the fast-paced privatization of large enterprises and public services were considered success stories.⁹⁷ This is indicative of the trend among Albanian policymakers and experts to adopt a 'support at all costs' attitude towards the pace and extent of privatization.⁹⁸ The strategy

⁹⁵ ALB. CTR. FOR INT'L TRADE (ACIT), ALBANIA 2007 TRADE REPORT (2007). In 2007, the export/import share compared to the EU, consisted of 7.9 percent—compared with 8.1 percent in 2006, and 10.0 percent—compared with 10.4 percent in 2006. In 2010, the regional trade flows consisted of ten percent of the overall trade. ALB. CTR. FOR COMPETITIVENESS AND INT'L TRADE, ALBANIA 2010 TRADE REPORT (2010).

⁹⁶ *Albania*, OBSERVATORY OF ECON. COMPLEXITY, <http://atlas.media.mit.edu/en/profile/country/alb/> [<https://perma.cc/4BSS-KSED>].

⁹⁷ REPUBLIC OF ALBANIA COUNCIL OF MINISTERS, NATIONAL STRATEGY FOR SOCIO-ECONOMIC DEVELOPMENT (2001).

⁹⁸ Iraj Hashi & Lindita Xhillari, *Privatisation and Transition in Albania*, 11 POST-COMMUNIST ECONS. 99, 125 (1999). Hashi and Xhillari write that: "At the micro level, the privatisation programme had progressed rapidly, resulting in the establishment of a dynamic agriculture and a vibrant new small business sector. Although manufacturing continued its decline until 1995, the decline was more than compensated by the rapid growth of activities in trade, services, agriculture and construction." The essence of the problem, according to the authors, was not theft of public property, but inadequate corporate governance standards regarding owners and managerial powers. *Id.* Arben Malaj and Fatmir Mema wrote in 2003 that although the privatization process until 1997 was plagued with a lack of mid and long term strategy, bad reputation of investors, and disparities in the organization and liberalization of the markets of goods (thoroughly liberalized), capitals, lack of financial and banking system, and human resources, in order to free the economy and ensure gains it was necessary to rapidly include all sectors in the privatization process, such as oil and gas, electric power, telecommunication, transport infrastructure and water infrastructure. Arben Malaj & Fatmir Mema, *Strategic*

also asserted that progress in institutional reforms was the key to attaining the objectives of the Growth and Poverty Reduction Strategy. Since then, the objectives for bringing about growth remain unchanged with the passage of time and turnover of governments and cabinet ministers.⁹⁹ When the IMF assessed the strategy, it emphasized and praised the government for its focus on good governance and political stability.¹⁰⁰

There is not much to be optimistic about when chanting the mantra of European integration. One can conclude that the chosen instruments of intervention—humanitarian intervention and liberalized trade—used by an empire-in-the-making such as the EU, along with strategies of the periphery to generate growth come up short of lifting all boats. As industries become systematically destroyed and technological innovation fades, the emphasis

Privatization, Its Achievements and Challenges, BERG 1, 2 (2003).

⁹⁹ In 2005, the Ministry of Economy stated that the objectives of the economic program were further liberalization of trade, legislative harmonization with EU and WTO commitments, and conclusion of regional free trade agreements. *Ministria e Ekonomise, Heqja e Pengesave Administrative, Proces i Vazhdueshem per Permiresimin e Klimes se Biznesit* (Mar. 2005). The same institution would pat its back in 2008 by singling out some of its spiciest achievements. The list included: privatization of the electrical distributing operator—OSSHE, the privatization of the oil refinery—ARMO, the signing of 50 concessionary contracts for the construction of hydro-plants, the signing of the contract for building a gas facility in the seaside, the licensing of 176 mining operators, and the adoption of studies and laws such as on the commercial societies, accreditation and metrology, consumer protection and industrial property, and company registration, among others. *Ministria e Ekonomise, Tregtise dhe Energjitikes, Realizime 2008. Ministria e Ekonomise, Tregtise dhe Energjitikes, Objektivat 2009*. In 2008, the government adopted another grand strategy, this time development was firmly embedded in integration, and the latter suppressed any other priority. The National Strategy for Development and Integration 2007—2013 set as its first priority the membership in NATO and the European Union. *REPUBLIC OF ALBANIA COUNCIL OF MINISTERS, NATIONAL STRATEGY FOR DEVELOPMENT AND INTEGRATION 1, 23* (2008). The goals regarding development are reduced to improving infrastructure, transportation, energy sector, and investments in the water supply, and of course, privatization. *Jonilda Koci, Albania Unveils Massive Privatization Plan*, *SETIMES* (July 5, 2011), <http://www.eurasiareview.com/05072011-albania-unveils-massive-privatization-plan/> [<https://perma.cc/2GGY-WKXL>]. Sali Berisha, the actual Democratic Party Prime Minister announced in 2010 that only schools, kindergartens, hospital and big dams would be excepted from total privatization. *Id.* Under Berisha's plan, all of the remaining 1,280 public properties, including abandoned military bases, will be sold except for schools, hospitals, public buildings and offices. *Id.* The plans include the last big enterprises, the oil production company Albpetrol and the insurance company giant INSIG (the latter will not even have a minimum price). *Id.*

¹⁰⁰ INT'L MONETARY FUND AND THE INT'L DEV. ASS'N, *ALBANIA: JOINT STAFF ASSESSMENT OF THE POVERTY REDUCTION STRATEGY PAPER* (2002).

becomes increasingly fixated on good governance and institutional reform, while the old *clichés* of the need to privatize and liberalize everything continue unabashed. Instead of lifting the economy off life support,¹⁰¹ the current model of external intervention ends up supporting hierarchies, the emergence of a new class of bureaucrats, endless studies, policy papers and strategies, and of course, the production of laws.¹⁰² The effect is obvious to the astute observer; after more than two decades of incessant reforms, Albania remains at the bottom of the income per capita among Member States as well as other candidate countries for membership in the EU.¹⁰³

In this context, the EU intervention falls prey to a series of self-perpetuating fallacies that intensify the dogmatic approach to development while undermining the need for diagnosis and accountability.¹⁰⁴ The common argument for underdevelopment is that all evils are products of insufficient compliance or velocity of reforms.¹⁰⁵ However, instead of focusing on economic growth as the most powerful instrument for reducing poverty, and in that context, experimenting with endogenous growth strategies based on using the preexisting industrial base, the story of Albania's last two decades is one of chances systemically squandered.¹⁰⁶ Thus, this state of limbo does not create the incentives and conditions that foster development; rather it is self-perpetuating.

III. Taming the Beast: The Politics of “Rule of Law” Reforms

As with previous modernization waves, and generally as is the case with social change, this third modernization process relies on

¹⁰¹ See DANI RODRIK, ONE ECONOMICS, MANY RECIPES: GLOBALIZATION, INSTITUTIONS, AND ECONOMIC GROWTH (2008). Rodrik argues that the challenge in most developing countries is not to rediscover industrial policy, but to redeploy it in a more effective manner. *Id.* at 102.

¹⁰² See Judith Hoffmann, *Integrating Albania: The Role of the European Union in the Democratization Process*, 1 ALB. J. OF POL. 55 (2005).

¹⁰³ *GDP Per Capita in PPS*, EUROSTAT (Aug. 28, 2016, 4:23 PM), <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tec0014&plugin=1> [<https://perma.cc/7P2L-WKM4>].

¹⁰⁴ RODRIK, *supra* note 101.

¹⁰⁵ *Id.*; see generally Ray Kieley, *The Clash of Globalisations* (2005), <http://www.gci.org.uk/Documents/CLash.pdf> [<https://perma.cc/7XYW-DBXQ>] (discussing globalization and development).

¹⁰⁶ Dani Rodrik argues that national policies are the ultimate determinant of economic growth, and successful countries have been those that have leveraged the forces of globalization to their benefit. RODRIK, *supra* note 101.

the law itself as the medium of transformation.¹⁰⁷ Statutes have become the commodities of the rule of law industry.¹⁰⁸ Modernization is measured, advocated, and deliberated in legal terms; law serves as its vernacular. The democratization and development strategies of the last 25 years have embraced law in order to create democratic societies and market economies.¹⁰⁹ The two dogmas of development—the neoliberal model and the rule of law as the nexus to growth—are not mutually exclusive; rather, they are proponents of a societal vision resting upon the assumption that economic growth stems from a sound judicial system, formalization and anti-corruption reforms.¹¹⁰ However, in the arid climate of transition, good governance reforms ring hollow. In the Albanian

¹⁰⁷ If a feature of a modern, rational state is the production of laws and the super-legalization of society, then the periphery is not faring badly. For instance, in Albania, the production of laws has reached industrial proportions. Laws are adopted at a moment's notice. However, this does not signify anything. It is like a summer blanket on a wintry night, it is evident that the rhetoric of European integration merely provides empty warmth and hollow reassurances about the future, and is being used as a means of social control.

¹⁰⁸ In twenty years of transition in Albania, between 1990 and 2010, approximately 3000 new laws and thousands of by-laws were adopted. *Records of the Albanian Parliament*, REPUBLIC OF ALB. PARLIAMENT, <https://www.parlament.al/records/?lang=en> [<https://perma.cc/8N4T-R9XH>]; see generally *The Law in Transition Series*, EUR. BANK FOR RECONSTRUCTION AND DEV., <http://www.ebrd.com/news/publications/newsletters/law-in-transition-2016.html> [<https://perma.cc/48AR-MSVE>]. For a description on the launch of legal reform projects. By Eastern Europe I mean all the former socialist countries east of Germany, not including the Soviet Union.

¹⁰⁹ When asked what these institutions are that dominate interventionist agendas, Douglas North described them as the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction. DOUGLAS NORTH, *INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE* 3 (1990). According to him: “[T]hey structure incentives in human exchange, whether political, social, or economic institutional change shapes the way societies evolve through time and hence is the key to understanding historical change.” *Id.* at 3. In this broad definition, institutions include any form of constraint that human beings devise to shape human interaction. Inherently instrumental, their role in society is to reduce uncertainty by establishing a stable structure to human interaction. *Id.* Walter Mattli echos this paradigm by arguing that institutions play a crucial role in lowering contracting costs, thus promoting growth. WALTER MATTLI, *THE LOGIC OF REGIONAL INTEGRATION: EUROPE AND BEYOND* 58 (1999). Alvaro Santos has argued that those variations of the concept of rule of law in legal reform programs can be classified according to institutional and substantive, instrumental and intrinsic criteria. Alvaro Santos, *The World Bank's Uses of the “Rule of Law” Promise in Economic Development*, in *THE NEW LAW AND ECON. DEV.: A CRITICAL APPRAISAL* 253, 258–259 (David Trubek & Alvaro Santos eds., 2006).

¹¹⁰ Tor Krever, *The Legal Turn in Late Development Theory: The Rule of Law and the World Bank's Development Model*, 52 *HARV. INT'L L.J.* 287, 298 (2011).

context, I claim that rather than accelerate the transition to a more prosperous and democratized destination, the focus on the rule of law reforms is used as a shortcut to bundle the causes of underdevelopment into one slogan; this reproduces the identity of Albania as a country riddled with bandits and crimes, a place of inherent instability, incapable of self-government.

In this section, I will discuss securitization, rule of law reforms, neo-formalism, and struggles for power. First, securitization: the use of rule of law reforms is based on the assumption that the recipient is an almost savage being, in this sense, Albania fits with the image of a patient that needs the rigor imposed by the straight jacket. Second, while rule of law reforms start as instruments to achieve something, an end goal, a destination, they become rhetorical tools wherein the medium becomes the goal. The perpetuation of reforms becomes a self-fulfilling fallacy—there are continuous reforms, but the final goal remains as elusive as ever. Third, the reforms rely and reproduce a neo-formalist conception of law, according to which, there is an insatiable demand for more laws. Finally, in this constructed reality, the executive branch emerges as the winner in the struggle for power.

A. From Europe's Tiger to Europe's Bandit

Within the span of a decade, Albania went from dominating the jungle of post-communist transition as the best case of economic recovery and shock therapy reforms—the IMF model student and poster child, the “Balkan’s tiger”—to being identified as a failure.¹¹¹ The metamorphosis was bitter; the tiger was gone, and a new era of banditry was dawning.

Hence, the preparation of the terrain was the first ideological triumph for the emergence of the rule of law discourse as the nexus to growth.¹¹² The rule of law reforms purported to bring order to a volatile domestic political situation, repeating the cycle of diagnosis, recommendations, and warnings with the same regularity of a physical phenomenon.¹¹³ One could identify certain

¹¹¹ DANIEL VAUGHAN-WHITEHEAD, *ALBANIA IN CRISIS: THE PREDICTABLE FALL OF THE SHINING STAR* xvii (Edward Elgar ed., 1999).

¹¹² *Report from the Commission to the Council on the work of the EU/Albania High Level Steering Group, in Preparation for the Negotiation of a Stabilisation and Association Agreement with Albania*, at 10, COM (2001) 300 final (June 6, 2001).

¹¹³ *Report from the Commission to the Council on the work of the EU/Albania High Level Steering Group, in Preparation for the Negotiation of a Stabilisation and Association*

constituting elements in the calls for reforms, which are contained in the annual progress reports issued by the European Commission, the quasi-executive branch of the European Union.¹¹⁴ First of all, there is seduction: the Commission is careful to note some progress and praise the domestic elite by noting achievements made in the preceding year.¹¹⁵ Then, there is withdrawal: but what you have done is not enough; therefore more is needed.¹¹⁶ The diagnosis follows: the problem with fulfilling the European standards is the bad functioning of the judiciary—limited capacity, widespread corruption, informal economy, and insufficient enforcement.¹¹⁷ A stern warning is in turn issued: there will be dire consequences if you do not comply because the problems with rule of law reforms,

Agreement with Albania, COM (2001) 300 final (June 6, 2001). In order to expose their regularity and standardization, the selected passage casted the spell for the years to come. It stated that:

despite the impressive achievements of the last two years [1999—2001] many problems remain which will make it difficult for Albania to meet the obligations of a Stabilisation and Association Agreement and to deliver on the commitments it would undertake. The main difficulties lie in the functioning of the judiciary, widespread corruption, a large grey economy and lack of capacity to implement laws. . . This situation has an adverse effect on the way Albanians view their state and impedes the full exercise of human and civil rights. It retards economic development and inward investment, since the law is not uniformly applied and the enforcement of contracts is difficult. Further concrete steps are necessary to consolidate democratic institutions and reinforcing good governance, the rule of law and the respect for human and minority rights.

Id.

¹¹⁴ See generally *Commission Staff Working Document, Albania: 2008 Progress Report*, SEC (2008) final 2692 (May 11, 2008).

