

Experiences of Accession to EU

Chairman: John Moore

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John Moore: Much of this conference agenda is focused on Russia and its relationship with Eastern Europe. This is the one session that in some ways is more general, looking at the experiences of new EU members. We have Phil Hanson's really excellent paper, *The European Union's Influence on the Development of Capitalism in Central Europe*¹. I would just like to mention the points he makes on accession: The process of accession on the institutions of the countries that joined in significant way and is there a relationship between accession and resulting competitiveness in the practice. In this session we are looking at views from Serbia and Croatia, neither of whom has joined the EU yet.

Miroslav Prokopijević**Experiences of countries acceding to the European Union**

The European Community (EC), and since 1992 the European Union (EU), has grown from its inception in 1951 to today in four different ways:

- a) Legal growth, from the *Paris Treaty* (1951) consisting of just a few pages establishing the European Coal and Steel Community (ECSC), via several other treaties, from Rome (1957) to Lisbon (2009), a number of accession treaties and other *Acquis* legislation of about 185,000 pages.
- b) Geographical growth, from the six original countries with a population of 170 million, to 27 countries with more than 500 million inhabitants.
- c) Institutional growth, from some core institutions like the High Representative of the ECSC, Parliamentary Assembly and the Court of Justice to an institutional setting that resembles a sovereign state. In other words, from an institutional vacuum to a densely populated international institution.
- d) Growth in size and number of common policies. At the beginning, in 1951, there was only one common policy (ECSC), followed by two other policies in 1957: European Economic Community and Euroatom. Today there are some 30 common policies. Some of them are concentrated 100% in Brussels, such as the custom union, trade policy, common market, competition policy, some shared between Brussels and national capitals (energy, traffic, environment, labour market, agriculture), with others predominantly in the national grasp, like defence, national security or internal policy. All the most expensive policies are in national hands, eg: pensions, health care, education, financial markets. Despite the fact that individual governments still control the majority of the most important policies, the EC/EU has expanded tremendously in its policies, both in size and number. Total direct costs never exceeded 1.24% of

¹ Chapter 5 in David Lane (ed), *The Transformation of State Socialism. System Change, Capitalism or Something Else?* Basingstoke, UK, and New York: Palgrave, 2007, pp. 95-113.

the EU's GDP, but there are significant indirect costs that flow from the legislation in Brussels and then materialise in the nation states.

In the geographical sense the EC (EU) has grown through five enlargements. In 1973, the UK, Ireland and Denmark joined the EC; in 1981, Greece, in 1986, Spain and Portugal, and in 1995, Austria, Sweden and Finland. Finally, via the fifth, historical enlargement in 2004-2007 ten transition countries from Eastern Europe together with Malta and Cyprus were brought into the EU.

All five enlargements were different and they happened in different circumstances both for the EC/EU and new members.² In what follows I will concentrate merely on the last, fifth enlargement. I will try to figure out what the reasons are for accession on the one side, and what would be reasons against accession on the other.

The East European countries were not that stable, like Norway or Switzerland, at the time of accession. For less than twenty years ago they still were communist dictatorships. At the end of the 1980s communist regimes collapsed in Eastern Europe, and these countries entered transition. It may be defined as a move from dictatorship, the rule of the only allowed (communist) party and planned economy to democracy, the rule of law and the market economy.³ In some 15 years from 1980s to 2004, these countries were unable to gain stability in the political and economic sense. The rules of the game in these countries were inferior to those in Western Europe. So basically, the move of the East European countries to the EU implied an improvement of their rules of the game. Improved rules of the game promise to produce better outcomes. That was a basic justification of the accession.

In changing the rules of the game for purposes of accession the two points were important. Countries were obliged to accept the *Acquis communautaire*, but this nevertheless allowed them to use different legislative solutions. Countries were able to follow the over regulated model of Germany, Italy and France, but they also were able to follow the more liberal models of the United Kingdom, Irish Republic or Holland. Some new members were lucky to side with more liberal solutions (the Baltics, Slovakia), some followed a mixed model (Czech Republic, Hungary, Romania, Bulgaria), while others coped with the over regulated model (Poland, Slovenia). An adherence to the over regulated model created the impression that transition for some East European countries consisted in the transition from socialism to socialism.⁴ It would be from the hard Soviet to the soft EU socialism.

Benefits of European Union Membership

In what follows, I will speak only about the economic reasons for and against joining the European Union. Besides these, there are political, security, cultural and other reasons.

There are several standard economic reasons in favour of joining the EU.

² More about this in Prokopijević 2009, p. 554-560.

³ Cf. Prokopijević 2002.

⁴ Cf. Pejovich 2005.

First, membership of the EU ensures lower barriers. There are several ways of lowering barriers. By entering the custom union, custom barriers cease to exist. By creating a common market, non-tariff barriers cease to exist. Both provide lower operation and transaction costs. Membership of the euro zone also reduces financial transaction costs, while that of the *Schengen zone* reduces travel transaction costs.

Second, enhanced competition in the enlarged market has consequences both for consumers and producers. For consumers it means greater freedom of choice, lower prices and better quality. Probably the largest gain for consumers from the common market and European integrations consists exactly in the above-mentioned benefits. There is also an effect from competition for producers. Enhanced competition drives firms to specialize and innovate.

Third, there is a standard argument of the economy of size. By entering a larger market firms are able to employ previously unused capacities with small or negligent increases in fixed production costs. This is an opportunity for competitive firms.

Fourth, by joining the EU, countries reduce their political and economic risks. This makes it possible for them both to borrow more cheaply in the financial markets and to make savings in servicing previous debt. Lower expenditure for these purposes relax public finances and may lead to tax cuts. We can observe, however, in practice this does not result in register tax cuts in the EU countries as a consequence of cheaper borrowing. Bureaucrats apparently prefer to use the financial means saved for welfare and other programmes. So, the saving along this line is generally wasted.

Fifth, all EU members, with the exception of the UK and Denmark, are obliged to enter the Euro zone. Up to now, 16 out of 27 countries were members in the Euro zone. As a result, the Euro became a more important international currency, than was the case with 16 other currencies combined. The Euro is the second largest currency, after the US Dollar, and was held some 37% in hard currency reserves throughout the world in 2008. Larger currency means larger gains from the seignorage, what is basically the monopoly of the central banks in creating and operating a currency.

Sixth, members of the EU enjoy a better position in the world trade negotiations than they would have otherwise. This is especially the case with the WTO negotiations, where individual nations – if not USA or Japan – do not have any visible influence on the outcome of negotiations.

Costs to Join the European Union

The rule that there is no free lunch holds for the European enlargement as well. There are several concerns related to enlargement that are common or frequent in the literature.

First, there is a loss of at least a part of sovereignty. This is a particularly strong objection for the new members from Eastern Europe, because they gained independence from the Soviet Empire a short time ago, and then speedily decided to hand it over to Brussels.

Second, by handing over a part of their sovereignty to Brussels, citizens in the member states will not be able to control the legislative process in Brussels. It is already perceived that national bureaucracies tend to shift legislation from national parliaments to Brussels, because it is easier for them to pass those laws in Brussels than in national capitals. The European Parliament has limited possibilities to control the legislative process that is staged between Commission, Council of Ministers and the European Council. *Acquis* currently consists in more than 185,000 pages, and tends to grow at an ever higher speed.

Third, all member states need to contribute 1.24% of their GDPs to the budget in Brussels. Twelve new members from 2004-2007 have to pay some € 12.5bn in 2009 to the general budget. Despite this payment, new members receive more from the EU Budget than their contributions.

Fourth, some legislation produced in Brussels is not costly for the EU itself, but has costly consequences in member states. This is especially the case in some areas, like the labour market, consumers' protection, environment, chemical products, agriculture and fisheries. In some cases new members are forced to adopt high standards of environmental regulation more fitted to developed rather than undeveloped countries, and the East European ones are apparently undeveloped. Less developed countries do not have that level of pollution as the developed countries, and thus they do not require the same level of protection. Nevertheless, they are asked by Brussels to implement it – either immediately or after some transitory period. This is called the killing of the comparative advantage of the new members.

