Introduction: Gaps between Formal and Informal Practices in Southeast European States

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Introduction

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The analyses in this selection shed light on some of the central characteristics of informality in Southeast Europe, while also intersecting with some basic theoretical discussions in the study of informality generally. Some of the central characteristics of Southeast European states that make them especially interesting as sites for the study of informality include: frequently low levels of institutional density, repeated experience of "fundamental" structural change inspired from outside and imposed from above, and complex interaction between formal institutions that are consolidated to varying degrees and requirements for reform generated through external processes (in particular, through pursuit of the goal of integration with the European Union). It might be said that these states are seeking, and partially succeeding, in establishing democratic systems, having emerged from a period in which they pursued, with partial success, the establishment of socialist systems. The gaps left by ambitious efforts to construct society-transforming political systems left ample space for the development of compensatory informal practices, some of which developed into stable forms of corruption, while others made it possible for everyday needs to be met in dysfunctional institutional environments. Additionally, as some of the states of the region are new states which have recently experienced violent conflict, the issues of institutional functionality and trust in institutions become more prominent.

A core issue is raised in the contribution by Đinđić and Bajić on Serbia, where the accelerated pace of EU accession has contributed to a rush in adoption of legislative reforms proposed solely for the purpose of compliance with the acquis communautaire, and frequently passed through the parliament without debate or substantive consideration. The labels proposed for these are apt: "fabricating reforms" and "reform simulation." They describe a situation in which legal resolutions are adopted by states which have neither the intention nor the capacity to implement them. Similar to the way that Verdery[1]

[1] Katherine Verdery, *What Was Socialism, and What Comes Next?* (Princeton, NJ: Princeton University Press, 1996).

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described a formally socialist economic system masking feudalist and capitalist practices on the ground, the adoption of liberal policy in the postsocialist period is marked by a disjunction between the world as it is described by official policy and the world that is confronted by citizens in their everyday experience. Contemporary research describes this as a gap between formal and informal practices, which appears to be growing as states hurry to generate legal and regulatory frameworks that do not respond to actual conditions.

We are then confronted with the question of what kinds of things enter into the gap between formal and informal practices. One explanation relies on path dependency. In her analysis of power networks in Bulgaria, Toneva-Metodieva demonstrates ways in which currently functioning relations of influence preexist the contemporary institutional order and use informal channels based on knowledge and experience to preserve privileged positions that developed under a previously existing set of political arrangements. A second set of explanations draws on cultural tendencies and proclivities, and is explored by Zhllima et al. in their interrogation of relations between cultural values, as well as economic and structural factors, and corruption. An implication is that some cultural and material environments may be more receptive to corrupt practices than others, though the analysis indicates that privatization of public activity, while it may derive in part from a perceived obligation to provide "help," is structured principally by the constraints and incentives that derive from the organization of formal systems.

Less fully explored in many discussions of informality is the role played by external actors in promoting and consolidating informal practices. This dimension is frequently obscured by self-promoting stereotypes that view outside actors as bringing the rule of law to recalcitrant political actors who resist it. This perception is explicitly contested in two of the contributions to this selection. Markovikj and Damjanovski draw on research from the INFORM project on leadership meetings, noting them as instances of "the imprecise nature of the EU's political criteria as a source of numerous inconsistencies ranging from vague conditions that are not based on EU wide standards to contradictory application." The facilitation of short-term agreements through "leadership meetings," bypassing the elected decision-making institutions of the state in favor of direct consultation between the heads of political parties, has an obvious appeal to EU mediators as it makes it possible to break impasses and move closer to the achievement of some long-term goals. In the process, however, "political informality leaves maneuvering space for political actors driven by short-term political gain." A clear but frequently overlooked conclusion is that outside actors, working with the overall intention of promoting legitimacy and the rule of law, are not immune to the temptation of internalizing some of the informal practices that dominate political activity in unconsolidated states, thereby, probably unintentionally, undermining the institutions that they hope to promote.

The critique is advanced further by Beha and Selaci, who build on the model proposed by (among others) Pavlović[2] and Bieber and Kmezić[3] to contrast the competing goals of stability and democracy promotion, concentrating on the activity of EULEX and UNMIK in Kosovo. They argue that the emphasis on stability as opposed to democracy has encouraged the "reproduction of the patrimonial relations." An important insight here is that the failure to achieve political legitimacy has had concrete impacts on material concerns of the population, including social welfare and employment.

The contributions taken together help to construct an observation that is all too obvious to people who live in the region but is frequently not apparent to outside observers in government and media: there are large portions of the system by which political power and influence operate that are not represented by the official structures of formal power and not described by law. They represent, on the one hand (in their corrupt form), ways in which gaps in the system are exploited by people in a position to take advantage of them for personal gain, and in that sense are threats to the establishment and consolidation of a rule-based system that is predictable, efficient, and bound by regulations that act to protect the interests of citizens. At the same time they also represent (in their complementary form) strategies and networks that citizens draw upon in order to accomplish tasks that are not facilitated by systems established in law but not enacted into practice.

These features add up to make Southeast Europe an excellent environment for the study of informality, which makes it all the more baffling that there has not been more research on this theme in the region to date. Both the extended-transition characteristics of the states and what is often perceived to be the "tradition" of informality in regional cultures contribute to the richness of the research environment. The perception of the existence of a "tradition," however, could be misleading. Much of the research suggests that informal practices of long standing derive from political conditions: repeated changes of political regime over the past century, a corresponding repeated failure of regimes to consolidate formal aspects of their rule, and a consequent and apparently permanent deficit of trust in institutions. But the perception of tradition also contributes to the longevity of a stereotype, which sees informality as in some ways embedded in the cultures of the region. A homologous stereotype of "backwardness" traces its path through the literature to Banfield's study

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2 Srđa Pavlović, "Montenegro's 'Stabilitocracy': The West's Support of Đukanović Is Damaging the Prospects of Democratic Change," *LSE European Politics and Policy Blog 2016*, http://blogs.lse.ac.uk/europpblog/2016/12/23/montenegros-stabilitocracy-how-the-wests-support-of-dukanovic-is-damaging-the-prospects-of-democratic-change/, accessed 10 August 2018.