¹¹⁵ For example, “Albania’s legal framework has been developing during the last decade and can today be considered as broadly satisfactory, particularly if Albania’s current level of development is taken into account [**seduction!**]. However, implementation and enforcement capacity remains weak [**withdrawal!**]. This constitutes a serious challenge for further progress of Albania in the Stabilisation and Association process [**warning!**] . . . During the last three years, Albania has adopted a large number of laws and regulations designed to improve the functioning of its judicial system. However, implementation of the bulk of this legislation remains clearly insufficient due, amongst other, to a lack of basic infrastructure and equipment (dilapidated buildings, deficient postal and telephone services, power cuts, lack of filing and recording systems) [**diagnosis!**] . . . [in order] to really curb corruption, much more is needed, including the creation of efficient implementation mechanisms and strengthening co-operation between law enforcement bodies, and where appropriate, judges are duly prosecuted [**cure!**]. *Commission Staff Working Paper, Albania: Stabilisation and Association Report*, at 11, SEC (2002), 339 final (Apr. 4, 2002).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

in the words of the Commission, delay economic development, and adversely affect human rights and the trust of citizens in their own state.¹¹⁸ And finally, the cure: the government has to take further steps to consolidate institutions and reinforce the rule of law.¹¹⁹ Every year, in the same manner, the EU and domestic elites will proclaim these maxims as the “saving grace.”¹²⁰

The number of cases prosecuted, property titles enforced by the courts,¹²¹ and the number of laws enacted, in other words, a “body count” approach, has emerged as the yardstick for measuring success in the progress reports.¹²² A higher number of arrests indicate that the government is serious about fighting corruption, curbing informality, and progressing towards EU accession. For instance, in 2000 and 2001, the Commission noted that the High Council of Justice took measures against 33 judges, 18 of which were dismissed, while disciplinary action was taken against the other 15 judges (out of a total of 347) on grounds of corruption or improper professional behavior.¹²³ Out of 213 cases opened against traffickers over the first nine months of 2002, 37 went to trial; 176 were ultimately dismissed due to an inability to collect sufficient evidence or procedural errors.¹²⁴ The increased number of

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ For example, in a recent speech that shows the persistence, power and attraction of the rule of law rhetoric, but also its impact on the consciousness of lawyers and experts, Eduard Halimi, minister of justice, stated that: “The reform of the justice sector and the consolidation of the rule of law is without doubt the absolute priority of the Ministry of Justice in the framework of government’s policy to strengthen the rule of law, protect individual freedoms and rights, ensure the trust in the justice sector, increase the transparency and the uncompromising fight against corruption.” *Ministria e Drejtësisë, Ministri Halimi me EURALIUS III : Po punojmë së bashku për konsolidimin e drejtësisë* (Oct. 7, 2012).

¹²¹ *Commission Staff Working Document, Albania: 2008 Progress Report*, SEC (2008) final 2692 (May 11, 2008).

¹²² *Id.* The enforcement of court decisions, as well as the privatization of court enforcements, emerged as another yardstick of measuring the success of various anti-informality campaigns that governments of all stripes had taken over the years. For instance, electricity bills, mortgages, and loans were transformed into executive titles, enforceable at the moment when an invoice become due. These types of measures were considered effective in filling up the coffers of private and public companies. *Id.*

¹²³ *Commission Staff Working Paper, Albania: Stabilization and Association Report 2003*, SEC (2003) 339 final (Mar. 25, 2003).

¹²⁴ *Id.* The 2003 report would state that:

Limited progress has been made by Albania in this area [judiciary]. The Albanian judicial system remains weak. Infrastructure is generally poor. Magistrates,

corruption prosecutions, 237 prosecuted in 2005 compared to 171 in 2004, was considered a sign of success.¹²⁵ However, the government still needed to show further progress, according to the Commission, in its fight against corruption.¹²⁶ Penitentiary institutions, which had been a headache for the European Commission in its pursuit of civilizing the “other,” were expanding their capacities in order to meet the EU expectations.¹²⁷ When I was working at the Ministry of Justice, between 2000 and 2004, the approximation of legislation always took second place in relation to the attention and funding of prisons. The EU praised itself as supporting Albania to manage its prisons in a humane way.¹²⁸

But the focus on body counts did not bring about the desired

prosecutors, lawyers and administrative staff are not yet sufficiently trained. Rulings are not always executed. Corruption remains widespread and affects both judges and prosecutors. Furthermore, judicial proceedings for serious crimes frequently fail. As a consequence, there is a fundamental lack of trust by the Albanian population (including key actors in the sector such as lawyers) in the delivery of justice and in the judicial institutions. . . . Corruption and improper professional behavior within the judicial system continue to constitute a serious problem. The Albanian Government should be much more proactive and result-oriented in this area. It should urgently take the necessary measures to ensure, amongst others, increased institutional capacity to investigate and prosecute corruption, the provision of adequate witness protection and effective measures against bribery of public officials, and the adoption and enforcement of the long expected new law on the declaration of assets of public officials. Such measures should lead to a more effective prosecution of corruption, notably in the areas sensitive to this phenomenon such as the judiciary, prosecution, police, customs and tax administrations, and public procurement.

Id.; see *European Commission, Albania, Progress Report 2005*, SEC (2005) final 1421 (Nov. 9, 2005).

¹²⁵ *Commission Staff Working Document, Albania 2006 Progress Report*, SEC (2006) final 1383 (Aug. 11, 2006).

¹²⁶ Regarding future measures—the cure—the Commission called that: “This will require following up strong initial measures with systematic efforts to tackle the causes of corruption by fixing legal loopholes, improving salaries, stabilising [sic] the public administration, further simplifying complex and opaque administrative procedures and improving the professionalism of civil servants. Designing and adopting effective legislation for the required systemic reforms will require broad political consensus on how to tackle corruption in the medium and long term.” *Id.*

¹²⁷ Keshilli Ministrave, *Strategjia Kombetare per Zhvillim dhe Integrim, Raporti Progresit 2008*, at 17 (Nentor 2009).

¹²⁸ European Commission Press Release, *European Commission Supports Albania to Manage its Prisons in a Human Way* (June 15, 2007); European Commission Press Release, *European Commission Supports Albania to Manage its Prisons in a Humane Way* (June 15, 2007).

results of eradicating corruption. Other measures were deemed necessary too.¹²⁹ Therefore, the 2008 progress report noted that efforts were needed to standardize the courts' files, provide job security for court administrative employees, increase the transparency and public access, streamline the distribution of cases, and complete the legal basis for establishing administrative courts in order to create a model judiciary free of corruption.¹³⁰

This drive to reform at all costs and times, while using the same categories of concepts and vernacular, demonstrates the weaknesses in the diagnosis and the prescriptions, to say the least, and it also manifests the limitations imposed by following a one-way road towards development and security. Even after the ten-year had passed since the start of the Stabilization and Association process in 1999, according to the EU, corruption was widespread and needed to be matched by a vigorous fight,¹³¹ and the judicial reform in Albania remained at an early stage.¹³² During this time, the lack of independence and transparency, inefficiency, and inadequate infrastructure, which were identified as causes of corruption, proved to be elusive solutions as well.¹³³ The paradox was that regardless of numerous reforms, investigated cases and prosecutions, there were never enough "bodies to count," and corruption stubbornly remains a phenomenon identified with the judiciary.¹³⁴

On another front, the judicial reforms in the name of combating corruption, posited both the government and the European Commission in a performative act. The EU's critique of the judiciary effectively created a vicious circle, whereby, on the one hand, it was politically expedient for the Commission to engage with the executive branch and use it as an intermediary in the

¹²⁹ *Commission Staff Working Document, Albania: 2008 Progress Report*, SEC (2008), 2692 final (Nov. 5, 2008).

¹³⁰ *Id.* at 9.

¹³¹ *Commission Staff Working Document, Albania: 2008 Progress Report*, SEC (2008), 2692 final (May 11, 2008).

¹³² *Commission Staff Working Document, Albania: 2009 Progress Report*, at 10–11, SEC (2009) 1337 final (Oct. 14, 2009).

¹³³ *Commission Staff Working Document, Analytical Report, Commission Opinion on Albania's Application for Membership of the European Union*, at 22, SEC (2010) 1335 final (Nov. 9, 2010). See generally, *Commission Staff Working Document, Albania: 2007 Progress Report*, SEC (2007) 1429 final (Nov. 6, 2007); *Commission Staff Working Paper, Albania: 2011 Progress Report*, SEC (2011) 1205 final (Oct. 12, 2011).

¹³⁴ *Commission Staff Working Document: Albania 2015 Report*, at 13, COM (2015) 213 final (Nov. 10, 2015) [hereinafter *Albania 2015 Report*].

relationship with the judiciary.¹³⁵ Yet, conversely, the executive branch was usually careful to not come across as violating or threatening what was held as sacrosanct—the judiciary’s independence—while making efforts to comply with the EU’s demands.¹³⁶ If the government wanted to restructure the judicial sector and reappoint judges, then surely it would be held by the judiciary and the opposition as infringing on the judiciary’s independence, for which the Commission would then feel obliged to respond and caution the executive branch.

The result of the performance by the EU and the government was that both claimed their efforts were legitimate, given the systemic constraints imposed by the obligation to preserve the judicial independence, while the judiciary escaped practically unscathed by the confrontation. Therefore, in this respect, the judicial branch became quite untouchable despite its endemic corruption.¹³⁷ The signal emanating from the Commission to the government is that as long as the government is seen as putting in some effort, and in particular showing the adoption of *acquis communautaire*, it will continue to show “some progress” in its reports.¹³⁸ The dichotomy between “some progress,” and “more needs to be done” has become the synonym of transition.¹³⁹

B. Agents of Reforms

The European integration reforms demand the production of laws on an industrial scale, and hence they reinforce the assumption that for every new problem there needs to be a new law to solve or address it.¹⁴⁰ The adoption of laws has been proceeding at full blast these last two and a half decades.¹⁴¹ What is peculiar about Albania

¹³⁵ *Commission Staff Working Paper, Albania: Stabilization and Association Report 2004*, at 16, SEC (2004) 374 final (2004).

¹³⁶ *Commission Staff Working Paper, Albania: Stabilisation and Association Report*, SEC (2002), 339 final (April 4, 2002). (“During the last four years, Albania has adopted a large number of laws and regulations designed to improve the functioning of its judicial system. . . . However, implementation of the bulk of this legislation remains clearly insufficient . . .”).

¹³⁷ *See Albania 2015 Report*, *supra* note 134, at 13.

¹³⁸ *Id.* at 5.

¹³⁹ *Id.* at 5.

¹⁴⁰ *Commission Staff Working Paper, Albania: Stabilisation and Association Report*, SEC (2002), 339 final (April 4, 2002).

¹⁴¹ *See generally* REPUBLIC OF ALB. COUNCIL OF MINISTERS, NATIONAL STRATEGY FOR SOCIO-ECONOMIC DEVELOPMENT (EXECUTIVE SUMMARY) (2001),

is extremely formalistic legal thinking, demanding that for every specific action that the bureaucracy is either entitled or obliged to take, there needs to be an authorizing act for it.¹⁴² Without a particular legal basis or specific authorization, the bureaucracy comes to a full stop in rendering its duties. The Constitutional or statutory rights conferred to individuals, or duties imposed on the state apparatus, are rendered meaningless in the absence of a specific order requiring a particular bureaucrat to enforce a given right or comply with a duty.¹⁴³

In such a context, the reforms simply end up needing and encouraging the commodification of law in order to deal with the constant regurgitation of recommendations and demands.¹⁴⁴ They rely both on the prestige of the Western experts to inform locals about best practices and also on local experts to carry out the transplantation of norms into the domestic legal order, a process which both parties claim to be technocratic in nature.¹⁴⁵ In these concerted moves between the international expert and its local counterpart, they legitimize each other's work by clothing it with a presumption of objectivity and neutrality.¹⁴⁶

Writing on an initial sense of reception of norms from the West,

http://siteresources.worldbank.org/INTALBANIA/Resources/National_Strategy_for_Socio-Economic_Development.pdf [<https://perma.cc/VYJ9-7DBV>] (describing Albania's progress in different fields); Keshilli Ministrave, Raporti Vjetor i Progresit 2005 (Shtator 2006), pp. 17, Keshilli Ministrave, Plani Kombetar per Zbatimin e Marreveshjes se Stabilizim Asociimit (Qershor 2006); COUNCIL OF MINISTERS, NATIONAL STRATEGY FOR DEVELOPMENT AND INTEGRATION 2007-2013 15 (2008).

¹⁴² See generally *Report from the Commission to the Council on the Work of the EU/Albania High Level Steering Group, in Preparation for the Negotiation of a Stabilisation and Association Agreement with Albania*, at 11, COM (2001) 300 Final (June 6, 2001) (discussing endemic problems that make the judiciary operate at a snail's pace).

¹⁴³ See generally *Corruption and Political Interference Burden Albania's Judicial System*, COUNCIL OF EUR. (Aug. 28, 2016), <http://www.coe.int/en/web/commissioner/-/corruption-and-political-interference-burden-albania-s-judicial-system> [<https://perma.cc/ZW5U-E68N>] (discussing the notoriously slow and corrupt judiciary and in the legislative process).

¹⁴⁴ See *Records of Albanian Parliament*, *supra* note 108 (showing large numbers of laws to go with the commodification of laws).

¹⁴⁵ See Llazer Semini, *Albanian Parties Finally Agree on Reform Package*, STAR TRIB. (Aug. 28, 2016), <http://www.startribune.com/eu-helps-albania-parties-agree-on-judicial-package-reform/387638551/> [<https://perma.cc/NU5Q-D2M2>] (showing examples of western experts and Albanians working together).

¹⁴⁶ Matjaz Nahtigal, *Remarks*, in Alexander N. Domrin et al., *Ten Years of Legal Reform in the Former Soviet Union: A "Progress" Report*, 93 PROCS. ANN. MEETING AM. SOC'Y INT'L LAW 235, 239 (1999).

Matjaz Nahtigal claimed:

Central and Eastern Europe had no broad theoretical knowledge on how reform is to be coordinated among several branches of government, or between the government and the private sector, the government and civil society or the government and pressure groups. There was no experience on how to run things without the government. So the immediate withdrawal of government from every level of society caused an institutional vacuum, which did not allow for development to arise from the bottom up, but rather it generated an intermediate struggle for private ownership.¹⁴⁷

The vacuum created by the recession of one set of legal norms and consciousness was soon filled with customary norms that people had to extract from their distant, collective past but which did not quite fit in with the new social realities. Yet the drive to extract the custom was surpassed by an overriding desire to produce laws in order to accentuate the power of the center and the neo-formalist thinking about the legal system. Even the most random issue merits its own statute, according to the latter drive. The two systems, mutated customs and neo-formalism, coexist in the realities of the periphery.

Like the adoption of a new religion, the local convert—jurists—took up formalism with more zeal than its proponents. That direction was the preferred choice by, not only the general public that was yearning for a sense of stability at a time of upheaval, but also by those legal professionals that remained idealistic and faithful to a vision of the rule of law that was absent during communism. Nafiz Bezhani for instance, head of the State Commission for the Verification of the Official Figures, describes his role as one guided solely by the law, and not politics, for which he had deep contempt and attributed the responsibility of ruining the country to it.¹⁴⁸

In this context, a group of Albanian authors with prominent figures such as Xhezair Zaganjori, an Albanian legal expert and

¹⁴⁷ Matjaz Nahtigal, Remarks, in Alexander N. Domrin et al., *Ten Years of Legal Reform in the Former Soviet Union: A "Progress" Report*, 93 Proceedings of the Annual Meeting of the American Soc'y of Int'l L. 235, 239 (1999).