Fifth, a greater problem is related to the so called optimal currency area. This is important not only for the current 16 members of the Euro zone, but also for the rest of the EU, because all EU countries, with the exception of the UK and Denmark, need to enter the Euro zone.⁵ Robert Mundell worked out conditions for the optimal currency area by saying that must fulfil three conditions. The area should be open to trade, it needs to have a diversified economy and it needs to have mobility in the labour force. The two former conditions are satisfied in the EU, the third is not. When one is fired in Hamburg he or she would not like to move to Munich or Berlin, not to mention moving to Holland or Portugal. In the EU15 with a population of 380 million, only some 5 million people work and live outside their home country. If mobility of the work force is low, there is a risk of socio-economic troubles being concentrated in a region that suffers from low investment. In other words, without a mobile labour force, economic and political troubles tend to be concentrated in some regions and some countries.

Sixth, Brussels frequently asks for the bureaucratic harmonization, while it systematically discourages fiscal competition (fiscal federalism). Brussels frequently supports over regulation, and just exceptionally deregulation. Brussels constantly pleads for higher taxes, never lower. Brussels distorts the European markets via its Common Agricultural Policy, regional policy and some other policies, but nevertheless does not consider changing its questionable policies.

⁵ UK and Denmark made a special deal with the EU according to which they may permanently keep their currencies.

Seventh, in many senses Brussels resembles Moscow with the only difference, that in Brussels, socialism is with a human face. Brussels sells over regulation and market distortions, and that has characterised socialism. Brussels institutions systematically suppress independent research, while on the other hand supports propaganda. Authors that normally analyse EU topics are not excommunicated like dissidents in the Soviet Union, but they are marginalized in the use of the EU funds and conferences. Similar to communist propaganda, Brussels uses taxpayers' money to seduce citizens of the European Union, by being silent about troubles and internal affairs, by marginalizing negative integrative effects and by overstating positive effects.

Results

Putting costs of EU membership on the one side and benefits on the other assists us to measure what weighs more. One way to evaluate membership is to consider whether the European Union has expanded or shrank. The EC/EU has grown from 1951 with six members to 27 members in 2009. The majority of new members rushed to join, especially those from Eastern Europe. Only one territory has left. This was Greenland in 1986, because the country's 60,000 large population was heavily dependent on fishery and the quota for catching was too narrow. Since then, not one single state from the EU27 has declared an intention to leave. This is indirect proof that EU co-operation is still mutually profitable.

Many studies indicate a similar finding – that the EU is a mutually profitable form of co-operation. They are different in the use of indicators, methods and topics, but they basically agree that the EU traffic is a mutually beneficial gain. The gain is demonstrated by lower transaction costs and enhanced competition. This positive result need not last forever. If the EU undergoes a degenerative bureaucratization process that could change its basic rules and profile, this may provide incentives for members to leave.

Finally, authors that are highly estimated in our circle, like Vaclav Klaus and Mart Laar, never publicly said that their countries should leave the European Union. This indirectly proves that they also consider membership as useful. They frequently criticize the EU for centralization, bureaucratization, harmonization, over regulation and other anti-market deviations. And right was on their side, because the EU is undergoing a period of degeneration that still persists.

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Karl-Peter Schwarz: I think I must start with the reminder that that Croatia is a country with two negative heritages: one is socialism, the other internecine war. This country has not come to terms with its negative heritage because what the war did was simply freeze the political structures of the socialist regime. So Croatia has ended up with a kind of crony capitalism after the crony privatisation process, during Tudjman's government. In 2000, the Social Democratic Party was elected to government and promised to change and correct the privatisation process, but nothing happened.

Nowadays Croatia is a country with the highest taxes in the entire region. Around 270,000 people work in the public sector out of a population of five million – about 20% of the country's workforce. Wages and pensions in the public sector consume around 24% of GDP. It is a country with a high degree of corruption but no high-ranking politician has ever been caught because of the corruption. There is a corrupt justice system and there is a strong political influence of whatever passes for business in this country. It happens that, for instance, foreign investors lease a certain piece of land and invest in a company and then the local authorities halt its business. This has happened several times in recent years.

After Tudjman's authoritarian regime the socialists – the communists – took over the country to start a market economy, open it to Europe and prepare the country to enter the European Union. This process of integration to the European Union restarted this period, but the promises they gave were not fulfilled. So four years have been lost. In the meantime, Tudjman's Croatian Democratic Union, with a change in its leadership, produced a leader who co-operates with the extremist nationalist wing. He was re-elected last year but surprisingly in June of this year he stepped down. Nobody really understood why. There are speculations that he could have been involved in some corruption cases. Whatever happened we do not know, but he stepped down. So now there is a new Prime Minister – Jadranka Kosor. She is a former journalist and was a very loyal assistant to some others. She took over the leadership of the party, and role of Prime Minister, but how strong she really is in the party is quite unknown. As you probably remember, Croatia had many problems with the accession process because of the various cases linked to war crimes in the former Yugoslavia. One of the generals was protected by certain groups inside the state apparatus for many years and in different countries, and finally arrested in Spain, evidently with the help of another group in the country's Secret Service.

In the meantime the whole situation is at a standstill and continues to be blocked by Slovenia because of the border conflict regarding the Adriatic Sea coast shared by the two countries. For over ten months Slovenia has blocked the opening of 11 chapters of the EU negotiations. Hopefully, they say, it will end this week in the EU Accession Conference organised by the Swedish presidency because there was the agreement between Mr Pahor, Slovenia's Prime Minister, and Mrs Kosor, Prime Minister of Croatia, two weeks ago. The strange thing is that both of them have very different interpretations of what the agreement consists. So with both incompatible, nobody really knows how they will find the way out of this situation. Slovenia's actions were highly criticised by other EU countries. I have always had an impression that this is more of an exercise than a real concern, because for some countries, particularly the UK, and the Netherlands, and in a certain way for Germany, Croatia was not wanted

in the European Union: one reason being the negative experiences with Romania and Bulgaria, particularly regarding the cases of corruption. Immediately after entering the European Union these countries virtually stopped fighting against corruption and changed the legislation. It is the problem we will have in different countries. I think that two of the problems with EU accession are, the pre-accession period – when there is kind of leverage on the European Union and what happens after the accession – because there are no instruments to influence the political development of these countries once they are in the EU.

It is obvious that Croatia is a test case for the expansion of the European Union in the rest of Balkans. If the EU does not succeed in admitting Croatia, with the Slovenian-Croatian problem, how will it resolve all the other cases? Just to mention a few: the question of status between Kosovo and Serbia and the other concerns from Macedonia. This is important. I think this is one of the reasons why the Swedish Presidency, and not only the Swedish Presidency but also the United States, exerted such strong pressure. It seems that the intervention of Hilary Clinton contributed very much to dissolving this blockade by Slovenia.

I should like to give you an interesting figure from the economic point of view, just to complete the negative picture of the state-run economy in Croatia. It comes from the Institute of Public Finance, probably the most serious economic think-tank in Croatia. The Institute publish an article about the Croatian Government's foreign debt and says that the budget has been deposited every single year and the public debt has increased four-fold for the past ten years. So, imagine what they have to do? In the meantime the input of foreign capital is diminishing and the credits are more expensive. So, it is very difficult for them to avoid bankrupting the state. There was a big debate during the summer and they introduced the linear tax of 5-6 % for all incomes above 400 Euros. This extraordinary measure was explained by the Ministry of Federal Finance with the argument that they will not be able to pay the teachers and civil servants, if this is not done in September. So this is the budget situation in Croatia. I think it is of interest to our debate. Whatever I know I will answer but I am not an expert in Croatia's economy.

