Tuula Vaarakallio & Taru Haapala (eds.)

The Distant Present

The Distant Present

Edited by Tuula Vaarakallio & Taru Haapala

[SoPhi]

[SoPhi]

CONTENTS

INTRODUCTION

Tuula Vaarakallio and Taru Haapala

Commenting on contemporary political phenomena is an inher-ent part of the public perception of political science scholars to-day. Perhaps this is the only way they can reach a wider audience. The analysis of contemporary politics, however, is a crucial challenge for the professional study of politics. Due to the rhetorical dimension of poli-tics it is especially vital to re-frame political phenomena by some form of distancing. The thesis of this volume is that distancing is a much needed scholarly perspective that makes current political phenomena appear much less familiar than what they appear to political agents and commentators. The question is, then, how is such distancing possible?

This collection takes its inspiration from Bertolt Brecht's conception of *Verfremdungseffekt* [1] which was originally connected to epic theatre. Brecht based his *Verfremdungseffekt* on the construction of a conscious distance between theatre and life: the spectators were actively reminded of the fact that they were in a theatre and the events on the stage were not part of their own life.[2] Distancing was a tool to stress the actor's self-

---

1   *Verfremdungseffekt* is commonly translated in English as alienation, distan-cing or de-familiarisation.

2   See e.g. John Willett, Brecht on Theatre, New York: Hill and Wang, 1964; Peter Brooker, Key words in Brecht's theory and practice of theatre, in The Cambridge Companion to Brecht, eds. Peter Thomson & Glendyr Sacks,

reflexivity, to make the spectator aware of the situation, and to question the obvious in everyday things by making the familiar appear strange. Our intention is to extend the idea of alienation, or distancing, into political research. In other words, the aim is to use something similar to Brecht's distancing effect as a condition for the study of contemporary politics. As Brecht says:

> *Alienating an event or character means first of all stripping the event of its self-evident, familiar, obvious quality and creating a sense of astonishment and curiosity about them. (Quotation of Brecht in Brooker 1994, 191)*

Brecht's aim was to maintain the audience's self-criticism by keeping the audience free from conventional forms of identification and excessive feelings of empathy. Instead, he wanted to create a perspective of *Verfremdung* that would historicise, maybe even politicise, that which was taken for granted. "Making strange" therefore signifies "making aware". Brecht's aim was to make the audience intellectually conscious and, thereby, critical.

Similarly, the practise of political research requires distance to help distinguish the politically interesting features of the subject matter. The problem is that political phenomena appear to have their 'ready-made' names and categorisations that sound more or less as natural when presented in the news or commentaries. Moving away from a commentary to scholarly analysis or interpretation requires a new problematisation of the concepts, names and categories in order to make sense of them. They must be viewed from a critical perspective.

Conscious de-familiarisation in the sense of Brecht's *Verfremdung* provides a fresh angle from which to examine political phenomena. The conscious means of distancing puts forward and clarifies explicitly what happens in research activity through theorising or through historical or rhetorical analysis, for example. Research activity necessarily demands a certain distance towards the object of research and, when it comes to political phenomena, the distancing becomes even more important due to the ambiguous character of politics. The *Verfremdungseffekt* therefore serves as a heuristic perspective, but not as a simplistic pre-given meth-

---

Cambridge: CUP, 1994.

od with which to approach political studies. Our intention is not to provide a re-interpretation of Brecht's theory itself, but rather to follow his line of thought and indicate its usefulness to political research. This volume highlights how Brecht's *Verfremdungseffekt* and analogous modes of analysis can be fruitfully associated with political research that analyses political discourses and texts.

De-familiarising the object of study helps overcome journalistic commonplaces and avoid easy traps of research. This aspect is of great importance especially in the study of politics as scholars face phenomena loaded with prejudices, ready made presuppositions and fixed opinions. This is even more the case when dealing with contemporary topics already widely covered in the media. For example, a deeply rooted assumption in public debates and journalism seems to be to assume that things "really" are given or determinate, and both journalism and scholarship must simply uncover the "truth" about it. Such a view is opposite to our understanding of what the scholarly analysis of politics is.

We can illustrate the problematic with a simple example. From the French Revolution to the 1980s classifying intellectual currents was not difficult, e.g. an understanding parliamentary parties and elections according to the one-dimensional left-right scale. It has even been suggested that this distinction is somewhat natural, an inherent part of the human mind. Rather, this categorisation emanates from political controversies and can be viewed as a tool of political analysis that could be replaced by others. After the demise of Communist regimes in Europe, it has become clear that such a distinction is barely applicable to post-Communist regimes. The remaining (post-)Communist parties in the former Soviet bloc countries can hardly be called "left". Nonetheless, despite characteristic features such as the defence of established order, it would also be misleading to count them as representing the "right". In addition to the fact that the left-right conceptualisation has become more nuanced, the entire political spectrum must be analysed in more multi-dimensional terms.

As the title suggests, this volume focuses on present day phenomena. Distancing is required, especially when analysing familiar contemporary objects of research. De-familiarisation thus signifies that the present is treated as distant. However, the form of distance and how it is

6

interpreted may vary. Furthermore, the vantage point which frames the approach to the present object of research will be manifold: rhetorical, historical or more intensively conceptual. The articles in this collection make this aspect clear as the authors have actualised the necessity of distance from different angles. The subject matters are also dissimilar, and this hopefully renders the distancing effect even more intelligible and shows how distancing may be applied in a variety of political contexts.

All the writers in this volume are involved in research inspired to different degrees by conceptual history or political rhetoric. For them, politics is understood and analysed loosely as linguistic acts represented in texts and speeches to which certain intellectual distance should be maintained. As mentioned above, in order to analyse political phenomena through various discourses, it is important to use intellectual distance as a conscious instrument which makes the familiar and perhaps already well known appear "strange" and new. In other words, it is to question the "taken for granted" perspectives and to rise above the level of familiarity and obviousness. Since the 1980s, all of this has been part of the profile of studying politics at the University of Jyväskylä, an approach that has now expanded and also reached a broader international audience (see http://www.coepolcon.fi and http://www.concepta-net.org).

Our understanding is to take seriously the actions, speeches and writings of political agents. This is a condition for not "explaining away politics" from politics. Such a danger is obvious in many approaches to politics that simply apply theories or models which are constructed in other contexts, such as the systems theory or the rational choice approach. For such fields of study, 'politics' is just another field of exercise to which a theory is extended, without due concern that such approaches tend to de-politicise politics when transposing figures that are alien to the political agents themselves.

Rhetorical and conceptual approaches do not, of course, take the words and deeds of politicians at face value. Instead, scholars with these backgrounds understand them as speech acts which deserve to be interpreted from different perspectives. Such approaches teach us to situate political actions in their different contexts of speech or action, relating them to different intellectual and political traditions and their combi-

nation with each other or to certain typical situations e.g. understanding the differences between the same words in parliament, an electoral campaign or at a party conference. We can also judge the points of novelty and singularity of words in both their own time and in a broader historical perspective. Words also can illustrate parallels and contrasts with analogous topics or thoughts in entirely different contexts, for example, in terms of the rhetorical genres of speech and debate.

One crucial aspect connecting the studies in this volume is that the various subject matters chosen for the respective analyses are approached in an unusual manner. They do not represent the main stream of political research. There are topics that are definitely politically interesting, but not necessarily considered to be common themes of academic political science. The common insight of these studies lies in the fact that political action is not compartmentalised into separate sectors studied as spheres of their own. The point is, rather, to *study politics through these special cases.* The cases are read politically: each researcher analysing, interpreting and evaluating a politically interesting case connected to scholarly or contemporary *debates* about the political aspect of the phenomena studied. As a point of comparison we refer to Quentin Skinner's suggestion of how to read Thomas Hobbes's *Leviathan:* "think of it as a speech in Parliament"[3].

From this perspective, the choice of a topic is a widely contingent and often a personal matter. The authors study topics they have found interesting which they connect with more general debates. Each scholar constructs an access to certain key issues which are debated in the contemporary study of politics. From this point of view they are also obliged to make an estimation of their own contribution to the debate.

In the Skinnerian sense all the case studies in this collection are contributions to 'debate' in a double sense. First, the political agents analysed participate in the actual controversies in different countries and times, in different genres of debate. Secondly, the analysis of these debates can also connect to the more general problematic of studying rhetoric and concepts as a path to new ways of understanding politics. The readings of the political have been extended to phenomena that

---

3   Skinner's interview by Alan Macfarlane, 10 January 2008 available through http://www.dspace.cam.ac.uk/handle/1810/197060.

offer a perspective to some debates in political science or other politics-related disciplines. In some of the articles, however, the topics are more commonplace although they have been approached through by rather unusual viewpoints.

The themes of this introduction will be deepened and focused in some respects by the first article in the collection. Kari Palonen is an established scholar with an international profile of his own in the studies on conceptual history of politics, on the political thought of Max Weber and on the rhetoric and conceptual history of parliamentarism. These studies provide the background for his contribution insisting that the scholarly perspective on politics should always be a distanced one. He discusses how scholars, such as Reinhart Koselleck or Quentin Skinner, have taken up the idea of scholarly de-familiarisation referring to the Brechtian *Verfremdungseffekt* or some other media that can achieve a similar effect of creating distance to the present. He discusses the question of the conditions for studying contemporary politics more generally in contemporary universities that do not favour taking temporal, spatial, linguistic or other distances into account in academic study.

In the second article, Tuula Vaarakallio deals with the anti-parliamentary aspect of national populism in France. She takes up the example of the Front National, a party that excites a lot of emotions, not only among the general public, but also in the field of political science. Her point is to stress that it is necessary to keep a certain distance towards such an object of study, both by detaching oneself from common prejudices and by setting personal antipathies aside. Against the background of her work on the Third Republic right wing anti-parliamentarism she scrutinises in detail the programmatic documents of the party and takes examples of party texts which, on the one hand, give the impression of defending aspects of parliamentarism, and on the other hand, are in favour of plebiscitary and presidential anti-parliamentarism.

Parliamentary and presidential powers is also in the focus of the third article. Anna Kronlund analyzes congressional debates in the US around the concept of a "state of exception" after the 9/11 attacks, by comparing the presidential powers to declare the state of exception with reference to the Weimar Republic constitutional context. She uses

the distancing effect to compare a past point of reference to debates on the Weimar constitution as a historical example in which, unlike in the US, the declaration of the state of exception is included in the constitution itself. Theoretical debates on the Weimar Constitution concerning the 'state of exception' are frequently evoked in the post-9/11 American academic debates. The same themes even appear in other related political discussions.

The rhetoric of debates in the contemporary North America is also dealt with in the fourth article by Taru Haapala. She has focused on the politics of irony in the Canadian activist magazine called *Adbusters* by situating it in the classical rhetorical tradition, especially the Roman rhetoric of Cicero and Quintilian. In this manner, she illustrates how contemporary texts and debates that are presented as new and unique can be analysed in a historical perspective. Rather than disputing the novelty, she illustrates how the provocative irony of *Adbusters* has been achieved through the use of classical tropes, figures and schemes of argumentation. Her article also shows that by becoming aware of ancient rhetorical theories and comparing them to our contemporary examples of rhetorical strategies something which appears to be politically trivial can be seen as a highly interesting phenomenon.

For the study of politics it is not always the "winners" but frequently the "losers" who are politically interesting. The distance to the established political order can be constructed by focusing on marginal agency. In the fifth article, Anna Björk examines the rhetoric of internal debates and political interventions of the Women's Coalition party that, after a few years in Stormont Parliament, lost its seats and soon thereafter formally ended its activity. Her analyses of the Northern Ireland conflict of the 1990s focuses on the Women's Coalition party and how it built its narratives in the political rhetoric of time to legitimise its presence as a new and independent force in peace negotiations, electoral campaigns and in the Stormont Parliament. For her, different layers of time in the narratives serve as the main tools to analyse the rhetorical moves of the party.

While Haapala's and Björk's studies focus on political activity from the margins of institutionalised politics, in the sixth article Hanna-Mari Kivistö analyses the political rhetoric of individuals whose chances to

10

appear as political actors is barely even marginal, the 'Dublin' asylum seekers. Her case study of Finland exemplifies the process of how asylum seekers first arrive in another EU country and, according to the EU rules, can only justify their stay in Finland on very special grounds. Distancing herself from the dominant administrative logic (of the EU), she has read a number of such asylum applications from the point of view of political agency. Using the Weberian concept of "occasional politician", Kivistö discusses the "demand for the impossible": The rhetorical attempts by asylum seekers to construct arguments that would convince the administrators or the court of appeal that they, after all, might have special grounds to stay in Finland, however tentative those arguments might be.

Taking Distance as a Condition of the Study of Politics

Kari Palonen

Students of politics are frequently asked to comment on contemporary events such as elections and governmental or international crises. Those who closely follow daily political events and processes, such as politicians and journalists, analyse these topics very differently from scholars of politics. The latter group cannot systematically observe day-to-day events. Where scholars want to deepen their understanding of politics it is often helpful if they keep their distance.

As commentators of contemporary affairs, journalists are undoubtedly better than scholars who should not even try to compete on this level or to see their work as a form of investigative journalism. Incumbent politicians are engaged on a daily basis in drafting an analysis of the contemporary situation, one that should comprehensively account for all possible aspects of this situation in order to situate their political projects in the given context. Investigative journalists also need a comprehensive view of the situation, although they don't have formal public projects to fulfil as do politicians. To claim to understand the 'entire situation' is, however, illusory, although to attempt something like this is crucial for both politicians and journalists: it is part of understanding politics as "the art of the impossible" (See esp. Weber 1919, 88).

12

The condition of scholars is necessarily different. All research is selective, bound to a definite and chosen point of view which the scholars then one-sidedly accentuate in their studies (see Weber 1904 and the discussion of it below). Scholars have the option to merely thematise particular aspects of political events for analysis, and if they are good scholars then they may frequently accentuate aspects not taken up in the public debate. A scholarly perspective on daily politics is always selective and therefore at the distance to that of the agents.

All this has consequences which are often overlooked. Academics all too easily succumb to the demands of those who expect a comprehensive analysis of the contemporary situation. Nonetheless, we should recognise that nothing is more difficult for a political scientist to study than the contemporary politics in one's home country. Nonetheless, she is also always doing exactly that, even where her actual topic research is far from the contemporary in time and space. All studies have a certain relationship to the scholar's personal context of living in the time of writing the study, that is the experiences, vocabularies and situational analyses, independently of whether one's research topic is the most recent domestic elections, or say, the politics of Renaissance Florence.

This paradoxical situation should not, however, render a contemporary analysis impossible. A rhetorical medium exists which makes it possible to reflect upon the relationship between the scholar and her research topics: the intellectual distance between the scholar and the topics studied is a condition of the highest order for the study of politics. The point is that the practice of taking distance, or of de-familiarisation, should be made into a conscious instrument that renders possible the analytical attitude of research as opposed to an un-reflected attitude toward the object.

When looking at works of art, we need a certain distance to distinguish the distinct and original features of the work. In the same sense, the practice of political research also requires a distance to the subject matter. If the object appears to us as too familiar, we have to create tools that enable us to gain or to preserve a distance. In order to analyse contemporary politics from a definite perspective, the studies included in this volume operate at a kind of double distance: from the present to the distant and back; and from the politics of one's own spatio-temporal

proximity in order to be able to analyse contemporary politics from a definite perspective.

The *Verfremdungseffekt* in the Study of History and Politics

Bertolt Brecht (1898-1956) coined the term *Verfremdungseffekt* in the 1920s. Brecht was a medical student who became a poet and playwright, well known in the cultural-political scene of the Weimar Republic. In his first dramatic work *Baal* (1918) Brecht still operates with the expressionist style which shaped the abstractionism in painting (Kandinsky), a pro-political stand of literature in the manifests of Kurt Hiller and other 'activists', as well as a new political theatre perhaps best represented in Ernst Toller's works written both before and after the revolution of 1918/19 (on expressionism see, for example, Stark 1982 and the documents in Anz & Stark eds. 1982). After the decline of the revolutionary wave in the early 1920s, the fashion for expressionism had become exhausted and was regarded as pathetic and moralistic. In its place the slogan of the 1920s was "Die neue Sachlichkeit"[1] (See for example Kaes ed. 1983). A generalised suspicion for enthusiasm and the preference for an indirect stand is also a dimension of Brecht's *Verfremdungseffekt*.

In Weimar's left-wing theatre scene Brecht also had another opponent. The neo-classicist style of the Stanislavski school was decried as un-Aristotelian and was supported by the Bolsheviks (although neither was without opposition in the Soviet Union). A further opponent of Brecht in Weimar's left-wing milieu was Erwin Piscator with his programme of political theatre, although Brecht had formerly participated in Piscator's experimental theatre (See Piscator 1929/1979).

Brecht's un-Aristotelian theatre was based on the construction of a conscious distance between theatre and life: the spectators were constantly reminded that they were in the theatre and the events on the stage were not part of their own life. The programmatic declaration of un-Aristotelian theatre was presented in the notes to the opera *Der Aufstieg und Fall der Stadt Mahagonny* (1929/1930, see more on epic theatre

---

1   "Sachlichkeit" refers in this context to a cool and detached orientation, as opposed to the enthusiasm of the expressionists.

on Wikipedia http://de.wikipedia.org/wiki/Episches_Theater).

Brecht's point was directed against the tendency of the audience to identify themselves with the events in the play, a *topos* of 'Aristotelian' theatre based on the unity of time, space and action. In this context he also formulated idea of distance or de-familiarisation[2]: "To render an event or a character strange means, above all, simply refusing to consider them as self-evident and self-illuminating and to produce a wondering and curious look at them. … To de-familiarise something also means to historicise, that is to present the events and persons as transitory (*vergänglich*) ones." (Brecht 1967, 301, my translation)

Reinhart Koselleck regards *Verfremdungseffekt* as an indispensable medium for the study of the history of political concepts. In the *Einleitung* to the *Geschichtliche Grundbegriffe* he writes:[3]

The extent to which undesirable or arbitrary contemporary meanings have been imposed upon earlier meanings of words may now be determined. Retrieving the historical background and meanings of words will illuminate today's expressions and slogans. Definitions need no longer remain ahistorical or excessively abstract because of ignorance of what they may have meant in the past. They can now take into account the traditional plenitude or poverty of meanings of concepts. Exposure to experiences that once seemed distant and unfamiliar may sharpen conscious-

---

2 Einen Vorgang oder einen Charakter verfremden heißt zunächst einfach, dem Vorgang oder dem Charakter das Selbstverständliche, Einleuchtende zu nehmen und über ihn Staunen und Neugier zu erzeugen [...] Verfremden heißt also Historisieren, heißt Vorgänge und Personen als vergänglich darzustellen. http://de.wikipedia.org/wiki/Verfremdungseffekt#Brechts_Idee_als_Gegenpart_zum_aristotelischen_Dramenbegriff

3 Ungewollte oder eigenmächtige Übertragungen gegenwärtiger Sinngehalte in vergangene Wortbedeutungen lassen sich überprüfen. Heute gängige Ausdrücke und Schlagworte werden in ihren historischen Hintergrundsbedeutungen erhellt. Definitionen müssen dort nicht mehr ungeschichtlich und abstrakt bleiben, wo sie dies aus Unkenntnis der historischen Herkunft sind; sie können die überkommene Bedeutungsfülle oder Bedeutungsarmut der Begriffe einbeziehen. Der Verfremdungseffekt durch vergangene Erfahrung mag dann der gegenwärtigen Bewußtseinsschärfung dienen, die von historischer Klarstellung zu politischer Klärung führt. (Koselleck 1972, xix)

15

ness of the present; such historical clarification may lead to a more enlightened political discourse. (Koselleck 2011, 16; see also Koselleck 1971, 10)

By evoking the *Verfremdungseffekt*, Koselleck does not merely oppose the anachronistic transposition of contemporary concepts onto the past but, in addition, he thematises the seemingly opposite requirement that a scholar re-translate the concepts of historical agents in a manner that relates them to current debates. Otto Brunner's *Land und Herrschaft* (1939) is a major work that Koselleck praises for its efficient critique of analyses which project the modern concept of the state onto medieval realms, as was common practice in legal and historical studies since the nineteenth century. Koselleck, however, criticises Brunner, (the book was published in Austria just after German annexation) for not relating his critical insights as a medievalist to his own present but adopting the notorious *völkisch* jargon of the later 1930s. Only such a double act of translation renders Brunner's insights intelligible, both as foreign or distantforeign and at the same time understandable to contemporary scholars[4].

A constitutional historiography sticking to the language of the sources remains mute if it does not translate or re-describe the historical concepts. If this is not done, the presentation merely repeats the text of the old sources in a one to one relationship. (Koselleck 1983, 13, my translation)

Quentin Skinner similarly emphasises the need for de-familiarisation in historical studies. For him the past has to be treated as a "foreign country", while it is simultaneously crucial to "recover past treasures" to the contemporary agenda of the present.

It is the very impression of familiarity, however, which constitutes the added barrier to understanding. The historians of our past still tend, perhaps in consequence, to be much less aware than the social anthropologists have become about the dan-

---

4   Eine quellensprachlich gebundene Darstellung der Verfassungsgeschichte wird stumm, wenn die vergangenen Begriffe nicht übersetzt oder umschrieben werden. Sonst handelt es sich um eine Textwiedergabe alter Quellen im Verhältnis von 1:1. (Koselleck 1983, 13)

ger that an application of familiar concepts and conventions may actually be self-defeating if the project is the understanding of the past. (Skinner 1970, 136)

In this context, Skinner's point is that linguistic studies of speech acts easily tend to miss the historical dimension, although it would be most valuable in understanding the different uses of speech acts. Past conventions that are different from ours are the most difficult to detect, and accordingly, what was previously experienced as new, original and unconventional in the past must be constructed from what our contemporary historical standpoint assumes to have been conventional, even if such conventions required no mention in their historical context. In historical studies we all too easily think that what is familiar to us must also have been the same for historical agents, without any sufficient grounds to distinguish in which respects this was not the case. From this point of view Skinner insists on the urgent need to be aware of the dangers of anachronism when discussing the question of what past agents assumed were such obvious conventions that there was no need even to refer to them.