¹⁴⁸ NAFIZ BEZHANI, MEKATARET Vol. I (2003). Bezhani claimed that "he was going to find support in the law and only in the law . . . these decisions allow one to believe in the truth and in justice, which should not be conceptualized only under the blue or pink flag [blue and pink flags are respectively the flags of the Democratic and Socialist Parties in Albania], but as the source of the undisputable logic of the law." *Id.*

judge in the Constitutional Court, have written that:

[O]f course laws are indispensable in the rule of law . . . the governance is conducted based on laws and in times of conflict the laws are implemented through judicial decisions. The laws and legal norms should be well formulated in a clear and precise way so that they can be implementable and not abstract . . .¹⁴⁹

The authors used the term “legal certainty” to explain how the system of laws should look.¹⁵⁰ This epitomizes their mechanical understanding of what law is—“the legal order should be understandable, predictable, and not contradictory.”¹⁵¹ Conceptualized in that way, one of the problems associated with legal reform projects is the emphasis on the technical rather than political or social nature of expertise.¹⁵² When limited to the technical notion, the legal reform becomes an object that is malleable and best left to the decision of experts, thus insulated from ideological contestation. While this approach allows legal work to be carried out even in those areas considered inherently political, with the justification that it could increase the legitimacy of the outcome through prestige, more often than not, the proposed reform remains solely on paper, thereby contributing towards expanding the gap between law in the books and law in action.

The proliferation of legislation and the turn to law for any problem that is identified in the modernization process challenges the classical division of the power among the three branches of government. The executive branch, in its position as the main interlocutor of the elite with international actors and as an actor with more capacities relative to the other branches, and especially the parliament, challenges the latter’s assumed role as the lawmaker. In an inverse way, the executive branch, by virtue of its duty as the enforcer of laws, becomes the lawmaker and the enforcer.¹⁵³

¹⁴⁹ XHEZAI R ZAGANJORI ET AL., SHTETI I SE DREJTËS NE KUSHTETUTËN E REPUBLIKËS SE SHQIPËRISE 47 (2011).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*; see also Çlirim Gjata, Mbi formimin e logjikës juridike te studentët e Drejtësisë, GAZETA PANORAMA [<http://perma.cc/E454-GRLG>].

¹⁵² See generally David Kennedy, *Challenging Expert Rule: The Politics of Global Governance*, 27 SYDNEY J. OF INT’L L. 5 (2005) (making a case on the need to bring politics in expertise and comparative law); *The Methods and Politics of Comparative Law*, in COMMON CORE EUR. PRIV. LAW: ESSAYS ON THE PROJECT 131 (Mauro Bussani & Ugo Mattei eds., 2003).

¹⁵³ However, the supremacy of the executive branch while it is seen as necessary for pushing ahead European reforms, also has other unintended consequences. Thus for

Furthermore, the role of the parliament as one of the check and balances mechanisms of the system is undermined by the consistent call for consensus around reforms that purport to bring Albania closer to EU standards. The institutional architecture as personified in a state with three independent but inter-functional branches was a *sine qua non* for the establishment of new democracies in Central and Eastern Europe. However, downgrading the role of Parliament from the legislator into the approver, or rubber stamper, directly influences the parliamentary basis of the state.¹⁵⁴

The distribution of power among the three branches—executive, legislative and judiciary—albeit preached daily as a standard for democracy, it is an outdated concept.¹⁵⁵ As Joseph Weiler argues, the Union governance and institutions have a perverse effect on these principal democratic processes within the Member States and within the Union itself.¹⁵⁶ The Member State executive branch is reconstituted in the Community as the principal legislative organ with, as noted above, an ever-widening jurisdiction

instance, in the 2006 progress report, the Commission noted that: “However, much remains to be done to ensure wider consensus and the use of all available expertise on reforms. New horizontal teams working directly for the Prime Minister have not always drawn upon government and donor expertise in drafting legislative proposals, resulting in poor drafting. An increase in the number of institutions directly accountable to the Council of Ministers has taken place, and there is a tendency for direct oversight by the Prime Minister. This centralisation [sic] has led to many routine technical decisions being taken at the level of the Prime Minister, which has delayed key actions.” *European Commission Staff Working Document, Albania: 2006 Progress Report*, SEC (2006) 1383 final (Nov. 8, 2006).

¹⁵⁴ See also *The Legislative Process in Albania, 2010: The Current Situation and Considerations for Improvement*, EURALIUS (May 16, 2014), <http://www.reporter.al/wp-content/uploads/Euralius-web-site.pdf> [https://perma.cc/A739-78ZU]. The Euralius project (the European Assistance Mission to the Albanian Justice System), established to help the government with the reforms in the justice and legal areas, argues that while the parliament has created an “integration unit” to parallel the units set up by Prime Ministerial order in the line ministries, there has not been much control at the parliamentary stage. *Id.* Among other things, the Euralius experts argue, approximated laws could easily become “de-approximated” as a draft moves through the parliamentary process. *Id.* They argue that it might be useful to have parliamentary staff work with a proposing ministry (and/or the MoE) after a law has been passed so that together they could determine the final status of the approximation of a new law. *Id.* The Albanian Government has to have an accurate idea of the status of its approximated laws and any problems that may have arisen during the parliamentary process should be identified. *Id.*

¹⁵⁵ See Dankwart A. Rustow, *Transitions to Democracy: Toward a Dynamic Model*, 2 J. COMP. POLS. 337 (1970).

¹⁵⁶ Joseph Weiler et al., *European Democracy and Its Critique -- Five Uneasy Pieces* (Eur. Univ. Inst., Working Paper No. 95/11, 1995).

over increasing areas of public policy.¹⁵⁷ The volume, complexity and timing of the Community decisional process makes national parliamentary control, especially in large Member States, more an illusion than a reality.¹⁵⁸ Andrew Moravcsik, in a seminal article on the democratic deficit in the EU acknowledges the tendency to insulate decision-making as a fact of life in any modern democracy.¹⁵⁹ Moravcsik argues that the fact that governments delegate to bodies such as constitutional courts, central banks, regulatory agencies, and insulated executive negotiators is a fact of life, one with a great deal of normative and pragmatic justification.¹⁶⁰ Another scholar of European integration, Gianfranco Majone, thinks that the reason for the shift towards independent and regulatory bodies is the commitment problem and its implications for public credibility.¹⁶¹ Majone affirms the trend of shifting power over policy making to independent, regulatory bodies, arguing that “such problems are not increasingly important at all levels of government as the shift from the positive to the regulatory state gains momentum throughout Europe.”¹⁶²

In a context where the rise of formalist legal thinking is being advocated as the escape from politics and ideology, the emergence of the executive branch as the strongest actor in domestic politics goes undisputed, if only to prove a point that a country cannot democratize simply by copying laws or parliamentary practices, but by facing up to its own conflicts.¹⁶³ Even in the best of circumstances, during a transition process, special interests enter the lawmaking process during the agenda setting and drafting of statutes.¹⁶⁴ In this sense, the notion that the parliament is posited as

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Andrew Moravcsik, *In Defense of the ‘Democratic Deficit’: Reassessing Legitimacy in the European Union* (Ctr. for Eur. Studies Working Paper No. 92, 2003).

¹⁶⁰ *Id.*

¹⁶¹ Giandomenico Majone, *Europe’s ‘Democratic Deficit’: The Question of Standards*, 4 EUR. L. J. 1, 5 (1998).

¹⁶² Giandomenico Majone, *From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance*, 17 J. PUB. POL’Y 2, 139 (1997).

¹⁶³ See Dankwart A. Rustow, *Transitions to Democracy: Toward a Dynamic Model*, 2 J. COMP. POLS. 337 (1970); but see Ismet Elezi, *On the Legal Reform*, 56 TRIBUNA JURIDIKE 5, 8 (2005) (advocating the strict separation of institutions as a result of the modern rule of reforms).

¹⁶⁴ Elisabeth Gerber, *The Logic of Reform: Assessing Initiative Reform Strategies*, in DANGEROUS DEMOCRACY? THE BATTLE OVER BALLOT INITIATIVES IN AMERICA 143, 147

the lawmaker in order to, along with the judicial branch, check and balance the executive branch fits with the theoretical assumption but exposes the gap between normativity and reality.

Attempting to defuse charges of the democratic deficit, and garner greater legitimacy, the EU usually relies upon the so called “stakeholder approach.”¹⁶⁵ The stakeholder approach gives the domestic elite an opportunity to engage with external actors and to shift the responsibility of unpopular decisions, while at the same time, it gives an empire in the making, in this case the EU, the democratic legitimacy by “involving” the other party.¹⁶⁶ After all, one can join the club only after playing by the rules. However, the call to involve stakeholders is often used to bypass genuine participatory processes and, as will be shown later on in this paper, as a shortcut for avoiding political responsibility.¹⁶⁷

These conditions have stimulated the elective affinity between the local elite and the European Union¹⁶⁸ and created a supply-and-demand mechanism that has perpetuated the vision of instability and permanent transition.¹⁶⁹ Expertise and financial rewards are key mechanisms in the functioning of the system of export-import of laws in what Duncan Kennedy calls the third globalization of law.¹⁷⁰

(Larry J. Sabato et. al. eds., 2001).

¹⁶⁵ See *Stakeholder Value Approach*, BUS. DICTIONARY, <http://www.businessdictionary.com/definition/stakeholder-value-approach.html> [<https://perma.cc/YN36-2KUB>] (defining stakeholder value approach as being designed “to maximize this value by following policies that (1) minimize cost and waste while improving the quality of its products, (2) enhance the skills and satisfaction of its employees, and (3) contribute to the development of the community from which it draws its resources and sustenance”).

¹⁶⁶ See Sigurt Vitols, *A Stakeholder Approach To EU Corporate Governance – Waiting For Godot?*, SOC. EUR. (Dec. 20, 2012), <https://www.socialeurope.eu/2012/12/a-stakeholder-approach-to-eu-corporate-governance-waiting-for-godot/> [<https://perma.cc/C298-QGKC>] (describing the EU’s implementation of their Action Plan, a stakeholder approach to corporate governance).

¹⁶⁷ See Archon Fung, *Democratizing the Policy Process*, in OXFORD HANDBOOK PUBLIC POL’Y 682 (Michael Moran et. al. eds., 2005). According to Archon Fung, opening channels of participation to public decision-making can bring the energies, resources, and ideas of citizens and stakeholders to bear on complex public problems. *Id.*

¹⁶⁸ On the one hand, the domestic elite entrenches its status and control over domestic resources while ruthlessly delegitimizing challengers and discouraging social mobility, and on the other hand, the European Union projects its vision as an enlightened power, able to bring about security and prosperity to its darkest corners.

¹⁶⁹ See Gianmaria Ajani, *By Chance and Prestige: Legal Transplants in Russia and Eastern Europe*, 43 AM. J. COMP. L. 1, 93, 95 (1995).

¹⁷⁰ Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850-2000, in THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL* (David Trubek &

Hence, rule of law reforms become the reality that defines the status of a country and take on a life of their own. Their circular nature, which produces positive but not positive enough results, guarantees their eternity. The mantra of “more reforms” becomes the guiding light in this transformative process. The upshot of two-and-a-half decades of reforms, in the framework of the European integration process, is a deep mismatch between the objectives and the results sought. Instead of democratization and development, the result is a drive towards securitization and an economic strategy of peripheralization.

IV. From Communism to Europeanization: A Political Culture of Transition

Peripheralization takes root in a particular set of conditions. Apart from deindustrialization and securitization, political factors such as the cleavage of society along political party lines, cult of personality, and ideological uniformity, play their role in creating a downward spiral towards peripheralization.¹⁷¹ These three elements are mutually reinforcing and serve to perpetuate the submission of society to a domestic elite, and who, in turn, have solidified their position based on a claim of external legitimacy. This claim is derived from their “allegiance” to Europeanization, and their position as the most malleable interlocutors for the EU.

Throughout twenty-five years of transition, the premise of democratization has been shaped by the prospect of membership into the European Union.¹⁷² The European Union has projected an image of remedying injustices through its core values while

Alvaro Santos eds., 2006). The feasibility of projects relies mostly on the origin of the organization(s) involved. *Id.* The more Western an organization is, the higher the chances for funding and trading in influence. *Id.* Prestige carries a lot of weight. *Id.*

¹⁷¹ On the importance of discussing the political milieu and forces that dominate it see E. E. SCHATTSCHEIDER, *THE SEMI-SOVEREIGN PEOPLE: A REALIST'S VIEW OF DEMOCRACY IN AMERICA* (1960). Schattschneider argues that the scope of conflict is an aspect of the scale of political organization and the extent of political competition. *Id.* The size of constituencies being mobilized and the inclusiveness or exclusiveness of the conflicts people expect to develop have a bearing on all theories about how politics is or should be organized. *Id.* Law also is a variable in the equation of power, however I am limiting the discussion to the above-mentioned elements.

¹⁷² Marina Lazeri, *Renegotiating Albania Identity: European Transformations* (unpublished manuscript, Utrecht University, The Netherlands), <http://www.inclusionexclusion.eu/site/wp-content/uploads/2014/11/Marina-Lazeri.pdf> [<https://perma.cc/NPF9-2C9T>].

simultaneously holding domestic politicians accountable.¹⁷³ The export of EU norms has rested on the premise that democratization is building a society that stimulates the access of individuals to power; a premise that is embodied in the Copenhagen criteria of membership in the Union, which requires that a candidate country be democratic.¹⁷⁴ Instead, a political culture characterized by class struggle, the cult of individuality, and a desert of alternative development models is the result of twenty-five years of transition.¹⁷⁵ I argue that the discourse of Europeanization perpetuates a consciousness of permanent limbo: in Europe, but not fully European; democratizing, but not yet a Western democracy; not barbarian, but not fully civilized either. In this framework, Albania exists in a permanent state of transition. The mystification of the European Union as the only escape from domestic politics presents as necessary, essential, and objective what is contingent, arbitrary, and subjective. In this context, the price for membership into the club gets transformed into a list of recommendations, preferences, and best practices to be implemented in order to bring about “enlightenment” and “modernization”¹⁷³ as well as to comply

¹⁷³ *Id.*

¹⁷⁴ *European Commission - Enlargement - Accession Criteria*, EUR. COMM'N, http://ec.europa.eu/enlargement/policy/glossary/terms/accession-criteria_en.htm [<https://perma.cc/BT5J-KZUF>] (last updated Sept. 7, 2012) (stating that EU Copenhagen criteria for membership requires that a candidate country be democratic, ensure the functioning of the rule of law and protection for minorities, that it has a functioning market economy, and that it adopts the *acquis communautaire*).