Philip Hanson: It could be worth saying something in response to Miroslav's very fair account of pros and cons of EU membership. Just from the point of view of British experience and also talking about the more recent accession – you know there is a rather smug British saying that Britain acquired an empire in a fit of absence of mind. Well, we joined the European Union rather the same way and, I think, one of the things that comes out of the British experience is that there are a great many extenuating circumstances that limit the impressiveness of some of the disadvantages that you mention. As you imply, and I cannot stress more, tax competition remains a possibility within the EU and it is really important that this continues to be the case. I think one of the things that we certainly in the UK hoped to gain from the extension of the membership of the EU is precisely the support of countries that came into the EU with low tax rates. If you compare the top rates of marginal income tax, top rates of corporation tax of the entrants into the EU in 2004 and also the expected government spending relative to the great extension of income, they are, actually, low tax countries compared to the existent members. Let us say if you leave Slovenia and the Czech Republic, the other six which entered in 2004 are, if you like, the natural allies or appeared to be the natural allies of the supporters of tax competition. I think

as long as tax competition continues to be possible in the EU – that is something which is healthy. I would also stress the role of enlargement in all this. Enlargement is the way of keeping people in Brussels occupied as an alternative to deepening. So enlargement works two ways: it brings in low tax countries and it keeps people occupied in Brussels. I think it was quite explicit in British policy, or at least in a lot of British policy, that we like enlargement for various reasons, including the fact that it can be combined very easily with deepening at the same time.

I would just say a bit about the movement of labour. Obviously if the euro zone were to approximate the optimal currency area, there would need to be a lot more mobility than there actually is. But intriguingly there still is quite a bit of movement outside the euro zone. If you think of the Polish workers moving into the UK, there was far larger movement of people than it was estimated in advance and it was very favourably received in the UK. I think that if only free movement of labour could be generalised more extensively for the new entrants to the EU, for labour to be able to move to the old Europe more freely than it has been able to, it would be very beneficial. I would just like to describe to you a cartoon in the British press: A picture of a bloke, an arrow saying North Pole, an arrow saying South Pole and an arrow pointing to the UK saying, All the other Poles. That is how it was perceived in the UK, so it has been beneficial in many ways for both parties.

Jan Winięcki: On the question about the impact of accession on competitiveness, I wonder whether we should look at it the other way round, mainly the transition reforms made these countries more competitive and that was clear even before we entered the EU. But after entering we found ourselves within a very large disparate area and our foreign trade accelerated faster, which shows we did our job of becoming more competitive before taking the opportunity when it arose. Secondly, I was not sure what Professor Prokopijević was complaining about in respect to Maastricht. Was it that Maastricht criteria are too strong or that transgressions are allowed too often, because these are two different stories. I would be all in favour of Maastricht criteria, but at the same time I regret that within the EU, particularly large countries have a greater leeway when it comes to registering larger budget deficits and so on; even before the present crisis, so that would be worth keeping in mind. My experience is very limited with regard to Croatia, and the only conference I attended, with a discussion on Croatia's economy in preparation for the EU, I had an impression they were backward looking. They were looking at the kind of industrial structure they had before the civil war in former Yugoslavia and discussing the re-establishment of the competitiveness in the shipyard industry. I think there is a too little understanding that the search for opportunities should continue, and a more level playing field provided to those seeking new pastures.

Krassen Stanchev: There are many issues here for comment, but I think the most important point in Miroslav Prokopijević's introduction was the attempt to list reasons in favour, and probably to compare them with reasons for not joining the EU. With all due respect, I think all the reasons to appreciate the role of the EU in economic prosperity of member states, especially new states, are not created by the structures of the European Union itself. These are, rather, effects rooted in the European Free Trade Agreement (EFTA) and the Custom Union. So if in an ideal world there was an alternative organisation to the EU, the same impact would have been there if there was a custom union within EFTA. It is very difficult to measure this and consider the

results in socio-economic analysis, but one of the possible analytical tools would be to compare, on one side, the influence of trade and GDP per annum with the costs of trade and on the other, costs of regulation over certain periods of time – perhaps per annum – on some historical basis. So, there is little doubt on the costs of regulation.

The first relatively comprehensive research appeared earlier this year, it put the historic price on administrative compliance cost, for the last ten years, at the level of 1.3 trillion accumulative administrative costs complied. So, it is very difficult to compare these costs of and regulations by the European Union with anything. But if you take, for example, the last GDP figure for this year (2009), which will be probably 11 trillion, the cost is about 10% or more, and this is the minimum. The next thing which might be useful, but there is no research I am aware of since Tom Karlson's is in either 2000 or 2001, to look at the cost to consumers who were paying for the EU's various protectionist measures rooted in tariff and non-tariff barriers and posts, to third parties not member states. That figure was at the level of 600 million per annum. These are prices the consumers of the EU pay, so obviously the regulation and consumers' cost of the EU should be taken as a share of the benefit of GDP. The third point is, that while on one hand these assessments are difficult and take time, on the other hand they are examples of the classic phenomena, because very often these costs are spread around quite a sizeable population of 500 million. If, for example, you take the cost per annum of the regulations it comes up as 10 euros per person, although you do not see this. My last point is, if there is any rational argument about the EU, it should probably have the ability to predict something. What needs to be assessed is at which point EU costs will exceed the benefits.

Silvana Malle: I think one point that was not raised is the effects of the financial crisis. How did it affect the problems raised here by the leading speakers? Has the financial crisis increased centrifugal forces, or the contrary as in my view? Has it helped the countries to gather together, to reinforce the attraction of being in the EU? On one side is Iceland, a country struggling to enter the Euro and if you look at the Baltic States, the programmes implemented in some Baltic countries are really tremendous. The costs that have been imposed on the population in Latvia and Estonia etc. are enormous. The public sector wages and pensions have been slashed by around 20%, but there were huge cuts just to remain within the orientation of keeping the currency in line with the Euro, and not to leave this space they had been fighting to conquer. I think that could also be an interesting perspective. When countries are in difficulties, and also taking the global economy into consideration, how does the EU resist? Is it in good shape or bad shape? I think that is important. An incidental issue I would like to raise: what if there had been no accession? What would this country be like? I think it would be in worse shape, from a political point of view, which we did not take into account. It would be in limbo, though perhaps not quite because Big Brother is there, but also from an economic point of view.

Jan Winiecki: On the point raised by Silvana, I agree completely that these countries which are in trouble, would be in a much worse shape, and are better off being inside during the crisis. However, there is another story; I have not found the answer but serious questions should be raised. Why, when you look at the performance of these countries during the crisis, has there been such a tremendous spread in performance in terms of GDP? I did some preliminary research for a macroeconomic bulletin I edited at the Bank, and I found that traditional relationships do not work. For example, there

is an idea that the smaller the country, generally the more sensitive it is to business cycles, because it benefits more from exporting in good years and takes more beating during recession. This does not work, because it is dependent on the assumption that the smaller countries have higher export to GDP ratios. There is no correlation for those countries. Another story is that the more developed a country is, the more affected it is by the business cycle because it has a larger share of luxury goods. This does not work and was the argument used to illustrate why Poland has been doing so well. In that case, Romania, a similar size to Poland, should have been doing even better because it has a less developed economy. So the question is: what kind of problems do these countries have? My hunch, because I did not research it, is that they are idiosyncratic, typical for each country concerned.

Geza Jeszensky: First of all, as a historian, I think that Central Europe's accession to the EU is the second attempt at integration. The first one would have been the Hapsburg Empire, and if we compare the two accessions, though there is not enough time for that, I see an interesting tendency that the Hapsburg monarchy provided economic space, had a common currency (which we have not had at all), and even a kind of army and foreign policy. It created a sort of EU even if it did not reach everyone, as there were eleven ethnic groups in the Austro-Hungarian Empire. I think they became increasingly unhappy with the association, but looking back, almost without exception, there is a nostalgia. So I see a kind of similarity that the EU obviously had high expectations, but the time between the engagement and consummation of the marriage was too long, so some of the illusions were already discarded before the marriage. I think it is very unfortunate that so soon after the accession, the financial crisis hit. In the minds of Hungarians the crisis is quite severe, so people establish a link between the two and they tend to think that if not the EU, then capitalism caused it. Globalisation is a more pressured term; there is a failure. Today I think that in most of these new members, if referendums were held, support for the EU would be very disappointing.