In his discussion on political liberty, Skinner takes up both the difficulty of understanding the 'neo-Roman' concept of liberty as opposed to dependency, and the need to transfer its resources to the current normative debates around the concept of political liberty. He does so by leaving the choice to the contemporary agents. The point is that what he calls the neo-Roman concept of political liberty—or more recently: republican—seems to have disappeared from much of contemporary discourse (See for the altered language Skinner 2008). Skinner does not advocate a return to the early modern uses of republican liberty, but merely wants to bring the concept to contemporary debates as something which perhaps can be actualised in a new form. "Do we choose rightly. I leave it to you to ruminate", as he writes at the end of *Liberty before Liberalism*. (Skinner 1998, 120)

Skinner's critique of anachronism should not be mixed with authorising the language of sources in the manner of his former colleague Geoffrey Elton, with his craftsmanship conception of historiography. In opposition to this, Skinner insists, in close parallel to Koselleck's critique of Brunner, that it is the scholar who formulates the questions

and selects what is interesting in the past in general, and in the specific sources, in particular. "Just as the value of factual information depends on what the historian wants to understand, I would argue, so the attempt to uncover new facts needs to be guided by a sense of what appears to be worth understanding." (Skinner 2002, 20)

We can roughly summarise the use of the Brechtian figure in the works of Koselleck and Skinner as follows. The need for de-familiarisation consists in the recognition that there is no immediate access to the phenomena that appear close to the living situation of the scholar. On the contrary, she has to recognise that spontaneous everyday experiences are already products of certain implicit interpretative commitments. Furthermore, academic studies are only possible when they require a conscious effort to reflect upon the subject matter. Such a reflection, however, already requires a sense for the distance to the present and proximate environment.

The study of previous eras, foreign countries and texts written in a foreign language are per se already exemplary cases in creating the necessary distance. All this can be made more explicit by discussing not only the availability of distance but also regarding the modes of how the practices of de-familiarisation can and will be used in the actual study.

In more general terms, we can perhaps grasp what is at work here by comparing a scholarly study to the confrontation between a viewer and a painting, the subject matter of a scholarly analysis is only possible from a certain distance. The object looks different when regarded from different distances which may have their specific advantages and disadvantages. However, a zero distance of immediate and spontaneous experience does not exist.

The need for a de-familiarising distance can be regarded as a special case of the perspectivistic view of knowledge. This is also part of the Nietzschean insight that there are no 'facts', only interpretations (See Nietzsche 1981, 904). This perspectivism of all knowledge is well formulated in Max Weber's essay on 'objectivity'.[5]

---

5   Es gibt keine schlechthin 'objektive' wissenschaftliche Analyse des Kultur-lebens oder – was vielleicht etwas Engeres, für unsern Zweck aber sicher nichts wesentlich anderes bedeutet – der »sozialen Erscheinungen« unab-hängig von speziellen und 'einseitigen' Gesichtspunkten, nach denen sie

There is no absolutely 'objective' scientific analysis of cultural life – or to put it perhaps more precisely, without however materially altering our meaning – there is no 'objective' analysis of social phenomena independent of special and one-sided perspectives, on the basis of which such phenomena can be (explicitly or implicitly, consciously or unconsciously) selected as an object of research, analysed and systematically represented. (Weber 2004, 374)

In other words, we can understand the de-familiarising effect as a methodological device to understand the indispensable perspectivism of all knowledge. With their de-familiarising practices scholars can provoke the implicit one-sidedness, – *einseitige Steigerung* (Weber 1904, 191), – that forms a precondition for knowledge that supersedes the everyday illusion of immediacy. Such a vision also allows Weber to re-think the concept of 'objectivity': it is no quality of realities, agents or theories but, refers to a distinct procedure of debating *pro et contra* under the conditions of the parliamentary principles of fair play (see Palonen 2010).

In the Weberian sense, Koselleck too opposes the chronicle of *Aufschreibung* and the 'normal science' of *Fortschreibung* to *Umschreibung* in historiography, aiming at a revision of the existing interpretations but submitted to the debate with competing approaches to do the same. The point is that an element of *Umschreibung*, a claim to revision of previously accepted views, is crucial in any historical study, and it may be based on new sources, new questions and new perspectives on the phenomenon (Koselleck 1988).

The point of *Umschreibung* lies in treating the present as distant, the understanding of which requires a sense for its de-familiarisation. In other words, scholars can have something more precise and definite to say about issues that are close to our own life context by using the means of distancing from the immediate experience of the present. (see also Palonen 2005)

– ausdrücklich oder stillschweigend, bewußt oder unbewußt – als Forschungsobjekt ausgewählt, analysiert und darstellend gegliedert werden. (Weber 1904, 170)

The Practices of De-familiarisation

In her work, the scholar cannot avoid some minimal reference to the events of her current living situation. Contemporary topics in both academic and political debates always play an inspiring or disturbing heuristic role for the study of the past by proposing new perspectives on the past. When the language of historical agents is analysed in detail many of the current views may appear strictly anachronistic, yet some of them may remain fruitful, at least in indicating which possibilities remained completely beyond the horizons of past agents. More specifically, despite the risk of anachronism, present-day events and debates may be part of detecting potentially fruitful new aspects in the problematics of the past.

I am currently studying the political and conceptual history of the genre of parliamentary rhetoric. Today, it is clear that the genre was practised in Britain at least since the sixteenth century (see for example Mack 2002, Peltonen 2007). Nonetheless, only in the eighteenth century do the agents and scholars begin to identify a distinctly parliamentary mode of speaking, including rhetoric, oratory or eloquence. The practice of collecting parliamentary speeches as a genre that is equal to the ancient deliberative eloquence was initiated cautiously in late eighteenth century and became a separate and widespread genre of publications only in the nineteenth century. David Harsha (Addison) writes in the mid-nineteenth century:

> *There is but little to interest us in the study of modern, parliamentary eloquence until we come to the time of Lord Chatham. It is true that we find some sudden bursts of genuine, patriotic eloquence in the speeches of Pym, Eliot, Vane, and other statesmen of the English Commonwealth, under Oliver Cromwell, yet we hear not the highest notes until Chatham arises and sways the British senate by the spell of his matchless oratory. Here, then, we date the era of parliamentary eloquence in the British nation; and, commencing with the name of Lord Chatham, we now proceed to contemplate some of her most illustrious orators and statesmen. (Harsha 1857, 78)*

In other words, something new and original happened in the Brit-

ish parliament in the eighteenth century but it took time for its members, the reporters and the scholars of rhetoric to understand where this novelty lay and in which sense it was original and therefore worthy of more systematic reflection in rhetorical terms. Most of the twentieth-century histories of parliamentarism which discuss the first steps of distinguishing the parliamentary government from others in early-modern England tend to undervalue the role of a parliamentary culture of speaking as 'mere rhetoric'. It is the same case for the conceptual and historical conditions of parliament as a deliberative assembly, namely the free mandate and the individual basis of parliamentary procedure—frequently neglected or devalued at the cost of absolutising the government vs. the opposition divide—or the inter-party negotiations that became prominent in the parliamentary politics of the nineteenth and twentieth centuries. Hence, it may not be a complete accident that to write aspects of the conceptual history of the genre of parliamentary rhetoric and its relations to parliamentary politics is left to someone looking at the parliamentary regimes in Britain and France from the distance of a Finnish professor in the early twenty-first century (See Palonen 2008, ch. 4 for a preliminary version).

The studies in this volume use tools of de-familiarisation in different manners. The first moment of *Verfremdung* consists in making the familiar appear strange, and therefore worthy of analysis, turning the phenomenon in question into a contingent historical result of past actions. The second moment of *Verfremdung* consists of applying some past point of reference to a present topic in order to offer a de-familiarising perspective for the analysis of the present topic. Such a move renders the topic more intelligible than is possible for the agents themselves, although taking their words and deeds seriously and not rendering them into puppets of history.

A conscious relation of the present to the past is a necessary condition for the double use of the *Verfremdungseffekt*. It is only through the relation to the past than the other dimensions of distance, such as those in space and the language between the scholar and the politics of the agents, becomes practically possible. In a volume on Finnish conceptual history, published by *Käsitteet liikkeessä* in 2003 after eight years of work, our programmatic point of departure was to treat 'Finland' as a

foreign country which is, nonetheless, well-known to the authors (for the practice, see Palonen 2003b). This allowed us to avoid anachronistic projections of 'Finland', in contexts in which it was not used as a separate unit, as well analysing the frequent use of 'Finland' as if it were an acting subject and not simply the name of a space for political and conceptual struggles.

The temporal and spatial distances are closely related in the rhetorical and conceptual analysis to the problems of conceptual transfer and translation between 'natural' and political languages. This should not be taken as a sign of incommensurability, but of the recognition that for the study of politics the differences between 'natural' languages do not differ in principle from that of different political languages (in the sense of Pagden (ed.) 1987), or the special vocabularies of academic disciplines or intellectual traditions. On the contrary, we can insist for example on the similarity of the problems faced by parliamentarians in all countries with a parliamentary regime, using a broadly international 'parliamentary' vocabulary and procedural language of parliamentary practices, independently of which natural language they use. It is well illustrated in multi-lingual parliaments, such as the Swiss or the Finnish, that parliamentarians traverse political fractions, languages and national political traditions and can well understand each other, independently which 'natural' language they happen to use. To some extent also, we could compare the possibilities for crossing temporal divides to that of the divide separating parliamentary language in late eighteenth-century Britain and the present.

Conceptual history and rhetoric may be regarded as two examples of conceptual tools which enable the double *Verfremdungseffekt*, but they are potentially also closely connected with each other. The conceptual historical reading of contemporary texts, the lateral history of concepts (Palonen 2003a), directs attention to the historical dimension of the concepts as something that can be evoked for the contemporary analysis of the concepts as they are actually used, independently of whether the contemporary agents themselves are aware of this history. This offers insight into how a concept unwittingly changes when it has been released from its historical contextual links and is shifted into new contextual relationships. Such unintended changes may be innovative, es-

pecially when they are bound to a definite contemporary dispute—for example, when serving as rhetorical moves in a parliamentary debate. Furthermore, the conceptual historical analysis can be connected to interpretative schemes of conceptual history, and to the opposition between asymmetric and symmetric counter-concepts, in particular (See for example Koselleck 1979).

A rhetorical reading of contemporary documents has entire historical traditions of both classical and modern rhetoric amongst its repertoire of de-familiarisation. It is possible to analyse, for example, things such as the political differences in using forensic, epideictic and deliberative genres of rhetoric as instruments to distinguish certain typical forms of discussion and decision. Or you can construct some typical or atypical *topoi* in order to search the arguments used among the contexts which are being compared. Similarly the study of tropes and figures can be used to construct or to legitimise the positions taken in the subject matter with those of a different historical context.

A rhetorical repertoire of practices is, however, never an end in itself and such an analysis always remains in the service of bringing to light certain specific points of view. These include, recovering the rhetorical moves of the agents studied, or the researcher may want to dispute some previous interpretations of the past by making use of the language of the contemporary agents. Such active use of classical and Renaissance rhetoric was practised in William Gerald Hamilton's maxims of advice for the parliamentarians collected from late eighteenth-century Westminster (See Hamilton 1808/1927).

De-familiarisation and the Life of Scholars

Why does the use of the de-familiarisation effect remain so rare in the study of contemporary politics? Of course, "the cult of fact" that Skinner parodied in his essay on Elton (Skinner 2002, 9) is prominent here: it is not easy for scholars to get rid of a picture created by the first-hand 'information' in the media naming the events, classifying phenomena, using metaphors and so on.

Another practical point is that it takes time to learn foreign languages, to become acquainted with previous eras and foreign countries—and this becomes even more difficult when undertaken simultaneously. On the basis of current assumptions regarding the timetables of students and young scholars it would appear that such time-consuming practice of creating distance is not recommended for anyone. Still, to a certain extent, this is implied in the exchange programmes among students and academics, for example. From a scholarly point of view, the risk of sacrificing one's time to the study of the politics and history of previous eras and foreign countries—to learning or improving the linguistic skills required to analyse the primary sources, or the acquaintance with academic debates needed to construct the analytical apparatus—remains a risk that is worth taking. This holds for both the chances of successfully pursuing an academic career and for the competence required in taking distance as a medium of mastering unfamiliar daily practices.

As a competency introducing de-familiarising distances may be extended beyond the actual study in question to other forms of distance or other topics of study. They are exemplary at teaching one how to look one's current situation from a distance, which simultaneously allows to acknowledge its contingency and to wonder about the tacit conventions which are implicit, and so on. Furthermore, de-familiarisation as a core competency allows the scholar to choose research topics which are close to one's own life-situation and be equipped to meet the challenges of doing so.

Independently of official pressure to reduce the time available for the university studies, it is nevertheless more valuable to study topics that require taking distance, to go abroad and to expand the scholar's linguistic and political repertoire. The variety of modes available to practise the *Verfremdungseffekt* also indicate that this de-familiarising effect does not offer any preconceived 'method' but requires further individual efforts to construct such a practice and adapt it to one's specific topic of study.

For every scholar it is crucial to separate what is interesting, challenging and worthy of closer study from what is valuable or rewarding for the academic in their present life situation. This also means the ability to avoid the trap of denouncing unsympathetic agents. Even in the study of the Nazi politics, we have to avoid a 'knee-jerk' demonising, *à la*

East German style: the Arendtian strategy of understanding Adolf Eich-
mann's actions as banal using ironic distance is strongly preferable (See
Arendt 1963 and Tuija Parvikko's recent (2008) interpretation of it).

References

Anz, T. and Stark, M., eds., 1982. *Manifeste und Dokumente zur deutschen
    Literatur 1910-1920*. Stuttgart: Metzler.

Arendt, H., 1963. *Eichmann in Jerusalem*. New York: Viking Press, 1965.

Brecht, B., 1967. *Gesammelte Werke*, Bd. 15. Available through: Wikipe-
    dia <http://de.wikipedia.org/wiki/Verfremdungseffekt#Brechts_
    Idee_als_Gegenpart_zum_aristotelischen_Dramenbegriff> [Ac-
    cessed 3 May 2009]

Brunner, O., 1939/1942. *Land und Herrschaft*. Brünn: Rohrer, 1942.

Episches Theater. Available through: Wikipedia <http://de.wikipedia.
    org/wiki/Episches_Theater> [Accessed 12 February 2013]

Hamilton, W. G., 1808. *Parliamentary Logic*. Edited by C. S. Kenny. Cam-
    bridge: Heffer, 1927.

Harsha, D. A. [D. Addison], 1857. *The Most Eminent Orators and States-
    men of Ancient and Modern Times Containing Sections of their Lives,
    Specimens of their Eloquence and an Estimate of Their Genius*. Availa-
    ble through: The Internet Archive <*http://www.archive.org/details/
    mosteminentorato00harsuoft*> [Accessed 15 July 2009]

Kaes, A., ed., 1983. *Manifeste und Dokumente zur deutschen Literatur 1918-
    1933*. Stuttgart: Metzler.

Koselleck, R., 1971. Wozu noch Historie? *Historische Zeitschrift*, 212, pp.
    1-18.

Koselleck, R., 1972. Einleitung. In: *Geschichtliche Grundbegriffe*, Bd. I.
    Stuttgart: Klett, XIII-XXVIII.

Koselleck, R., 1979. *Vergangene Zukunft*. Frankfurt am Main: Suhrkamp.

Koselleck, R., 1983. Begriffsgeschichtliche Probleme der Verfassungs-
    geschichtsschreibung. *Der Staat*, 6, pp. 7–21.

Koselleck, R., 1988. Erfahrungswandel und Methodenwechsel. Eine
    historisch -anthropologische Skizze. In: Meier, C. & Rüsen, J. eds.
    1988. *Historische Methode*. München: Deutscher Taschenbuch Ver-

lag, pp. 13-61.

Koselleck, R., 2011. Introduction (Einleitung) to the Geschichtliche Grundbegriffe. Translated by M. Richter. *Contributions to the History of Concepts*, 7(1), pp. 7-25.

Mack, P., 2002. *Elizabethan Rhetoric*. Cambridge: Cambridge University Press.

Nietzsche, F., 1981. Aus dem Nachlass der achtziger Jahre. In: *Werke*. Edited by Schlechta, Frankfurt am Main: Ullstein, 1981., III, pp. 467-924.

Pagden, A., ed., 1987. *Languages of Political Theory in Early-Modern Europe*. Cambridge: Cambridge University Press.

Palonen, K., 2003a. Begriffsgeschichte und/als Politikwissenschaft. *Archiv für Begriffsgeschichte*, 44, pp. 221-234.

Palonen, K., 2003b. Translation, Politics and Conceptual Change. *Finnish Yearbook of Political Thought*, 7, pp. 15-35.

Palonen, K., 2005. Den begreppshistoriska Verfremdungseffekten. In: B. Lindberg, ed. 2005. *Begreppshistoria. En konferensrapport*. Stockholm: Vitterhetsakademins skriftserie, pp. 35-50.

Palonen, K., 2008. *The Politics of Limited Times. The Rhetoric of Temporal Judgment in Parliamentary Democracies*. Baden–Baden: Nomos.

Palonen, K., 2010. *"Objektivität" als faires Spiel. Wissenschaft als Politik bei Max Weber*. Baden–Baden: Nomos.

Parvikko, T., 2008. *Arendt, Eichmann and the Politics of the Past*. Helsinki: The Finnish Political Science Association.

Peltonen, M., 2007. Rhetoric and Citizenship in the Monarchical Republic of Queen Elizabeth I. In: J. F. McDiarmid, ed. 2007. *The Monarchical Republic of Early Modern England*. Aldershot: Ashgate, pp. 129-148.

Piscator, E., 1929/1979. *Das politische Theater*. Neu bearbeitet von Felix Gasbarra. Reinbek: Rowohlt.

Skinner, Q., 1970. Conventions and the Understanding of Speech Acts. *The Philosophical Quarterly*, 20, pp. 118–138.

Skinner, Q., 1998. *Liberty before Liberalism*. Cambridge: Cambridge University Press.

Skinner, Q., 2002. *Visions of Politics. Vol. 1: Regarding Method*. Cambridge: Cambridge University Press.

Skinner, Q., 2008. *Hobbes and Republican Liberty*. Cambridge: Cambridge University Press.

Stark, M., 1982. *Für und wider den Expressionismus*. Stuttgart: Metzler.

Weber, M., 1904. Die "Objektivität" sozialwissenschaftlicher und sozialpolitischer Erkenntnis. In: J. Winckelmann, ed. 1973. *Gesammelte Aufsätze zur Wissenschaftslehre*. Tübingen: Mohr, pp. 146-214.

Weber, M., 1919. Politik als Beruf. In: W. Schluchter, ed. 1994. *Max Weber-Studienausgabe*, Bd. I/17, Tübingen: Mohr, pp. 35-88.

Weber, M., 2004. The 'Objectivity' in Social Science and Social Policy. Translated by K. Tribe. In: S. Whimster, ed. 2004. *The Essential Weber*. London: Routledge, pp. 368-403.

Anti-Parliamentarism of the French Front National Party

Tuula Vaarakallio

Distancing as a Tacit Approach

This article examines France's contemporary Front National Party (FN) and its anti-system and anti-parliamentary thought. It intends to show that the *Verfremdungseffekt* applied in the study of political science can be used as an approach that is not necessarily explicit to the reader. It is, rather, an inner attitude of the scholar and he or she makes it a conscious element while doing research.

The Front National, which has for a long time been personified by its figurehead and former leader Jean-Marie Le Pen[1], is considered to be a voice of protest that fights against the existing form of government and political life in France. Labels such as anti-establishment or anti-system are often attached in reference to the party, and with which it happily identifies. Anti-parliamentarism, by contrast, is a feature that is not explicitly proclaimed by the party itself, although party texts re-

---

1   At the moment Marine Le Pen leads the party. She is Jean-Marie Le Pen's youngest daughter and was elected as her father's successor as a party leader in January 2011.

veal clear evidence of it nonetheless. Yet, the party can be regarded as a contemporary continuum in the long tradition of both nationalist and anti-parliamentary thought in France.

The Brechtian notion of *Verfremdungseffekt* is used here as a framing device which creates a kind of "distancing effect" and which offers an important perspective in the research of populist or extreme movements. Maintaining intellectual distance from the topic studied is essential, especially when it comes to the relatively simplistic discourses of populist parties. Firstly, because a scholar must remain detached from the subject and simply face the ideological aspects which might be personally repulsive. Secondly, the scholar must take the simplistic ideology "seriously", by looking behind the populist texts and rendering their fundamental message more intelligible. Thirdly, the necessary distance also parallels with the fact that a scholar has no intention of legitimising the ideology that he or she studies.

Intellectual consciousness and criticism are therefore necessary in relation to populist or extremist movements and their public image. Such movements are often widely covered in the media and have a strong public image with ready-made determinations and classifications. The perspectives given by the media can serve as heuristic tools to a scholar but they should not limit scholarly investigation. The scholar should try to go beyond journalistic facts, constructing a methodological means of exploring such things as the political programme of a populist party.

In this article the means of distancing is concretely used by scrutinising in detail party programmes prior to 2011[2], i.e. in their pure form, but also comparing them to their political and constitutional contexts. In so doing, party political programmes may reveal commitments that remain hidden from other forms of analysis. In other words, distancing serves as a conscious and tacit means to analyse how the Front National discourse operates with definitions such as anti-system and anti-parliamentary.

---

2   The time frame has been deliberately limited to the era of "father Le Pen" and therefore the era of "daughter Le Pen" goes mainly beyond the scope of this paper.

Is the Front National Anti-Parliamentary?

Anti-parliamentarism in France is an old phenomenon. It is at least as old as parliamentarism in France[3], and in reality hostility towards the representative form of government goes back to the French Revolution of 1789. (See e.g. Defrasne 1990, Rémond 2002, Winock 1990) Anti-parliamentarism includes: the hostility towards the institution of parliament as such and against the principle of parliamentarism, which is basically understood as a government's political responsibility to parliament; it may manifest itself in the form of criticism towards certain aspects of parliament such as to relations between the legislative and the executive, to parliament's procedural practises or simply to the parliament as an arena of public political speech; additionally, anti-parliamentarism has very often expressed itself through virulent distrust of politicians and the political elite. As such, anti-parliamentarism often maintains anti-political or metapolitical positions and by so doing is willing to search alternative channels for action instead of the conventional political ones.

Even if anti-parliamentarism is an old phenomenon in France, it must be said that in the contemporary constitutional context it has lost most of its virulence. The semi-presidential Fifth Republic with the reduced role of the National Assembly does not offer many opportunities for anti-parliamentary criticism. Yet, the national populist party, the Front National, can be regarded as one of the last anti-system and even anti-parliamentary voices in France; although, paradoxically, the party itself proclaims to be the fervent defender of the parliamentary institution and of democracy. How can this paradox be explained?