3 Florian Bieber and Marko Kmezić, *The Crisis of Democracy in the Western Balkans: Authoritarianism and EU Stabilitocracy* (Graz: Balkans in Europe Policy Advisory Group, 2017).

of southern Italy,[4] and is neatly reproduced in a 1991 regional survey tracing the "origins of backwardness" in Eastern Europe.[5] In both cases the persuasiveness of the characterization of some parts of the world as fundamentally more "backward" than others depended on the conditions and policies that produced "backwardness," and tended to disappear with the disappearance of those conditions. Is informality a product of cultural inclinations? Probably if it is, then it is so everywhere, or at least in a widely varying range of cultural environments. And to the degree that culture inclines societies to be accepting of "bad" informality (such as bribery and the use of connections) it does so mostly in trivial ways (exchange of gifts, obligation to help family). Research from our ongoing project[6] indicates that the prevalence of informality is primarily a product of dysfunctional regulatory environments. Evidence on entrepreneurs in Southeast Europe suggests that businesspeople will engage intensively in bribery and the instrumental exchange of gifts and favors to the degree that they understand these activities as being necessary for the conduct of their business, but when predictable and efficient legal resolutions become easily available, the volume of informal transactions declines.[7] Similarly, the example of corruption in the educational system in Albania (discussed by Zhllima et al. in this collection) reflects a phenomenon that is familiar across the region: corrupt practices can often emerge as a consequence of a formal system seeking to expand its accessibility and reach beyond the level of its capacity.

Another difficulty confronting the study of informality in Southeast Europe involves one of the problematics that lies at the heart of this collection of studies: the close relation between the emergence of informality as a research problem and the challenges that accompany implementation of the European Union's rule of law agenda. A consequence of this, which is clearly visible in much of the policy literature, is that informality tends to be viewed exclusively as a problem to be eliminated, closely related to corruption and obstructing the establishment of stable and reliable legal institutions. This view is not inaccurate, but it is also not complete. It has the consequence of overlooking, in particular, the way in which many informal practices emerged as responses to

4 Edward Banfield, *The Moral Basis of a Backward Society* (Glencoe, IL: The Free Press, 1958).

5 Daniel Chirot, ed., *The Origins of Backwardness in Eastern Europe* (Berkeley: University of California Press, 1991).

6 Predrag Cvetičanin, Misha Popovikj, and Miloš Jovanović, "Informality in the Western Balkans: Perceptions, Attitudes, Practices," INFORM Working Paper 2018; Alena Ledeneva, Eric Gordy, and Predrag Cvetičanin, "Mind the Gap: Toward Closing the Gap between Formal Rules and Informal Constraints in the Western Balkans," INFORM Working Paper 2018 (forthcoming).

7 For example Adnan Efendić, Mirza Mujarić, Hariz Halilović, Nirha Efendić, and Ismet Kulajić, "Informal Economy and Informal practices in the Formal Economy of the Western Balkans Region," INFORM Working Paper 2017, http://www.formal-informal.eu/research-papers.html, accessed 10 August 2018.

the failures of formal institutions to provide means for people to accomplish necessary tasks in their lives.

The mixed character of informality has encouraged the development of two opposing approaches to the problem, both of which are incomplete and extreme: condemnation and celebration. One camp advances pure formality as a goal and regards informality as a source of corruption and diversion that needs to be eliminated. The other points to the creative and "authentic" character of informality as an organically generated set of strategies for problem solving, and encourages a view of it as a resource to build upon in policy development. Helmke and Levitsky's typology[8] represents an effort to overcome this dualism, and as such has been widely influential – it is cited by several of the authors in this collection, as it is throughout the informality literature. But this solution brings with it some problems of its own. The main problem is that in distinguishing between "good" (law-enhancing) and "bad" (law-subverting) informality, it maintains both the dualism and the preference for state-based solutions that characterize the literature that precedes it. The principal obstacle to knowledge here is that an overly strongly drawn distinction eludes the basic interactivity of the relationship between formality and informality, and the fact that formal institutions function (necessarily) with informal practices, while informal practices develop rule-like strategies of enforcement.[9] This interactivity is not necessarily a problem or a failure, but rather it is a resource for the generation of information. The scale and type of informal practices tell us about the limitations of formally conceived systems.

Empirically grounded research elaborated by a clear understanding of the cultural contexts in which the empirical facts emerge, like the studies in this collection, help us to move beyond the unhelpful dualism that is characteristic of a good quantity of the existing research on informality. It should also be helpful, ultimately, in the development of policy. To the degree that in the accession states of Southeast Europe, the European Union's strategy of transposing formal rules from one environment to another can be viewed as having been unsuccessful on several fronts, it might be possible to conclude that among the principal sources of failure has been the introduction of formal practices into environments that have been, whether for structural, cultural, or political reasons, unreceptive. The contribution that researchers are able to make is to draw attention to aspects of the context into which new regulations are introduced, and to encourage flexibility and sensibility.

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8 Gretchen Helmke and Steven Levitsky, "Informal Institutions and Comparative Politics: A Research Agenda," *Perspectives on Politics* 2, no. 4 (2004): 725–40.

9 Douglass North, "Institutions, Institutional Change, and Economic Performance," *Journal of Economic Perspectives* 5, no. 1 (1990): 97–112.