Another reason for the disappointment is that in all these countries a large part of the population depends on agriculture or lives in the countryside, and for them the EU in the long-term, especially if it maintains support for agricultural subsidies, would be a benefit. But since support given to the new members is substantially below that given to the old members, our agricultural producers cannot really compete with those highly subsidised producers. I think Poland is the only exception because the government provides additional support for the Polish farmers from the state budget. In their agreement they are entitled to EU funds to subsidize the farms. So, Polish farmers receive a higher percentage of the subsidies than the Hungarians. Unsurprisingly, Hungarian farmers are rather unhappy and have a huge problem with a surplus of cheap agricultural goods imported from other EU countries. Hungarian membership is not a popular subject today, but it is absolutely true that without membership Hungary would be in a worse position in this financial crisis. The last factor I have to mention is that, I do not want to sound partisan, since our accession we have had a socialist government and the government's performance is extremely poor, which also explains why Hungarians do not feel that the EU is a success. I must stress that corruption is widespread everywhere, but at least the EU checks on how their funds are being used, and now we have to repay some of the subsidies, but with good reason. So I think it is a check on our government.

Miroslav Prokopijevic: There were many comments about the Maastricht criteria, so I will select just a few. Why not introduce a rule that public debt cannot exceed 0 or 10%, because when you look at what happened to relevant EU countries at that time, you will see that public debt oscillated between 50 and 130% in Belgium, Italy, Greece etc. So my idea of 0% of public debt would mean that if you have very high taxes and you still have high public debt, it must be a very stagnant economy. You cannot relax inflation, reduce the number of procedures, reduce taxes. My point at the time was that these two rules, budget deficit not exceeding 3% and a maximum of 60% public debt, are inconsistent. This is because if the budget deficit rule should work in the following way: that the deficit is allowed in bad years then there will be a surplus in good years, so basically public debt should be at 0%. If this is the idea, why then does 60% exist? If this budget deficit rule is not going to work, then again 60% is not enough, because countries are going to be in debt for years and public debt is going to rise. Some economists told me I am not well informed– although a few American and East European economists agreed with me – and said that I do not understand the issue, although they provided no explanation.

Philip's remark to keep the bureaucracy busy is excellent, because that was the intended consequence of enlargement. They intended extending the German-Italian-French model to the other countries, without changing the rules in these big countries and now it is impossible to impose a lot of debt, and much more difficult under this diversity to obtain a majority again, which is even higher than in the US. 73% point something and two thirds of the population. On the other hand it was this fiscal federalism that was very healthy and I guess if this does not help, then we are lost and sooner or later, the EU is going to be, as the Germans say, *Kaput*.

Bernard Brscic: For me, the question is whether the extension of markets and enabling the division of labour would have emerged spontaneously without external institutional structures such as the EU. This is because if one looks at EU policies, there is hardly anything positive in them. Given the fact that the EU spends 1.27% of GDP and that CAP is a failure, as Miro mentioned and I agree. The same goes for regional policy for cohesion as well as structural funds. All the EU policies for building or improving the cohesion of different countries are a failure in Slovenia. There are examples how EU grants and subsidies changed the incentive structure of entrepreneurs. Suddenly everyone is busy working out how to receive subsidies and grants and a whole new entrepreneurial class has emerged, wanting to grab the opportunity. If you look at Slovenia's business directory, you would be surprised how many firms specialise in preparing gaining EU grants. It is a whole industry and has resulted in many new hotels, built with the help of the EU. The EU will grant, for example, 30% or 40% of the investment. I am certain that without subsidies these hotels would not have been built. It is not only through the CAP that the EU creates certain price distortions which is bad enough, but what worries me even more is that the EU distorts incentives with its subsidies and grants thus damaging the entrepreneurial class. Now everyone, not only entrepreneurs, expects grants.

There is also a big government agenda to extract funds from the EU. The big question for the Slovenian government is how to be a net receiver from the EU, because of course you have to supplement EU funding with the country's own. No one asked whether these investment projects were worthwhile, whether they would have been pursued without the subsidies. You have these huge distortions and I think a lethal

impact on the entrepreneurial class. It kills the spirit of enterprise and promotes a new kind of rent-seeking. My point is not the EU as a kind of superior institutional structure, but the question remains, whether without such a political institution as the EU, this continuous process and the emergence of endogenous change, freeing various barriers to trade, extending the market, would emerge and ultimately lead to better efficiency. I just do not see the benefit of 1.27% of EU GDP, or even a cent spent by Brussels. It is a regulatory burden on the economy. In a way we are back to whether the markets are rationally imposed from above or, the Hayekian thesis, that spontaneous process can be relied on; and people will eventually find out that the benefits of trade are such that you do not need supranational structures to lead the development process.

John Moore: When I look at Miro's lists of advantages and disadvantages, the advantages seem to be economical ones and the disadvantages seem to be political and social. The question is, as Bernard asked, could you not have the advantages without the disadvantages by not having the EU, but just the common market?

Miroslav Prokopijevic: I am not sure whether this can function without political interference. We can see from the historical example of an encyclical letter by Pope Gregory VII in 1079, limiting the power of Christian sovereigns in Europe that promoted a lot of entrepreneurship at a micro level. From that time Western Europe grew up, and remember Eastern Europe was more developed. During feudalism there was institutional competition among these small states, but it never led to the creation of a larger market, so it may be that some political intervention is necessary to open the way but then you need at some time to remove it.

Krassen Stanchev: In one sense there was no common market in the Middle Ages, just the opposite, but at the same time it was fairly well established. The barriers were much lower then. What Bernard says leads to the next question, what are the levers for positive change? Presumably these are the member states. I do not remember a single case where it was successful. For example most of the new EU countries had huge costs because of the work time directive. The only country, which tried to raise the point, was Slovenia, and it was not about the directive itself, but on doctors' working hours that are regulated by the directive. It was not supported by any coalition of the new members not even by the United Kingdom, which had been so critical of the directive. The second channel is public opinion. I think there was an attempt to change the European Union with the referendums in Holland, France and the Republic of Ireland. But obviously the political pressure of the establishment was so powerful that it can even over-rule the voters and I can list a number of cases of complete failure. The last was the attempt led by Elena Leontiva from the Lithuanian Institute to initiate a change in the process of the EU. We have written, in my point of view, the best paper on the budget process of the European Union, but nobody ever paid any attention to it. It is very difficult to change. Can it be changed on purpose or just by accident? It is some sort of unexpected constellation of different factors.

Karl-Peter Schwarz: I think I am also rather pessimistic regarding the development of the EU, but from a pragmatic point of view we can see that the EU exists and that is a fact.

Krassen Stanchev: It is possible!

Karl-Peter Schwarz: It is possible and that means it constitutes a power and it changes the relationship between the political class and individual rights and the market. This interaction, which is the case in every nation state, has a new dimension in this multinational level. This can have positive consequences, advantages to some extent and also disadvantages. The possibility of transforming it to a free trade zone simply does not exist because the institutions exist. I believe that this gap between the perception of what is going on in the EU, regarding Slovenia on the one hand, and the behaviour of the political class of the EU on the other, is very symptomatic, so I think it is not possible to stop it. I hope that it is possible with the forthcoming referendum in the Irish Republic and that they will confirm the 'no' vote⁶. If not, then perhaps it is possible that the Czech Republic⁷ will block it until the British elections next year, with an ensuing referendum as promised by the Conservative Party. I hope this is a way to block it. But if not, I think we have really reached a point where the people are not going to accept further proposals towards consolidation of a superstate. I think it is not only a EU problem, but also of the consciousness of the political class in the member countries.

Croatia, as Professor Winiecki rightly pointed out, wants to return to the golden 1970s, to industrial policies, government-controlled, and probably financed by the World Bank. This idea, to return to this idea of workers' self-government, financed by international institutions, plus social protectionism for everybody, is the ideal, and they think this is the way into the EU. So let them enter the EU, and let us see what happens. A week ago the Croatian President was in Havana for the second time in two years. He went to Che Guevara's grave, where he made a speech, declaring that Guevara is a model for the younger generation, because the young want a more just and better society. When he came home, he defended himself by saying because of Croatia's lack of competitiveness the country is unable to sell its products to other countries, so why not sell them to the non-aligned countries, such as Cuba or whatever dictatorship still in existence, and do business with them. This is exactly the way things were done under Tito. And this is the president of a country which wants to enter the EU and is already a member of NATO. That is the reality.

Jan Winiecki: I would like to introduce a new topic, but before I do I agree with Karl-Peter that facing realities is always useful. I am afraid that at least two opinions here were guilty of what Demsetz called the Nirvana fallacy, namely comparing the EU with not what could exist in reality, but with some ideal. Of course that ideal is simply unachievable, because something happened over the last fifty or so years.