At first sight the programme of the Front National does not seem to have explicitly anti-parliamentary connotations. To be sure, party pri-

---

3 Parliamentary government, that is the principle of ministerial responsibility, was thoroughly formed in France during the July Monarchy (1830-1848). At the time new means to control the government, for example the right to interpellation was introduced. It should, yet, to be mentioned that parliamentary regime started to develop in France already during the Second Restauration from 1815 onwards. (See more in detail Morabito 2004, ch. 2; Garrigues 2007, ch. 3)

orities are preoccupied, as they have always been, with the "problem of immigration" and, increasingly, the question of security. Institutional questions have been secondary but they have always been essentially connected to the main lines of the Front National programme. (See e.g. Mayer and Perrineau 1989, Taguieff 1984)

One of the permanent demands in this respect has been the partial reform of the Constitution of 1958. The reform includes the shift to the Sixth Republic with the notorious clause of national preference written into the Constitution. The party's demand for national preference means that employment, housing, public health services and social security benefits would be reserved only for French citizens. According to the party, this idea of national preference would, in itself, become a natural solution to "the problem of immigration". (See e.g. The Front national: the Programme de Gouvernement 1993, 44-50 and Party Manifesto of Strasbourg 1997 [4] and Le Gallou 1985)

In terms of political institutions, the calls for the modification of the Constitution concern the role of the executive or, that is, the role of the president of the republic and "his" government. This aspect will be discussed in more detail later in this article. However, the role of parliament has generally been seen as a question of *national* sovereignty and *national* pride in relation to the European Union and to the rest of the world. Since the Front National regards the French nation ideally as one homogenous entity, the logical consequence is that the parliament should represent the unity of the nation. Although nationalistic unanimity is the ideal presupposition behind political decision-making in the Front National discourse, they do not cherish parliamentary pluralism, i.e. political alternatives discussed and confronted within the parliament. On the contrary, parliamentary struggles are viewed with contempt even if the deliberation *pro et contra* is in-built in the parliamentary procedure. (See e.g. Soininen and Turkka 2008) The Front National interprets the parliamentary institution as linked to democracy and as adequate representation of "the people" within it. Calls for direct or "populist" democracy are the main demands in this sense, notably underlining the referenda and the people's initiative.

---

4   The Manifesto was published in 10th Congress of the Front National, 29, 30 and 31 March 1997, in Strasbourg.

The Front National often despises and underrates parliamentary politicians while the functioning of representative democracy is depicted as improper. The Front National has created the image of being against the rotten political establishment, i.e. an anti-establishment party against "established disorder" and a self-serving political elite. The parties of establishment have been depicted a number of ways over the years, e.g. the band of four[5] or the "cosmopolitan, totalitarian and corrupt oligarchy". Still, the establishment is depicted as being against France while the Front National is portrayed as the only political force that genuinely stands for the people. (See e.g. Le Pen 1985, 17-24; Mégret 1990)

Despite this criticism, the Front National has participated in electoral and parliamentary politics. The party has had a total of 35 Members of Parliament in the French National Assembly between 1986 and 1988. This was mainly due to the proportional electoral system that was in use in 1986. Since then, during the majority vote in legislative elections, the party has not had noteworthy success in parliamentary elections and, currently (February 2013), it has two parliamentary representatives[6]. It has achieved success primarily in European and presidential elections, and constantly has representatives serving on both regional and municipal levels, as well as in the European Parliament. (On Front National's electoral success and electors, see e.g. Perrineau and Ysmal 2003, Mayer 2002, Perrineau 2012)

Thus, if the Front National accepts the parliamentary system and participates in elections in order to win seats in representative assemblies, can it be regarded as anti-parliamentary at the same time?[7] This is a question that will be discussed in more detail in the following paragraphs in the light of original texts written by the party members.

---

5   I.e. UDF (Union pour la Démocratie Française), RPR (Rassemblement pour la République), PS (Parti Socialiste) and PCF (Parti Communiste Français) parties.

6   In the 2012 parliamentary elections Marion Maréchal-Le Pen (a granddaughter of Jean-Marie Le Pen) and Gilbert Collard (as a supporter of Marine Le Pen's *Rassemblement Bleu-Marine*) were elected.

7   This is not to say that participation in elections or in parliaments as such overrules anti-parliamentarism, quite the opposite is true regarding e.g. communist parties, the Nazi party or the French Boulangists at the turn of the twentieth century.

Ostensible Pro-Parliamentarism

The discussion begins with examples taken from the party's manifestos from the 1990s in which the party presents itself as pro-parliamentary. Following this, other examples from more recent party programmes are discussed where the demand for constitutional change is presented. The argument is that scrutinising the programme statements and their formulations in detail may reveal a great deal about party's commitments.

In the late 1990s the Front National called for the strengthening of parliament (*relever le Parlement*). In the Manifesto published during the party congress in Strasbourg in 1997[8], the party was concerned about the reduced power of the parliament. A similar concern was already voiced in the party programme in 1993. (See Front National: Programme de gouvernement 1993, 400)

> *Le Parlement est abaissé: intégralement prisonnier de l'ordre de jour gouvernemental, dépossédé d'une partie de ses compétences par les organisations europénnes, il se voit souvent censuré par le Conseil constitutionnel super-législateur de moins en moins juge en droit, de plus en plus juge en idéologie. (FN: Strasbourg Party Manifesto 1997)[9]*

As this quotation suggests, reinforcing the role of parliament compares the discourse of the Front National with arresting the so-called decline in parliamentary power. Here, the decline of parliamentary power is connected, firstly, with the fact that government controls the parliamentary agenda, secondly, with the increasing role of the European Union and, thirdly, with the censorship of the Constitutional Council which binds the hands of parliamentarians ideologically. Before tackling the first aspect, the other two will be explained.

---

8   10th Congress of the Front National, 29, 30 and 31 March 1997, Strasbourg.

9   In English: "The Parliament is in decline: completely captive to the agenda of the government, dispossessed of its responsibilities by the organisations of the European Union, often censured by the Constitutional Council, a super-legislator which is less and less a judge of law and more and more a judge of ideology."

The party is concerned about the alleged weakening of national sovereignty due to the combination of European integration and the globalisation of the world economy. It is willing to abolish all "supranational and anti-democratic" powers that try to govern France and to renegotiate EU treaties. The role of the Constitutional Council is also criticised because the party sees it acting more as a regulator of ideology than as a proper judicial censor. (FN: Manifesto of Strasbourg 1997, see also Mégret 1996, 60) According to the Constitution, the Council is able to overturn laws already voted in both houses of parliament if they do not respect the Constitution according to their interpretation. The Front National has a vested interest here, since its demand for the establishment of the principle of national preference would certainly go against the existing Constitution and would therefore certainly be censored judicially. It can also be said that the Front National's point of criticism towards the Constitutional Council does not focus on its legal model of censorship as such – in other words it does not necessarily prefer parliamentary politics over the "anti-politics" of legal institutions. (See e.g. Tomkins 2005)

Regarding the first point above, the Front National regards legislative power and the drafting of the political agenda as too concentrated in the hands of government bureaucracies which end up making decisions in place of parliamentary politicians. Also, government administration is criticised because it is seen as acting too independently and without regard for ministers[10]. Furthermore, the party is claiming that governmental power, to which the high administration is directly linked, is sliding beyond parliamentary control, and, additionally, that government bureaucracies ("technocrates non élus") are actually beyond any kind of political control whatsoever. These technocrats are also susceptible to the influences of various extra-parliamentary "lobbies", one of which,

---

10   In the former programme published on the Internet the party posed the following question: "Le gouvernement ... détermine-t-il la politique de la Nation? Rien n'est moins sûr: les ministres, y compris le premier d'entre eux, délèguent aux cabinets ministériels et à une caste de hauts fonctionnaires, l'essentiel de leurs pouvoirs. Certains fonctionnaires politisés font la loi, au sens littéral du terme ... " (http://web.archive.org/web/20090207194041/http://frontnational.com/doc_souv_institutions.php).

they maintain, is the Freemasons[11].

What these party texts begin to make clear is that the Front National demands that government be subject to greater control, although not necessarily by the representative parliament but by the people via direct democracy and referenda. In this sense, the party sees the ideal political system as polarised between the government and the people, with the people controlling the actions of the government by means of elections and referenda. This demand is linked to another aspect of the Front National. The party considers the representative elite in parliament to be far removed from the people who are the "true" sovereign. The way out of "this totalitary and oligarchical drift", to quote the former second in command of the party Bruno Mègret (1996, 62), would be "to restore a more authentic democracy that will re-establish the people as a sovereign"[12]. In other words, besides referring to direct democracy, this would also mean a return to the proportional electoral system which the Front National supports.

According to the Front National, one means of strengthening the parliament would be moving to a proportional electoral system. The current system of parliamentary election which is based on a majority, "represents only a reduced minority of the French people", and therefore, "does not correctly assure its function of control or its duty of representation" (FN: Programme de gouvernement 1993, 390-391). Here, the idea is that since all facets of public opinion are not represented in parliament due to the prevalent electoral system, the mimetic representation of the nation remains incomplete. In other words, the people are not represented as accurately as they should be in the parliament – the parliament does not mirror the whole entity of the people. (See e.g. Ankersmit 1996, 28-)

In relation to this, it should also be asked whether the Front National is willing to rehabilitate the parliamentary style of politics along with

---

11   In the programme of 1993, this idea is argued as follows: "La réalité technique du pouvoir est détenue par un petit nombre d'hommes qui, sans mandat ni contrôle du peuple, prennent des décisions sous l'influence de lobbies de tous ordres." (FN: Programme de gouvernement 1993, 391)

12   In French: "Il est urgent d'interrompre cette dérive oligarchique et totalitaire et de s'employer à restaurer une démocratie plus authentique qui rétablisse le peuple en position de souverain." (Mègret 1996, 62)

the parliamentary institution and, subsequently, the parliament as an arena of political speech, controversy, contingency, and perhaps also eloquence. The reply might be "yes" to a lesser extent and "no" to a greater extent. On one hand, the party demands an increase in the parliament's power of initiative, with regard to both legislative work and the drafting of the political agenda, and, in this sense, it is promoting an increase in the level of discussion within the National Assembly. In its Strasbourg Manifesto (1997), for instance, the Front National called for the establishment of an extra weekly parliamentary session, which would be, to quote, "reserved for the discussion of bills of law following the supplementary agenda adopted by the Assembly".[13]

However, the Front National views parliamentary discussions as neither a form of political struggle in itself, nor as a means of weighing alternatives, but more as a means of presenting opinions and making public the debate surrounding various issues. As stated in their programme of 1985: "The role of Parliament is finally to shed light on political debate by bringing to attention the reasons behind the decisions made."[14] (Le Pen 1985, 41) Here, no mention is made of either parliamentary eloquence or parliamentary discussion as being inherently futile as was the case with the Boulangist anti-parliamentary rhetoric at the turn of the twentieth century. (See Vaarakallio 2004) It is even possible to claim that if the contempt for politicians were to remain on the platform of the Front National it would be addressed more to a "non-virtuous and corrupted political class" than against useless political discussion within the parliament. This obvious difference between the attitudes of the Front National and the former Boulangists is perhaps due to changes within the overall parliamentary context, although it does not entirely explain the difference away.

In addition, the role of the parliament for the Front National remains more than an instrument for controlling the government. From one perspective, this control implies the surveying of the political elite, which, according to the party, has an inherent tendency towards cor-

---

13   In French: "Réservée à la discussion des propositions des lois suivant un ordre du jour complémentaire adopté par l'Assemblée."

14   In French: "Le rôle du Parlement c'est enfin d'éclairer le débat politique en portant à la connaissance de l'opinion les raisons des choix effectués."

ruption. The direct consultation of the people would serve as a means of preventing this kind of scenario. In this light, the reinforcement of the parliament does not necessarily mean the strengthening of parliamentarism, in itself, as the main remedy concerning political institutions lies rather in plebiscitarian democracy. This is to say that although the Front National is not strictly speaking anti-parliamentary, neither is it pro-parliamentary because the main political issue on the Front National's party agenda continues to be direct democracy. Direct democracy, according to the party, is the only means of guaranteeing genuine democracy and, in so doing, represents in concrete terms the real sovereignty of the people. (See e.g. Front National 1993, 396-402; Manifesto of Strasbourg 1997; http://www.frontnational.com/pdf/projet_mlp2012.pdf: *Démocratie et morale publique*, p. 8)

Accordingly, the representative parliament appears for the Front National as an imperfect, albeit necessary, supplement to direct democracy. It may be said that, according to the viewpoint of the Front National, the parliament is important as a national institution symbolising not only the political sovereignty of France but also the importance of France as a "Western democracy" in relation to the rest of the world.

At first glance, it might appear peculiar for a national populist party to call for the "rehabilitation" of the parliament. However, upon closer examination it becomes clear that the question of primary importance to the party is direct or plebiscitarian democracy, while the parliament merely plays a secondary role. Compared to Boulangism of the late nineteenth century, the representative parliament might not be as decorative and supernumerary for the Front National as it was for this anti-parliamentary and populist predecessor, nevertheless, contemporary national populists do not promote either parliamentary government or a "government of discussion". Instead it calls for a more authoritarian model of government which will be discussed in the following section.

Strong Presidentialism

The programmes of the Front National provided on the Internet in the 2000s have been much more straightforward than the programmes of

the 1990s and earlier. Perhaps this is partly due to the new profile of the party just around Le Pen and his factions after the departure of Bruno Mégret and his so-called intellectual faction from the party in 1999. For example the programme available on the Internet from the year 2011[15] repeats in its institutional section the party's well-known call for a more authoritarian model represented by a firm and powerful Head of State. Parallel to that, the party is willing to extend the presidential term back to seven years. The party has claimed previously that the five-year term is inherently dangerous because by aligning the length of "*magistrature supreme*" with other mandates it actually undermines the role of the president. In this previous programme the party demanded a change of Article 20 of the Constitution as follows:

Modifier l'article 20 en faisant du Gouvernement l'équipe d'éxecution et d'administration de la politique présidentielle responsable devant le Parlement. [16] *(http://web. archive.org/web/20100326014114/http://www.frontnational.com/?page_id=1174)*

First of all, as the above quotation further suggests, the Front National is willing to reinforce the power of the president. The government would then be the president's ministerial team and probably chosen by the president.

If the government is solely subordinated to the president's political will and is completely isolated from the National Assembly (which implies that the ministers are themselves not parliamentarians), this non-parliamentary configuration potentially undermines the role of the parliament and can make it a rubber stamp to the political wishes of the executive. It could also undermine the pure principle of parliamentary

15 The party's website content has been revised since 2011. The programme of the party available on Internet has changed to the so-called Project of Marine Le Pen made for the presidential elections 2012. See the current site: http://www.frontnational.com/pdf/projet_mlp2012.pdf The programme from the year 2011 is still available through: http://web.archive.org/web/20110628173234/http://www.frontnational.com/?page_id=504

16 In English: "To modify the article 20 in order to make the Government as president's politics' executive and administrative team responsible before the Parliament."

responsibility because if the government serves as the president's team it cannot truly be responsible before parliament.

Furthermore, if the principle of government as a presidential team were written into the Constitution, it would insulate presidential activity and further weaken legislative power. The Front National's proposal would, then, emphasise even more the clear separation of legislative and executive branches and make the National Assembly into an arena in which presidential policies are presented but there is no space for real deliberation or confrontation.

Walter Bagehot criticised the American model of presidentialism in his classic work *The English Constitution* by confronting that presidential system with the British style cabinet or parliamentary government. According to him, the Cabinet educate the nation because of the critical opposition and the delicate or controversial parliamentary discussions through which "[t]he nation is forced to hear two sides – all the sides, perhaps, of that which most concerns it." (Bagehot 1867, 17) "The great scene of debate, the great engine of popular instruction and political controversy, is the legislative assembly", Bagehot argues and he goes on to stress that what makes the parliamentary debate so fine is the always immanent possibility of a fall of the government. As he puts it: "The debates, which have this catastrophe at the end of them – or may so have it – are sure to be listened to and sure to sink deep into the national mind." (op.cit. 16-17) For Bagehot, it is this constitutional option which is lacking in American presidentialism.

Even though the French system is not as presidential as in the United States, i.e. the National Assembly is able to overthrow the government, some of the criticism of US presidentialism may well also be applied to the contemporary French system. (See e.g. François 2001 and 2009) The role of the president and the scope of presidentialism are understandably related to how parliamentary discussion, political pluralism and conflict are "officially" perceived. The presidential system called by the Front National inherently emphasises the role of the president as an institution that is above everyday political conflicts, thus perpetuating an illusion of political harmony. It is arguable that in this sense the Front National's nationalist thinking remains incompatible with a polity based on the omnipresence of political struggles and competition as well as political deliberation.

All in all, the model which one can derive from the positions outlined by the Front National blends mixed government and a highly presidential aspect with a weak parliamentary system. It would certainly emphasise the role of the president (and diminish the role of the prime minister), leaving intact only the government's responsibility to the National Assembly. It is this concession to weak parliamentarism that distinguishes the Front National from the fervently anti-parliamentary Boulangism, for example, which would completely abolish the principle of parliamentarism. (See especially Boulanger's speech in the Chamber of Deputies on 4 June 1888) Yet, both movements share the overt tendency to authoritarianism and calls for the "sovereignty of the people" by means of referenda, not to mention their similarities in the field of "pure" nationalism.

The Front National's call for a change of the Constitution is also problematic since it does not take into account possible cohabitation situations, in which no automatic presidential majority can be found in the National Assembly after a general election. In the cohabitation situation the government represents the political side of the parliamentary majority whereas the president comes from the opposite side of the political spectrum.

If the Constitution were modified according to the proposal by the Front National, the government should be the president's group of execution and administration. But how could the government be established in a situation where a parliamentary majority and a president come from rival parties? In the current constitutional context it would mean a forced cohabitation, but that seems to be an impossibility in the constitutional context imagined by the Front National.

In addition, the Front National has called for a return to the seven-year period of presidency, which means there would be at least one general election during the presidential term. It is slightly confusing, therefore, that the party calls for a seven-year presidential term, on the one hand, and demands the fusion of governmental and presidential executive, on the other. If the National Assembly were elected every five years, as is the normal case, there would arise the possibility of cohabitation if the parliamentary majority turns out to be politically opposed to the president. Or perhaps the Front National presupposes that the

president, once elected by popular vote and opposed to the parliamentary majority, immediately dissolves the National Assembly and calls for a general election and thereby tries to get a presidential majority in the parliament. This can be done, as Mitterrand did in 1981, but it does not solve the constitutional problem as such. For example, five years later, Mitterrand, too, faced the first cohabitation situation since the socialists lost their majority in the general election.

It is also debatable if the Front National's model is as radical as it purports to be. When the president enjoys a majority under the current constitutional system, he or she is more or less able to conduct the business of government as well as choose ministers. During Sarkozy's presidential term this was generally the practise. Bastien François, for example, is one of the critics of the currently existing form presidentialism under the Fifth Republic. According to him:

La Ve République restera toujours prisonnière d'une conception du politique dans laquelle l'efficacité prime sur le débat, l'arbitrage sur la délibération des programmes, l'expertise sur la représentativité, le consensus sur le conflit, l'unité du pouvoir sur le pluralisme des opinions. (François 2001, 35) [17]

Against the backdrop of the interpretation above, the Front National's demand for strengthening presidentialism is just a step further from the current regime. The powers of the president are already wide-ranging but this is not sufficient for the Front National. The party's idea is to emphasise not only the role of the Head of State but also the role of the people within which lies sovereignty. This demand is made concrete by the more frequent referenda on "subjects of major concern", such as immigration (See FN: Manifesto of Strasbourg 1997, Programme de gouvernement 1993, 400–401).

In other words, what the Front National cherishes most is the direct

---

[17] In English: "The Fifth Republic will always be a prisoner of the political conception in which effectiveness supersedes debate, arbitration supersedes deliberation over programmes, expertise supersedes representation, consensus supersedes conflict, and the unity of power supersedes the pluralism of opinions."

relationship between the Head of State and the people. Decision-making by means of referenda would be for them the simplest and the most honourable expression of authentic democracy since it does not involve party political intrigues and conflicts. Party politics is seen as dissolving national unity whereas direct democracy by means of referenda is seen as strengthening the presumed unanimity of the people. According to the party, therefore, the model of plebiscitarian democracy pacifies social life, harmonises political action and makes it effective, because referenda would concentrate on purely substantial issues as opposed to the conflicting and consolidating views of people's representatives. (Cf. FN: Manifesto of Strasbourg 1997, Programme de gouvernement 1993, 400-401)

This *dédramatisation* of political life, purifying the conflictual nature of politics, necessarily implies a depoliticising aspect in the discourse of the Front National. Popular referenda also tend to structure political decision-making on complex political issues on the model of simplistic "No" or "Yes" responses, or mere expressions of public happiness or unhappiness – without any fundamental parliamentary deliberation from different points of view. (See Weber 1994, 225-226; Ankersmit 2002, 124) Overall, the Front National's view of direct democracy stresses an unmediated link between the rulers and the ruled by means of referenda. This system of populist democracy – as it is put in the vocabulary of the party – acts like an ideal supplement for a parliamentary democracy, and therefore provides a more genuine guarantee of popular sovereignty than parliamentary representation ever could (See FN: Programme de gouvernement 1993, 397; cf. also the current site of the Front National under the title *Démocratie. La voix du peuple* in http://www.frontnational.com/le-projet-de-marine-le-pen/refondation-republicaine/democratie/)

Conclusion

This article has discussed some institutional viewpoints towards parliamentarism and presidentialism as presented in the party programmes of the Front National party. As demonstrated, the programmes include

some pro-parliamentary as well as more presidentially oriented commitments, which in the detailed analysis can reveal further details about party's stance towards a parliamentary style of politics. The fact that both pro-parliamentary and more tacit anti-parliamentary stances are represented in party programmes is not as paradoxical as it might seem if one keeps in mind that for the party parliamentary democracy is a necessary evil while the populist-style direct democracy is a utopia to reach for.