¹⁷⁵ This approach to democracy does not necessarily reject a procedural conception of democracy. Rather, it seeks to show how even a minimalist definition of democracy leads easily to manipulation and domination. For a procedural definition of democracy see Schumpeter's definition of democratic method as the “institutional arrangement for arriving at political decisions which realizes the common good by making the people itself decide issues through the election of individuals who are to assemble in order to carry out its will . . . the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote.” JOSEPH A. SCHUMPETER, *CAPITALISM, SOCIALISM AND DEMOCRACY* 250, 269 (3rd ed. 2008). Democracy does not mean and cannot mean that the people actually rule in any obvious sense of the terms “people” and “rule.” *Id.* at 285. Democracy means only that the people have the opportunity of accepting or refusing the men who are to rule them. *Id.*; see also Dankwart A. Rustow, *Transitions to Democracy: Toward a Dynamic Model*, 2 *COMP. POL.* 337 (1970) [hereinafter *Transitions to Democracy*]. Rustow defines democracy as a system of rule by temporary majorities. *Id.* at 351. Rustow also says that the advent of democracy must not be understood as occurring in one year. *Id.* at 347. However, a period of twenty years is quite sufficient in order to scrutinize the process of modernization. *Id.*

with what is said to be the popular will—entrance into the European Union equals destiny. Such worldviews serve as sources of legitimation for political actors while delegitimizing and quashing even the most modest attempts for alternative solutions. Consequently, a culture of submission and fatalism is created.

The domestic elite embraces Europeanization in order to maximize its influence and its control over the masses.¹⁷⁶ A Hobbesian image of the public as inherently warlike, and dominated by ancient hatreds, strengthens the position of the domestic elite as the most optimal and pragmatic interlocutor with international actors and the European Union in particular. The domestic elite uses the paradigm of Europeanization in order to delegitimize attempts to challenge unjust social relations and reconfigure the political system. On the other end of the spectrum, Europeanization gives the European Union an unprecedented ideological supremacy, a claim for truth, and a measure of control over the domestic elite and the masses.¹⁷⁷

A. *From One to Many: Politicization and Fragmentation in Albania*

If there is one thing in common that the nascent political parties inherited from the old regime, it is the totalitarian culture of suppression and exclusion of the “other.” The mechanism used to enforce the unification of society around the Communist Party (or Labor Party, as it was otherwise called) was the dichotomy between “us” and “them.”¹⁷⁸ “Us” included the party members, the working class, peasantry, and the intelligentsia.¹⁷⁹ “Them” referred to the untouchables—people associated with the former regimes, i.e., nationalist forces and the royalists, as well as undesirables among the communists themselves, who were eventually purged from the

¹⁷⁶ A counterargument could be made that elites receive the Europeanization and internalize values from it, hence contributing to what Dahl calls the need for elites to embrace a commitment to democratic values in order to bring about democratic stability. See ROBERT A. DAHL, *WHO GOVERNS? DEMOCRACY AND POWER IN AN AMERICAN CITY* (1961).

¹⁷⁷ The next part provides a more detailed discussion on the role of international actors in domestic politics.

¹⁷⁸ I refer to the Labor Party (otherwise known as Party of Labor).

¹⁷⁹ Anila Pashaj, *Civil Service Reform in Albania: The Broken Promise of De-Politicisation* 18 (2010) (unpublished Masters of Arts in Public Policy dissertation, Central European University), www.etd.ceu.hu/2010/pashaj_anila.pdf [<https://perma.cc/NAD8-LJ9A>].

Party ranks.¹⁸⁰ There was no middle ground, and indifference to the communist ideology was not tolerated.¹⁸¹ One definitely did not want to be signaled as different from the revolutionary masses. To be different was to be easily identified as an enemy of the people's power and as such, to be ostracized.

The anti-communist fervor in the early 1990s justified and legitimized sweeping purges in the public administration.¹⁸² It was not long before the administration was staffed along overlapping sectarian and regional divisions.¹⁸³ North Albania was a favorite stronghold of the democrats, whereas the south was seen as a bastion of the socialists.¹⁸⁴ The overwhelming presence of northerners in the bureaucracy, when democrats were in power, and respectively, southerners, when socialists were in office, fueled resentment and a popular backlash against the newcomers to the capital.¹⁸⁵ At the outset of 1990, Tirana had a population of 300,000 inhabitants, but by 2015, the population has at least tripled in size.¹⁸⁶ Despite this massive migration wave and the higher density, the social capital remains at very low levels. In fact, political forces

¹⁸⁰ *Id.* It must be noted that the purges were not limited to the alleged traitors of the Party, but included the immediate family members, while the extended families often were degraded in their workplaces and lived with the constant fear of persecution. *Id.*

¹⁸¹ *Id.* at 24.

¹⁸² For instance, Eduard Selami, the Chairman of the Democratic Party, said in a meeting of the DP National Council, after they won the elections in 1992, "We need to remove people of the old administration because they are putting obstacles to us. We need to reform the justice sector organs with new cadres" BLERIM ÇELA, DEFORMIMI I PARTISE DEMOKRATIKE 235 (2010).

¹⁸³ *See* Pashaj, *supra* note 179.

¹⁸⁴ *Id.*

¹⁸⁵ By the time the Democrats returned to power in 2005, the phenomenon of administrative purges was well established. Pashaj, *supra* note 179, at 18. As in 1992, and as with the Socialists in 1997, Democrats again started to purge the bureaucracy of people who were closely linked to the Socialists. *Id.* For instance, in 2006, in the central administration organs, out of 1129 total employees, there were 319 fewer employees than in 2005. *Id.* at 26. Every time I visited Tirana since December 2005, fewer people I had known in the government were still working there. During a visit to the Ministry of Justice where I spent four years, between 2000 and 2004, only a couple janitors, out of 150 lawyers, remained. Newcomers had replaced everyone else. A former colleague, Ditmir Bushati, who was the Director for Approximation of Legislation in the Ministry for European Integration, was fired on the day in which the Stabilization and Association Agreement with the European Union was signed in June of 2006.

¹⁸⁶ *Tirana Population*, POPULATION CITY, <http://population.city/albania/tirana/> [<http://perma.cc/V46K-HY43>].

have deliberately tolerated this social ungluing.¹⁸⁷ Hence, the first obstacle to the sense of a community comes precisely from the organized drive to atomize the society.¹⁸⁸

Once a party wins the local or parliamentary elections, it is expected that it will employ its members and sympathizers in the state apparatus, and generally use the state coffers for either private or party gains. When coalitions win elections, then parties penetrate the bureaucracy and divide the state into respective fiefdoms according to the percentage of votes accumulated in the elections.¹⁸⁹ For instance, after the parliamentary elections of June 2009, when the Socialist Movement for Integration (“LSI”), a left wing party, entered into a coalition with the Democratic Party, it demanded a twenty percent share of all state offices as the price for its support.¹⁹⁰ The phenomenon of distributing state offices to political parties is so encompassing, that there is not a single cell of administration without party politics determining its composition.¹⁹¹

¹⁸⁷ Although I use the term “social ungluing,” the term “social capital” as discussed by Robert Putnam in *BOWLING ALONE* can also be used, albeit with the qualification that it would presuppose the once existence of a social capital. ROBERT PUTNAM, *BOWLING ALONE*, 294 (2000). While it is often argued that socialism forced voluntarism and collectivism and as such there was not any social capital to start with, this is a view that I do not support. *Id.* at 397.

¹⁸⁸ The ideological support for the extinction of anything social was reinforced by the abandonment of discussion of authors that wrote on the role of society in shaping the individual. Marx was a first casualty from the school curricula, but also other authors, Durkheim’s Division of Labor was another. *Id.* at 287.

¹⁸⁹ The mechanism commonly used in coalition governments is that each party of the coalition gets a share of positions in every unit of the public administration, which gets determined by the election results. Rowena Mason, *Coalition Governments: What Are They and How Are They Formed?*, *THE GUARDIAN* (Apr. 15, 2015), <http://www.theguardian.com/politics/2015/apr/15/coalition-governments-what-are-they-and-how-are-they-formed> [https://perma.cc/A89H-R68R].

¹⁹⁰ For media reports, see *Ja çfarë përmban marrëveshja mes PD e LSI*, *TEMA* (Maj. 29, 2012, 9:45 AM), <http://www.gazetatema.net/web/2012/05/29/ja-çfare-permban-marreveshjes-mes-pd-e-lsi/> [https://perma.cc/A5T8-JCTH]; *Berisha ndan â€œtortenâ€ e mbetur te qeverise*, *TOP CHANNEL* (Mar. 09, 2009, 8:05 AM), <http://top-channel.tv/lajme/artikull.php?id=160942> [https://perma.cc/JG3U-25V2]; *Fjala e plotë e kryeministrit Berisha dhe kreut të LSI-së, Ilir Meta pas nënshkrimit të marrëveshjes së bashkëqeverisjes*, 55 *ONLINE* (FEB. 09, 2009), <http://gazeta55.al/fjala-e-plote-e-kryeministrit-berisha-dhe-kreut-te-lsi-se-ilir-meta-pas-nenshkrimit-te-marreveshjes-se-bashkeqeverisjes/> [https://perma.cc/ANB4-G9UW].

¹⁹¹ In 2010, following the parliamentary elections of 2009, which were won by a coalition led by the Democratic Party, the number of complaints filed with the Commission of the Civil Servant was 259. Myrteza Myftari, *The Right to Complain in Albanian Civil Service and its Effects*, 4 *MEDITERRANEAN J. SOC. SCI.* 656, 656 (2013). In 2011, the

The fragmentation of the public administration into political fiefdoms is often described as “tribal politics.” For instance, Mustafa Nano, a journalist, claims that Berisha and Meta have time and time again demonstrated that they are not bothered by using their places of origin as a mechanism to attract followers.¹⁹² They actually instrumentalize them to their benefit.¹⁹³ The “tribalization” of national politics has relied upon the foregrounding of a particular region and its people in national politics. The end goal is not simply the tribalization of the country, but the domination of national politics by a particular region.¹⁹⁴

This fragmentation suggests that a crisis of representation is as much a result of the instrumentalization of sectarian divisions as it fuels them. Blendi Kajsiiu argues that the crisis of representation comes from the construction of a negative identity for political contenders.¹⁹⁵ They stimulate the perception of the adversary as the

number of complaints related to termination from the civil service was 124, almost half of the overall complaints filed with the Commission. *Id.* at 662. These two figures can be contrasted with the lack of fluctuations in the number of cases of termination during 2009, the election year. In 2009, there were only five cases of termination of the civil servant status. *Id.*

¹⁹² Sali Berisha was the leader of the Democratic Party and hails from the northeast of Albania, from a region called Tropoja. Ilir Meta is the leader of the Socialist Movement for Integration and hails from the south, from a region called Skrapar. Besar Likmeta, *Albania's Berisha Becomes Born-Again Nationalist*, BALKAN TRANSITIONAL JUSTICE (Feb. 1, 2013), <http://www.balkaninsight.com/en/article/albania-s-berisha-becomes-born-again-nationalist> [https://perma.cc/STN7-BAJ4].

¹⁹³ *Id.*

¹⁹⁴ See Mustafa Nano, *Tribalizmi në shoqërinë tonë është një fakt kulturor, jo fetar*, GAZETA SHQIP (Dhjetor 12, 2011); see also Mustafa Nano, *Është një hendek i frikshëm mes palëve*, REPUBLICA (Maj 21, 2011) (discussing the lack of political dialogue among parties). The law enforcement sectors as well as the customs and tax authorities were the favored destination for party militants and sympathizers. Mustafa Nano, “*ResPublica*” nuk është më e imja, REPUBLICA (Qershor 09, 2015, 12:53), <http://www.respublica.al/content/intervista-mustafa-nano-%E2%80%9Crespublica%E2%80%9D-nuk-%C3%ABsht%C3%AB-m%C3%AB-e-imja> [https://perma.cc/GXM6-7MJE].

¹⁹⁵ Blendi Kajsiiu, *Vdekje Politikës, Liri Popullit! - Kriza e Përfaqësimit në Shqipëri*, POLIS 5 (2008). Regarding the question of representation, the dichotomy developed by Edmond Burke along mandate and trustee representation, or the concept of representation developed by Jane Mansbridge defined as promissory, anticipatory, gyroscopic, and surrogate representation can be used to illustrate the abyss between individuals and political outcomes. See Jane Mansbridge, *Rethinking Representation*, 97 AM POL. SCI. REV. 515, 515 (2003); see also Edmond Burke, *Speech to the Electors of Bristol November 3, 1774*, in 1 THE FOUNDERS’ CONST. 391 (Ralph Lerner & Philip B. Kurland eds., 1987), <http://press-pubs.uchicago.edu/founders/documents/v1ch13s7.html>

main threat that ought to be prevented. This is easily demonstrated by the political message during elections, but also in between elections. Thus, from 1990 to 1997, the main threat was constructed around the communists, the message articulated: anti-communism. From 1997 to 2005, Socialists consolidated their position in power by vilifying Berisha and claiming to fight against Democrats' return to power.

From 2005 and onwards, Democrats as well as the Socialists have not missed a chance to stigmatize each other's adversaries, and in particular their respective leaders, Sali Berisha and Edi Rama as "the worst of the worst." This approach to competition for power stands closer to what Schumpeter identifies as the main characteristics of parties and the race for power.¹⁹⁶ According to Schumpeter,

a party is not, as classical doctrine would have us believe, a group of men who intend to promote public welfare upon some principle on which they are all agreed. . . . A party cannot be defined in terms of its principles. A party is a group whose members propose to act in concert in the competitive struggle for political power. Party and machine politicians are simply a response to the fact that the electoral mass is incapable of action other than to create a stampede, and they constitute an attempt to regulate political competition exactly similar to the corresponding practices of a trade association.¹⁹⁷

Kajsiu contends that the personalized approach taken by these party entrepreneurs prevents the meaningful discussion of politics and party programs.¹⁹⁸ Voters in Albania look at party leaders and not party programs.¹⁹⁹ The stimulation of conflict has alienated citizens making it harder for the parties themselves to build identities based on ideologies rather than leaders.²⁰⁰ The less representative the parties become, the more society and interest groups identify each other as adversaries.²⁰¹ In a frank affirmation

[<https://perma.cc/P2VR-FZG8>].

¹⁹⁶ See SCHUMPETER, *supra* note 16, at 283.

¹⁹⁷ *Id.*

¹⁹⁸ See Kajsiu, *supra* note 195.

¹⁹⁹ *But see* ANNE PHILLIPS, *THE POLITICS OF PRESENCE* (1995). Phillips argues that the political party provides us with the necessary shorthand for making our political choice: we look at the label rather than the person, and hope we will not be let down. *Id.* at 2.

²⁰⁰ See Kajsiu, *supra* note 195, at 5.