Now to my point; these subsidies or structural funds are interesting, because when you ask politicians in new member states they usually put that first, economists say it is foreign trade over a very large area. Some more knowledgeable add that it is foreign direct investment, capital flows. And now as we are playing by the same rules, they are flowing more than before and business is now more sure it will receive similar protection to that in other EU countries. But politicians always mention these subsidies, and their economic value in the long-term is probably negative although the

⁶ The second vote imposed on the people in the Irish Republic took place on 1 October 2009. They voted yes

⁷ President Klaus of the Czech Republic under great pressure finally signed the Lisbon Treaty on 3 November 2009. Subsequently the leader of the Conservative party reneged on the promise of a referendum.

money actually may be useful in the present crisis, regardless of whether there could be a long-term positive effect of a given investment or training programme etc. This is because you spend the money now and that increases GDP, thus helping to reduce the impact of the global recession. But I am of Peter Bauer's opinion, who in the early 70s was talking not so much about the lack of economic effort, but the pernicious socio-political effort. Namely, that these external subsidies changed the attitude of active groups in society. Before that, if they had to rely on their own resources, they dealt with various issues important to them; whether it was to build a historical museum or a road through the mountains; they relied on their own initiative. However, if the money came from outside via a political channel, that is from another country or an international institution, then the problem arose because of a change of orientation. All these socially active groups, intermediaries between family and state, instead of trying to solve their own problems, are now competing with other active groups for the favour of government, distributing the goodies. Of course this is very bad for a civic society and a new issue we should consider.

Another issue is the impact of the crisis, which means that not many people living in the EU will consider leaving it. In any case even fewer will because of their attachment to free market ideas. We may see if EU bureaucracy, which we all dislike so much, insists on keeping procedures that are in the Charter or EU practice. We may see countries like France leaving the EU on a completely different basis; for pursuing not so much economic freedom-oriented policies, but political protectionism-oriented policy. This is something we should keep in mind when talking about the future.

Silvana Malle: It seems to me that here we are in the usual gloom and doom concerning the EU. I would like to introduce a brief positive note; actually the EU budget has not increased and that is the reaction of the country over the year. There are all these programmes, and yes, they can be misused, though not all the countries misuse them. I have witnessed blooming in Birmingham, a city I visit almost every year. There were structural funds given to Birmingham and helped a very unlovely place, some twenty years ago, to become beautiful. So it depends. If the funds go to corrupt regions, states, politicians and so on – and I am Italian so I know what happens when the funds go to the South – they increase corruption. If they go to another institutional setting, maybe the results are not so bad.

John Moore: Thank you for all your comments, I think we have at least one fold-over issue, what Jan was saying about the civic society. I think that is an interesting and important point; it is the small platoons that are changing the orientation. There are a couple of other things that occurred to me as I was listening, that we might want to think about for the discussion. The idea of a common market without political constraints is in a sense one of them. Years ago there was a lot of talk about 'Fortress Europe', about the common external tariffs protecting all the member states from external competition and that has not been mentioned here at all. I wonder whatever happened to that argument. Miro mentioned three broad areas where the rules led to improvements. One is democracy, one is the market economy and one is the rule of law. My question regards the last rule. Is improvement in the rule of law something that is happening? Is it uniform improvement in the member states or is it something that is a high-sounding principle but has not been implemented throughout the area? A few years ago I ran a small colloquium on the advantages and disadvantages for joining the EU and some of the people here attended. We had a long discussion over

two full days and at the end of it the consensus of the Central-East Europeans who were there, was that it was a good idea to join. Why? For the market, for the movement towards the West and for security. Those were the three reasons, despite all the problems with the accession process itself, coping with the regulations and the new supervision from Brussels. I wonder if those are still valid and I wonder if part of the movement to the EU was a result simply of a desire to put as much space between these countries and communism as possible, or part of the revolution to join the EU.

Andreja Valic: First of all I would like to thank you, Ljubo Sirc, for the invitation. I would like to add another dimension to this discussion as a historian. The title of this colloquium is “European Conscience and Communism”. We must not forget that this year marks twenty years since the fall of the Iron Curtain, and all Europe, especially those countries that were behind the Iron Curtain, remembers this anniversary. The EU is supposed to be the area for a market economy, or maybe a social market economy, the rule of law and democracy. We should also think about European identity. As far as I know, especially after the accession of ten new states in 2004, this debate became very prominent in the EU countries and in European institutions. I would like to remind you that Europe will not be united and this is our glory and this is our attitude towards European history. I am a historian and listened to Professor Jezzensky and I agree that the Austro-Hungarian Empire was a kind of common market, but it was not a democratic state. On the other hand, the EU is trying to be, and I would like to find out if, after 2004, the question of European identity is very much stronger. I see this in many documents on the European level, and also in the Declaration of European Conscience and Totalitarianism⁸. A kind of common structure is being prepared: the “European Platform of Conscience and Memory” which will produce a variety of education programmes. It will collect research from institutions, like ours, the Centre for National Reconciliation in Ljubljana, and also try to work as a European institution to preserve common European memory -which is not only the memory of the West but also the memory of the East.

Robert Reilly: I was most interested in those remarks. Some of you know my primary interest in recent years has been Islam, and I am quite taken by exactly the absence of a common set of values in Europe. There is a loss of self-confidence in Europe, to the extent to which the Muslims in many of the European countries do not assimilate, for the simple reason that there is nothing to assimilate into. So while I applaud everything you have said, it does not appear to me today that there is a firm foundation for the common values of which you speak. To the extent to which when Europeans are faced with someone else’s firm foundations or values, they do not know what to do about it. They do not have their own foundations to counter-place, even when that other set of values is inimical to the very things of which you speak. I find that very worrying, it is sort of a litmus test of how weak the foundations are.

Jan Winiacki: I would like to turn firstly to John’s comment just before the break, you asked a question whether there is an improvement in the rule of law. My experience is (I have been involved in several projects related to this issue), that this process tends to be much longer than I had optimistically expected at the beginning of

⁸ Prague Declaration on European Conscience and Communism, 3 June 2008
see: <http://praguedeclaration.org/>

transition. This is because, as I see how the law evolves, it is not enough to have even very good or even bad regulation. It is not the improvement in the rule of law, because law is improved when decisions based on the law tend to congregate. In a similar situation they tend to be the same, so you have to observe how the law is interpreted, how it is applied by judges, arbitrators etc. The law may be good, but it may be misinterpreted. Or the law may be bad, but judges may improve it. Both ways are possible, but require time. You may have either reasonably good or bad regulation, but whether it works well in the society and the economy may take a lot of time. Judges must decide many cases, and you can observe whether in similar situations there are similar verdicts and so on. This process really takes longer than expected.

John Moore: By the way, you mentioned judges, which in itself is an important issue, this entire matter, who they are or where they came from.

Bernard Brscic: After twenty years of transition in the field of the rule of law there has been little progress. Indeed, it is the case that transition countries transplanted the full institutions, the constitutions and the rulebooks, which are pretty similar to the capitalist countries. Yet given the experiences, one can hardly assess these countries as functioning rule of law countries. This is because often we only concentrate on the procedural definition of the rule of law; that basically the EU process must be observed, and should be able to apply legislation retrospectively. The law should be abstract and not concrete and yet we often forget the substantive content of the rule of law, what the law should be and also as John mentioned, the question of one of the preconditions for the functioning rule of law, an independent judiciary. It is the case – as in Slovenia’s experience – that people who abuse a special power, given by the state to adjudicate in cases, and who were part of the political process in the fifty or sixty years of communism, can hardly advocate that they have changed their understanding of what law is. I think that the greatest weakness of the rule of law is the lack of an independent judiciary.