As the interpretations above show, it is quite possible to interpret the Front National as a contemporary continuum of earlier right-wing anti-parliamentary movements based on the thematic parallels inherent in their programmatic declarations. Historical movements such as Boulangism in the late nineteenth century France used very similar rhetoric in their demands for constitutional changes. Both movements, for example, call for a clearer distinction between legislative and executive branches. However, due to the differences in the parliamentary contexts of the Third and the Fifth Republics, the interpretations of the Boulangists and the contemporary Front National differ quite significantly. The Front National is at present channelling latent anti-parliamentary and anti-establishment feelings among the voters and has subsequently modified its discourse and themes (anti-globalisation, anti-EU, anti-Islam) as responses to alleged failures of present-day parliamentary and democratic elites and institutions.

Analysing the party's anti-parliamentarism purely through various programmatic texts has been a conscious means to remain detached from the common determinations that surround the party. In addition, the use of rhetorical and historical perspectives can provide a fertile means of keeping intellectual distance from the topic. Furthermore, if attention is focused largely on primary programmatic texts which might appear initially to be meaningless little contributions (such as the Strasbourg Manifesto of the Front National), some further details may be revealed. [18]

---

18   Generally speaking, various "little" texts (e.g. programme leaflets distributed during the party congress) can serve as distancing tools enabling the reader to "see through" them and make the engagements within them more consciously grasped.

A limited number of texts which are scrutinised here are thereby treated as "representative anecdotes" (Burke 1945) about the modes of argumentation that characterise and descript the entire body of rhetoric, in this case a political party's thinking. Therefore, although the practices of de-familiarisation by a researcher may in a sense be hidden, nevertheless they simultaneously and clearly trace the approach that the scholar takes towards the subject matter.

In addition to this, someone studying extremist phenomena with which he or she does not sympathise at all, should put aside all lack of empathy for the research object. In the Brechtian context, the distancing effect is a method of reducing audience's empathy for theatrical characters and to replace emotional identification with intellectual consciousness. In the research of extremist political phenomena, the distancing effect, by contrast, can serve as a means of eliminating the lack of empathy.

Strong moral evaluations connected to populist movements also renders the research of such movements into a suspicious activity. An academic who focuses on the analysis of extreme or populist movements is easily taken as a "lightweight academic" and such research is regarded with contempt. One can find, therefore, parallels in the attitude of academic circles towards researchers concentrating on populism with the moral condemnation that prevails in the political field towards the populist parties themselves. As Chantal Mouffe (2005, 76) justly claims in her discussion on right wing populist parties, these parties are nowadays considered more in the moral than in the political register. They are condemned straightforwardly as morally evil –whereupon the traditional parties are eager to build a *cordon sanitaire* between them and populist parties. Since those parties are regarded as evil, it means, to echo Mouffe, that "with the 'evil them' no agonistic debate is possible, they must be eradicated" (ibid.).

In a similar vein academic research on populist parties is often considered, if not futile, at least irrelevant, and more importantly the involvement with these movements – if only through the research – is thought to be harmful. In this respect, the Brechtian *Verfremdungseffekt* can be useful: not only to review populist parties from a certain distance but also to legitimise the *research* of such phenomena. By saying this we

do not want to legitimise this kind of populism or extremism but only to stress that there is no need to mystify it and, thereby, potentially render this political phenomenon even more appealing. Scrutinising the phenomenon is to make it more transparent and thereby, hopefully, the audience might be able to find more conscious ways to face it.

References

Primary sources

Boulanger, G., 1888. Discours du Général Boulanger à la Chambre des Députés le 4 juin. *Journal Officiel*. Débats de la Chambre des Députés.

Front National, 1993. *Programme de gouvernement*. 300 mesures pour la renaissance de la France. Editions Nationales.

Front National, 1997. Party Manifesto, 10th Congress of the Front National. 29-31 March, Strasbourg. Including: *République Française. Projet de Référendum portant approbation de la réforme de la Constitution* and *Projet de référendum tendant à réformer la Constitution. Exposé des Motifs*.

http://web.archive.org/web/20090207194041/http://frontnational. com/doc_souv_institutions.php [Accessed 24 April 2013]

http://web.archive.org/web/20100326014114/http://www.frontnational.com/?page_id=1174 [Accessed 24 April 2013]

http://www.frontnational.com/pdf/projet_mlp2012.pdf [Accessed 12 February 2013]

http://www.frontnational.com/le-projet-de-marine-le-pen/refondation-republicaine/democratie/ [Accessed 12 February 2013]

Le Gallou, J.-Y., 1985. *La préférence nationale: Réponse à l'immigration*. Paris: Albin Michel.

Le Pen, J.-M., 1985. *Pour la France. Programme du Front national*. Paris: Albatros.

Mégret, B., 1990. *La Flamme. Les voies de la renaissance*. Paris: Robert Laffont.

Mégret, B., 1996. *L'Alternative nationale. Les priorités du Front national*. Saint-Cloud: Editions Nationales.

Secondary sources

Ankersmit, F. R., 1996. *Aesthetic Politics*. *Political philosophy beyond fact and value*. Stanford, California: Stanford University Press.

Ankersmit, F. R., 2002. *Political Representation*. Stanford, California: Stanford University Press.

Bagehot, W., 1867. *The English Constitution*. Oxford: Oxford University Press, 2001.

Burke, K., 1945. *A Grammar of Motives*. Berkeley: University of California Press, 1969.

Defrasne, J., 1990. *L'Antiparlementarisme en France.* 'Que sais-je?' Paris: Presses Universitaires de France.

François, B., 2001. *Misère de la Ve République*. Pourquoi il faut changer les institutions. Paris: Denoël.

François, B., 2009. *La Constitution Sarkozy*. Paris: Odile Jacob.

Garrigues, J., ed., 2007. *Histoire du Parlement de 1879 à nos jours*. Paris: Armand Colin.

Mayer, N. and Perrineau, P., eds., 1989. *Le Front national à découvert*. Paris: Presses de la Fondation Nationale des Sciences Politiques.

Mayer, N., 2002. *Ces Français qui votent Le Pen*. Paris: Flammarion.

Morabito, M., 2004. *Histoire constitutionnelle de la France (1789-1958)*. Paris: Montchrestien.

Mouffe, C., 2005. *On the Political*. Abingdon: Routledge.

Perrineau, P., 2012. *La renaissance électoral de l'électorat frontiste*. N° 5, Avril Sciences Po, Cevipof. Available through: www.cevipof.com <http://www.cevipof.com/rtefiles/File/AtlasEl3/NotePERRI-NEAU.pdf > [Accessed 12 February 2013]

Perrineau, P. and Ysmal, C., eds., 2003. *Le vote de tous les refus. Les élections présidentielle et législatives de 2002*. Paris: Presses de Sciences Po.

Rémond, R., 2002. *La République souveraine*. *La vie politique en France 1879-1939*. Paris: Arthème Fayard.

Soininen, S. and Turkka, T., eds., 2008. *The Parliamentary Style of Politics*. Helsinki: Finnish Political Science Association.

Taguieff, P.-A., 1984. La Rhétorique du national-populisme. Les règles élémentaires de la propagande xénophobe. *Mots*, 9, pp. 113–139.

Tomkins, A., 2005. *Our Republican Constitution*. Oxford: Hart Publishing.

Vaarakallio, T., 2004. *"Rotten to the Core". Variations of French Nationalist Anti-System Rhetoric.* Jyväskylä: University of Jyväskylä.

Weber, M., 1994. *Political Writings.* Ed. by P. Lassman and R. Speirs eds., 1994. Translated from the German. Cambridge: Cambridge University Press.

Winock, M., 1990. Les Français et la tentation antiparlementaire (1789-1990). *L'Histoire*, N° 137, October, pp. 34–48.

The Rhetoric of National Emergency: "9/11" versus Weimar Republic

Anna Kronlund

"At the present time few questions of political organizations are of more immediate concern than the problem of constitutional emergency powers. The problem itself is almost as old as constitutional government," wrote Frederick Watkins in his book *The Failure of Constitutional Emergency Powers under the German Republic*, published in 1939 (Watkins 1939, 3). Even though the context today is very different, discussions over emergency powers still inspire political theorists and scholars within different disciplines. The question of a state of exception recently re-emerged in the discussions of constitutional law and political theory because of the events on September 11, 2001. It is hardly a surprise that the attacks raised several questions of how democratic and liberal governance should be organized in times of crisis (Cf. Wolfe 2009).

A common paradox of politics is that the outcomes of politics cannot be determined beforehand yet it has to be prepared for future needs. Emergency and war powers are classical ways which the executive may attempt to deal with crisis and war situations and therefore they must be effectively controlled and circumscribed by parliament. These pow-

ers are usually limited by establishing constitutional emergency powers or relying on to the statutory law to grant the executive the authority to act in times of crisis.

The use of emergency powers has always raised intractable problems both in political theory and constitutional practice. In order to explore this problem in detail, one which is common to constitutional law and political theory and specific instances of the executive branch of the United States government dealing with extraordinary political situations we can use the concept of the *state of exception* and expressions which are close or parallel to this in United States constitutional politics. This essay examines the U.S. national emergency after "9/11" against the backdrop of the 1919 Weimar Republic Constitution as interpreted by juridical interpreters such as Carl Schmitt (1888-1985). The U.S. and Weimar Constitutions represent two alternatives in constitutional law, and the political practices which emerged from them deserve closer comparative analysis, from both a theoretical and historical perspectives. However, this analysis will also include the innovation of taking parliamentary debates as the basis. There are certain historical and contextual differences that one must be aware of when applying Schmitt's[1] view of the *state of exception* in the context of Weimar as a perspective through which to consider US discussions. It does not make sense to compare these very different contexts without first undertaking some conceptual and theoretical adaptation. One of the main differences is that the Weimar Constitution was the first republican Constitution which made a provision to deal with emergencies, whereas the US Constitution does not recognize any emergency powers despite the *habeas corpus* -provision.

The research undertaken here is an example of using the concept of "distance" in several different ways, namely personal, linguistic, spatial, and temporal. The study uses the history of the concept of exception – especially of the debates on the Weimar 1919 Constitution and its Article 48 among politicians and scholars – as a perspective enabling an analysis of debates in the U.S. Congress. By addressing contemporary

---

1   Cf. Schmitt: *Die Diktatur* 1921 & *Politische Theologie* 1922. Schmitt's interpretations of Constitution of the Weimar Republic: Schmitt 1924 and 1928.

polemic discussions about the state of exception in the light of an historical example it is also possible to examine what these recent discussions following "9/11" have brought to a political theory of the state of exception. Therefore, drawing certain parallels between the Weimar Republic (and Schmitt's writings about it) and post–WW II United States is useful for a researcher. In this way the framework establishes a certain analytical distance, a gap between the historical point of reference in the Weimar Republic and contemporary USA.

The main idea is to study the theory of a state of exception in U.S. constitutional politics through the relationship between the power of the executive and that of the legislature. To this end congressional discussions in the aftermath of the "9/11" are viewed through a framework which comes from other time and tradition. The Weimar context and Schmitt's conception of *Ausnahmezustand*[2] is used here to de-familiarize the texts under examination. It is of course true that parallels in terms of concepts and their political significance always remain relative, but both the differences and similarities can prove to be interesting.

There has been a great deal of research in recent years related to the political meaning and significance of "9/11". However, the use in this essay of a perspective framed by conceptual history and parliamentary rhetoric is a novel way to approach the topic. While in the aftermath of "9/11" laws in the United States have not been abolished nor has the constitution been suspended, there have been certain types of procedures and debates which are comparable to the discussions around the state of exception in the history of political theory and constitutional law. These discussions concern issues such as contesting the constitutional separation of powers and the idea of positive norms being capable of meeting the challenge of an emergency. Further, the topical question is how it is possible to be prepared for exceptional situations, and more importantly, how to deal with emergencies, without also transferring the powers from the legislative to the executive as an unavoidable outcome.

What is of interest here is the question about how two different constitutional systems (parliamentary and presidential) deal with emergen-

---

2   *Ausnahmezustand* is usually translated in English as a state of exception. About the history of the concept of *Ausnahmezustand* see Boldt 1972.

cy powers, as well as the related issue of what kind of powers the US Congress has at its disposal to control the use of emergency powers by the executive in a presidential system. The cases of the USA and Weimar have the same thematic although each of the Constitutions take rather different approaches toward emergency powers. The role of the legislature in the handling of emergency powers in both constitutional systems appears to be well established, however, both examples indicate that the role of the executive clearly takes precedence in relation to the legislature during times of crisis. In both cases, the legislature has a certain role in the field of war/emergency powers. However, the parliament during the Weimar Republic faced difficulties securing a majority in order to defend the parliamentary system, whereas, the U.S Congress has been unsuccessful in responding to political pressures, in large part due to the priority assumed by the executive following political tensions in the aftermath of the "9/11". By using concrete examples of how emergency powers have been discussed in parliamentary debates, it is possible to focus on the empirical rather than the normative side of emergency powers: what exactly happens after the national emergency proclamation has been made, and why?

Parliamentary and Academic Debates on the Presidential Powers of Exception in Weimar Germany

In order to better critique, evaluate and understand the controversy relating to the concept of the *state of exception* in contemporary US political discussions it is useful to relate historical debates to contemporary debates. In this case, the appropriate historical example, which forms a point of comparison of a including a *state of exception* provision, is the Constitution of German Weimar Republic (1919). By examining how *Article 48* and state of exception was contested, legitimated and debated in *Weimarer Nationalversammlung* in 1919 and in other political debates, it is possible to generalise a range of questions that may then be further applied to contemporary discussion in the US.

The use and meaning of emergency powers in the Weimar Republic

was quite different from the way this issue is framed today. In particular, the early years of the Republic were marked by social unrest and instability. The Weimar assembly, because of its particular historical position, was disposed to recognize the need for constitutional emergency powers. The founder of the Weimar Constitution Hugo Preuss noted in 1923, "Wenn jemals in der Geschichte für eine Staatsgewalt diktatorische Vollmachten unentbehrlich waren, so waren sie es für die Reichsregierung der jungen Deutschen Republik" (Preuss 1923, 100).[3] Indeed, the principle of constitutional emergency powers was adopted along with other provisions under the Weimar Constitution by an overwhelming majority (Watkins 1939, 14).

As a result, the second paragraph of Article 48 of the Weimar Constitution (1919) authorized the president take necessary measures for their restoration when public security and order were seriously disturbed or endangered interfering help from the armed forces if necessary. For this purpose the president may suspend completely or in part certain basic rights enumerated in the Article 48: "Der Reichspräsident kann, wenn im Deutschen Reiche die öffentliche Sicherheit und Ordnung erheblich gestört oder gefährdet wird, die zur Wiederherstellung der öffentlichen Sicherheit und Ordnung nötigen Maßnahmen treffen, erforderlichenfalls mit Hilfe der bewaffneten Macht einschreiten. Zu diesem Zwecke darf er vorübergehend die in den Artikeln 114, 115, 117, 118, 123, 124 und 153 festgesetzten Grundrechte ganz oder zum Teil außer Kraft setzen."[4] The question which followed from Article 48 was whether it granted powers to the president to suspend the only those basic rights in the Articles referenced or were wider powers available allowing other measures to restore the public security and order (See Schmitt 1994).

The emergency authority was restricted with some checks and bal-

---

3   "If ever in the history dictatorial powers were essential, they were so for the Government of the young German Republic." (Preuss 1923, 100, my translation)

4   "The president may, when the public security and order is considerably disturbed or endangered, to take all necessary measures to ensure restoration of public security and order, including, if required, the assistance of the armed forces. To this end he may temporarily suspend wholly or partially the basic rights referred in Articles 114, 115, 117, 118, 123, 124 and 153." (Weimarer Verfassung Art. 48, 1919, my translation)

ances and it was generally understood that the *Reichstag* should have control over the use of the emergency powers. According to Article 48, the *Reichstag* should establish and regulate these details, however, the parliament failed to enact such a provision. From the start, Article 48 was meant to deal with political crises only, although it was also used for other purposes. Friedrich Ebert, the inaugural president of the Republic, was the first to use the emergency powers laid down in Article 48 in order to suppress political unrest and rebellions from the extreme right and left, as well as dealing with economical and social problems (Kurz 1992).[5] Yet, according to Watkins (1939, 3-4), during the fifteen years that the Constitution was actually effective there was an effort to govern the Reich through liberal democratic principles.

Carl Schmitt's *Ausnahmezustand*

Carl Schmitt is a theorist of the state of exception, and his writings on *Ausnahmezustand* in the context of Weimar Republic have recently attracted a great deal of attention. Many contemporary writers have drawn a parallel between Schmitt's theory of *Ausnahmezustand* and the political events surrounding US President George W. Bush and his administration's actions when emphasizing a certain kind of danger related to the use of unilateral executive authority (See details in 2008, 179). The actions of President Bush during the "war on terror" are characterized by their parallels with Schmitt's theoretical position for example when the president claimed the powers on the basis of his authority as Commander-in-Chief, to ignore the statutes he believed limited his powers, and insisted that Courts cannot review his policies (ibid.). It should be noted, however, that following the historical-legal context framing how emergency situations are dealt with in the United States, Congress also enacted several laws in the aftermath of "9/11" thus authorizing the president to respond to the novel threat of terrorism.

Schmitt's book *Die Diktatur* (1921) includes a section at the end where the author examines the dictatorship of the Reich's president according to Article 48 of the Weimar Constitution (Die Diktatur des

---

5   In this regard we could mention for example Kapp Putsch in 1920.

Reichspräsidenten nach Artikel 48 der Weimarer Verfassung). What was novel for the conception of *Ausnahmezustand* introduced by Schmitt was the connection between the concepts of sovereign and the state of exception. Schmitt in his *Politische Theologie* (1922) defines that „Souverän ist, wer über den Ausnahmezustand entscheidet" (Schmitt 1985, 11). For Schmitt the sovereign is who decides the state of exception. Schmitt (e.g. 1983) indeed criticized liberal democracies for trying to bypass the whole question of the sovereign. The state of exception for Schmitt is not about suspending or transferring constitutional powers but rather a decision to sustain order. For Schmitt (1997, 55-56) the separation of powers and different control mechanisms included in constitutions tend to bypass the whole question of the sovereign. For Schmitt decision-making under the state of exception is absolute and therefore Article 48 was not an *Ausnahmezustand* but rather it corresponded with commissarial dictatorship: "Die kommissarische Diktatur hebt die Verfassung in concreto auf, um dieselbe Verfassung in ihrem konkreten Bestand zu schützen" (Schmitt 1994, 133).[6] Schmitt's (1994) criticism of Article 48 is primarily concerned with the claim that the state of exception and required measures cannot be possibly foreseen and regulated.

We should also note that in his constitutional theory Schmitt understands the exception in a very specific and significant way: the norm always relies on the exception. In *Politische Theologie* (1985, 22) Schmitt further defends the exception in constitutional law as follows: "Das Normale beweist nichts, die Ausnahme beweist alles; sie bestätigt nicht nur die Regel, die Regel lebt überhaupt nur von der Ausnahme."[7] For Schmitt the normality holds no interest whereas the exception is everything.

Even though Schmitt's idea of Ausnahmezustand was formed in a very specific context, it continues to have political resonance in the current circumstances. After the Second World War when the United

---

6   "The Commissarial dictator suspends the Constitution in order to protect the concrete existence of the very same Constitution." (Schmitt 1994, 133, my translation)

7   "The rules proves nothing, the exception proves everything: it confirms not only the rule but also its existence, which derives only from the exception." (Schmitt 1985, 11, translated by Schwab 2005)

States had become a "super power", certain practises and procedures – comparable to the *state of exception* in the history of constitutional law and political theory – were commonly criticised in different contexts. Many of the ideas which theorists and critique of Weimar addressed remain familiar to students of U.S. constitutional history. For instance Caldwell (1997, 10) mentions that the question of the relation of popular sovereignty to constitutional law, which was at the very centre of debates between Carl Schmitt and Hans Kelsen, is from time to time in discussions in the United States a live debate regarding government functions, the involvement of the federal government in the state politics and legitimacy of court opinions.

A problematic: the State of Exception and the US constitutional Framework

A typical constitutional document recognizes the unavoidability of crises and the need for some kind of (exceptional) authority to deal with them. The Constitution of the United States, however, does not address any specific emergency powers regardless of the *habeas corpus* rule: "The privilege of the writ of Habeas Corpus shall not be suspended, unless in cases of the rebellion or invasion the public safety may require it."[8] This 'faint' recognition of emergency powers has been invoked at least once during the Civil War by Lincoln (Cf. Issacharoff & Pildes 2004, 1).[9] The issue of whether or not the U.S. Constitution has an emergency power

8   Habeas Corpus Act (England 1679) traditionally refers to the right of the person being detained to appear before a judge for hearing to decide whether the detention is lawful.

9   This seems to be, however, a matter of interpretation. Jonathan Hafez argued when testifying for the U.S. Senate Committee on Judiciary that the habeas corpus rule has been suspended altogether four times since the nation's founding: "during the middle of the Civil War in the United States; during an armed rebellion in several southern States after the Civil War; during an armed rebellion in the Philippines in the early 1990s; and in Hawaii immediately after the attack on Pearl Harbor. Each suspension was not only a response to an ongoing, present emergency, but was limited in duration to the active rebellion or invasion that necessitated it." (Military Commissions Act of 2006, H7546)

provision and if not whether one should be included in the Constitution has divided American scholars (See for instance Ferejohn & Pasquino 2006). The Second Article of the U.S. Constitution establishes that the president is the Commander-in-Chief of the armed forces and he has the power to execute the laws. These are, of course, very broad powers and scholars as well as politicians continuously deliberate upon the "proper" limitations of the executive power. After a crisis, countries with common law typically undertake a judicial review to evaluate the exercise of emergency powers but in addition in the US, after "9/11", legislative motions were also adopted such as the *Patriot Act of 2001.*

Unlike in the Weimar Republic, there were no discussions about what norms could be suspended in times of crisis or what rights should not be abrogated and thereby a clear definition of abuse has not been set. The Constitution is regarded to be valid in all times and in all situations. In the words of the Supreme Court decision *Ex Parte Milligan* (1866), "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances." In the *Youngstown Sheet & Tube v. Sawyer* (1952) case Justice Jackson in his concurring opinion, however, noticed that there is "a zone of twilight" between the discrete powers of the executive and the legislative. The general idea seems to be, however, that all authority vested in the office of the president can be traced back to the Constitution or the statutory delegations of power. In the context of the United States the president may claim special powers on the basis of emergency situations, or by authorization of Congress. When Congress authorizes emergency powers for the president it does so by passing new laws. When the president wants to build his own jurisdiction for meeting emergencies he does so through regulations and executive orders. (E.g. Balkin & Levinson 2010, 1857.)