²⁰¹ *Id.*

of the degree to which party politics affects the atomization and fragmentation of society, Robert Elsie, an albanologue, responds in the following way when asked whether he would like to live in Albania: “there is much frustration in the daily life. . . . If I was to live here[,] I would be spending a disproportionate amount of time on politics. It would be imperative to take a side; otherwise, it would be way too difficult to live as a non-politically engaged citizen.”²⁰²

Fatos Lubonja has referred to political parties as gangs in quest for power.²⁰³ According to him, the most that can be done is to channel this competition within a set of procedures.²⁰⁴ Lubonja argues that the Albanian society has been victimized by the permanent conflict between two sets of leaders—Berisha on the one hand, and Nano or Rama on the other hand.²⁰⁵ The effect of this struggle for power has been the elimination of a substantive dialectic and institutions.²⁰⁶ Culturally and politically, political leaders were educated and matured during socialism; many of them were members of the Communist Party. The same could be said for the majority of the population. From 1945 to 1990, the population tripled to 3.5 million.²⁰⁷ It is safe to say that the Albanian elite is a product of socialism. This form of alienation from the opposition was carried over in the new “democratic” regime. The parties and their supporters again neatly fall into two camps, “us” and “them.” You could either be a Democratic Party or Socialist Party supporter.²⁰⁸ The system does not tolerate nuances or ambiguity.

²⁰² Robert Elsie, *Po të jetoja në Shqipëri, do çmendesha. Është njësoj si në kohën osmane*, TEMA (7 Shkurt, 2012, 7:12 PM), <http://www.gazetatema.net/web/2012/02/07/intervista-robert-elsie-po-do-jetoja-ne-shqiperi-do-cmendesha-eshte-njesoj-si-ne-kohen-osmane/> [https://perma.cc/K6D8-YUHC].

²⁰³ Fatos Lubonja, *Vjedhja e votës si dhunë strukturore*, PËRPIEKJA (8 Mars, 2010), <http://perpjekja.blogspot.com/2010/03/vjedhja-e-votes-si-dhune-strukturore.html> [https://perma.cc/RP2M-R6JS].

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Fatos Lubonja, *Pse Pa Berishën dhe pa Edi Ramën*, GAZETA PANORAMA (1 Shkurt, 2012, 5:20 PM), <http://arkivi.peshkupauje.com/2012/02/pse-pa-berishen-dhe-pa-ediramen> [https://perma.cc/TLY6-8GMR].

²⁰⁷ *The World Factbook: Albania*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/al.html> [https://perma.cc/Y5AH-RBF4].

²⁰⁸ One of course could argue that people participate in politics because they get something out of it. However, this view adopted by Steven J. Rosenstone & John Mark Hansen presupposes a voluntaristic approach to politics. See generally STEVEN J.

This polarization of the society has resulted in a total distrust of the other side, and it has plagued the politics.²⁰⁹

B. Power Entrepreneurs: Leaders and Parties

The second phenomenon is the emergence and entrenchment of charismatic leaders. The deep political cleavage stimulates, and is fueled in turn by the rise of charismatic leaders who are more interested in expanding their power base, than in debating ideas or programs with their opponents, though they are more than capable of fomenting short term, fluid alliances. Their behavior resembles that of power entrepreneurs that seek to maximize their power base regardless of the means. The political conflict is built around the personalized conflict among the leaders who view the political competition, and subsequently the access to power, as an instrument with which to plunder public resources. Even in a heated competitive environment, performance takes a second place to fostering and demanding loyalty based on personal and party lines.²¹⁰ As with the former communist dictator, Enver Hoxha and the Labor Party, political parties have traditionally relied on the

ROSENSTONE & JOHN MARK HANSEN, *MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA* (2003). On the other hand, I contend that the participation in politics come from coercion. The authors argue that people participate in politics because they get something out of it. *Id.* at 16. The rewards take many forms. Participants enjoy material benefits, tangible rewards that are easily converted into money like a government job or a tax break. *Id.* Those active in politics can also receive solidary benefits, intangible rewards that stem from social interaction, like status, deference, and friendship. *Id.* And participation can also yield purposive benefits, intrinsic rewards that derive from the act of participation itself, such as a sense of satisfaction from having contributed to a worthy cause. *Id.*

²⁰⁹ This state resembles the worst in Rousseau's critique of political parties. JEAN JACQUE ROUSSEAU, *DISCOURSE ON THE ORIGIN AND BASIS OF INEQUALITY AMONG MEN* (1754), <http://www.constitution.org/jjr/ineq.htm> [<https://perma.cc/8SQW-LGXS>].

²¹⁰ *But see* David A. Lake & Matthew A. Baum, *The Invisible Hand of Democracy: Political Control & Public Services*, 34 *COMP. POL. STUD.* 587, 598 (2001) (providing an opposing view). The authors contend that regimes that have undergone a significant political change will quickly produce a new and politically appropriate package of public services. *Id.* In regimes that have recently become more democratic, elected leaders, faced with prospects of being voted out of office for failing to improve the welfare of their constituents, will place a high priority on quickly delivering a substantial improvement in public services. *Id.* Politicians in new democracies have strong incentives to deliver substantial and immediate policy change. *Id.* This implies two additional hypotheses on political transitions: (a) fundamental regime changes will produce disproportionately large changes in levels of public services, and (b) the lags between changes in regime and public services will be relatively short. *Id.* Democracies in which the political market is more contestable should produce larger quantities of public services. *Id.* Democracy should constrain the state to produce closer to the social optimum. *Id.*

idolization of their leaders, and consequently, have strengthened their cult of personality.²¹¹ Dissent is simply not tolerated, party structures are dysfunctional, and all power rests with the leaders. The centralization of parties is then a constant feature of transition, regardless of the distinction between parliamentary and extra parliamentary parties.²¹²

The personal form of power and authority fuels the previously mentioned dichotomy between informal and formal government structures and legal norms. Leaders use ancient mechanisms of redistribution and reciprocity to generate more power and accumulate wealth.²¹³ Shinasi Rama argues that due to the unchanged behavior of the Albanian elite, the state of transition will stop only when they succeed in subduing the public through creating artificial cleavages in the society.²¹⁴ The wide political cleavage and the personal character of the new democratic regime pose grave dangers to its existence and are among the causes for the cycles of instability.²¹⁵ Moreover, they have installed a general culture of impunity, captured very succinctly by Learned Hand who claims that in any society the aggressive and insistent have

²¹¹ Jay Nordlinger, "Sole Force," *They Called Him*, THE NAT'L REV. (Dec. 22, 2015, 10:27 AM), <http://www.nationalreview.com/corner/428895/jeremy-corbyn-enver-hoxha-and-totalitarian-temptation> [<https://perma.cc/Q8AB-X8VX>].

²¹² *But see* MAURICE DUVERGER, POLITICAL PARTIES: THEIR ORGANIZATION (1963). Duverger argues that extra parliamentary parties are more centralized than others. *Id.*

²¹³ Shinasi Rama, *Shteti Gangster: Deshtimi i Tranzicionit dhe Nevoja per nje Fillim te Ri*, TEMA (25 Janar, 2011, 11:11 PM), <http://www.gazetatema.net/web/2011/01/25/shteti-i-gangstereve-deshtimi-i-tranzicionit-dhe-nevoja-per-nje-fillim-te-ri/> [<https://perma.cc/2R2F-K4LJ>].

²¹⁴ *Id.*

²¹⁵ Larry Diamond and Robert Putnam argue that the evolution of a democratic political culture is a key factor in the consolidation of democracy, and why this phase takes decades in order to complete its course. *See* LARRY DIAMOND, INTRODUCTION TO POLITICAL CULTURE AND DEMOCRACY IN DEVELOPING COUNTRIES (1992); *see also* ROBERT D. PUTNAM, MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN ITALY (1993). On the importance of elite consensus *see also* GIUSEPPE DI PALMA, TO CRAFT DEMOCRACIES: AN ESSAY ON DEMOCRATIC TRANSITIONS (1990). In an account on why states comply with international law, Thomas Franck has an interesting argument that is relevant also for our discussion. Franck writes that the real power of law rests on the general belief of those to whom the law is addressed that they have a stake in the rule of law itself. Thomas F. Franck, *The Power of Legitimacy and the Legitimacy of Power: International Law in the Age of Power Disequilibrium*, 100 AM. J. INT'L L. 1, 88 (2006). When a community loses faith in the law's power to restrain and channel conduct, this perception propels the descent into anarchy. *Id.*

disproportionate power over others.²¹⁶

The conflict among leaders, but particularly between Sali Berisha, Edi Rama, and Ilir Meta, considered as the three main political actors, is perceived by the public and the European Union as preventing the Europeanization of the country, which in turn causes the failure to reform, following with a backslide of democratization and development. The conflict then becomes not about who privatizes more or less, or who will redistribute more income than the other, but who among them is stronger and more civilized and most importantly who will bring about faster Europeanization.

The personalized nature of the political conflict is not unknown internationally.²¹⁷ In an article on the political crisis, Daniel Korski provides an insightful metaphor for the relationship between Berisha and Rama, “the sharp, policy-lite, personality-driven rivalry between Berisha and Rama has acted like a two-person saw, with the back-and-forth friction of each side cutting through the country’s institutions like a saw through a plank of wood.”²¹⁸ Korski then turns to the European Union as the actor with the responsibility and authority to essentially govern an ungovernable land.²¹⁹ Here is how he puts the proposal:

The international community should organize and run an extraordinary parliamentary election next year, sending an unambiguous message that Albania’s institutions are no longer trusted or capable of doing so themselves. A new government should be held to a concrete agenda for reform. That may finally stop Albania’s politicians from sawing through the country’s institutions. If it doesn’t, the impact will be felt beyond the borders of Albania.²²⁰

C. *Mystification of Europe*

The ideological conformity, or what Unger calls the dictatorship

²¹⁶ See LEARNED HAND, DEMOCRACY: ITS PRESUMPTIONS AND REALITIES (1932).

²¹⁷ See generally Matthew Brunwasser, *2 Men Jostle for Power in Albania*, N.Y. TIMES (Jan. 26, 2011), <http://www.nytimes.com/2011/01/27/world/europe/27iht-albania27.html> [<https://perma.cc/VE6J-W7WJ>].

²¹⁸ Daniel Korski, *Stop Albania’s Self-Destruction*, INT’L HERALD TRIBUNE (Jan. 26, 2011), <http://www.nytimes.com/2011/01/27/opinion/27iht-edkorski27.html> [<https://perma.cc/8LPC-BGW8>].

²¹⁹ *Id.*

²²⁰ *Id.*

of no alternatives, is intensified by the orientation toward the European integration.²²¹ Europeanization, in this context, becomes the dominating ideology and provides the legitimating basis of reforms as well as of political actors who compete with each other on the degree of compliance with the EU conditions. A common feature among the three main parties²²² is their identical approach to four main issues: economic development, democratization, rule of law, and Europeanization. All three parties adopt slogans, one-sentence statements rather than plans in their platforms or programs. The Democrats since their earlier days of inception identified themselves as a right wing party, even though they were careful to expel or dissuade people associated with the nationalist or pre-communist elite. In opposition to the Socialists, Democrats made a great appeal to the adoption and implementation of human rights as recognized by various international instruments such as the Helsinki Act, the protection of the freedom of enterprise and market economy as mechanisms of quick and sustainable development.²²³

But the Democrats are not alone in this approach to economic development. The Socialist Movement for Integration is even more explicit in the adoption of market liberalization reforms. Considering itself as being established to fulfill a historical role, LSI propagates for the liberalization of the market through the elimination of monopolies, improvement of fiscal legislation and supporting domestic businesses through fair competition, and the transparent and fast privatization of public monopolies such as water supply, energy, and telecommunications in order to get rid of their dominant position in the market, total liberalization of these sectors in order to improve the services and lives of its citizens.²²⁴

Socialists are somewhat more verbose regarding the principles of economic development. They envision development as an issue consisting of sustainable development with less public debt, a fairer redistribution of wealth, progressive markets and economy and not excessive use of natural resources, support for domestic producers and exporters, rural development and agriculture, modern

²²¹ ROBERTO MANGABEIRA UNGER, WHAT SHOULD THE LEFT PROPOSE? 1 (2005).

²²² Democratic Party, Socialist Party, Socialist Movement for Integration.

²²³ Aleksander Meksi, DHJETOR '90: DOKUMENTE & MATERIALE (2010); Article 2 of the Statute of the Democratic Party.

²²⁴ *The Party*, LSI, http://www.lsi.al/index.php?option=com_content&view=article&id=3&Itemid=107&lang=en [https://perma.cc/7JE9-Q2PE].

infrastructure, and a clean environment.²²⁵ Their program highlights the fact that they will create 300,000 jobs when they come to power, but it does not elaborate further.²²⁶

All three parties are for social justice. The democrats call for the elimination of privileges and inequalities that are not justified from labor and property, or from talent or services rendered to the country.²²⁷ For LSI, justice is about equality before the law and equality of freedom, equal opportunities for political and social participation and social security.²²⁸ Socialists mention the fairer redistribution of wealth as a topic of interest.²²⁹ According to their program, it is not fair that five percent of the population controls ninety-five percent of the national capital.²³⁰

On the question of democratization, Democrats are dedicated to building a democracy of human rights based on the community of free and responsible individuals, that cooperate, respect and carry common responsibilities.²³¹ They want to build a society based on the rule of law and separation of power, that guarantees the life and rights accorded by law.²³² LSI too is very much for the rule of law, anti-corruption, and the fight against organized crime through the strengthening of institutional capacities.²³³ Not to be outdone, the Socialists are also for law and order, for building a democratic society based on the rule of law with a European-like public administration, for the protection and enjoyment of property rights, for greater local autonomy and the revitalization of a civil society and for the freedom of the media.²³⁴

However, none of the parties discuss or has ever discussed the

²²⁵ *Id.*

²²⁶ See ENFRID ISLAMI, *THE NECESSARY RETURN OF IDEOLOGY: POLITICAL PARTIES AND IDEOLOGICAL PROFILE IN ALBANIA* (Alba Çela ed., 2013), <http://www.aiis-albania.org/sites/default/files/PoliticalParties.pdf> [<https://perma.cc/F3AN-EXDT>].

²²⁷ STATUTE OF THE DEMOCRATIC PARTY. art. II, § 10, <http://www.pd.al/statuti/> [<https://perma.cc/2J8K-2ASK>].

²²⁸ See *The Socialist Movement for Integration*, *supra* note 222.

²²⁹ Economic Recovery Program of the Socialist Party, 16, <http://ps.al/files/programi/Rimekembje-e-ekonomise.pdf> [<https://perma.cc/2HFG-FTGG>].

²³⁰ Socialists have come under persistent attack by Democrats and others for having the wealthiest parliamentary group. See ISLAMI, *supra* note 226, at 15.

²³¹ STATUTE OF THE DEMOCRATIC PARTY, art. II, §§ 6.

²³² STATUTE OF THE DEMOCRATIC PARTY. art. II, §§ 5-9.

²³³ See *The Socialist Movement for Integration*, *supra* note 222.

²³⁴ *Id.*

role of industrialization, or of endogenous growth strategies. A crucial feature is also the lack of discussion on social mobility. There has been the same group of people hailing from mid or high level positions of the communist *nomenklatura* that leads political parties, and governs Albania to this very day. There has not been a single instance, in which a representative of the pre-communist elite has been raised to a leadership position, and sustained it in any of the current political forces, or fully acquired properties confiscated from the communist regime since 1944.