The pervasive phenomenon, throughout the transition countries, is that there was no lustration in the judiciary and the judges remained the same. Now, obviously, without lustration, you cannot expect a change in those who abused power to serve the Communist Party, suddenly to change their attitudes and adopt the values of a liberal democratic system. It is not the case that the communist judges remain impartial after the political system changes. Let me give you an example from Slovenia’s Constitutional Court, where the vice-president is Ciril Ribicic, one of the last presidents of the Communist Party. When you have a former communist chief in such a position, how can you say you have an independent judiciary? When we talk about an independent judiciary, we often forget that it is not only the so-called external or institutional independence that matters: the judges’ salaries are not dependent on their procedures and the executive branch does not interfere with the judiciary. What is even more important than institutional or external independence is internal independence. This means the adherence of the judiciary to certain basic values of a liberal democratic system. These countries lack this internal independence and cannot achieve it if you then deal with judges who misused power during communism. Without lustration you cannot have an internally independent judiciary.

Geza Jeszensky: On one hand I am very much in agreement with what Bernard has said, although I would expand this question of who are the legislators the full

mentality of society and the impact of how the judiciary is performing, depends not only on the personal record of these people, whether they had been prominent communist figures or not, but also how they feel how they have been independent and that is a weak point. In Hungary we are very fortunate in our president, Laszlo Solyom, a non-communist, and a former head of the Constitutional Court, which is widely recognised as an outstanding institution in the post-Communist world. However, about the mentality and how people in former communist-dominated societies feel about Western values. Yes, it is important, but also a bit misleading to speak about Western values, because it is a big concern for everyone, and for every society that means something different. For some it is Christianity, and it is a disappointment for many people behind the former Iron Curtain, that it was impossible to have Christianity in what started as the Constitution of the EU. As a historian I think it is preposterous not to accept the Constitution, even if you are a non-Christian.

I think that democracy is supposed to be one of the preconditions of Western values and also a rule of law, or in a wider sense a rational attitude. But ordinary people in former communist countries thought that what was painful in communism were dictatorship, the lack of rule of law, and a network of informers and spies. So what they expected from the change was to be rid of those. And the most important expectation from former Communist societies, seldom mentioned as a Western value, was prosperity, an abundance of goods. Western societies were not as rich as they were supposed to be, but still I think that the disappointment has even more to do with the lack of lustration, not the lack of prosperity. What increases it is that former communists are very often at the top. They are the richest people who have accomplished nothing positive, but preside over the big factories, employment, speculation and by connections. This disappointment is something that is inevitable, but I agree that not dealing with the past in facing the crimes of communism, has certainly something to do with this disappointment, because in Japan and Germany, after the Second World War, the people had to face the crimes of the regimes. Ordinary citizens in these societies know very little about the crimes of communism, although they have their individual grievances. This is especially the case in Russian society. The Russians do not even admit to Stalin's crimes, and the West did not stand up for facing their past, although they very rightly prosecuted defenders of Nazism. I think we could say many more things about this disappointment and lack of satisfaction in the changes.

Jan Winiecki: I cannot resist noting one problem with what Professor Jeszensky said, namely the disappointment with the standard of living. I think there has been great progress in the ten states that joined the EU in 2004. Such feelings of disappointment existed in Poland in the early 1990s, because many people believed that they would be better off immediately without any effort. That such feelings exist so extensively, otherwise Professor Jeszensky would not have mentioned it, is a surprise to me.

I would like to shift to a new topic. The issue of European identity was raised briefly at the beginning, and I would like to take it in a larger context, not so much a European, but a Western identity. Here I would suggest that in future we should discuss past issues less, and more about the present that affect our future. A very important issue to be discussed is why collectivist ideas enjoy popularity in spite of many failures. Then we should look not only at the specific failures of the Soviet

Communist system, but also at micro failures. A number of studies show that whether collectivist ideas were imposed from above, or undertaken by small groups for religious or ideological reasons, they also ended in failure. The time span of these initiatives ranged from about two to twenty four years. Interestingly, they lasted longer for religious reasons than for ideological reasons. Then we should identify the sources of this yearning for collective solutions and we should probably look at groups that are creating this type of yearning.

One group would certainly be intellectual ideologists, who are profound in such solutions. They are certainly frustrated because they have been facing one failure after another, but they are escaping to another proposal, hoping that the next will be an improvement on all the previous ones. Then you have the artists, who rarely undertake this subject. Artists and writers plunge for collectivist solutions for a reason that is probably not understood. Because they look at the capitalist system and say that if you write good books, people will read them, then you will earn a lot of money. In collectivist solutions they are told you will be the avant-garde of the future, you will mould the people in a new society, new collective, new men or women for that matter. That puts them morally in the forefront of the movement and they feel flattered. The third group, which is critical of capitalism and individualist solutions, are religious leaders. They are preaching collective solutions, helping others, thinking of others rather than yourself, and they also face the failures of the solutions, because people are pursuing their individual, well-understood interests. All these groups create a climate in which any new collective solution is proposed and accepted by them and spread in society. Our role would be to counter such thinking, show the failures of the past and present the contrast. That would really be a useful contribution when we think about the future. Because we not only feel a loss of belief in our own civilization, or even the superiority of this civilization, but we also have the problem with two trends fighting each other for a couple of centuries. We should understand why this is the case and how to counter it.

Steve Pejovich: I want make a comment, but it has more to do with Bob Reilly's point. You know you said that religious leaders are preaching wealth redistribution. There is a big difference between preaching wealth redistribution and mandating wealth redistribution. That is the great difference between religious leaders and governments. Preaching wealth distribution, in the US, for example, where 1.75% of GDP is contributed voluntarily by people towards redistributing wealth. In France, which preaches mandated wealth distribution, it is 0.3%. So I would be very careful in saying what religious leaders are doing. They are trying to provide a cultural compass, by which we live. But the government leaders are trying to steal from those who work and give to those who do not. That is how I see it.

Bob Reilly: Thank you for that distinction, Steve. I completely agree with it. Think of the Croatian president, who went to Cuba recently to lay flowers at the grave of Che Guevara, and who said that this man's life was an example to inspire today's youth, to fight for justice. This is quite an extraordinary example of the problem of which we speak. Failure is not enough to discredit the claims to justice that the collectivists have made. The failures are manifest, the ruin of Russia, the ruin of the economies of Eastern and Central Europe. You would think the reality of this ruin would be enough to discredit the claim, but it is not. The president of Croatia has recently been trying to teach the youth of his country at the grave of this monster Che Guevara, and I think one of the reasons is because they have never surrendered their claim to an objective

source of justice. And the European intelligentsia have surrendered their claim because they succumbed to a form of moral relativism. Whereas we can continually point to the mass failure of these attempts, they can always say, as do the Marxists in US universities, 'that was not real Marxism', and they continue to take the high ground on the claim to justice. Our intellectuals have lost the foundation on which to make a countervailing claim to an objective source of justice and I think that is one of the sources of the problems you have pointed out.

Silvana Malle: I want to pick up on the question of independent judiciary and the Muslims in Europe. The independent judiciary is a big problem not only in Slovenia and other Eastern European countries, but also in some west European countries. Certainly in Italy it is a big problem and not because it was preceded by communism, but because after the war the communists steadily managed to enter the institutions. It was a precise idea and they forced this idea and succeeded. So our judiciary is full of communists. Of course we do not use this word any more, but they are Lefties. Let us see what could be positive in the East European context. Here the Supreme Court of Justice has ruled wrongly on a number of issues, in the end they end up in the court of justice, which is not perfect either, but still a higher level. People can appeal in Europe, where the sentences are more independent.

On the question of the rule of law and Muslims: It was said here that Muslims in Europe cannot find anything to assimilate to; I am not sure about that. Certainly there were cases brought before German, Italian and British courts, where the judges are ruling according to Shari'a Law. There are such cases in Europe, and a few have been widely covered by the press, to which the public has reacted adversely. The other day I was watching the BBC programme where an imam was talking about the usefulness of adopting Shari'a Law in Britain to settle a few issues. But let us look at the positive side of this. Some feminist movements are becoming stronger because Shari'a Law adversely affects women. In Italy and France we have seen these women joining conservative parties, I hope they are organising themselves in the United Kingdom. There are counter tendencies within these groups of people. In all these counter tendencies and picking up this collectivist feeling we still have in Europe. It is part of European tradition, but it is also part of the governments we have had over a long time. These people are socialists and former communists.