There is a historical-legal paradigm for the use of emergency powers in the United States. Emergency powers are mainly based on the framework of statutory delegations of power that the Supreme Court has approved. In addition, the U.S. Constitution has always provided post facto remedies. Rather than conceptualizing emergencies as exceptions, emergencies are expected to be dealt with within normal governmental

procedures (See more about the discussion e.g. Scheppele 2006). During hearings held by the House of Representatives in the mid-1970s, this specific issue was addressed when Congress was debating the bill that would regulate how the national emergencies should be dealt with in the future. The argument put forward by Representative Rodino (D-NJ) captures this issue:

> *It is important that governmental functioning and procedures in emergency situations be understood and subjected to congressional oversight. And there is a further pressing need for a statutory resolution and definition concerning the exercise of the powers and authorities in connection with national emergencies. A basic assumption in any such legislative consideration is that our Government should function in accordance with regular and normal provisions of law, rather than special exceptions and procedures which were intended to be in effect for limited periods to meet specific emergency conditions. (Subcommittee on administrative law and governmental relations of the Committee on Judiciary Hearings on H.R.3884 1975, 2)*

As such, for Congress it was important that the authorities of the executive in emergency situations are not only properly understood but also subjected to the congressional oversight.

Supreme Court Justice Jackson noticed in his concurring opinion in the *Youngstown Sheet & Tube v. Sawyer* case in 1952: "When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." Jackson continued that when the president takes measures against the direct will of the Congress, his authority is "at its lowest ebb." Notwithstanding it is typical that executive power will be increased or extended during times of crisis, the separation of powers should prevent it turning into an absolute or unilateral power. Following Justice Jackson's view Congress has usually granted statutory authorization for the president. According to Justice Jackson, by following this procedure "we retain government by law --- special, temporary law, perhaps, but law nonetheless" (See Jackson's concurring opinion in the Youngstown v. Sawyer Case, 1952). The problem in responding to national emergencies with statutory law,

57

however, is that in times of crisis appropriate debate and deliberation frequently do not take place. On several occasions the US Congress has neglected to subject the laws enacted in times of crisis to the necessary oversight or termination requirements. (See more in detail NEA Source Book 1976 [10].) In the aftermath of "9/11" it is often repeated that Congress granted powers to president to act in times of crisis but it could be also said that by enacting new legislation Congress circumscribed, to some extent, those discretionary powers.

The National Emergency Act and Emergency Debates in the USA

The absence of certain powers to address emergency contexts does not mean that throughout history such contexts have not arisen (Cf. Issacharoff & Pildes 2004). In U.S. congressional discussions, for instance, "9/11" is often characterized as comparable to the events of Pearl Harbor in 1941 as Senator Schumer (D-NY) has noted, "Yes, this was a 21st century Pearl Harbor but a little different because they aimed at civilians…" (Terrorist attacks against United States: September 12, 2001, S9286). Abraham Lincoln's emergency authority during the Civil War raised the first real controversy regarding the extent to which presidents have authority and discretionary power in times of crisis. Indeed, the emergency powers discussions have a history since the Continental Congresses onwards, even though in the Constitutional Convention emergency powers were not discussed in detail (e.g. Relyea 2007, 2). Historical precedents worthy of mention in this context are, for instance, discussions related to the American Civil War, the First and Second World Wars, the New Deal and President Truman actions during the Korean War.

In 1972 discussions relating to emergency powers re-emerged in

10   I.e. Committee on Government Operations and the Special Committee on National Emergencies and Delegated Emergency Powers United States Senate. 1976. *The National Emergencies Act (Public Law 94-412) Source Book: Legislative History, Texts, and Other Documents*. Washington: U.S. Government Printing Office.

the United States. Senator Mathias (R–MD) emphasized that Congress should be a part of how national emergencies are dealt with: "Unless we accept the principle of an optional Constitution and an optional Congress, we must reject the concept of national emergencies declarable by the President at his discretion in peace time without termination dates. Since this concept has been upheld in essence by the Courts, it is up to the Congress to recover by legislation the constitutional role that it has allowed the executive to usurp." (End the National State of Emergency 1972, 19671.) It was, however, due to an incident, which occurred during the course of the hearing on the introduction of U.S. forces to Cambodia that the scope of emergency powers and their potential for undermining constitutional government was brought to the attention of the Congress (Senator Church (D-ID), the National Emergencies Act 1976, S33416). In 1973, a special congressional committee was formed to examine national emergency powers and existing national emergencies. The National Emergencies Act of 1976 established as law a procedure that set the proclamation, execution and termination of a state of emergency on a statutory footing (NEA Source Book 1976).

It was the intention of Congress in passing the National Emergencies Act in 1976 to review and rule on emergency powers. The legislation presupposed that in the future the president should publish the national emergency declarations in the Federal Register, and Congress could terminate the emergency by enacting a concurrent resolution.[11] The final version of the bill established that no later than six months after a national emergency is declared and every six months after that, each house should consider a vote on a concurrent resolution concerning termination of the state of national emergency (Public Law 94-412; NEA Source Book 1976).

---

11   In 1985, Congress replaced the concurrent resolution requirement with a joint resolution because a concurrent resolution to control the executive was questioned by the Supreme Court decision, *INS*. v. *Chadha* (1983) (Relyea 2007, 12). At the same time the prerequisite for congressional review every six months was, in Fisher's (2007, 265) words, "rendered a nullity through disuse."

The "9/11" Moment

A few days after the attacks on September the 11th, 2001 President Bush called for a national emergency.[12] Further, President Bush received authorization from Congress "To use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001" (S.J. Resolution 23; 107th Congress 2001). Congress was part of the decision-making process when it authorized powers for the president, not only by passing the AUMF-resolution (S.J.Res.23, 2001), but also the *Patriot Act of 2001* and other legislative motions that are not considered here more in detail.

What is interesting to notice after the September 2001 terrorist attacks is that some kind of break was introduced in the temporalization of contemporary US politics. The shift is illustrated in the congressional discussions:

> *The people of the United States awoke on September 12 to a whole new world, one in which we can no longer feel safe within our borders. We awoke to a world in which our very way of life is under attack, and we have since resolved to fight back with every tool at our disposal. This is an unprecedented state of affairs and it demands unprecedented action. (Senator Feinstein (D-CA), Uniting and Strengthening America Act 2001, S10591.)*

The events which have become known as "9/11" are often presented during the discussions as something completely unique and unparalleled, as Senator Nelson's (D–NE) following argument shows: "I would normally express that 'it's a moment like this' when words cannot suffice to express the anguish of yesterday's attack, but there has never been a moment quite 'like this' in our history as a sovereign nation. The magnitude of the events that transpired yesterday will be measured in

---

12   "A national emergency exists by reason of the terrorist attacks […] Now, therefore, I, George W. Bush, President of the United States of America, by virtue of the authority vested in me as President by the Constitution and the laws of the United States, I hereby declare that the national emergency has existed since September 11, 2001." (President Bush 14.9.2001)

an infinite number of ways for years to come." (Terrorist attacks against the United States 2001, S9326.) It is debatable whether September 11, 2001 changed everything, but it aptly illustrates contemporary challenges to political theory and constitutional law regarding to modern crises situations.

Does the Bush administration's conception of emergency differ from that of its predecessors? The answer is yes and no. When the events of "9/11" brought President Bush to declare a national emergency his actions followed a long tradition which can be traced back to George Washington's actions during the "Whiskey Rebellion" in 1794 (Relyea 2005, 1). In the immediate wake of "9/11" all three branches worked together paying special attention to constitutional responsibilities and the possible temptation to overact:

> *We as Americans are all united on this issue. We can respect article I of the Constitution if we are talking about a declaration of war. We can respect the War Powers Act. We can act together as an executive and as a Congress to be sure we are unified, not just emotionally, but as a government and a country when the necessary acts have to be taken to retaliate against those who have committed these deeds." (Senator Feingold (D-WI), Terrorist Attacks against United States 2001, S9318.)*

However, subsequent actions by President Bush differ from previous examples of emergency powers in the United States, because the president did not necessarily seek separate approval for his actions or publicly announce that he was acting according to certain specific powers (e.g. Scheppele 2006).

Members of Congress criticized the president's actions as not taking into account the separation of powers. Indeed, Senator Leahy (D-VT) claimed during the debate over the *Military Commissions Act* in the Senate in 2006 that the bill under consideration would further enlarge the powers of the president: "Into that breach, this legislation throws the administration's solution to all problems: more Presidential power. This is a formula for still fewer checks and balances and for more abuse, secrecy, and power-grabbing. It is a formula for immunity for past and future abuses by the Executive." (Military Commissions Act 2006, S10254.)

For Senator Frist (R–TN) Congress should, however, pass more laws: "In the past 5 years alone, in this body we have passed more than 70 laws and other bills related to the war on terror, but they haven't been enough. They haven't kept pace with the ever-changing field of battle. There is more we can do and, indeed, we must do." (Military Commissions Act 2006, S10243.) For Senator Frist, then, the Military Commissions Act was a necessary addition to the 70 laws already passed after 9/11 in order to provide appropriate and necessary authorities.

Throughout U.S. history, presidents have frequently argued that they have strong inherent war/emergency powers. President Bush, however, introduced a new interpretation of these powers after the terrorist attack on September 11, 2001 when he argued that Congress must not infringe upon the use of extensive powers of the president (See details in Scheppele 2008). After "9/11" the clear intention of the Bush regime was to define the political situation and realities in a way that would make dissent irrelevant. In a sense, the administration's actions resemble the Schmittian sovereign who decides on the state of exception. The Schmittian idea of the executive who can make decisions only if he is completely free from any other authority has appeared in President Bush's rhetoric after "9/11". Further, President Bush appeared to adopt some kind of Schmittian doctrine when seeking support directly from the people and public opinion in order to increase and maintain the executive powers. President Bush relied in particular on the plebiscitary presidency conception when responding to the war on terror.

This kind of emergency rhetoric also appeared in the congressional discussions after "9/11". Senator Levin (D-MI) emphasized in the Congress that while debate is a very important feature of the democratic system, the national emergency sets different standard for action: "Debate is an inherent part of democracy. And while our democratic institutions are stronger than any terrorist effort to shake them, in one regard we operate differently in times of national emergency. We set aside our differences to join forces together, with decent people everywhere, to seek out and defeat a common enemy of the civilized world." (End terrorist attacks in the United States 2001, S9302.) Thus there was a willingness to set aside debate and deliberation in favour of the felt need to have decisive action in order to pass the legislation granting

new authority to the president. Representative Green (R-WI) illustrated the issue with the following words: "Debate is important; rhetoric is good. We should debate ideas. But there is also a time and place for action. Today is the time. This is the place for action. Let us get this done as quickly as we can now." (Patriot Act 2001, H6764.) Not all the members of the Congress, however, shared this view and numerous voices emphasized that indeed it is during times of crisis that Congress should make sure decisions are made following the normal procedures.

Clearly, the terrorist attacks of the 11th of September were characterized in such a way as to inspire new measures and authorities: "When we think back on September 11th, obviously it was one of the darkest days in the history of our republic, and it has led us to spend a great deal of time thinking about the unthinkable. Because of September 11th, we have had to ponder things that we would never even possibly consider because of the fact that we had not seen that kind of attack on U.S. soil." (Representative Dreier (R-CA), Continuity of Representation Act 2005, H950) The claim that the event of "9/11" was completely unforeseen and unexpected was the basis of the claim legitimatizing the adoption of new kinds of procedures.

When discussing the Patriot Act of 2001 in the aftermath of "9/11", the sunset provision was enacted as law in order to provide the opportunity for Congress to re-evaluate these measures after four years when, according to the Senator Udall (D-NM) words: "heads are cooler and when we are not in the heat of battle" (Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism of 2001, H7206). The sunset provision was legitimatized primarily because the bill actually contained authorities that were justified specifically in relation to "9/11". Representative Dreier (R-CA) expressed the need to have future review as follows: "I am concerned about civil liberties for everyone, and I believe that it is important to note that some of these provisions may, may be unnecessary at another time in our Nation's history. So I believe that the agreement for the 4-year sunset provision is an appropriate one." (Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism of 2001, H7203.) Despite the sunset provisions included in the law, Congress enacted the Patriot

Reauthorization Act of 2005 that made 14 provisions of the original bill permanent law in 2006 (Yeh & Doyle 2006, 3).

Bruce Ackerman suggested in 2009, after Barack Obama's election as president, that the US has the possibility to change this kind of "state of exception" paradigm. For Ackerman a situation in which the Democratic Party controlled both the White House and the majority of the Congress would be a perfect time to constitute a new commission to examine and oversight presidential power. In collaboration Congress and the president could provide better procedures for maintaining the separation of powers in the future. The idea had appeared previously. In the 1970s, for example, Secretary of State William P. Rogers suggested the establishment of a joint congressional committee which could act as consultative body with the executive in emergency situations (Congress, the President, and the War Powers 1971, 8). In the 1970s, Congress enacted laws like the War Powers Resolution of 1973 and the National Emergency Act 1976 as responses to the imbalance of power between Congress and the president in foreign policy matters as they has developed since the presidency of Franklin D. Roosevelt.

There has not been any formal declaration of an end to the national emergency proclaimed by President Bush after "9/11"; on the contrary in September 2012 President Obama announced the continuation of the national emergency because of the continuing threat of terrorism to the United States. One of the main intentions of the National Emergencies Act of 1976 was to restore normality because the emergency government that lasted approximately 40 years had become the norm. (National Emergency proclamations made by Roosevelt 1933; Truman 1950, Nixon 1970; Nixon 1971) The intention of the bill was to determine that all future use of emergency powers be invoked only on the basis of short-time national emergencies and that the public and Congress be aware of what powers the executive is given reign to adopt when proclaiming a state of national emergency (See more in detail NEA Source Book 1976). Viewed from the current perspective, it appears that the law has only been partly successful. The question, of course, is the significance of the national emergency proclamation made by President Bush after September 11, 2001 in light of the overall context of 9/11.

64

September 11, 2001 terrorist attacks and other modern emergencies differ from those emergencies that were confronted, for example, in the Weimar Republic. Contemporary emergencies pose new kinds of challenges for dealing with crises. One of the essential questions after "9/11" has been whether acts of terrorism call for the use of emergency powers? It is obvious that 'classical emergency power institutions' are not necessarily the most effective or desirable framework for dealing with 'modern emergencies' such as terrorist attacks. Dealing with the terrorism in general, and coping with the particular attacks such as "9/11", are two different things. Therefore, Manin (2008) has argued, for instance, that considering the contemporary threat of terrorism within the framework of emergency powers seems to be 'using the wrong paradigm'.

Concluding remarks

In summary, the question of the *state of exception* is certainly compelling because it is a question of *Recht* and *Ordnung* or in other words between the norm and decision (Schmitt 1985, 19). Instead of a Schmittian (1985) kind of juxtaposition between the norm and the decision, however, the view taken in this essay is that the state of exception in U.S. discussions refers primarily to the juxtaposition between the decision and debate, in which case the parliamentary debates have an inherent value, which is not dependent on power relations.

Even after what happened on September 11, 2001 nobody has seriously suggested an arrangement similar to Brüning's government in Germany during the 1930s, in which both the parliament's authority and session were limited, and the government mainly governed using exceptional authority (*Notverordnung*) (Cf. Patch 1998). Indeed, after "9/11" there has been a forum for critical debate and constitutional principles have been maintained. When, however, examining the contemporary discussions in the light of the historical experience, the novelty of the September 11, 2001 terrorist attacks and the historical meaning of this event can be better actualized and relativised.

After the attacks, Congress was united behind the president. Some

65

of the members, however, began to consider whether the separation of powers system and the idea of the checks and balances had been un–dermined in the aftermath of the attacks because of President Bush's actions as a "Commander–in–Chief" but also because of the increased partisanship in the Congress. The debates after "9/11" show that the members of the Congress had very different views concerning to the substance and the relevance of the laws adopted in the aftermath of the terrorist attacks and to what extent the powers of the president should be increased by enacting new statutory law. Even though the Republi–cans seemed to be united behind President Bush not all of the questions under consideration followed party lines. In the aftermath of "9/11" Congress was included to the decision-making process, it passed sev–eral significant laws such as the *Patriot Act of 2001* and the *Homeland Se–curity Act of 2002*. However, the members of the Congress questioned the way the bills were passed in the Congress. Several arguments in the congressional debates illustrate the need to follow the procedures and practices of Congress more carefully, to have more debate and delibera–tion and that the security should not be above "politics".

References

Primary Sources

Bush, G. W., 2001. *Declaration of National Emergency by Reason of Certain Terrorist Attacks*. 14.9.2001. Available through: <http://www.white-house.gov/news/releases/2001/09/20010914-4.html>   [Accessed 13 February 2013]

Congressional Records. Available through: US Government Printing <http://www.gpo.gov/fdsys/browse/collection.action?collection Code=CREC> [Accessed 12 February 2013]

Continuity of Representation Act. 2005. Congressional Record: March 3, 2005 (House), Page H948–H969.

Department of State Publication/General foreign Policy Series 255. 1971. *Congress, the President, and the War Powers*. Released June 1971.

End the National State of Emergency (Representative Abzug). 1972. Congressional Record: June 5, 1972 (House), Page 19670-19671.

End terrorist attacks against the United States. 2001. Congressional Record: September 12, 2001 (Senate), Page S9289-S9331.

Joint Resolution of Congress. 2001. S.J. RES. 23. September 11, 2001. *Attack on America*: *Joint Resolution 23*; *September 13, 2001*. Available through: <http://avalon.law.yale.edu/sept11/sjres23.asp> [Accessed 12 February 2013]

Military Commissions Act. 2006. Congressional Record: September 27, 2006 (House), Page H7522-H7561.

Military Commissions Act. 2006. Congressional Record: September 27, 2006 (Senate), Page S10243-S10274.

The National Emergencies Act (Senator Church). 1976. Congressional Record: September 29, 1976 (Senate), Page 33416-33418.

Obama, B. 2012. *Continuation of the National Emergency with Respect to Certain Terrorist Attacks September 11, 2012*. Available through: <http://www.whitehouse.gov/the-press-office/2012/09/11/notice-continuation-national-emergency-respect-certain-terrorist-attacks> [Accessed 12 February 2013]

Patriot Act. 2001. Congressional Record: October 12, 2001 (House), Page H6726-H6776.

Public Law 94-412. The National Emergencies Act of 1976. Available through: <http://thomas.loc.gov/cgi-bin/bdquery/z?d094:H.R.3884:> [Accessed 12 February 2013]

Subcommittee on administrative law and governmental relations of the Committee on Judiciary Hearings on H.R.3884. House of Representatives. 94th Congress, 1st Session, March 6, 13, 19, and April 9, 1975. Washington: US Government Printing Office.

Supreme Court of the United States. 1866. *Ex Parte Milligan*. 71 U.S. 2 (4). Available through: <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0071_0002_ZS.html> [Accessed 12 February 2013]

Supreme Court of the United States. 1952. *Youngstown Sheet & Tube Co. v. Sawyer*. 343 U.S. 579. Available through: <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0343_0579_ZS.html> [Accessed 12 February 2013]

Terrorist Attacks against the United States; September 12, 2001 (Senate). Congressional Record: September 12, 2001 (Senate), Page S9284–S9332.

Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism of 2001. Congressional Record: October 23, 2001 (House), Page H7159-H7207.

Uniting and strengthening America Act. 2001. (Patriot Act) Congressional Record:

October 11, 2001 (Senate), Page S10547–S10630.

Die Verfassung des Deutschen Reichs (Weimarer Reichsverfassung). 1919. Available through: <http://www.documentarchiv.de/wr/wrv. html> [Accessed 12 February 2013]

Secondary Sources

Ackerman, B., 2009. *Why We Need a Commission on Presidential Power.* Available through: <http://www.prospect.org/cs/ articles?article=why_we_need_a_commission_on_presidential_ power> [Accessed 13 February 2013]

Balkin, J. M. & Levinson, S., 2010. Constitutional Dictatorship: Its Dangers and Its Design. *Minnesota Law Review*, 94, pp. 1790-1865.

Boldt, H., 1972. Ausnahmezustand. In: Brunner, O., Conze, W. and Koselleck, R. eds., *Geschichtliche Grundbegriffe. Historisches Lexikon zur Politisch-Sozialen Sprache in Deutschland*. Band 1. A-D. Stuttgart: Ernst Klett Verlag, pp. 343-377.

Caldwell, P. C., 1997. *Popular Sovereignty and the Crisis of German Constitutional Law: the Theory and Practice of Weimar Constitutionalism*. Durham, North Carolina: Duke University Press.

Committee on Government Operations and the Special Committee on National Emergencies and Delegated Emergency Powers United States Senate. 1976. *The National Emergencies Act (Public Law 94-412) Source Book: Legislative History, Texts, and Other Documents*. Washington: U.S. Government Printing Office.

Ferejohn, J. & Pasquino, P., 2006. Emergency powers. In: Dryzek, J. S., Honig, B. and Phillips, A. eds. 2006, *The Oxford Handbook of Political*

Theory. Oxford: Oxford University Press, pp. 333-348.

Fisher, L., 2007. *Constitutional Conflicts Between Congress and the President*. Fifth Edition. Lawrence, Kansas: University Press of Kansas.

Issacharoff, S. & Pildes, R. H., 2004. Emergency contexts without emergency powers: The United States' constitutional approach to rights during wartime. *International Journal of Constitutional Law*, 2, pp. 296-333.

Kurz, A., 1992. *Demokratische Diktatur? Auslegung und Handhabung des Artikels 48 der Weimarer Verfassung 1919-1925*. Berlin: Duncker & Humblot.

Manin, B., 2008. The Emergency Paradigm and the New Terrorism. What if the end of terrorism is not in sight? In: Baume, S. and Fontana, B. eds. 2008, *Les usages de la séparation des pouvoirs – The uses of the Separation of powers*. Paris: Michel Houdiard, pp. 136-171. Available through: <http://politics.as.nyu.edu/docs/IO/2792/emerg.pdf > [Accessed 12 February 2013]

Patch, W. L. Jr., 1998. *Heinrich Brüning and the Dissolution of the Weimar Republic*. Cambridge: Cambridge University Press.

Preuss, H., 1923. Reichsverfassungsmässige Diktatur. *Zeitschrift für Politik*, Dreizehnter Band. Berlin: Carl Heymanns Verlag, pp. 97-113.