The question of European integration has absolute consensus among all parties, and the order in society is kept by the promise of membership in the European Union. The latter is used as a form of denial, a way to deal with perceived contradictions of the communist legacy and transition that are painful to hold in conscience, because “decision” implies that there is a choice, but when the choice is already given, then there is no discussion. Europeanization becomes the great legitimizer of social action. The interests of the elite are held by their vested interest in serving as the exclusive interlocutors with the European Union. Thus, Europeanization ends up serving the interests of the dominant class, and justifying their power. This conceptualization of the future belies a meaningful discussion of values, modes of development and the essence of democracy.

Europeanization reinforces the perception that there is maximum consensus of the destiny, but the conflict between political leaders is the problem. This depiction of the state of democratization implies that as long as political leaders meet and make a deal, then all things will run smoothly.²³⁵ That is the middle ground for Europeanization. Democratization has been replaced by Europeanization. It is unusually hard to break away from this model of political culture and rely upon popular support for democratization. Thus, under conditions in which economic backwardness reigns, rule of law is only a *façade*, cultural and

²³⁵ See Blendi Kajsii, *Emergjenca e radhes*, GAZETA PANORAMA (10 Shkurt, 2010). Kajsii argues that “there is the perception that problems of the Albanian democracy rest on the disagreement between Berisha and Rama. Otherwise, the integration in the European Union will be jeopardized. This view is undermined by the fact that politicians, right and left, are in agreement for everything; they are all pro NATO, pro integration, pro free trade, in favor of small government, low taxes, foreign investments, constitution, public and private universities and so on. One of the reasons why we are so busy with small fights is that we do not have a great debate.” *Id.*

intellectual thought has plummeted to unknown depths, it follows that rapacious politicians will be able to exploit citizens to the full extent of their ability without consequence.²³⁶ In such a context, a state and its citizens stand in opposition to one another in an enduring struggle.²³⁷

V. Carrots and Sticks: The Long Road to the European Union

In the literature on transition, the elite consensus on channeling political conflicts through institutional procedures, the existence of a vibrant civil society and functioning state institutions are purported to create some of the conditions for the consolidation of democratic regimes.²³⁸ Against this backdrop, the role that international actors play is influential in shaping the institutional

²³⁶ According to Przeworsky and Limongi, what destabilizes regimes are economic crises, and poor democracies are particularly and extremely vulnerable to bad economic performance. Adam Przeworski & Fernando Limongi, *Modernization: Theories and Facts*, 49.2 *WORLD POL.* 155, 157 (1997).

²³⁷ See Lake & Baum, *supra* note 210, at 618; see also James A. Robinson, *Economic Development and Democracy*, 9 *ANN. REV. POL. SCI.* 503, 515 (2006).

²³⁸ For instance, Richard Rose and Doh Chull Shin write that different from the first wave of democratization, the third wave introduced political reforms without first consolidating basic institutions of a modern state, such as rule of law, civil society and accountability. Richard Rose & Doh Chull Shin, *Democratization Backwards: The Problem of Third Wave Democracies*, 31 *BRITISH J. OF POL. SCI.* 313, 331 (2001); Mancur Olson, *Dictatorship, Democracy, and Development*, 87 *AM. POL. SCI. REV.* 567, 574 (1993) (writing on political leaders that democracies have the great advantage of preventing significant extraction of social surplus by their leaders); see Grzegorz Ekiert, *Democratization Processes in East Central Europe: A Theoretical Reconsideration*, 21 *BRITISH J. OF POL. SCI.* 285 (1991); Guillermo O'Donnell, *Transitions, Continuities, and Paradoxes*, *ISSUES IN DEMOCRATIC CONSOLIDATION: THE NEW SOUTH AMERICAN DEMOCRACIES IN COMPARATIVE PERSPECTIVE*, 17–56 (Scott Mainwaring et al. eds., 1992); Francis Fukuyama, *The End of History?*, 16 *NAT'L INT.* (1989); Seymour Martin Lipset, *Some Social Requisites of Democracy*, 53 *AM. POL. SCI. REV.* 69 (1959); BRUCE ACKERMAN, *THE FUTURE OF LIBERAL REVOLUTION* (1992); Juan Linz, *Transitions to Democracy*, 13 *WASH. MONTHLY* 143–64 (1990); GABRIEL A. ALMOND & SIDNEY VERBA, *THE CIVIC CULTURE: POLITICAL ATTITUDES AND DEMOCRACY IN FIVE NATIONS* (1963); Robert A. Dahl, *Polyarchy: Participation and Opposition*, *N.Y. TIMES* (Aug. 8, 1971), at BR4; *INSTITUTIONAL DESIGN IN NEW DEMOCRACIES: EASTERN EUROPE AND LATIN AMERICA* (Arend Lijphart & Carlos H. Waisman eds., 1996); *TRANSITIONS FROM AUTHORITARIAN RULE: COMPARATIVE PERSPECTIVES* (Guillermo O'Donnell et al. eds., 1986); Adam Przeworski, *Economic Development and Transitions to Democracy* (Working Paper, 2004); Doh Chull Shin, *On the Third Wave of Democratization: A Synthesis and Evaluation of Recent Theory and Research*, 47 *WORLD POL.* 135–70 (1994); Jordan Gans-Morse, *Searching for Transitologists: Contemporary Theories of Post-Communist Transitions and the Myth of a Dominant Paradigm*, 20 *POST-SOVIET AFF.* 320–49 (2004).

structures needed to support the democratization efforts. Historically, in Albania, international actors have held significant influence over the domestic political outcomes, often determining them. The feral nature of Albanian politics breeds mutual distrust and suspicion among political actors, and it gives international interlocutors, such as the European Union, unprecedented access to, and influence over, domestic politics.²³⁹ The public expects international actors to perform a balancing role against the follies of domestic politicians and seeks protection in them from the vagaries of transition. However, instead of pushing the domestic elite to redress grievances and be held accountable for its actions, more often than not, the EU's actions end up consolidating the domestic elite's grip on power.²⁴⁰

This approach to politics tends to be problematic because the public perceives, and is stimulated to perceive itself as powerless over political choices made by the domestic elite. Often, political choices made by domestic actors are framed as necessities imposed by international actors, such as the EU, who in turn, blame domestic actors for the wailings of underdevelopment.²⁴¹ There is no political accountability on the part of the EU and there is no accountability on the part of the domestic elite either. When things go well, then the credit goes to the European Union for providing the incentive for reforms, remember the prospect of membership in the Union, and also to the domestic actors who saw the light of day and behaved properly.²⁴² When things go wrong, domestic actors pledge further

²³⁹ See SAMUEL P. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* (1991) (discussing the role of external actors in the third wave of democratization).

²⁴⁰ *Id.*

²⁴¹ See *Albania Passes Key Judicial Reform for EU Membership*, DEUTSCHE WELLE, <http://www.dw.com/en/albania-passes-key-judicial-reform-for-eu-membership/a-19420808> [<https://perma.cc/2M9E-RT4A>] [hereinafter DW] (describing Albania's justification for judicial reform to combat organized crime to obtain EU membership and the EU's reliance on Albania to implement the reform). In this context, there is also the perception shared by the elite and the public that international actors can be bought by awarding public contracts to international companies. See Matthew Brunwasser, *Steamrolled: A Special Investigation Into the Diplomacy of Doing Business Abroad*, FOREIGN POLICY, <http://foreignpolicy.com/2015/01/30/steamrolled-investigation-bechtel-highway-business-kosovo/> [<https://perma.cc/6Y7F-SZ2P>] ("The company has long used highly placed officials in the State Department and other government agencies to shepherd international contracts . . .").

²⁴² See DW, *supra* note 241 ("The EU praised the vote, saying the reform would give Albanian citizens an 'accountable, independent and transparent' judiciary which will help

reforms, whereas the EU is only happy to help.²⁴³ And the cycle repeats itself.

In a way, it is a push-pull game, a vicious cycle that instead of strengthening democratization by increasing deliberation and accountability ends up undermining it because it creates a breathing space for the domestic elite. This party in turn tends to feel comfortable because it will not have to subject its choices to public scrutiny.

This part of the paper problematizes the relationship between the EU and domestic actors as two sets of actors involved in a performative act. I focus on two cases that illustrate the limitations of conditions and results of this interplay between them. The first case brings to the forefront the elites interaction in the context of the long-term goal of membership in the Union, and the second discusses the lifting of the visa requirement for Albanian citizens to travel to most of the EU Member States.

A. *One Step Forward and Two Steps Back: The Mirage of Europe*

As a neo-medieval empire, as Jan Zielonka calls the European Union, the EU seeks others in order to affirm its own identity.²⁴⁴ In this sense, its identity is built against peripheral politics and politicians. Whereas, the latter are corrupted, quasi-feudal, and untrustworthy, the European Union comes across as trustworthy, incorruptible, rational, objective, and benevolent.²⁴⁵ The EU

fight organized crime and corruption.”).

²⁴³ *Id.* (describing EU attempts to help Albania pass judicial reform to address corruption); Corina Stratulat & Gjergji Vurmo, *Opportunity Knocks: can the EU help Albania to Help Itself?*, EUR. POLICY CTR. 1 (Mar. 22, 2012) [hereinafter *Opportunity Knocks*] (listing twelve conditions for EU membership); *but see* Ridvan Peshkopia, *The Limits of Conditionality*, 6 SE. EUR. POL. 44, 44 (2005) (discussing limits of the idea that EU push for reforms directs Albanian democratization); Arolda Elbasani, *Albania in Transition: Manipulation or Appropriation of International Norms?*, 4 SE. EUR. POL. 24, 24 (2004) (assessing the impact of EU on Albanian politics).

²⁴⁴ JAN ZIELONKA, *EUROPE AS EMPIRE: THE NATURE OF THE ENLARGED EUROPEAN UNION 1* (2006) (arguing that the European Union based on its dispersed forms of authority, flexible borders, and multiculturalism, resembles a neo medieval empire).

²⁴⁵ *See* PUBLIC POLICY AND MANAGEMENT INSTITUTE ET. AL., *ANALYSIS OF THE PERCEPTION OF THE EU AND OF EU’S POLICIES ABROAD (EXECUTIVE SUMMARY) 5* (2015), http://ec.europa.eu/dgs/fpi/documents/showcases/eu_perceptions_study_executive_summary.pdf [<https://perma.cc/NB6K-X7SC>] [hereinafter *FPI*] (“The majority of public opinion survey respondents across the [Strategic Partner] countries had an overall positive view of the EU . . .”).

projects the identity of a civilized, democratic, and modern community—a magical land. Membership in the EU lends prestige and reaffirms the European identity of the newcomers from the European periphery. This projection takes an escapist dimension by portraying the EU as the destination, as an escape from the brutal politics of the Balkans. Hence, accession in the EU embodies a cultural image as well, namely that of taming the barbarian, making both the domestic elite and the masses more civilized, more European like.²⁴⁶

But, the road to EU membership is not linear; it is filled with challenges, missed opportunities, and perpetual conditions. In this great process of modernization, or catching up with the center, the periphery, in this case Albania, is not only behind, but it is also displaced sideways. Kennedy and Specht write, “as some Eastern Europeans demand more democratic political forms, the Western Europe of Brussels has bid the cumbersome legislative, judicial, and administrative structures of national democratic government farewell for a more flexible and technically sophisticated approach to government.”²⁴⁷ The discrepancy of what the European Union is about and what candidate Member States are asked to do is evident in the way the negotiations for membership unfold.

When EU officials interact with their Albanian counterparts, every move they make, in this constructed reality, is used strategically by each of them, respectively. First, there is an unrelenting attention from the European Union on the need for political consensus related to EU membership reforms. The European Commission seems to flinch whenever its policies are contested.

In its reports, Albania is often portrayed as a young, but still unstable democracy, and the focus is on the Parliament as the arena where political consensus ought to have been displayed.²⁴⁸ And

²⁴⁶ See *id.* at 5 (“Public opinion survey results show that EU countries are seen as somewhat to very attractive in terms of their **culture and lifestyle.**”) (emphasis in original).

²⁴⁷ David Kennedy & Leopold Specht, *Austrian Membership in the European Communities*, 31 HARV. INT'L L.J. 407, 407 (1990).

²⁴⁸ See *Commission Staff Working Paper, Albania: Stabilization and Association Report*, at 2, SEC (2003) 339 (Mar. 26, 2003) (stating that Albania is a young and unstable democracy); *Commission Staff Working Paper, Albania: Stabilization and Association Report*, at 2, COM (2004) 203 final (noting that, “Albania remains a young and rather unstable democracy. The medium-term interest of the country is often sacrificed to shorter-term, narrower political interests. Consolidation of democratic culture is essential to bring

year after year, that portrayal, through repetition, is transformed into an identity.²⁴⁹ Keeping up with the lukewarm and ambivalent nature of Commission's reports, the glass is always half full—some progress has been made, but more needs to be done. But the conditions or recommendations contained in the EU requirements serve to fulfill different agendas for the domestic actors without necessarily implicating or constraining one single actor and without really advancing democratization.

The ambiguous and ambivalent nature of the reports, as well as their persistence over often-abstract concepts, such as improving the functioning of the Parliament, provide domestic actors with the necessary margin of maneuverability to pass measures without relenting their grip on power.²⁵⁰ Actually, the vagueness and abstract nature are essential elements in maintaining the fiction of modernization. The reports also strengthen the myth of the EU as the destination for a vilified periphery by cultivating an escapist identity from the daily grind of domestic politics, which are always constructed and experienced as negative, backward and hostile to modernization.¹⁸⁵

Second, apart from relying on the annual progress reports, which carry the force of a papal bull, to convey the message to domestic actors, the Enlargement Commissioners or the Commission's senior officials behave like modern day political commissars from the Soviet Union. The practice of the Enlargement Commission *fonctionnaires* is to visit all countries

about necessary reforms"); see also *Commission Staff Working Document, Analytical Report Accompanying the Communication from the Commission to the European Parliament and the Council Commission Opinion on Albania 's Application for Membership of the European Union*, at 11, SEC (2010) 1335 (Nov. 9, 2010) (declaring that insufficient progress had been made on the first requirement for a proper functioning of Parliament on the basis of a constructive and sustained political dialogue among all political parties).

²⁴⁹ *Id.*

²⁵⁰ See *Report from the Commission on the Feasibility of Negotiating a Stabilisation and Association Agreement with Albania*, at 7, COM (1999) 599 final (Nov. 24, 1999) (stating that Albania's democratic process marked by institutional instability); *Report from the Commission to the Council on the work of the EU/Albania High Level Steering Group, in Preparation for the Negotiation of a Stabilisation and Association Agreement with Albania*, ¶ 2, IP/01/802 (June 6, 2001) ("Although progress has been achieved in recent years, Albania still has some way to go before being in a position to meet the obligations of an Stabilisation and Association Agreement."); *Commission Staff Working Paper, Albania: Stabilisation and Association Report*, at 8, SEC (2002) 339 (Apr. 4, 2002) (Albania's improvements of their judicial system remain insufficient).

under their jurisdiction at least once a year, but also to be on call to offer suggestions or to comment on domestic issues ranging from what the criteria for electing presidents should be to how often it is appropriate for a minister to visit Brussels.²⁵¹ In their visits, Commissioners pass on their wisdom to the locals, encourage them to continue with reforms, hand out some criticism to all domestic actors, so that no one among them will use what the Commissioners say against their adversaries, and reiterate that the path towards the EU destiny is open as long as the reforms continue. As a result, the progress depends on the locals!²⁵² The locals, on the other hand, impatiently wait for these visits to demonstrate how close they are to the guests. Proximity to power gets translated into legitimacy.