But now the political scene is changing and nobody today mentioned Angela Merkel. Gordon Brown has only a few months left, Berlusconi, although he is obsessed with women, is a very solid ruler of the country. Sarkozy is for protectionism, but he is better than Ségolène Royal. The political scene in Europe is moving towards the Right, or whatever Right means in Italy, or something similar. I think we should take this into account in order to see what is happening and I am glad we have a young colleague, who is a historian, because in history things change very slowly, which Jan mentioned. We cannot see immediate changes in the rule of law; this takes decades or even centuries. But it moves and the question we should ask is whether it is moving backwards or forward. I do not see it moving backwards.

Finally, in terms of European identity, I think one basic thing we have seen is that Europe has dropped the idea of federalism. The idea of a Europe of Nations is much more prominent, so the whole EU is not moving towards a federalist state. I do not know whether that is good or bad, but it is happening. It would also be of interest to pick up on a point John raised earlier, the political influence and the role that Europe

plays, even with a weak foreign policy that does not exist in institutional terms. We have a colleague here from Belarus, and there has been pressure from the EU on Belarus. This creates an interesting debate in the country and around it, because there you have Russia, with this imaginary Union of Russia and Belarus, and subsequent pressures there. The same is true for the Ukraine and Moldova. So let us not forget what is happening has positive aspects. That crook no longer runs Moldova; there is hope that that the country is moving in a pro-rule of law direction.

John H. Moore: I should like to comment on the evolution of law, which Jan raised initially. In the study of common law, which is taking place in the US, there is an old conclusion that the way the system works, decisions will tend to produce gradually economically efficient outcomes. That is one version of evolution of law. It takes time and this analysis is in the context of the common law and also in the context of economic evolution, in terms of developing the rule of law. There is a second sense in which you could talk about things taking time in evolving and that is a generational change, which was mentioned. Now the question I would raise is whether either of these lead to a conversion to the Austrian theory of how equilibrium is reached in the market by the process of discovering competition and their claim that it does. Their case is a convincing argument that this passage of time will lead more in the direction of the adoption of the rule of law, as in the US, or not. Is there any mechanism or argument that is convincing in that regard given the circumstances?

Andrzej Brzeski: Shari'a law.

Krassen Stanchev: I think the development of the rule of law depends on the various constellations and I would like to say my feeling on the role of the EU as a Union, not Europe, the role of the EU in promotion of European values, is quite dubious for several reasons. Basically I think the first reason is Euro-speak and the second reason is double-speak. So the Euro-speak is sort of a code of passwords to get some sort of budget allocated. The double-speak is much more important and it goes through the laws and regulations. So if we take the common understanding of the Christian tradition of Western values, we will have the dignity of being individual, structures of religious belief, which leaves room for individual freedom and rewards for a person's deeds on Earth. Then you have the so-called liberal democracy, new representatives of democracy and similar issues. When you try to see these variables somehow implemented by the European laws, regulations and policies, you do not see any of them. For instance, it is claimed that the so-called solidarity in a pure socialist interpretation is part of European common values. The second thing, you see, is the fight against climate change; it is an unbelievably costly policy. I have done this research on the Energy Charter. The costs of implementing it are enormous. My clients are all from the energy sector and it is crazy: built on the consumer costs. It is claimed to be a European type of policy and it is in the very system we are supposed to be fighting against; it is completely irrational. There are many similar examples. For example there is a view, or even a value, which is typical for Europe, that Europeans rest more and work less, so perhaps that is their way of life. But for new member states that was not a way of life, and the only advantage they had before the accession was that they could work harder and become richer sooner rather than later. But it was not in any way enshrined in the accession process or in regulations. The next thing is, because of regulations, you have the rule of law as applied by the European Court and you have these values somehow taken into account during the

accession process in different countries or even common to neighbouring countries. So I think the European Court decided on the work time directives. In two or three cases already, all of them defended the directive as such, at the expense of so-called individual freedom. The court process is similar when it comes to disputes between labour unions and employers; this is a very negative tendency in Luxembourg. And last but not least, the really interesting processes in Belarus, Moldova, in the Ukraine and in other countries. Very often, but especially in the case of Moldova, the EU was about to create more problems than resolutions. And it was just by chance that the people in Moldova managed to get rid of the state apparatus. But I know, how the official envoys, one is even a friend of mine, behaved during the crisis. They behaved outrageously, so should be fired immediately, but nobody is doing this.

Dragan Lakicevic: I want to address, which was not only practical, not only moral, who will replace the judges? In Eastern Europe we did not have an administration able to handle the cases, particularly in Serbia. There we have a democratic government and the Ministry of Justice replaced two hundred judges with disastrous results. They were completely incompetent; they could not handle the cases. They were more corrupt than the old ones, and I personally know a few judges who were not Communist Party members. Those judges with all those difficulties, and some were party members could at least work more or less properly. After the changes we did not have a competent administration to replace the communist one. Twenty years is not so long, and it will take time to build a new kind of legislation and introduce the rule of law.

Miroslav Prokopijevic: There is one exception you missed, and that is East Germany, because the German state actually replaced all these judges and brought new ones from West Germany. Just briefly about advances in the rule of law, I talked to several people who were in charge of the disintegration process during conferences. If you ask me to summarise in one sentence what they basically told me it is that they are keeping everything as it is, just providing the changes and labels and if Brussels discovers something wrong, only then are forced to make small changes.

Krassen Stanchev: This happened in Bosnia. Over sixteen months 59% of the judges were replaced and the system does not work. The Special Representative for Bosnia, Elisabeth Rehn⁹, was responsible for the judiciary and the appointment of judges, but had with no knowledge of the local situation and the people. She had advisers who appointed judges, who were as bad or worse as the previous ones, and this was totally backed up by the EU, the High Representative. It was well financed, as the costs of the judiciary system in Bosnia are very high, as in Western Europe. A judge in Bosnia would receive something like 2500 euros per month, which is a good salary there.

Steve Pejovich: I want to make the point, the distinction between law and legislation. Then if you think in terms of law, you really do not need lawyers as judges, you need people with high culture and high moral qualities.

Karl-Peter Schwarz: I think we can continue to substitute judges, but the situation will not change if the societies are unable to perceive the importance of unwritten rules. There was this big difference between judges from Western Germany and those

⁹ Elisabeth Rehn was a member of the Finnish Parliament from 1979 to 1995

in the East, because West German judges not only brought their skills and knowledge, but they also brought the culture of the unwritten rules; what you can and cannot do as a judge. In a certain sense we are all fond of the Austrian School of Economics, but there is another school in Austria, the Legal School, which is much more problematic. Chaos is the rule in transformation, this idea to separate the law from historical and cultural traditions and from the roots, is absolutely unacceptable in Post-Communist societies, because what they do is combine democracy -- understood as the power of the majority whatever happens -- together with the idea of formal law, and then you can even have an independent judiciary, because this power is strong enough to connect with whatever they want to do. This is not only the question of left-wing parties to right-wing parties in these countries. In Albania, for example, where two weeks ago they elected a new government. In this government there are two highly corrupt politicians. One is the former Minister of Defence, responsible for the missile explosion near Tirana, where thirty people died due to the disgracefully low standards in this factory. He was put on trial, which was then halted for formal reasons and he has now re-entered Berisha's government as the Minister of Interior. The second case was the Transport Minister who was heavily implicated in a corruption case. He is also part of Berisha's staunch anti-communists, but the kind of collective thinking and how they handle the judiciary is completely socialist as before. I think the problem is the need for a change of mentality in society and a return to conservative values, which are important in forming the identity of these nations.

Phil Hanson: I just want to return to Jan Winiecki's observation of a possible shift in our agenda. I was struck by one of the things that Jan put on the agenda, that is the origins and nature of constituencies for continued collectivist ideas like intellectual utopias. This of course is something which should have been discussed a long time ago; capitalism, socialism and democracy. And if we are now worrying about that in Central Europe, it suggests to me that Central Europe is more in the same world as the rest of us, than it was several years ago.

Andreja Valic: I have three comments. First, about values and judiciaries, I totally agree that it is very important to realise there is a certain political culture, and we cannot take institutions from one culture and bring them to another. The second is on lustration. As far as I know, Slovenia is the only former Communist country where there was no lustration. I connect this with archives and I would like to point out that one of the main goals of the Centre for National Reconciliation is opening the archives. My third comment concerns what Silvana asked, a crucial question for the future, is whether we are going forwards or back. I am not sure that Slovenian society is moving forward. I would like to illustrate this. Two days ago, in Ljubljana's main bookshop I found on the shelf, the first book the store recommends, the Communist manifesto by Karl Marx.