Relyea, H. C., 2005. *Terrorist Attacks and National Emergencies Act Declarations*. CRS Report for Congress. Updated January 7, 2005. Order Code RS21017. Available through: <http://www.fas.org/irp/crs/RS21017.pdf> [Accessed 12 February 2013]

Relyea, H. C., 2007. *National Emergency Powers*. CRS-report for Congress. August 30, 2007. Order Code 98-505 GOV. Available through: <http://www.fas.org/sgp/crs/natsec/98 505.pdf> [Accessed 12 February 2013]

Scheppele, K. L., 2006. Small emergencies. *Georgia Law Review*, 40, pp. 835-862.

Scheppele, K. L., 2008. Legal and Extralegal Emergencies. In: Whittington, K. E., Kelemen, R. D. and Caldeira, G. A. eds. 2008, *The Oxford Handbook of Law and Politics*. Oxford: Oxford University Press, pp. 165-184.

Schmitt, C., 1924. Die Diktatur des Reichspräsidenten nach Art. 48 der Reichsverfassung. In: Anschütz, G., Bilfinger, K., Schmitt, C. and Ja-

cobi, E. 1924. *Der Deutshce Föderalismus. Die Diktatur des Reichspräsidenten*. Berlin: Walter de Gruyter, pp. 63-104.

Schmitt, C., 1983. (1928) *Verfassungslehre*. Berlin: Duncker & Humblot.

Schmitt, C., 1985. (1922) *Politische Theologie*. Vierte Auflage. Berlin: Duncker & Humblot.

Schmitt, C., 1994. (1921) *Die Diktatur. Von den Anfängen des Modernen Souveränitätsgedanken bis zum Proletarischen Klassenkampf*. Berlin: Duncker & Humblot.

Schmitt, C., 1997. (1922) *Poliittinen teologia*: *Neljä lukua suvereenisuusopista*. (Politische Theologie) Translated by T. Hietaniemi. Helsinki: Tutkijaliitto.

Schmitt, C., 2005. *Political Theology. Four Chapters on the Concept of Sovereignty*. Translated and with an Introduction by G. Schwab. Chicago: Chicago University Press.

Watkins, F. M., 1939. *The Failure of Constitutional Emergency Powers under the German Republic*. Cambridge, Massachusetts: Harvard University Press.

Wolfe, A., 2009. *The Future of Liberalism*. New York: Alfred A. Knopf.

Yeh, B. T. & Doyle, C., 2006. *USA Patriot Improvement and Reauthorization Act of 2005: A Legal Analysis*. CRS Report for Congress. Updated December 21, 2006. Order Code RL33332. Available through: <http://www.fas.org/sgp/crs/intel/RL33332.pdf> [Accessed 12 February 2013]

THE MOCKERY OF ADBUSTERS MAGAZINE IN THE CLASSICAL TRADITION OF POLITICAL RHETORIC

Taru Haapala

The Canadian magazine, Adbusters, has largely been attributed to a radical form of media activism. Harold (2004), for instance, claims that its "pranking rhetoric" is a form of protest that functions through exaggeration of rhetorical tropes in corporate commercials. Indeed, Adbusters does exhibit an intricate ability to use advertising for furthering political ends.[1]

Ultimately, advertising is a tool for marketing: through commercials, products are made known to a specific consumer market. It is also a highly profitable business in itself for those who work for the marketing industry and actually create the campaigns. Professional marketing textbook writers describe the industry as one that benefits from widely held beliefs and values, not just about the actual advertising.[2] In short, it

---

1   The magazine has a website: http://www.adbusters.org.
2   For example, Phillips (2005, 18): "Marketing means running a first-rate business and letting people know about it. Every action your company takes sends a marketing message. […] A clever ad is what pops into most people's minds when they think about getting the word out about their business. The fact is, most of us know little about advertising and a whole

is claimed that marketing is about knowing how to reach the attention of consumers. The consumers are the audience who are being persuaded by marketing experts.

In this essay Adbusters is viewed from the perspective of Roman rhetorical literature. This is done in order to create distance between the scholar and her subject matter. Classical rhetoric provides a theoretical apparatus for distancing, as it forestalls the temptation to make easy assumptions about activists' provocative rhetoric. Set opinions pose serious challenges for political scholars who try to distance themselves from previously constructed interpretations. Here it will be shown that by looking at new and mediated forms of activism and locating their resemblance to a very old rhetorical tradition offers new ways to understand present political phenomena.

The focus here is on the analysis of Adbusters as a mediated form of the public speaking tradition. While accepting that there are historical and contextual problems involved in using classical rhetorical theories as the basis of analysis, it is also fair to recall that consumer culture critique practised by media activists is part of the Western rhetorical tradition.

The idea is not so far-fetched if we take into account the way our Western culture has become permeated by different political uses of media. Mediated public speaking certainly builds distance between the speakers and the audience. As the conditions for oratory have changed "the sites of public debate have been privatised and rededicated to the gods of a consumer culture" (Edwards & Reid 2004, 2). In short, the interpretation presented here is that Adbusters provides a site of political action via a certain form of public speaking.

Here the political activity of the editors of Adbusters is analysed in a critical manner by using primarily Roman rhetorical theories. The aim is to look at the rhetorical strategies of Adbusters and to consider to what extent they exhibit the application of classical rhetoric. Compared with ancient theories, Adbusters' rhetorical strategies are likely to reveal serious shortcomings, but also provide us with an understanding of the possible reasons why Adbusters' political activity is not persuasive to wider audience.

---

lot about marketing. We are really *the* marketing experts for our business because we know it better than anyone else."

The activists behind Adbusters appeal to their mainly activist-based audience by using marketing strategies to persuade. The magazine is run by a group of Vancouver-based media activists who aim at "resetting" the corporate-driven political agenda in North America. In their magazine the activists use images and text interchangeably as a means to argue their case in the provocative and unexpected way advertising companies have done for decades in the form of corporate marketing. Marketing strategies are themselves rhetorical "weapons" which the editors of Adbusters intentionally use in order to point out that ultimately the corporations who advertise have no right to monopolise the techniques of persuasion.

It seems that styles of persuasion used in marketing tend to repeat old *topoi*, and classical rhetorical literature can, indeed, be read out from advertising. The connection of rhetoric and advertising has been recognised by Roland Barthes, for example. His claim is that Western countries are affected by the persistence of classical rhetoric even today through advertising (Barthes 1985). But it has also been argued that the modern media of communication are not meant to provoke thoughtful debate (Hunter 2004, 199). Despite this, or rather because of it, the Adbusters Media Foundation activists are knowingly using provocative rhetorical techniques and thereby trying to incite debate on the state of North American consumer culture. One might claim that it is a form of distancing, an effort to step out of the predominant corporate rhetoric.

The activist network Adbusters Media Foundation was founded in Vancouver in 1989. Originally it included just a small group of environmental activists who had previously organised a joint and fairly successful media campaign in order to fight against the forest industry in British Columbia. After the campaign they decided to launch a social movement to fight "corporate injustice". The group set itself the task of making sure the North American public was aware of their efforts to fight against "undemocratic" corporate-owned mass media. It began publishing its own non-sponsored and anti-profit magazine, Adbusters, which was designed to combine marketing and artistic creativity. The magazine was to be used for creating "plurality of opinion" in a corporate-driven culture where, it was claimed by the activists, there is none. However, other activists promoting the same media movement, i.e. cul-

ture jamming,[3] have accused the group of mere imitation of corporations:

> *Adbusters has its own ideas about culture jamming. "Culture Jamming On Campus" reads the headline across the cover. Inside, there's two full pages on the subject, two full pages of tools you'll need to culture jam. Basically, this boils down to a few pointless vagaries ("challenge your economics professors to justify their scientific credentials in class") and things to buy --air-time on local TV to air Adbusters' anti-commercials, Buy Nothing Day promo goods (irony, anyone?)… Fight fire with fire. Beat 'em at their own game, I guess is the thinking. But what comes out is no real alternative to our culture of consumption. Just a different brand. (Stay Free! Magazine 1995)*

As already mentioned, it seems that the criticism is directed against the irony which they claim the Adbusters Media Foundation is using. However, irony can be interpreted as the fundamental reason why the Adbusters Media Foundation does what it is doing: the irony must be shown in order to prove a point. By proving that anyone can use the same tools as corporations the network tries to reset the agenda of consumer culture.

Irony as a rhetorical figure has a very confrontational character. Nowadays, it is more readily associated with literary investigation rather than politics and public address. In the Roman rhetorical tradition irony was treated as an effective tool for persuasion in public. Hence, the classical perspective offers good grounds for analysing Adbusters and its political action. However, it is important to shift our focus momentarily to other ways of viewing rhetorical irony today.

Irony in the 'New Rhetoric' Tradition

In its simplest definition irony may be said to be something like a witty representation of reality. In rhetorical theory it is also often described as representing opinions which are the opposite of those actually uttered. It induces a variety of emotions, from delight to anger, but it may also

---

3   On culture jamming, see Harold (2004).

74

go unnoticed if not understood in the specific context where it is used. There have been many studies on irony in recent decades ranging from political philosophy to cognitive studies.[4] It has been particularly influential in Anglo-American academic tradition where it has been considered as a distinctly post-modern concept derived from literary studies.

The American literary and social critic Kenneth Burke (1897-1993) has contributed to the so-called 'new' rhetoric tradition. He played a significant role in introducing rhetorical tropes to the post-World War II academic discussion in the United States. Burke's theory involved four classical rhetorical tropes, metaphor, metonymy, synecdoche, and irony, which were interconnected and made possible what he called "the perspective of perspectives" (Burke 1962, 504). The idea was that through identification of the major tropes the rhetorical, unconscious impact of their use would become evident.

In short, in the tradition of new rhetorical analysis the main idea is to use rhetorical tropes in order to unfold discourses. In the case of irony as a trope, those following Burke's line of inquiry include Cleanth Brooks (1951) and John S. Nelson (1998). They share the idea that political irony is a trope which helps us to understand underlying political intentions. In North America this line of thought is also connected to studies in popular culture. This tradition can be roughly separated into two strands: there are those who link irony with times of cultural instability (Purdy 1999); and those who consider irony a radical tool of political criticism in the area of popular culture (Shevory 2003).

Apart from the previously mentioned views, there is another one which suggests that irony is not just a rhetorical trope to be identified and examined. While the 'new' rhetorical tradition considers tropes as either consciously or unconsciously applied, classical rhetorical tradition emphasises oratorical skills where tropes and figures are tools of

---

4   On rhetorical irony as a reconstitutive perspective, see e.g. Linda Hutcheon *Irony's Edge. The theory and politics of irony* (Routledge, 1994) and Wayne Booth *A Rhetoric of Irony* (University of Chicago Press, 1974). In political philosophy, Richard Rorty's *Contingency, irony, and solidarity* (Cambridge University Press, 1989). On irony in cognitive studies, see e.g. Raymond W. Gibbs Jr. & Herbert L. Colston (eds.) *Irony in Language and Thought: A Cognitive Science Reader* (Lawrence Erlbaum Associates, 2007).

expression which are intentionally used in persuasion for specific purposes. In classical rhetoric irony is seen as a tool for political action which is used strategically, not by accident.

In this essay the approach in reading Adbusters is provided by theories of irony which originate from ancient Roman rhetorical literature where irony is essentially connected to the possibility of inducing *pathos* through ridicule. Its potential use in public speaking was considered useful and effective in making an audience sympathetic towards the cause of the orator. In this tradition the question surrounding rhetorical irony is whether or not the intention of the person is identified by those who are being persuaded. Thus, the skills of the agent and the situation where irony is used determine its effect on the audience. Following J.L. Austin's speech act theory, Quentin Skinner, who is also well-known for his work in reviving ancient Roman rhetorical theories, has provided a useful definition: "The illocutionary acts we perform are identical, like all voluntary acts, by our intentions; but the illocutionary forces carried by our utterances are mainly determined by their meaning and context" (Skinner 2002, 109). Although irony itself does not always indicate ridicule in the modern sense, the intention here is to take a closer look at how the persuasion used in Adbusters resembles that of ancient Roman rhetorical mockery and what may be elucidated about its political significance.

Adbusters and Mockery of the "Game" of the Adversary

In ancient Rome, ridicule was a very commonly discussed phenomenon for rhetoricians who taught public speakers how to use it in practice for their own benefit. Both Cicero and Quintilian recommend that orators use those commonplaces which were known for creating laughter and good will in the audience. Cicero defends the use of humour in oratory as extremely useful:

> *It is in calming or kindling the feelings of the audience that the full power and science of oratory are to be brought into play. To this there should be added a certain humour, flashes of wit, […] and readiness and terseness alike in repelling and in*

76

delivering the attack, the whole being combined with a delicate charm and urbanity. (De oratore: I, v. 17.)

Thus wit was used mainly to incite *pathos* for the benefit of the orators themselves.

Despite the obvious benefits of inducing ridicule, mockery was also described as a potentially harmful tool of persuasion. Quintilian in particular warned that ridicule did not always increase one's *ethos*. The danger lay in the fact that the orator himself could become the object of the audience's ridicule. In other words, mockery could backfire on the orator.

Adbusters is a magazine in which the sort of capitalism that multinational corporations represent is ridiculed. The profile of the magazine is deliberately provocative: the activists editing Adbusters flamboyantly use the same commercial and marketing strategies as the corporations they have set out to criticise. The group uses the tools of advertising including startling pictures and eye-catching headlines, which represent the rhetorical conventions that are demanded of a successful advertising campaign. The layout of the magazine has been carefully shaped over the years by designers experienced in working for the marketing industry and interested in supporting the idea of the activist network.

Reactions towards the group have not all been supportive, and the editors of the magazine have faced criticism of double standards, most notably from other activists claiming to fight contemporary forms of consumer culture hegemonised by multinational corporations. The opponents have argued that Adbusters promotes the opposite of what it is supposed to criticise by playing by the rules of corporative marketing. One way of understanding this critique is provided by the fact that there is a fundamental difference in the way the activists behind Adbusters and those criticising them understand political action. By engaging in the "game", the Adbusters Media Foundation activists are intentionally bending the rules of marketing strategies, which multinational corporations have established. Thereby the use of the rhetorical conventions of marketing is made ironic: the group aims at employing the same tactics of persuasion as the marketing industry, but does so in order to play the "game" of their adversary, which, for them, is not the

same as playing by the rules. Furthermore, the activists are trying to provide a new political arena in which they set out to play the "game" with their adversary. Readers of the magazine are encouraged to engage in its policy of sharing ideas for new alternatives in setting the leftist political agenda in North America. But perhaps the self-irony of this is that readers are only indirectly participating in the political action through the magazine, as they leave persuasion and argument to the activists instead of making their own voices heard.

The editors' intention is to shift activism from the streets to the media because that is where the "actual" fighting happens: "The real riots, the important ones that shift alliances, shake governments, win (or lose) elections and force corporations and industries to rethink their agendas, now take place inside your head" (Lasn 2000, 123). The implication of this may be interpreted as a fight for the most convincing and persuasive argument: "[W]e can foster rebellions that win the hearts and minds of the people. And that is where the true battleground lies: the battle for imagination, the battle for spirit". (Editors: Adbusters #52) In summary, it seems that Adbusters is a magazine whose guiding policy is that without the same level of visibility as corporations have in the media the "game" will be over. Therefore publicity is the gateway through which it becomes possible to present what the reality is. That is what motivates the Adbusters activists and what makes the "game" so valuable for them: the struggle over the representation of "reality".

According to the editors of Adbusters, not enough effort has been given to challenge the corporate way of thinking about how consumer culture is carried out. In the magazine, corporations are portrayed as non-realistic constructors of the North American consumer culture whose actions are immoral and illegitimate. Instead, the actions of the Adbusters Media Foundation are presented as authentic and democratic. The aim of the editors' rhetoric of authenticity is to portray the way of thinking behind the corporate action as artificial and unnatural. Adbusters puts forward critical perspectives on the way corporations act; its readers are encouraged to seriously reconsider the legitimacy of the founding principles of corporate action. This is done by rendering absurd the way corporations enter the lives of consumers – and the way consumers let them – through their messages and products. The overall

aim, it seems, is to make readers imagine what it would be like if people acted like corporations do, and just how unacceptable that would be.

The activists who participate in the making of the magazine are actually seeking the support of those who are already sceptical about corporate consumer culture. This explains why their arguments are ironic: mockery is used as a tool to generate interchange between the already critical audience and the activists to help come up with new alternatives. In short, the role of Adbusters in the more general framework of the group's activities is to create moral outrage for a common cause. It is about making the audience see the benefits of the argument "in their mind's eye", as was the main intention of the Roman rhetoricians[5], and thereby creating the sense of urgency to act accordingly. From the rhetorical point of view, it is a classical case of deliberative rhetoric where *pathos* is evoked in order to induce action.

Roman Rhetorical Features in the Political Mockery of Adbusters

Without perhaps realising it, the editors of Adbusters successfully apply classical rhetoric in a modern form. Unlike in the 'new' rhetorical tradition, where irony is sometimes considered unintended, in Adbusters it is explicitly used as a rhetorical tool. In this sense the idea behind using marketing strategies in order to persuade is to make people see something familiar in a new way.[6] Irony is, therefore, an intentionally applied rhetorical strategy.

5   In classical Roman rhetorical literature figures and tropes are expected to be used in situations where an orator wants to make his audience "see" that a change in present circumstances is needed. In other words, the hearers must be given a chance to deliberate themselves on the urgency of a change. When they "see" that what is suggested to them is indeed worth aiming at they act accordingly voluntarily.

6   The same strategy was used in classical oratory (Mack 2005, 91), although rhetorical tropes and figures were supposed to be remembered by heart since books were rare commodities. More on rhetorical figures in advertising see e.g. Edward F. McQuarrie & David Glen Mick, "Figures of Rhetoric in Advertising Language" in *Journal of Consumer Research*, 22 (1996), pp. 424-438.

However, we can distinguish two distinct challenges in the rhetorical strategy of Adbusters regarding the classical rhetorical interpretation of mockery in the context of American political culture: the construction of *ethos*[7] and the consideration of *decorum*[8]. In his *De oratore*, Cicero emphasises that the orator should consider carefully before using the tool of mockery against persons. He argues that to sustain his *ethos* the orator should refrain from mocking those who were greatly loved or despised by the public. Evidently, *ethos* and *decorum* are here interconnected: losing one would affect the success of both. In classical rhetoric successful persuasion is considered to be equally dependent on the three Aristotelian elements of rhetoric: *ethos*, *pathos* and *logos* (see e.g. Meyer 1999). Without *ethos* it was deemed highly unlikely that an orator would be able to persuade an audience, as *pathos* and *logos* would also be lacking.

In Roman rhetorical theories, where mockery was considered especially important, *decorum* was much discussed. Both Cicero and Quintilian emphasise that an orator must remember to bear in mind that he needed to stay inside the boundaries of generally approved behaviour while attacking his opponent with ridicule. By using his judgement at an appropriate moment, the orator was to be able to use rhetorical figures and tropes accordingly.

Quintilian provides two separate definitions of irony: as a rhetorical figure, and as a trope. According to him rhetorical figures, in general, do not change any meaning of the words used. In figures of irony, the form of presentation differs from what is expected (Institutio oratoria: IX, i. 4). Tropes, on the other hand, refer to the skillful use of words or sentences while creating new meanings (ibid. VIII, vi. 1). Irony, in its figure form, conceals what the public speaker means. The hidden meaning is considered to be obvious to his hearers (ibid. IX, ii. 46). In the trope form, the conflict is purely verbal in the sense that the skillful creation of new meanings comes to the fore.

When considering the use of irony by Adbusters editors, it is clear

---

7   *Ethos* means the credibility and moral profile of a public speaker (Ilie 2004, 46).
8   *Decorum* refers to action which is deemed morally acceptable in any given situation where public speaking is practised (Johannesson 1998, 279). Therefore it means the appropriateness of a rhetorical situation.

that both its rhetorical forms, those of figure and trope, are problematic. It follows that the very starting point for using irony in this context is potentially complicated and may lead to misunderstandings. The editors initiate discussion about issues they deem to be important through the use of radical persuasion in their magazine. There are two main constructions embedded in the rhetoric deployed in Adbusters. There is the rhetorical construction of the "opponent". This opponent represents the corporate version of "reality". Corporations themselves are not directly attacked but the opponent, as a rhetorical construction, serves as the counterpart for everything Adbusters represents. Unlike the magazine as a corporate entity, the rest of the North American corporate agenda is presented as essentially artificial. This setting provides the opportunity for the editors to be seen as promoting everything that is genuine and humane.

It is a fairly common rhetorical strategy to try and make an opponent look unconvincing. In terms of classical rhetoric there is, however, one essential difference in the Adbusters magazine's deliberative style: the "opponent" is argumentatively static and its actions are predictable. Fundamentally that means that there is no contingency in the very action of argument: the editors constantly recreate the opponent as the opposite of their own argument. Additionally, in this setting, the actors are both collective entities, which makes Adbusters an intriguing politico-rhetorical arena in terms of classical mockery.

In classical rhetorical literature, ridicule was also associated with what was called an *ad hominem* attack. Ad hominem attacks were not only thought of as being directed against persons but also related to making the advice of the person in question seem untrustworthy and unreliable (See Chichi 2002). Indirectly, it affected the way people regarded the arguments of that particular orator. Interestingly enough, Adbusters clearly states that the editors have intended to introduce "*ad hominem* attacks" (Editors: Adbusters #65) in order to fight against their opponent. It is essentially a rhetorical move with which the editors justify the provocative policy of their magazine "that would fire up the political activist scene with graphic punch and unflinching works of art" (ibid.). For Adbusters, the provocative policy is a way of distinguishing itself from other magazines critical of consumer culture. That may also

be one of the reasons why the editors use more pictures than words in the layout of the magazine. It is a familiar marketing strategy to make a "product" visible and to try not to blend in with the competition.

In the magazine, readers are treated as fellow consumers, as equal and critical as the editors themselves. Opposed to that, the entire media of North America is blamed for being undemocratic and overly dependent on advertising. This assumption suggests another rhetorical construction used in Adbusters: political space. This creation of political space is composed by the editors to give activists a chance to take part in the argumentation for and against the prevailing rules of the consumer culture. As a way of denoting the formation of that space and the fact that the editors also publish criticism towards the magazine, the editors themselves call it a "democratic move" (Adbusters #65). Consequently, letters from readers become part of the argumentative political space created in Adbusters: the messages sent are re-contextualised within the provocative policy of the magazine. Furthermore, negative comments against Adbusters' own policy that are published on its pages become a justification of action against the "opponent".