Further, there is an element of acculturation between international and domestic actors. An expat and long-time resident of Albania put it very succinctly—every international actor has his or her own favorite Albanian.²⁵³ But Albanians too have their favorite or disliked internationals. For instance, when Chris Patten, the former Governor of Hong Kong and EU Commissioner for External Affairs was visiting Tirana, then-Prime Minister Fatos Nano, asked Patten out for drinks at a trendy bar called the Black Box. Patten declined, and Nano was said to have told his entourage:

²⁵¹ Štefan Füle, the Enlargement and Neighbourhood Policy Commissioner from 2010-2014, discussed the problems that Albania faced: “My messages to Tirana were rather clear. Firstly, I expressed appreciation for the progress that has been made: Albania has become a member of NATO and the European Council has asked the Commission to prepare an opinion on the country. But I also stressed the importance of the political Copenhagen criteria. I expressed concern about the stability of democratic institutions and the lack of political dialogue in the parliament. I stressed the importance of this: of course, all laws are adopted here, and there would be no reforms without appropriate legislation. It is very much in the hands of the Albanians and I hope very much that they will make progress and show that they have a mature democracy. Responsibility lies with both political parties – both the ruling group and the opposition.” Interview by Georgi Gotev with Štefan Füle, *Enlargement and Neighbourhood Policy Commissioner*, EURACTIV (Mar. 30, 2010). Pierre Mirel, a Director at the Commission on the Western Balkans, also highlighted the need for consensual politics and called for turning the question of European integration into the first national question. Piere Mirel: *Integrimi çështje kombëtare, duhet dialog mes palëve*, Mar. 19, 2012.

²⁵² Examples of the internalization of submission are found frequently and ubiquitously in reports prepared by Albanian NGOs; see *Opportunity Knocks*, *supra* note 243, at 2 (“Albania is the master of its own fate.”); European Movement in Albania, A tour on the EC Progress Reports for Albania: The impact on Albania’s application for EU membership, 18 December 2009.

²⁵³ Conversation with Kathleen Imholz, Director of the Center for Public Policy, Political Science, and Law at New York University (Jan. 2016).

“What could one expect from a Customs Officer from Hong Kong?!”²⁵⁴ In general, Nano did not enjoy a smooth relationship with the international actors in Tirana. He saw them as a determining factor that had sabotaged his Presidential bid back in 2002. Nano was quite boastful, especially after marrying his second and significantly younger wife, Xhoana, and he considered most of the international actors who visited Tirana as dull, uninspiring, and hostile to him and his government.

Third, the Commission does not rely only on its own forces to assess and monitor the progress in the enlightening journey towards EU membership. It also relies upon a cohort of other actors, loosely fitting in the so-called civil society, which are tasked with monitoring the compliance of the Albanian government. The Open Society Foundation for Albania, and the European Movement in Albania are two key domestic actors that have turned the monitoring of the compliance with the EU requirements into an industry.²⁵⁵ In their monitoring reports, these domestic actors mirror the approach and the contents of the European Commission reports and sift through the measures adopted by the government in accordance with the guidelines from Brussels.²⁵⁶ The intervention of exponents

²⁵⁴ Conversation reported to me by a participant at the meeting with Nano and Patten.

²⁵⁵ *Open Society Foundation for Albania*, OPEN SOC’Y FOUNDS., <https://www.opensocietyfoundations.org/about/offices-foundations/open-society-foundation-albania> [<https://perma.cc/6ALR-ZCKL>]; *European Movement in Albania*, ANNA LINDH FOUND., <http://www.annalindhfoundation.org/members/european-movement-albania> [<https://perma.cc/T2MT-5WQG>] (monitoring the compliance with progress reports and also advocated for expedited reforms). There is a whole network of regional actors who, in cooperation with protagonists of European movements, call for the EU to play the civilizer’s role in the region. See, e.g., Rosa Balfour & Corina Stratulat, *The Democratic Transformation of the Balkans*, EUR. POL’Y CENTRE vii (Nov. 7, 2011), http://www.epc.eu/documents/uploads/pub_1363_the_democratic_transformation_of_the_balkans.pdf [<https://perma.cc/2GTC-P7Q2>] (consolidating democracy beyond the creation of formal institutions must be at the heart of EU strategies towards the Balkans”); GALLUP BALKAN MONITOR, INSIGHTS AND PERCEPTIONS: VOICES OF THE BALKANS, 2010 SUMMARY FINDINGS (“It is clear that if the citizens of the region have any realistic hope of a better life and political stability, then that has to be related to the prospect of their country joining the EU.”); ADÈLE BROWN & MICHAEL ATTENBOROUGH, HOUSE OF COMMONS LIBRARY, EU ENLARGEMENT: THE WESTERN BALKANS (2014) (describing that for the Balkans, the prospect of eventual EU membership provides “a tangible reason to reform and a focal point for action”).

²⁵⁶ See, e.g., Fondacioni i Shoqerise se Hapur per Shqiperine, Soros, Raport i Monitorimit të Shqipërisë në Procesin e Stabilizim Asociimit (1 Tetor 2007 – 15 Tetor 2008); Open Society Foundation for Albania, Annual Monitoring Report of Albania’s Progress in the Stabilization-Association Process

of the civil society in the Europeanization agenda is conceptualized as a control mechanism levied by the civil society against the governing majorities.

However, in spite of a three-pronged approach to reforms by imposing grand conditions on the domestic elite, acculturation, and some monitoring, there is a prevailing sentiment that this approach comes short of bridging the gap between the European Union and Albania. Instead, these performative acts of governance suggest that both sides need each other for their own versions of legitimation. Domestic actors are conscious that membership in the Union, while useful to dangle tantalizingly in front of the masses, remains beyond the reach of an electoral cycle. However, it is important for them to show that, in the end, they are in a dialogue with the EU, regardless of how much change they manage to bring or not bring about.

Lastly, for the public, the consciousness of being in a perpetual limbo leads to the absence of interest in any meaningful debate over alternative models of development and democratization, and it further intensifies the idea that transition does not lead towards a more prosperous and democratic destination. In this sense, the periphery resembles an arid landscape.

B. When Reforms Work

In contrast to the EU membership process, the visa liberalization case, which aimed to relax and remove visa requirements for traveling to the Schengen zone of the EU,²⁵⁷ highlights the usefulness and limitations of conditionality as a method for inducing compliance, and sheds light on socialization and

[1 October 2008—15 September 2009], October 2009; Open Society Foundation for Albania, Civic Report: Monitoring of the Implementation of the Stabilization and Association Agreement, October 2009—September 2010; OPEN SOC'Y FOUND. FOR ALB., CIVIC MONITORING REPORT 2011: THE ACTION PLAN TO ADDRESS THE 12 PRIORITIES OF THE EC OPINION FOR ALBANIA 8 (2011), https://www.osfa.al/sites/default/files/final_report_-_12_priorities_-_eng.pdf [<https://perma.cc/9UDH-HR2J>] (“In January 2011 Albanian Government drafted an **Action Plan Addressing the Priorities of the EC Opinion for Albania in the 12 areas.**”) (emphasis in original).

²⁵⁷ *Visa*, EUR. EXTERNAL ACTION SERV., http://eeas.europa.eu/delegations/pakistan/eu_travel/visa/index_en.htm [<https://perma.cc/GU7D-VULX>]. The Schengen agreement is one of the areas of enhanced cooperation in the European Union. It represents a territory where the free movement of persons is guaranteed. *Id.*

acculturation as additional ways of exercising influence.²⁵⁸

The existence of a visa regime with the EU represented a mental and physical barrier that had haunted the Balkans since the fall of the communist regime. The visa regime had exacerbated the distance between the Balkans and the EU, and had given rise to the illegal trafficking of human beings, as well as to widespread corruption involving consular officers, intermediaries and politicians.²⁵⁹ It had turned consular offices of EU embassies into rent-seeking power centers, and at the same time, into the most detested authorities as well. A whole class of middlemen emerged to facilitate the transactions between consular offices and Albanian citizens.²⁶⁰ Possession of a visa to the “free world” conferred a social status, that of a desired person by the West. Even within the visa holders’ community, there was further stratification. The ones who held multiple entry, long-term visas demanded greater prestige and status than those who held single entry visas. Thus, the existence of a visa regime had a socio-political economic significance.²⁶¹

²⁵⁸ See Dimitris Papadimitriou & Eli Gateva, *Between Enlargement-led Europeanisation and Balkan Exceptionalism: an appraisal of Bulgaria’s and Romania’s entry into the European Union*, HELLENIC OBSERVATORY PAPERS ON GREECE AND SOUTHEAST EUROPE (GreeSE Paper No. 25, 2009), <https://core.ac.uk/download/files/67/95185.pdf> [<https://perma.cc/D7GY-WLFC>] (discussing how the EU has sought to influence domestic reform in Bulgaria and Romania through “a mix of threats and rewards”); Heather Grabbe, *European Union Conditionality and the “Acquis Communautaire”*, 23 INT’L POL. SCI. REV. 249, 250 (2002) (setting out the “conditionality levers available to the Union to effect institutional and policy change”); see generally Frank Schimmelfennig & Ulrich Sedelmeier, *Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe*, 11 J. OF EUR. PUB. POL. 661, 669 (2004) (applying the governance approach to the EU’s external relations in the context of democratic conditionality); Judith Kelley, *International Actors on the Domestic Scene: Membership Conditionality and Socialization by International Institutions*, 58 INT’L ORG. 425, 426 (2004) (assessing the role of the European Union, the Council of Europe, and the Organization for Security and Cooperation in Europe on the governments of Latvia, Estonia, Slovakia, and Romania).

²⁵⁹ MIRELA BOGDANI & JOHN LOUGHLIN, *ALBANIA AND THE EUROPEAN UNION: THE TUMULTUOUS JOURNEY TOWARDS INTEGRATION AND ACCESSION* 157 (2007) (“The visa regime was established under the rationale that countries of the Balkan region represent a ‘security threat’ to Europe and the risk of importing organized crime and terrorism. . . . [However] this strong visa regime was ‘promoted’ the flourishing of human trafficking activities by the mafia.”).

²⁶⁰ *Id.* (“Borders create smugglers and criminals fly their own planes.”).

²⁶¹ *Id.* at 158 (“The EU’s present visa regime with the countries of the west Balkans is fostering resentment, inhibiting progress on trade, business, education and more open civil societies and as a result contributing negatively in regional instability . . .”(quoting

The process of facilitating and lifting the visa requirements included peer pressure, specific demands from the European Union, monitoring, intense socialization, and acculturation.¹⁹⁶

Franco Frattini, an Italian politician and then-European Commissioner for Justice and Home Affairs, was instrumental in launching the dialogue to lift the visa regime with the Western Balkan countries.²⁶² A charismatic politician, and someone who knew the region fairly well, Frattini had long been a proponent in the EU of closer ties with the Western Balkans.²⁶³ In his position as Commissioner for Justice and Home Affairs, he was singularly well positioned to advance his agenda of bringing the region into the European fold.²⁶⁴

With each of the five Western Balkan countries—i.e. Albania, Bosnia and Herzegovina, Macedonia, Montenegro, and Serbia—the dialogue was opened in March 2008, and roadmaps for visa liberalization were established.²⁶⁵ The roadmap, in the case of Albania, consisted of four blocks of issues, i.e. document security, illegal migration, public order and security, as well as external relations, and fundamental rights questions, linked to the movement of persons.²⁶⁶ The four blocks required the adoption of some forty-

ICG 2005 Report)).

¹⁹⁶ 2007 O.J. (L 334) 85. The essence of the visa facilitation agreements was to cut down the processing time, to reduce fees, and to streamline the set of documents required by consular office. *Id.* See also Ditmir Bushati et al., *One Year from the Visa Facilitation Agreement: What has Really Changed?*, AGENDA INST. 5 (Dec. 2007), http://www.agendainstitute.org/files/publications/14_Towards%20a%20Visa%20Free%20Regime_2007_en.pdf [<https://perma.cc/8RNE-Z5BL>] (identifying what “Albania and the EU need to do in order to make a success of visa liberalization process”).

²⁶² *Accession of Albania to the European Union*, WORLD HERITAGE ENCYCLOPEDIA, http://kindle.worldlibrary.net/articles/Accession_of_Albania_to_the_European_Union [<https://perma.cc/A77N-PSD7>] (quoting Frattini supporting “full abolishment of the visa requirements and the free movement of the Albanian citizens in the EU”).

²⁶³ European Commission Press Release IP/08/398, *Vice President Frattini in Tirana to Launch Visa Free Travel Dialogue with Albania* (Mar. 6, 2008), http://europa.eu/rapid/press-release_IP-08-398_en.htm?locale=en [<https://perma.cc/922M-GSJ2>].

²⁶⁴ *Id.*

²⁶⁵ Council of the European Union Press Release 15957/10, *Visa Liberalisation for Albania and Bosnia and Herzegovina* (Nov. 8, 2010), http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/117555.pdf [<https://perma.cc/NNJ6-XY7W>].

²⁶⁶ *Roadmap on Visa Free Travel to Albania*, EUR. COMM’N (June 3, 2008), <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/837&type=HTML> [<https://perma.cc/ER5Z-FM27>]; EUR. STABILITY INITIATIVE, VISA ROADMAP

one policies including issuance of biometric passports, real time cooperation with EU law enforcement agencies, an upgrade of border control capacities, an improvement of the asylum legislation in order to bring it up to date with international standards, control of migration flows, adoption of legislation regarding third countries' residencies, adoption of next generation anti-crime and anti-corruption strategies, personal data protection, protection of minorities, and the guaranteed access without discrimination to travel documents.²⁶⁷

By July 2009, three of the regional countries—Serbia, Macedonia and Montenegro—were included in the so-called white list of the Commission, which automatically made them eligible for visa free travel to the Schengen zone.²⁶⁸ This move of the Commission to lift the visa requirements for only three of the countries involved was generally expected, but once it happened, it was considered a bitter pill to swallow by both Albania and Bosnia and Herzegovina. The peer pressure to catch up with its neighbors intensified and became a hot issue in the regular spats between the government and the opposition. As a result, the events in Fall of 2009 were characterized by an unusual mobilization of the public administration to outperform in order to comply with the EU requirements.²⁶⁹

Between June 2008 and November 2010, when the Council of the European Union finally made a favorable decision to lift the visa regime, several expert missions from the EU visited Albanian ministries to monitor the progress of these reforms.²⁷⁰ The missions

IMPLEMENTATION IN ALBANIA COMPARISON MAY/OCTOBER 2009 (2009).