Silvana Malle: In terms of what Krassen said, criticising, as we usually do, the EU directives, certain things are not very welcome, but we should pick up on what is good for our arguments. For instance in the EU there is a directive stating that the retirement age for women and men should be made equal and raised, and that is clearly important. Women retire when they are fifty or fifty-five, which is a burden on society. That is a positive pressure. When you think what the EU did for your country, the EU is not really strong on the labour issue. On the question of Moldova, you mentioned the EU officials; I have no problem accepting what you say. There are

strange people around, but my point was on the question of values, and certainly young people were protesting on the streets about what we call European values, whatever they are. They are certainly not Russian values. It is also important to change the visa procedure between Moldova and Romania, now there is more liberty of movement. In addition, we should look at apparently minor things that count. My experience when I worked with a few universities in the Ukraine was the demand from PhD students not only for values but also procedures; how to improve them. The students were looking towards Europe for direction. I think we still have a mistaken view of these people. I am always annoyed by conversations which conclude that everything in Eastern Europe is bad. That is not true, although much needs improvement and even with this collectivist problem, things are changing. I see this in my own country, because if there was a really collectivist country, then it was Italy. This redistribution, the poor children, the poor students, the whole thing is disappearing very rapidly. There is pressure to improve efficiency; people are working longer and more effectively, so things are improving. Maybe we cannot see the results yet, but changes take time and we are moving away from collectivism.

Bernard Brscic: I object to Silvana's specious interpretation of history given that collectivist experience in the 20th century was imposed, and that we are somehow moving towards the end of history with a liberal democratic system and free markets around the globe. I think Bob's point is more accurate: the problem of liberal democratic societies of the West with a complete erosion of values and a total lapse into moral relativism. This beautifully connects to Karl-Peter's problem of EU positivism, this logical separation between the law and morals. I think you cannot really build society on this logical distinction, because in a way a good legal system can only be a continuation of a moral system. I am afraid that the friends of liberty are fighting a war on the level of moral philosophy, and not on a level Hayek would like us to do, on the basis of good or bad economics. It is not the case that socialists accept the economic arguments; that it is the free market delivering the goods and services. We also have to bear in mind that there are ideologies like militant Islamism, which is a kind of dysfunctional cultural system that was continuously forced as economically inefficient, yet it still prevails after millennia.

The problem is that as social scientists and economists, in particular, we tend to over-emphasize the economic part of life and forget that the self-fulfilment of an individual goes not only through his stomach, but also through certain spiritual issues. In a way, the decay or the decline of the West is in my view connected with this decay of values and what is paradoxical is that one does need a strong moral code compatible with the Ten Commandments. Free markets do not work in the absence of certain informal rules that are compatible with the rules of the game proposed by the Ten Commandments. But, paradoxically in a way, the market system as such, is hostile to the moral base. For example Schumpeter created this structure, that the more successful the free markets are, the more damaging they are to values. Therefore, when we forsook God in the 19th century, we did not have the necessary inflow of informal institutions conducive to wealth creation. So, this ideological world cannot be won only with the economic arguments, because the collectivists and socialists will always say it is not efficiency they want, but equality and social justice and that is only achievable in a system hostile to free markets.

Krassen Stanchev: I agree with Silvana's major comment, that the reality of common development is an appealing topic for discussion, but there must be some sort of hard evidence that this is not happening. If we look at the last twenty or twenty five years, it is obvious that some sort of development towards liberal democracy and individual freedom is taking place. There are no single widely accepted indices, competitiveness or economic freedom or general freedom, which basically show that the situation in Eastern Europe is deteriorating, not to mention old Europe. I think it is very important; otherwise we are missing a major dimension that way.

Jan Winiecki: First, to answer your question about the evolution of the legal system, and you referred to common law, which is not the tradition in continental Europe. But in continental Europe we have two ways in which the law can be improved, one better than the other. The less good way is, if you notice something wrong with the law, to amend it and make a new one. Then if it is still not satisfactory in a year or two, make another amendment. Another way is to allow the law to develop. There are law professors who interpret the law; bureaucrats who make binding interpretations; judges who make decisions on that basis. Then if these decisions converge on the basis of interpretations that make sense, the law becomes more predictable, which is what we are looking for. Unfortunately, from that vantage point, from what I know in parts of East and Central Europe, we still have the urge to improve. So not only is the process slow, but also we are not doing things the way that would improve it.

The second issue is the relationship between morals and the law. I have a completely different impression: our classical liberal Western civilization started when John Milton said law and morality are two areas which may overlap to some extent and not everything that is moral should be legislated, and not everything that is legislated must necessarily be moral. This is how the model version of Western civilization began. To give you proof, if you do it the other way round it will not work. Take for example, the two hundred judges in Bosnia who were fired with disastrous results. These were moral people and not communists, but legal imbeciles and made a greater mess than the old judges. So, we should not search for absolute justice and certainly not equate morals with the law. The Muslims do that with a result we all regret.

Andrzej Brzeski: Very briefly, there is doing according to learning and there is learning by doing; I think we are stuck with the latter. As far as the accession, the differences and results will sort themselves out in the long run. Unfortunately, there is a big problem Bob Reilly mentioned, and we have not paid any attention to Islamism; maybe it is irrelevant, but that is where the real danger for Europe comes from.

Bob Reilly: In response to Jan's point, I absolutely agree that the most disastrous thing anyone can embark upon is a realisation of absolute justice. It is at the heart of every ideology, it is a terrible thing, but I have to disagree with you. Long before Milton, St. Thomas Aquinas made clear that you do not try to legislate everything that is moral for the simple reason of prudence. It is imprudent to do so. However, every law is of course moral and is addressed in terms of better or worse. Conversations concerning better or worse cannot be had without a standard to what is good. And any definition of what is good is necessarily moral. So aside from deciding what colour fire hydrants should be, green, red or purple, every law has a foundation in morality. Unless of course this positivist distinction is made in which case law is reduced to simply another expression of the will for power. And that anything a majority decides

will constitute what is right, is a foundation of a different form of totalitarianism, as John Paul II called it, democratic totalitarianism, because there is no standard outside of which to say whether the majority has decided is good or evil.

Bernard Brscic: I did not say that there should be a total overlap between morality and the law, but I agree with John, that there should be two things. The law and morality cannot be logically separated, because otherwise you get certain evil systems, which are in a way, from the procedural perspective, quite compatible with the procedural notion of the rule of law. I am referring to Nazi Germany, which was immoral and therefore it is not true that Western liberalism begun with the separation of morality and the law. I do agree that there is a false classical liberalism that abolished the natural law tradition. The English positivist command law theory stated that the law is the command, and that a man must ask himself whether the procedures leading to this command are legitimate and, if they are, one should not question the moral foundation of the law. In my view, such a command theory of law is not only dangerous but in fact has led to numerous totalitarian systems in the 20th century. This positivist notion that the two things are completely separate is really dangerous and there should be a kind of grounding of natural law.

John H. Moore: This is indeed a debate that could go on for a long time. I just want to make one remark in closing; in a sense the EU is an effort to develop a set of common formal institutions that would apply to all members. One of the issues that underlies a lot of what we have said here, is that set of formal institutions is not to be applied to a number of countries with different informal institutions. I am really surprised that Steve, it must be only out of a sense of modesty, has not mentioned it in our discussion, because he has a very well known book on exactly this subject¹⁰. But that process of somehow aligning the set of formal institutions with the informal institutions of the new member states seems to me to be at the heart of what we are talking about, and is also something that takes a lot of time. It may not even be in the end, actually possible. I think also that the divergence not only in the EU, but also in other countries including the US; this effort of imposing formal institutions, that are in some sense different from the informal institutions that govern people's everyday behaviour, is a source of much of our political conflict in the US, but that is a secondary issue.

¹⁰ "Law, informal rules and economic performance: the case for common law", by Svetozar Pejovich, Enrico Colombatto. Edward Elgar, Cheltenham, 2008.