In the arguments presented in the magazine, it is presupposed that the readers-cum-consumers are well aware of the strategies and aims of advertising. There is a hidden claim that the "opponent" does not appreciate their intelligence, as North American consumer culture promotes only the agenda of multinational corporations. It is also implied that consumers have willingly put themselves in a position where they have lost their ability to perform acts which are normally required of actual citizens. The activists claim that, especially in North America, citizens have unwittingly, although in a perfectly conscious manner, given away their power to corporations to decide how their surrounding culture is being constructed (Lasn 2000, 76). According to them, the reason why the American corporate consumer culture is so successful is that it seemingly provides people with various opportunities to express their individuality. However, those opportunities, it is suggested, are only available under certain conditions: "There is a necessity for ever more diverse needs so that ever more specific products can be devised to meet them. Advanced capitalism maintains itself by fostering spurious individualism, pressuring us to define ourselves through our

purchases". (Oliver James: Adbusters #49) The rhetorical argument is that the "opponent" abuses consumers' trust by underlying conditions which are, however, silently accepted. The activists argue that in this case individuality is merely ostensible because it is derived from choosing consumer products which are not "real" alternatives.

In the rhetoric of Adbusters the "opponent" has created a reality of conformity, although the exact opposite state of affairs is presented to consumers. As the corporate-driven consumer culture is commonly thought to represent a variety of choices for how people may construct their identities through product choice, the activists, on the other hand, claim that no "real" alternatives exist in the sense that the differences between the alternatives do not matter.

It is important to bear in mind that Adbusters is not supporting the total destruction of those institutions through which the "opponent" acts. The institutions include political parties and governments, as well as smaller corporations and trade unions. From the viewpoint of classical *ad hominem* attacks, the aim is, rather, to present the "opponent" as being as pretentious as possible in order to weaken those arguments which support the present corporate-driven consumer culture.

Adbusters is designed to provoke feelings of moral injustice. Its rhetorical aim is to make people act against the injustice caused by corporate consumer culture. However, there is no one line of action the magazine recommends. Instead, by providing the space for others to suggest alternatives, they criticise the legitimacy of the lack of choice. It is, therefore, essential to understand that provocation has a distinct role in the magazine's policy. For example, it is argued that corporations have become the agenda-setters without the conscious permission of individuals who are mere on-lookers without "real" rights to participate in the decision-making:

> *Corporations are the only legal subjects whose nature propels them to seek personal gains rapaciously, with little sympathy for moral complexity – and whose unchecked power and influence mean the most successful ones can often do so with something resembling impunity. (Eric Rumble: Adbusters #67)*

Adbusters claim that corporations can use their legal rights to further their own ends, just like citizens. The difference is, it is argued, that

corporations are not made responsible enough if they fail to follow the laws. They are not answerable to the "people" in the constitutional sense, which leaves corporations morally questionable. Adbusters emphasises that the corporations are the ones who dominate the media and can get their way legally with the help of sponsorship deals.

One of the most crucial instances where the trope of irony is used in Adbusters is when the passivity of the citizens is mocked as a form of cult membership:

> *A long time ago, without even realizing it, just about all of us were recruited into a cult. […] By consensus, cult members speak a kind of corporate esperanto: words and ideas sucked up from TV and advertising. Cult members aren't really citizens. The notions of citizenship and nationhood make little sense in this world. (Lasn 2000, 53-54)*

As shown here, a 'cult member' is defined as the opposite of a 'citizen'. Cult members are portrayed as ones who are following rules imposed on them. It is suggested that corporations have become such an unquestionable part of the American culture that they are allowed to act without justification:

> *The most powerful narcotic in the world is the promise of belonging. And belonging is best achieved by conforming to the prescriptions of America™. […] And thus a heavily manipulative corporate ethos drives our culture. (Lasn 2000, xiii)*

As the *ethos* of the corporations is criticized, at the same time this "opponent" is portrayed as the one who uses advertising to control debate for the "wrong" reasons. This is a rhetorical figure of irony which seems to be very prominent in the Adbusters' political rhetoric: the actions of corporations are presented as absurd. Adbusters emphasises that it should be the citizens who act and decide what they want from the corporations rather than the corporations dictating actions and decisions. Adbusters' idea is to mock North American consumers for their willingness to follow corporate instructions in order to express their individual freedoms: "American culture is no longer created by the people". (Lasn 2000, xiii)

84

The main problem with Adbusters' mockery lies in the assumption that the readers of the magazine are all aware of the figure of irony which is employed. There is also the presupposition that readers are self-ironic in relation to their position as consumers: the underlying idea seems to be that the practical absence of choice outside consuming in some form or another is linked to their role as citizens. Indeed, there would be little left of corporate culture without the tacit support of people in general. As such, the intention of Adbusters' editors remains confused which leaves the mockery it employs ineffective as a persuasive technique from the perspective of classical Roman rhetoric.

According to the Adbusters Media Foundation, the capitalist system should be reconstructed so that it would guarantee equal opportunity for everyone who intends to compete with corporations. The editors of Adbusters are confident that it will happen by allowing public debate in media, even on issues which could potentially harm corporations. That would provide plurality of opinion which is deemed as necessary for equality in American political culture.

Certain provocative arguments presented in Adbusters take aim at the question of the due process of law where, it is claimed, citizens have not had the equal right to participate in decision-making which concerns them. In other words, the editors try to make people act by provocation. They encourage readers to "revoke charters" that allow corporations to overrun citizens: "[I]t would remind us, once and for all, that the people give legal birth to corporations by granting them their charters, and that the people must review those charters when things are amiss". (Editors: Adbusters #63) This deliberative rhetoric is intended to appear revolutionary. However, the rhetorical figure of irony is actually used as a show effect. The aim is not to overthrow the political institutions, but, instead, to provoke debate on issues that matter to the activists themselves. It is in their interest to cause a stir regarding the North American corporate agenda which is, according to Adbusters, monopolised by Big Business.

Conclusion

As has been presented above, the intention to provoke through the use of irony in Adbusters magazine creates certain limitations regarding its rhetorical effect. Furthermore, the intentional provocation negates the requirement of adjusting to appropriate moral conduct. The aim is to provoke debate through the trope of irony, which is carelessly employed, by relying on the assumption that the figure of irony is already understood by the audience. Therefore it seems that the provocative rhetorical strategy of Adbusters is not enough to guarantee success in itself because *decorum* is deliberately set aside repeatedly. However, in terms of political rhetoric, it would be too hasty to conclude that Adbusters is merely ironic.

In classical Roman theories of public speaking, *decorum* is a crucial preoccupation. The classical theories emphasise, in particular, that an orator should observe *decorum* in order to gain the benevolence of his audience. The same theories also stress the importance of maintaining the *ethos* of the orator. If the expectations of the audience are not met, the hearers must be re-convinced with appropriate *ethos*. *Ethos* will ultimately render a receptive mood for the orator to act (Cf. Skinner 1996, 128). It is Quintilian who states that *ethos* and *pathos* are connected, although they have different purposes:

> *Indeed I would add that pathos and ethos are sometimes of the same nature, differing only in degree; love for instance comes under the head of pathos, affection of ethos; sometimes however they differ, a distinction which is important for the peroration, since ethos is generally employed to calm the storm aroused by pathos. (Quintilian: Institutio oratoria, VI, ii. 12)*

He specifically adds that the orator must make sure that he is not perceived as hostile or cruel towards a person or a group of people. However, Adbusters urges its readers to forget about *decorum*. It is obvious that Adbusters has very different circumstances from those of the ancient Roman orators. The editors indeed are not public speakers in a strict sense, and, more importantly, they do not have direct contact with their audience. But there is a certain *decorum* in each speech-act situa-

86

tion which should not be overlooked for the sake of provocation.

As described above, in the Adbusters' case the political space which the editors have rhetorically constructed is founded on using marketing strategies against the "opponent". Adbusters has a rhetorical strategy, which is directed against an abstract entity: the corporate agenda of American consumer culture. The problem, perhaps, is that there is confusion about who exactly the "opponent" is, because it is not a person or a distinct group of people. The audience might interpret that the editors are fighting against the whole capitalist system, which the editors flatly deny. The denial might also trigger false assumptions about the editors who are perceived as simply making fun at the expense of the readers. Such a perception diminishes the *ethos* of the magazine mainly caused by the very fact that direct contact with the audience is not available.

The lack of contact with the audience makes it a rather hazardous enterprise to mock Adbusters' readers as 'cult members'. As Quintilian emphasises, ridicule might prove to be dangerous in situations where the intentions of an orator using irony are unclear. It is, however, perfectly understandable that the editors try to evoke debate among their readers with rhetorical strategies, which they have learned from marketing experts and which have proven to be effective elsewhere. While the editors pursue unconventionality through their tropes, at the same time they are putting their very *ethos* at risk while inducing ridicule. In short, Adbusters is obviously not the ideal type of modern orator. Nevertheless, the magazine is an interesting forum of speech-acts designed to ignite public debate, which makes it so fascinating as a political phenomenon. In a way, its purpose might be interpreted as to make itself unnecessary: by excessive provocation it tries to wake up citizens to make use of the existing political system and their political rights to correct the injustices that violate them.

References

Primary sources

Adbusters #49. Cool Fascismo. Sep/Oct 2003. Vancouver: Adbusters Media Foundation.

Adbusters #52. A Slap in the Face. Mar/Apr 2004. Vancouver: Adbusters Media Foundation.

Adbusters #63. The Big Ideas of 2006. Jan/Feb 2006. Vancouver: Adbusters Media Foundation.

Adbusters #65. Torture – Where Do You Draw The Line? May/June 2006. Vancouver: Adbusters Media Foundation.

Adbusters #67. Culture of Life & Death. Sep/Oct 2006. Vancouver: Adbusters Media Foundation.

Lasn, K., 2000. *Culture Jam: How to Reverse America's Suicidal Consumer Binge – And Why We Must*. New York: Harper Collins.

Secondary sources

Barthes, R., 1985. *L'aventure sémiologique*. Paris: Seuil.

Brooks, C., 1951. Irony as a Principle of Structure. In: M. D. Zabel, ed. 1951. *Literary Opinion in America: essays illustrating the status, methods, and problems of criticism in the United States in the twentieth century*. First published in 1949. New York: Harper, pp. 729-741.

Burke, K., 1962. *A Grammar of Motives*. First published in 1945. Cleveland: World Publishing Company.

Chichi, Graciela Marta, 2002. The Greek Roots of the Ad Hominem-Argument. *Argumentation*, 16(3), pp. 333–348.

Cicero, M.T., 1959. *De oratore*. Volumes I-III. Edited and translated by E. W. Sutton and H. Rackham, 1942. London: Heinemann.

Edwards, M. & Reid, C., 2004. *Oratory in Action*. Manchester: Manchester University Press.

Harold, C., 2004. Pranking Rhetoric: "Culture Jamming" as Media Activism. *Critical Studies in Media Communication*, 21(3), pp. 189–211.

Hunter, L., 2004. Video Cicero. In: M. Edwards & C. Reid, eds. 2004.

Oratory in Action. Manchester: Manchester University Press, pp. 186–209.

Ilie, C., 2004. Insulting as (un)parliamentary practice in the British and Swedish parliaments. In: P. Bayley, ed. 2004. *Cross-Cultural Perspectives on Parliamentary Discourse*. Amsterdam: John Benjamin's, pp. 45–86.

Johannesson, K., 1998. *Retorik – eller konsten att övertyga*. Stockholm: Nordstedts.

Mack, P., 2005. Humanist rhetoric and dialectic. In: J. Kraye, ed. 2005. *The Cambridge Companion to Renaissance Humanism*. First published 1996. Cambridge: Cambridge University Press, pp. 82–99.

Meyer, M., 1999. Introduction. In: M. Meyer, ed. 1999. *Histoire de la rhétorique: Des Grecs à nos jours*. Paris: Livre de Poche, pp. 5–16.

Nelson, J. S., 1998. *Tropes of Politics: Science, Theory, Rhetoric, Action*. Madison: The University of Wisconsin Press.

Phillips, M., 2005. *Marketing without Advertising: inspire customers to rave about your business & create lasting success*. Written with S. Rasberry. 5th edition. Berkeley: Nolo.

Purdy, J., 1999. *For Common Things: irony, trust, and commitment in America today*. First published in 1998. New York: A. A. Knopf.

Quintilian, M. F., 1966. *Institutio oratoria*. Vol. I–IV. Edited and translated by H. E. Butler., 1920-1921. London: Heinemann.

Shevory, T., 2003. From Censorship to Irony. Rhetorical Responses to 9/11. *POROI: An Interdisciplinary Journal of Rhetorical Analysis and Invention*, 2(1). Available through: University of Iowa Library <http://inpress.lib.uiowa.edu/poroi> [Accessed 12 February 2013]

Skinner, Q., 1996. *Reason and Rhetoric in the Philosophy of Hobbes*. Cambridge: Cambridge University Press.

Skinner, Q., 2002. *Visions of Politics. Volume I: Regarding Method*. Cambridge: Cambridge University Press.

Stay Free! Magazine 1995. Culture Jamming™: Brought to you by Adbusters. <http://www.stayfreemagazine.org/9/adbusters.htm> [Accessed 12 February 2013]

"Time to be heard": The Rhetorical Strategies of the Northern Ireland Women's Coalition

Anna Björk

The Northern Ireland Women's Coalition[1] is known as a feminist party from the late 1990s which existed for ten years on the Northern Irish political scene. Its emergence at the time of the peace talks in 1996 can be seen as the utilisation of a politically opportune situation, in which it was possible to politicise new elements of the party political field, at least temporarily. The Coalition is an example of a political party prefaced on a redefinition of 'the political' in a situation where the polity has for decades followed the lines of an established division. Its story is bound with the political development of the Belfast Agreement and the years following its implementation: the marginalised role of the new party was complemented by a role in the important negotiations for a peace treaty, providing an opportunity to contribute to the agenda. After gaining some visibility and two seats in the local parliament, the Coalition failed to secure its position and lost its assem-

---

1   Henceforth also: NIWC, The Coalition.

bly seats in the 2003 election. Finally, the party was dissolved in 2006.[2]

In the 1990s Northern Irish context, the NIWC was a party from the margins since it posited itself categorically as a feminist party and attempted to gain votes from both sides of the religious and traditional divide. This differentiated it from the other recognised cross-community party, the Alliance Party of Northern Ireland (APNI). The aim of this article is to analyse the rhetorical strategies of the NIWC, utilising the rhetorical situation of the mid 1990s as a new cross-community party without an established status or a prominent group of supporters. The socio-historical situation here is an important element for the arguments made by the party: the founding narrative which established the Women's Coalition was presented as an answer to a political demand stemming from the desire to have representatives elected for the negotiations in which the conditions for peace would be agreed and a new constitution drafted. The party reconfigured this aim rhetorically into a constructed momentum which emphasised the importance of this realisation and the significance of the peace treaty for the future of Northern Ireland. The analytical focus in this article looks at the rhetorical moves which the Women's Coalition used in order to fight for political space, a central manoeuvre of which was to construct "women" as a politically active category. This politicisation is further thematised by giving attention to two of the main aspects interwoven in the narratives of the Coalition: the approach to dealing with local history; and the concept of (female) experience.

Here, the Coalition is considered a representative of political agency at the time of the negotiations whose rhetorical strategies also resonated with the reconstruction of the established constellation of the traditional political order. Bearing in mind that the Women's Coalition actually managed to gain two seats in the local parliament, it was a relatively successful attempt at developing an alternative reading on the polity at that time (of course the downside turned out to be that the enthusiasm for this alternative reading did not outlast the problems that the peace process faced in the long term). There is an exhaustive literature on Northern Ireland politics in general and it is not the aim of this

---

2   The article is based on my previous study on the Northern Ireland Women's Coalition, presenting its main findings (See Björk 2006).

article to write yet another research paper on the 'Troubles' (the term generally used to describe the violent conflict in Northern Ireland) or an overview of the political developments of the Home Rule and the division of Ireland.

Concentrating on the Women's Coalition is, in itself, a way of constructing distance, since it never achieved mainstream party status and explicitly contested established conceptualisations of the political order. A further means of distancing, or "taking a step back" from the case, is to choose a tool for performing the analysis in a way that would help avoid any moralising or accusative undertones. Thus, temporalising the rhetorically built narratives makes it easier to deal with the complexity of the Troubles. The following article will be using it merely as a point of reference found in the situational analysis rather than an object of study. Temporality here means simply choosing to look at some of the figures used by the Coalition to construct their own narratives about the historical and political constellation in Northern Ireland. Time is the matter which ties all narratives together and, in political rhetoric, special attention needs to be given to the coherence and legitimacy of that narrative. Thus, differentiating the past, present and future, giving them meanings and providing them with (moral) judgement is a means for doing politics.

The following section of this article presents the emergence of the Women's Coalition, and the act of politicising "women". The third section discusses the meaning which the signing of the Belfast Agreement has had for the politics of Northern Ireland and assesses the way the Coalition was in the final instance able to use this to their benefit. The background material for this article consists of speeches, campaign material and party manifestos, only a selection of which is explicitly referenced here. Regarding the chosen vocabulary it should be noted that the following terms are used interchangeably: Protestant and unionist, as well as Catholic and nationalist. The terms loyalist and republican refer to the more extreme movements.

The Origins of the Women's Coalition

The current parliamentary body in Northern Ireland, Stormont, is a local assembly with legislative powers. The parliament for the newly established administrative unit was first established by the Government of Ireland Act of 1920. Since then, the local Parliament became the symbol of unionist dominance for the next fifty years: the Ulster Unionist Party dominated the parliament during the interwar years. After the war, the unionist parties remained in power until the fall of Stormont in 1972. English (1998, 98-99) has argued that the exclusion of an effective voice of the Catholic constituency on both the local and parliamentary levels prevented Northern Ireland from developing a proper culture for political debate, and strengthened feelings among Catholics about the illegitimacy of the institutions of the province.

According to Buckland (2001, 218), a "fundamental" error made by the British Government had been to hand the power over the province to the unionists, who are neither a united alliance nor had an ideology for governing a region with such a remarkable minority to deal with. The one theme uniting the unionist front in the 1920s had been the opposition to the Home Rule, and along that front were people who did not even want to govern the province but to have the direct rule by Westminster. On the religious side, the term "Protestant" refers to three differing churches, Presbyterian, Church of Ireland and Methodist, which further indicates the heterogeneous nature of those identified as unionist. These internal tensions had over the years created another sphere of mistrust: alongside the existing suspicion between unionist and nationalist, and vice versa, distrust between one unionist and another has also emerged (ibid.). After the Belfast Agreement (also: the Good Friday Agreement) of 1998, the Assembly has also become known as the New Assembly because of changes agreed upon in the treaty, such as the principle of consent and the establishment of power sharing. These have arguably had the potential to change the nature of the Assembly after periods during which it was suspended, the first of which took place in 1972.

Women in Northern Ireland have been largely absent from macro-level politics in the past, which can be deduced from the low number

of women elected for the Assembly or Westminster (based on European standards). For example, in the 1998 elections women won only 14 of the 108 seats available in the Assembly (Miller et al. 1999). Traditionally, women's movements in Northern Ireland have had their origins in the informal sphere of politics, at the community level and NGOs rather than in the framework of the formal party political level (McWilliams 1995; Miller et al. 1999; Porter 1998; Sales 1997). According to Porter (1998), occupying the communal level of politics has meant that women have also formed strongly local identities inside their own communities. Although practical issues such as child care, housing and poverty have invoked discussion and have been common for women from both traditions, discovering this commonality also has had a depoliticising effect on these issues: what has been defined as 'political' has become narrowed down to the constitutional issues (See Little 2002). The "politics of avoidance" (Sales 1997, 169) has meant that women working on the communal level, when associating with other women on issues such as child care, have been reluctant to talk about "politics", i.e. the central issue of the conflict.

By the 1990s, The Alliance Party had secured its position as a cross-communal party, with explicitly articulated support for the union, and had won votes from both communities. It had gathered support from the educated and wealthier middle class, and had a liberal basis with claims for equal citizenship, individual choice and devolution. At the time, the NIWC positioned itself as a cross-community party alongside with the APNI, but took the further step of refusing to take any explicit stand on the constitutional question. The polity of the party political field in Northern Ireland was challenged by the Coalition, due to operating from the field of the civil society and explicitly stating its close connection to community work and activism on the local level. However, the Coalition was established explicitly to function as a political party with the aim of participating in the formal sphere as opposed to being a social movement trying to influence the established parties from outside the institutions.

The explicit event marking the emergence of the Coalition according to its own narrative is when the British government states that the ten parties with the largest shares of votes in the election are to be al-

94

lowed into the Forum for Political Dialogue where the main issues of the peace agreement were to be debated (Darby & MacGinty 2000, 72). Originally this is done to ensure the inclusion of the small unionist parties with loyalist connections in the talks (Mitchell 1999, 43), but it also provides a window of opportunity for others outside the five main parties such as the Women's Coalition. The NIWC, founded officially in 1996, managed to be the ninth party on the list. According to the "official" story on the foundation of the Women's Coalition, the party was hastily put together for the election of the negotiating forum, which brought the sense of activism and political participation into the rhetoric of the Coalition (e.g. newsletter A Common cause: the story of the Northern Ireland Women's Coalition, NIWC 1998b).

Hence, it was against this background of women's movements and the political climate of the peace talks that the Coalition constructed its political narrative on active women being used to reach the communities in order to manage every-day issues in a more practical way. This "willingness to compromise" became one of the central arguments that the party made against those incapable of letting their constitutional positions fail for the bigger picture. The core ideas of the party became articulated with the three principals of *equity, inclusion,* and *human rights*, the aim being to distance itself rhetorically from the political parties that had been playing an active role during the Troubles and thus represent the historical sectarian division. It has been said that the party was concerned "with the *interests,* the *positions* of others, and how those interests might be accommodated within the NIWC's ethical framework." (Fearon & Rebouche 2006, 281)

Politicising "Women"

The NIWC brought "women" into the debate as an active category. By politicising this category they were able to appeal to a group which was not that heavily associated with the formal sphere of politics (as the Coalition emphasised) and hence did not bring them all the baggage from the past. The "baggage" obviously here refers to the decision making and the style of politics that led to violence and division: women

belonging to the party were essentially a group of those who had previously remained quiet in the face of the more serious (constitutional) issues, and whose needs and identity were interpreted one dimensionally through the conflict. The women, thus, represented a formerly latent group in society influenced by the conflict without ever having had a say in the form of rule. This was made clear in speeches by listing how few women had historically been elected to the British Parliament as well as stressing the absence of women from the local level of formal politics (See e.g. NIWC 1997, 1999b).