²⁶⁷ *Id.*

²⁶⁸ Clive Leviev-Sawyer, *EU gives Serbia, Montenegro and Macedonia Visa-free Travel from January 2010*, THE SOPHIA ECHO (July 15, 2009), http://sofiaecho.com/2009/07/15/755688_eu-gives-serbia-montenegro-and-macedonia-visa-free-travel- [<https://perma.cc/TBG5-ZKA6>].

²⁶⁹ For instance, the issuance of biometric passports, which was one of the requirements for increasing travel documents security, has increased dramatically. Commission White Paper on Updated Assessment of the Implementation by Albania of the Roadmap for Visa Liberalization, at 1 (Nov. 27, 2009), <http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20%20visa%20assessment%20Albania%20271109.pdf> [<https://perma.cc/29VZ-TU3H>]. By 2011, 2.8 million biometric passports had been issued. Besar Likmeta, *Albania Sees Surge in Demand for Biometric Passports*, BALKAN INSIGHT, (Aug. 26, 2011), <http://www.balkaninsight.com/en/article/visa-free-travel-grants-albanians-secure-documents> [<https://perma.cc/HVG7-EGQL>].

²⁷⁰ BALKIN TRUST FOR DEMOCRACY, EUR. MOVEMENT IN ALB., MONITORING THE VISA LIBERALISATION PROCESS WITH ALBANIA: WHAT TO EXPECT WHEN YOU ARE EXPECTING? 1,

were met with great anticipation and anxiety from the government and the public. Their visits commanded the greatest attention and meticulous preparations. All national rhetoric was limited to how the government would meet the experts and what they would write in their notebooks. What the experts would decide had immense consequences. Lulzim Basha, then Minister of Interior, would routinely take ambassadors from the EU and its Member States on inspection tours to border posts, where the ambassadors could check for themselves on the status of the infrastructure, which routinely meant checking on whether and how the new computers were working.²⁷¹

Illir Meta, the deputy Prime Minister and Minister of Foreign Affairs, was running all around the European capitals to remind his colleagues of the great efforts that the nation was making to merit the prize of visa free travel.²⁷² Apart from the government, the civil society was also mobilized in the general frenzy, and it did its duty in tracking the changes of the laws and policies.²⁷³ Thus, on the one hand, it could hold the government responsible if it had “failed” to adopt relevant measures, and on the other hand, it could take credit for doing its part in Europeanizing Albania.²⁷⁴

6 (2010), http://www.esiweb.org/pdf/schengen_white_list_project-EMA_Monitoring_the_Visa_Liberalisation_Process_with_Albania.pdf [<https://perma.cc/E5DX-84LC>].

²⁷¹ Conclusions based on media reporting, available at *Basha inspektor kufifin*, TOP CHANNEL (Aug. 21, 2010, 7:30 PM), <http://top-channel.tv/lajme/artikull.php?id=190412> [<https://perma.cc/Y52Y-49AA>]; *Ambasadoret francez e holandez inspektorje Qafe Thanen*, ALBEU (Nov. 21, 2009, 11:05 PM), <http://www.albeu.com/shqiperi/ambasadoret-francez-e-holandez-inspektorje-qafe-thanen/13284/> [<https://perma.cc/GY2X-W5QJ>]; *Basha inspektor pikën e kalimit kufitar Kapshticë, kërkon bashkëpunimin e pales greke për lehtësimin e lëvizjes së emigrantëve*, 55 ONLINE (Aug. 21, 2010), <http://gazeta55.al/basha-inspektor-piken-e-kalimit-kufitar-kapshtice-kerkon-bashkepunimin-e-pales-greke-per-lehtesimin-e-levizjes-se-emigranteve/> [<https://perma.cc/RK74-ALR5>].

²⁷² *Biography of Mr. Ilir Meta Speaker of the Parliament of Albania*, EUR. PARL., http://www.europarl.europa.eu/meetdocs/2009_2014/documents/afet/dv/20131205_cv_ilir_meta_/20131205_cv_ilir_meta_en.pdf [<https://perma.cc/J9N8-F8X7>] (“[Ilir Meta] was an early and strong campaigner for the liberalization of visas with the Schengen area, which was accomplished in 2010 to the benefit of all citizens of Albania.”).

²⁷³ BALKIN TRUST FOR DEMOCRACY, EUR. MOVEMENT IN ALB., MONITORING THE VISA LIBERALISATION PROCESS WITH ALBANIA: WHAT TO EXPECT WHEN YOU ARE EXPECTING? 13 (2010), http://www.esiweb.org/pdf/schengen_white_list_project-EMA_Monitoring_the_Visa_Liberalisation_Process_with_Albania.pdf [<https://perma.cc/E5DX-84LC>].

²⁷⁴ The European Movement in Albania (EMA), a local non profit organization, was not behind in this process of constant monitoring and reporting. *Id.* EMA saw the role of

It was not only *fonctionnaires* of the Commission who became frequent visitors to Tirana. Members of the European Parliament have been active participants in socializing with their Albanian counterparts. Eduard Kukan, Doris Pack, Hannes Swoboda, Viktor Bostinaru, Tanja Fajon, Joseph Daul did become household names. Despite their support for one Party or the other, their word carried a lot of weight. Whether organized in particular committees, or representing political groupings of the European Parliament, they maintain a channel of communication with the political establishment in Tirana. Tanja Fajon, a Slovenian MEP, became such a popular person in Albania that a coffee shop was named after her.²⁷⁵ Thus, the pressures from the Parliament, and the hyper-pace of adopting legislation brought the Commission a step closer to proposing a visa free regime.

On November 8, 2010, the Council of the European Union adopted the proposal from the Commission for holders of biometric passports to travel visa free to countries in the Schengen area.²⁷⁶ But the travel is not without its predicaments. The visitors have to prove their financial solvency to border police, and they must show documentation that proves their motives for visiting.²⁷⁷ Meanwhile, the Commission initiated a new follow-up monitoring mechanism to observe the implementation of the roadmap conditions as well as to control the inflow of asylum seekers or illegal migrants.²⁷⁸ The monitoring mechanism was used as a threatening mechanism, a whip, with which the European Commission could muster errant actors from the domestic elite.²⁷⁹ It was effective as well because it installed a sense of insecurity in the government, since the EU can suspend the visa free travel at a moment's notice; an approach which epitomizes the paranoia of the European Commission for border security from the penetration of the Balkan's hordes.

the civil society as additional conductors between Albania and the EU. *Id.*

²⁷⁵ See *The 40 MEPs who actually matter*, POLITICO, <http://www.politico.eu/list/the-40-meps-who-actually-matter-european-parliament-mep/tanja-fajon/> [<https://perma.cc/HB4S-BKA3>]; see also *Tirana-MTLG 2016*, KONGRES (June 6, 2016), <http://kongres-magazine.eu/2016/06/tirana-mtlg-2016/> [<https://perma.cc/H2BL-MEVC>].

²⁷⁶ Council of the European Union Press Release 15957/10, *supra* note 265.

²⁷⁷ BOGDANI & LOUGHLIN, *supra* note 259, at 158 (describing the difficult and costly effects of border crossing).

²⁷⁸ *Id.*

²⁷⁹ *Commission Staff Working Paper: On the Post-Visa Liberalisation Monitoring for the Western Balkan Countries in Accordance with the Commission Statement of 8 November 2010*, at 13, Brussels, SEC (2011) 695 final (July 12, 2011).

The reforms to prepare Albania for visa free travel to the Schengen area were deemed and propagated as technical in nature. However, this pretension is belied by the fact that reforms were inherently political, as significant budget and administrative resources were allocated to what was essentially law and order measures. The public, as always, was told to put up with the burden, the opposition did not object to anything in particular; rather it pointed its finger at governmental failings as a way to demonstrate to Albanians and the EU that it was better than the guys in power.²⁸⁰

The specificity of the requirements, constant monitoring and tangible public pressure, combined with direct and quick benefits, created the conditions for the government to comply with every single demand from the European Union and for the European Union to award the visa free travel.²⁸¹ Every single actor involved in this reformatory process claimed victory. The European Union reaffirmed its identity as a community of rules and values, which is objective, fair, just, and benevolent as long as all its conditions are fulfilled. The Albanian government claimed the victory as its own too, for it had adopted all the required reforms to strengthen the public administration and border controls, and thus it was moving

²⁸⁰ The latter attempted to score political points by accusing the government of insufficient speed and commitments to reforms. *See generally Report from the Commission to the Council and the European Parliament on Albania's Progress in the Fight Against Corruption and Organised Crime and in the Judicial Reform*, COM (2014) 31 final (June 4, 2014) (discussing inefficiencies in Albania's judicial system).

²⁸¹ Council Directive 15957/10, *supra* note 265. Another example of a successful and positive conditionality is the case with the accession to NATO. Accession to NATO was deemed to be relatively a medium term project, with specific requirements, constant monitoring, and tremendous public support. VINCENT MORELLI ET AL., CONG. RESEARCH SERV., RL34701, NATO ENLARGEMENT: ALBANIA, CROATIA, AND POSSIBLE FUTURE CANDIDATES 5 (2009). Domestic actors spared no efforts in adopting and implementing reforms in the framework of the Membership Action Plan. *Id.* at 7–8. This, in turn, facilitated the support of the United States in securing accession in April 2008. *Id.* The relationship between domestic actors and the IMF is another example at hand. Although, the contentious nature of reforms never enjoyed public support, and the Socialist governments between 1997 and 2005 deliberately kept the public in dark on the implications of reforms required by the IMF. With a brief break between 1995 and 1997, the IMF has been perhaps the most successful institution in ensuring compliance. The reforms demanded by the IMF were dutifully taken by the first Democratic Party government between 1992-1995, as part of the neoliberal package coming in the footsteps of the fall of socialism, and by all Socialist governments between 1997 and 2005. Whereas, the DP relied upon the experimentation with a new form of economic management, the SP managed to adopt policies required by the IMF with total disregard for alternative policies that would encourage economic growth and improve the social welfare.

the country closer to the European integration by realizing the decades-long dream of Albanians for visa free travel to the rest of the continent.²⁸² The opposition claimed that it did its part in this process too, by exposing the weaknesses and pushing the government to accelerate the pace of reforms. And the pro-European civil society claimed that its monitoring and raising of awareness had influenced the government in complying with the EU conditions, and it had helped the EU as well by keeping a watchful eye on the government.

VI. Conclusion

In conclusion, I would like to address three types of critique to my thesis. In the previous sections, I demonstrate that transition in the framework of the European integration process generates a consciousness of permanent limbo, a perpetual state of transition. In this context, transition is not a process, but a regime. The critique to my thesis can be organized around three main arguments.

The first argument raises the issue of the lack of political will on the part of the domestic elite to successfully pursue reforms. We are led to believe that the lack of will, or consensus, is the culprit in bringing about change. However, even in cases when there has been consensus in the adoption of reforms (and there has been consensus on reforms throughout the last 25 years), the system has persisted in its “immaturity.” Moreover, the argument on the lack of political will, or elite consensus is often inherently misplaced, and suffers from a democratic deficit. Instead of rubber stamping policies, the role of politics is to provide a forum for contestation, or democratic space for deliberating policies.

The second argument brings to the fore the issue of insufficient compliance with the so-called “homework.” However, there is a problem with this argument. Domestic actors see little incentives to go all the way in meeting external demands when returns are not tangible and do not arrive in the short term, as is the case with the EU membership.

The third argument highlights the perennial problem with the lack of adequate implementation. The problem with this argument

²⁸² *EU grants visa-free travel rights to Albania, Bosnia*, EU BUS. (Nov. 8, 2010), <http://www.eubusiness.com/news-eu/immigration-bosnia.6um> [<https://perma.cc/CD3D-BKVN>] (“The international community’s high representative in Bosnia, Valentin Inzko, said the visa liberalisation [sic] brought Bosnians ‘closer to the European homeland to which they belong.’”).

is that after twenty-five years of reforms, during which thousands of laws and institutions were adopted and a new bureaucratic apparatus was erected, it is hardly the case that the fault lies exclusively with inadequate implementation. This argument puts the blame on the domestic society, and often portrays the international actors as incorruptible, and the agenda of reforms as infallible, unquestionable, and non-negotiable.

Instead, a critical scrutiny of the transition process reveals that when a set of neoliberal policies embedded in a security state apparatus are dogmatically pursued even by well meaning organizations, such as the European Union, the results fall short of expectations. The problem with following dogmas is that as policy space shrinks, rarely distributional consequences are deliberated over by policymakers. For instance, Dani Rodrik, Turkish economist and Ford Foundation Professor of International Political Economy at the John F. Kennedy School of Government at Harvard University, argues that, “within the array of feasible globalizations, there are many different models from which to choose. Each of these models has different implications for whom we empower and whom we don’t, and who gains and who loses. We need to recognize these two facts in order to make progress in the globalization debate.”²⁸³ When addressing the needs of developing countries, Joel Trachtman, Professor of International Law at the Fletcher School of Law and Diplomacy at Tufts University, argues that developing countries facing stringent regulatory disciplines from the developed countries should maintain flexibility to apply regulation suited to their developmental goals, rather than take one position in a way that satisfies either stringent regulatory drives or deregulation.²⁸⁴

The drive for greater policy space and experimentation is strangely and largely absent in the EU’s approach to the Stabilization and Association Process. With most of its assistance focused on rule of law and political consensus reforms, the modernization of the EU periphery remains hostage to the elaboration of new development dogmas in the center. But as

²⁸³ Dani Rodrik, *Feasible Globalizations*, GLOBALIZATION, WHAT’S NEW? 196, 197 (M.M. Weinstein ed., 2002).

²⁸⁴ Joel Trachtman, *Domestic Regulation is Vital: Developing Countries Must Retain Policy Flexibility*, THE FIN. EXPRESS (Jun. 15, 2005), https://web.archive.org/web/20050827015735/http://www.financialexpress.com/fe_full_story.php?content_id=93822 [<https://perma.cc/8YXT-G7M9>].

Amartya Sen, Indian economist, argues, our conceptualization of economic needs depends crucially on open public debates and discussions.²⁸⁵

However, in the name of Europeanization, the quest for creative ways is usually put on the backburner by an overkill drive for harmonization of standards, bureaucratization and technical expertise. The latter pretends to be ideologically free, when in fact it is ideologically inside out. While the European Union treats this single path to development as a dogmatic magical spell, it does not subject the underlying assumptions of the paradigm to critical scrutiny in order to tackle the inequities between a prosperous center and an underdeveloped periphery.²⁸⁶

²⁸⁵ AMARTYA SEN, DEVELOPMENT AS FREEDOM 148–50 (1999).

²⁸⁶ We often do not look closely to Myrdalian cautionary arguments on integration of regions with unequal levels of development. GUNNAR MYRDAL, ECONOMIC THEORY AND UNDER-DEVELOPED REGIONS 33–38 (1957). The claim regarding integration along North-South lines, but also South-South lines, centers on the issue of domination by stronger countries that can benefit from tariff elimination and free movements by encouraging capital and labor flight towards richer areas. *Id.* The argument that Myrdal makes is that the movement of labor, capital, goods and services do not by themselves counteract the natural tendency of regional inequality. *Id.* Hence, the higher the economic development, the stronger the spread effect. *Id.* This regional inequality holds back economic development. *Id.*