One of the founding members and eventually the leader of the Women's Coalition was Professor Monica McWilliams. In a speech from 1997, McWilliams described the absence of women from the formal sphere of politics as a situation where women have "never been on the scene of the crime". By stressing the low rate of female representatives at the parliamentary level and the female input on the communal level she associates women with the issue of centred politics while disassociating them from the principle, in effect, centred politics leads to the depths of a zero-sum game. In an article by McWilliams, a theme is developed which is deployed later by the party. This is the articulation of women as "agents of change" (McWilliams 1995, 29). In the article, McWilliams argues that by lobbying for the need to address inequalities not concerning the traditional communal divide had made women representatives of matters that had been suppressed by questions regarding the conflict and paramilitary violence. According to her, the informal sphere of politics and its activism provides for a more dynamic ground for women to work on those issues they felt were important and have chosen this way of acting politically because it has not resonated with the "stagnation" of the formal sphere (McWilliams 1995, 30). This concept of women as "agents of change" was used in speeches given by McWilliams (e.g. NIWC 1997). The multiple levels of oppression experienced by women was also introduced in the article (McWilliams 1995, 31) as well as further articulated in speeches, where women in the formal sphere of politics are identified with the role of the "double other" (e.g. NIWC 1997 & 1999 a,b,c). Women are thus presented as occupying the sphere of "informal" politics. The party points out that women have been engaging in the grassroots narratives of Northern

96

Ireland for a long time, even though this was not regarded as "politics" in the traditional sense. Hence women are explicitly presented as activists, and the work of the grassroots organisations is recognised in the Coalition manifesto:

We know the vital role that community and voluntary groups have played in holding our society together over the last three decades. […] When elected we commit ourselves to […] developing open access for community groups: women's organisations; trade unions; and other organisations within civil society to our Assembly members. (NIWC 1998a, Northern Ireland Assembly Election Manifesto)

In numerous speeches the relation between the non-governmental organisations is repeated, for example, in a general NIWC speech from 2002 where it is stated that the Coalition tries to "stay consistent with [its] grassroots formation, seeking ways to involve [its] members in formulating and discussing party policies and political developments". It is further noted that the party "work[s] closely with voluntary and community organisations, bringing their views into the decision-making process".

Dealing with the Past, Constructing Experience

The concept of women as activists stresses the idea of impulse and action linked to the party, its members and policies, and with close ties to civil society. It also turns the focus away from politicians connected to previous forms of governing and creates an image of an outside actor. The fact that the members of the party intended to engage in party politics, aimed for the heart of the constitutional politics, and thus were not able to pose as a non-governmental organisation is dispelled by the story of the group: the party is presented as having been established for the purpose of becoming an institutional party, but with close ties to civil society activism from which it had emerged and whose interests it advocated.

One of the ways the Coalition chose to deal with the problematic past of Northern Ireland was to deploy the concept of experience. The

discourses which construct the emergence of the Coalition bear witness to this rooted in past experience, marking a specific period in history:

The Women's Coalition emerged out of a complex mix of years of aspirations; decades of experience; and sense of indignation. In forming the Coalition we knew that we were exposing ourselves to risk and ridicule - but all of you had the courage to listen to that deeper voice within you, the voice that says that it is no longer an option to take refuge in the safety of silence or in the shadow of an echo; instead it is time for women to be heard. (NIWC 1999c)

Here, the "time to be heard" marks a rhetorical offset to a period of time that had lasted up to this point, the period of politics in Northern Ireland when women had not been accounted for, and served as a forerunner to the next period where women entered the political scene and began participating on the party political level. The concept of (female) experience is used by the party to present women as capable of contributing to the political field in Northern Ireland. It is used to describe female knowledge as something gained from the concrete experience of engaging in cross-communal relationships. This is completed with another experience women possess: the experience of having to deal with the problems of everyday life, such as unemployment, the distortions and deficiencies in the systems of education, health care, and infrastructure.

The concept of commonality is a defining one in terms of experience: what "the quest for commonality" marks is the willingness of the women to engage in dialogue, to find a common ground from which to operate (e.g. NIWC 1999c). It is a mediating concept between the divided communities, the means of achieving compromise. Commonality illustrates the realisation of the idea of exchanging experiences, and highlights the search for a practical ground for working across sectarian lines.

The singular nature of personal experience is turned into an idea of shared experiences: singularity becomes a collective of pluralities. The emphasis is put on the personal experiences of the social relations in the "private sphere" in order to extend the concept of the political. At

98

the same time, this experience is incorporated into the experiences of others. The subjects of these experiences have the common denominator of being women, presented as the one most important index of all the experiences. The relationship between those with wisdom and those with knowledge follows the lines of those having the experience of being subordinated; in this case, the women and those without this experience.

The concept of experience challenged the former structures of division. By turning the focus onto the collective of individual experiences of "women", the party rhetorically presented these individual experiences as the true matter of the society, as the "reality" of the political life in Northern Ireland. The experiences justified the party's position as a party of "common sense" trying to deconstruct the existing political structure; the established order was presented as possessing few attachments to reality for a significant part of civil society, i.e. those who would bring about change. This was done in order to gain space for a newly politicised category, that of women. Talking about the experience of women also highlights different forms of oppression that occurred within society and, instead of discussing the past inequalities between the religious parties, the focus was on discrimination against women.

The shared experience composed of the personal experiences of women marked the suffering of the past and was simultaneously the reason for the active entrance of women into the party politics. The past was indeed referred to as a state of shared suffering, in which the victims were those who had to live in such a violent society. The principle of inclusion was repeated in speeches outside as well as inside the assembly, presented via the trope "part of the problem, party of the solution". This constructed a past with no visible subject as the bearer of blame and enabled the party to engage in negotiations with other parties committed to the process. Reconciliation as a term, and the practices for its realisation borrowed from the South African peace process, is offered as a means to deal with the suffering and the bitterness, and the Civic Forum the party advocated in the negotiations was presented as the forum in which different experiences of the conflict could be articulated and exchanged.

Experience was thus a central concept in arguments put forward by the Coalition. Justifying its knowledge and capability, it was argued that these capacities were rooted in the variety and essentiality of the every-day experiences of its representatives as women, as the substance of the society who had been and remained marginalised. In addition, by using the primacy of experience a space was enabled for (re)politicisation: the existing constellation of politicisations lacked the experience of a significant social group, the women. This meant the contemporary situation could be viewed as not answering the needs of society, in which a group of women demanded to be heard, and who clearly had the right, in the name of democracy, to present their case. The message was thus that polity of party politics was out of date and needed to be modified accordingly.

The Belfast Agreement and the Redefinition of the "Constitutional Issue"

The Belfast Agreement consists of three main strands which define the new democratic institutions established to secure power-sharing. In addition, there is a "micro-agenda", which deals with the issues of decommissioning, the release of prisoners, policing and security. Moreover, in the beginning the changes required both the British and the Irish constitution be addressed. These changes were needed to formulate the new constitutional status of Northern Ireland, and meant that the Republic of Ireland needed to drop the claim for the North from its constitution, and the British would reformulate their legislation in a way that, should the people of Northern Ireland so desire, Ulster would cease to be a part of the union. In the last section the conditions for implementation, validation and further reviewing of the Agreement are declared.

To put it crudely, the non-alteration of the Northern Irish had brought about an idea of a fixed polity of the formal sphere of politics, in which the minority had little chance to increase the power share because of the boundaries set by the majority. From this point of view the negotiations and the institutions of the Agreement had opened up

new forums and structures to shape the relations of shared power, not only between the minority and the majority, but also within the communities as well as beyond them. The fact that the form of governing and the constitution have come under debate means that the established structures are already challenged and more open for reformulation. This provided the Coalition with a chance to make an entrance. The importance of the Agreement is increased by the implications it would have for parliamentary institutions, i.e. for changes in established power-sharing and the safeguards for the principle of consent and for the ethos of the parliament.

For a newly established political party the ongoing debates and the challenge it posed for existing power structures meant that the successful utilisation of political occasions, successful politicisation, might be rewarded with a place in the formal political sphere, after which the representatives of the party would have a chance to utilise their position in defining, describing and categorising, and thus shaping the political discourse and the polity. For example, in talking about the constitutional paradigm influencing the debate in Northern Ireland, an element of the alternative point of departure for this paradigm could have, if effectively argued, shaken the structures.

Different intervals co-exist in the Coalition's argument. The onset of one period originates with the peace process, whatever the exact starting point may be. The "peace process" as a point of reference defines the framework for present action, a period, whose conclusion is to be realised if the region is to move from the process into a reconciled society. Underlining the progress by calling it a "process", or "peace building", makes the offset realisable. The process implies a movement forward, and it is the quality and nature of the outcome the parties are fighting for, not whether there should be peace or not. The signing of the Agreement is used as a legitimate onset for a new period of governing the region, in which the politics of the past decades mark a period of undemocratic ways. The Agreement, as noted above, is argued as providing "a fresh start" for the province, a beginning of a new interval of governing simultaneous with the peace building, with the potential offset being attaining the reconciled society, after which the parliamentary culture of Northern Ireland could become normalised.

Leaning on the legitimacy of the Belfast Agreement and the temporal rupture it had opened up became central to the legitimacy of the Women's Coalition, as well. In various speeches, their argument was based on the link the party constructed between itself and the Agreement, which had in turn become representative of a successful peace process. The Coalition presented those truly committed to the peace process as possessing moral superiority over their opponents, in that the latter either feed the violence of the past or refuse to do enough, or lack the capability of doing enough, to abolish these methods of "fear":

For those in the grip of fear, the requirement to work across our differences, demanded too much of them. Any attempt by the Women's Coalition to create a consensus style of politics or focus on the need for an honourable compromise was read by them as a demand for surrender. What the Agreement did was to radically disorientate people who refused to change and opposition came from two kinds of people, those who used violence outside the political process and those inside the political process who lacked the moral and political courage to move beyond their fears. (NIWC 2000)

The Coalition advocated that the process of reconciliation transcend the two communities' historical spaces, of fear and past division, into a "common space", which would enable the co-existence of the traditions (e.g. NIWC 1999a).

Concluding remarks

The peace process with the multi-party talks provided the Women's Coalition with a well utilised chance to gain political space within the formerly static party political structures. Employing a rhetorical analysis it was possible to gain insight into the conceptual contestation embedded in political action. In this case, the specific approach was to explicate the conceptual strategies of the Coalition as a new political party, whose rhetoric needed to be both in connection to the established conceptual field and bring about novelties. In the end the party did not, however, gain enough supporters for its cause and, after a noteworthy

start, failed to maintain momentum. The rhetoric of change was not the sole right of the new party, nor was the aim towards a more manageable political system or the claims for equality. Thus, while the constitutional issue was to some extent redefined, the traces of the original issues were still strong enough to maintain the established players of the party political field.

It is arguable that one of the reasons was that the party was leaning heavily on the success of the Belfast Agreement and the climate of the peace process. Moreover, they were not alone in advocating a less violent and more accommodating way of doing politics, which meant that the more established parties with secured numbers of support were also part of the positive developments in the region and managed to adjust their politics accordingly. However, it needs to be borne in mind that to win votes with a feminist agenda as a novelty was not an easy task even during the frenzy over the peace process. Indeed, in his memoirs Senator Mitchell wrote that

> *The women overcame a great deal of adversity. Early in the process they were not taken seriously in our talks and they were insulted in the Forum. I would not permit such conduct in the negotiations, but it took many months for their courage and commitment to earn the attention and respect of the other parties. In the final stages of the negotiations they were serious, important participants, and were treated as such. (Mitchell 1999, 44)*

From the temporal perspective, then, the seizure of the momentum was not turned into a more established politicisation of space for this particular party. However, despite the fact that the Coalition was unable to grow its base of support or even secure its vote, its presence at the time of the negotiations and function as a parliamentary party in the important early stages of the New Assembly remains a noteworthy achievement.

References

Primary sources

NIWC, 1997. The Northern Ireland Women's Coalition: the power of women. (Monica McWilliams for the Women's Studies Summer School, Trinity University) Dublin, dated July 26th.

NIWC, 1998a. The Northern Ireland Women's Coalition 1998 Northern Ireland Assembly Election Manifesto: "A new voice for new times".

NIWC, 1998b. A Common Cause: the story of the Northern Ireland Women's Coalition.

NIWC, 1999a. Between fear and hope: the process of reconciliation in a divided society. (Monica McWilliams for Lesley College), dated May 24th.

NIWC, 1999b. The role of women in Northern Ireland politics. (Monica McWilliams to the National Library of Ireland Society), dated June 3rd.

NIWC, 1999c. Conference Speech –NIWC annual conference. (Monica McWilliams), dated November 20th.

NIWC, 2000. Between Fear and Hope: Women's political role in the Northern Ireland Peace Process. (Monica McWilliams in ACIS conference), Limerick, dated July 1st.

NIWC, 2002. Oxford Foreign Service Diplomat Speech/ General NIWC –speech.

Secondary sources

Björk, A., 2006. *An attempt to seize the political occasion. A study dealing with time in Northern Ireland Women's Coalition*. Master's thesis, University of Jyväskylä.

Buckland, P., 2001. A Protestant state: unionists in government, 1921–39. In: G. D. Boyce & A. O'Day, eds. 2001. *Defenders of the Union: British & Irish Unionism, 1800-1999*. London: Routledge, pp. 211-226.

Darby, J. & MacGinty, R., 2000. Northern Ireland: long, cold peace. In: Darby, J. & MacGinty, R. eds. 2000. *Management of peace processes*. London: Palgrave, pp. 61–106.

English, R., 1998. The state and Northern Ireland. In: English, R., ed. 1998. *State: Historical and political dimensions*. London: Routledge, pp. 95–108.

Fearon, K. & Rebouche, R., 2006. What happened to the women? Promises, reality and the Northern Ireland Women's Coalition. In: Cox, M., Guelke, A. & Stephen, F. eds. 2006. *A Farewell to Arms? Beyond the Good Friday Agreement*. Manchester: Manchester University Press, pp. 280–301.

Little, A., 2002. Feminism and the politics of difference in Northern Ireland. *Journal of Political Ideologies*, 7(2), pp. 163–177.

McWilliams, Monica, 1995. Struggling for peace and justice: Reflections on Women's activism in Northern Ireland. *Journal of Women's History*, 6(4) / 7(1) (Winter/Spring 1995), pp.13–39.

Miller, R. L. & Wilford, Rick, eds., 1998. *Women, ethnicity and nationalism: The politics of transition*. London: Routledge.

Miller, R. L., Wilford, R. & Donoghue, F., 1999. Personal dynamics as political participation. *Political Research Quarterly*, 52(2), pp. 269–292.

Mitchell, G. J., 1999. *Making peace*. New York: A. A. Knopf.

Porter, E., 1998. Identity, location, plurality: women, nationalism and Northern Ireland. In: Miller, R. L. & Wilford, R., eds. 1998. *Women, ethnicity and nationalism: The politics of transition*. London: Routledge.

Sales, R., 1997. *Women divided: Gender, religion and politics in Northern Ireland*. London: Routledge.

'Dubliners' in the European Union – A Perspective on the Politics of Asylum-Seeking

Hanna-Mari Kivistö

Introduction

This article focuses on asylum-seeking in the context of the European Union (EU) Dublin System. By doing so, it looks at a topic which is not only relevant and actual in regard to politics of asylum in the European Union, but also in regard to contemporary questions related to international protection.

The Dublin System is a mechanism for allocating responsibility for asylum applications in Europe. It aims at rapidly determine the member state responsible for handling an asylum claim. The system should, on the one hand, guarantee that asylum applicants' claims are examined in the area of the European Union and, on the other hand, should prevent the same applicant from lodging multiple asylum applications, the so called "venue shopping".

Referring to 'Dubliners'[1] or 'Dublin asylum seekers' means those persons who, after having made a request for asylum, are regarded to

---

1   Papadimitriou & Papageorgiou 2005 speak of 'New Dubliners'.

be under the *responsibility* of some other state and the applicant is transferred to that state in order for the grounds for asylum be examined on merit[2]. 'Dublin asylum seeker' could, for example, be someone who, when submitting an asylum application, has already applied for asylum in one or several European Union states, or an applicant who has previously not lodged an application anywhere, but has travelled to his or her destination via another EU state, crossed an EU border illegally, or someone possessing a visa issued by one of the members states.

The question of state responsibility has been a very controversial and difficult issue in relation to international protection (Marx 2001, 9), something that Durieux (2009, 75) calls "the Achilles' heel of the international refugee regime". While being ambitious in placing responsibility, the Dublin regime has also been targeted by wide-ranging criticism, especially from organisations advocating refugee rights; it has been accused of: inflicting humanitarian problems; being both inefficient and expensive; failing to meet its goals; and leading to a situation where the pressures on asylum seekers are placed disproportionally on certain member states[3]. Consequently, the European Commission has proposed to recast the system[4].

This article hopes to offer a fresh perspective on the Europeanised asylum politics, as well as on the current "rights talk" related to asylum seekers in the context of the European Union. Further, when studying and problematising asylum-seeking in the Dublin framework, with particular emphasis on the Finnish context, the overall aim of the article is to offer a perspective on the question of distancing; how to draw the intellectual distance needed when studying a topic related to contemporary politics in one's home country. In this case, the focus is also on a topic that evokes emotions in public debate. Here Dublin asylum seekers are often framed as "abusers of the asylum system".

2   The focus will thus be on Dublin applicants who are turned away from the country, and not on 'Dublin-returnees', applicants who are returned to Finland for the substantive evaluation of asylum grounds.

3   Cf. UNHCR 2006; ECRE 2006 & ECRE 2009: The reports voice concern over e.g. the lack of common standards regarding the treatment of asylum seekers in the area of European Union, over detentions of applicants, and over situations related to unaccompanied minors, families as well as traumatised applicants.

4   COM(2008) 820 final.

This article is based on a study conducted on the Dublin procedure in Finland. Texts produced in the Dublin process, focusing especially on "cases" where there had been an appeal to the administrative court in order to try to challenge the transfer to the state responsible, served as the primary material for this study. Permission for the study was sought and received from the Finnish immigration authorities. The material concerned cases where the asylum application was lodged in 2004.[5]

Like any administrative context the Dublin procedure is based primarily on written documents. When approaching the Dublin framework by reading texts that are produced in the process, the research material consisted of the asylum protocols of the Dublin applicants. These protocols include the applicant's "asylum history" in Finland; in practice, the documents from the first notice that the police or the border authority makes when an application for asylum is lodged, to the last document of the asylum file, which is typically the decision to transfer the applicant to the state responsible. When cases that appealed to the administrative court were studied the files also included the appeal texts and the court decisions.

The research in itself was a journey into the decision making process of the Dublin System. As such it was also about travelling into a highly bureaucratic context with a distinctive vocabulary and a specific logic. In the Dublin framework the main question is who should determine an asylum claim. The main actors are the state units trying to agree over the responsibility of the claimants, and a special focus is put on the movement and on the control of the movement of asylum applicants in Europe.

In 2004 the number of asylum applicants arriving in Finland was 4764. Although the number seems quite small in comparison with several other European countries, 1611 of these persons could be defined as 'Dubliners'[6]. This relates first and foremost to Finland's geographical position, but it also means that a substantial number of those applicants arriving in the country can be turned away. Of those applicants receiv-

5   The choice of the study year relates to the timeframe in which the research was originally conducted (2006-2007).
6   For the statistics, see http://www.migri.fi/about_us/statistics/statistics_on_asylum_and_refugees

ing a Dublin decision in 2004 only one seventh, approximately, challenged the transfer to the responsible state in the administrative court.

<p style="text-align:center">☙</p>

This article views and approaches the Dublin framework by asking what kind of chance the state centred system would leave for the applicants to influence their situation. Further, by studying appeal cases the otherwise mechanical and frequently unnoticed decision-making process of the Dublin II Regulation can be problematised and examined.

To emphasise this perspective, the article will link asylum-seeking with the concept of the 'occasional politician', which Max Weber formulates in his *Politics as a Vocation* (*Politik als Beruf*, 1919) when giving the ideal typical description of a politician: "We are all 'occasional' politicians when we cast our vote or likewise express our will: applause or protest in a 'political' gathering, give a 'political' speech etc." (Weber 1988, 512)[7]

Weber's point is that when acting politically on a certain occasion, such as when voting or protesting, one can be regarded as an occasional politician. In distinction to the public duties of a professional politician, this concept relates to the conduct of one's own life, by emphasising the political role of one's actions and choices (Cf. Palonen 1999). To clarify the link between asylum-seeking and occasional politicians – which may at first seem peculiar – I will refer to Albert O. Hirschman's concept of 'voice'. 'Voice' relates to an individual's ability to voice a claim, to protest and to speak in order to try to create change in a certain situation. As Hirschman describes it, 'voice' is political action *par excellence*. (Hirschman 1970, 15-20)

This paper is interested in the chances the Dublin applicants have to act in a legal space, to speak and to try to challenge the impossibilities and necessities that are related to the allocation of responsibility. Although the Dublin applicants do not get their asylum claims examined

---

7 'Gelegenheits' politiker sind wir alle, wenn wir unseren Wahlzettel abgeben oder eine ähnliche Willensäußerung: etwa Beifall oder Protest in einer 'politischen' Versammlung vollziehen, eine 'politische' Rede halten usw. (Weber 1988, 512)

on merit, they do in the Finnish context have access to an interview that the police or the border authority conducts when an asylum claim is lodged in order to determine the identity and the travel route of the applicant. This paper holds that both this interview and the appeal to the administrative court are 'voice' situations, which break the administrative process and allow the applicant to speak for himself or herself.

Furthermore, emphasising political agency permits speaking about Dublin applicants without characterising them as 'victims' or as 'abusers of the system', both of which are categories which are completely depoliticising. This paper looks and reflects on asylum-seeking through reading administrative texts. These texts are produced in a certain quasi-juridical discourse, and as such they are strictly bound to a particular agenda emphasising particular aspects. From the point of distancing, the research setting produces distance between the researcher and the topic: in the research material the applicants are presented as "cases". In the research phase, when sitting in an office and considering someone's "asylum narrative" in the form of a file, this distance becomes particularly concrete. This kind of power relation and its implications are then of course something that the researcher has to be actively aware of.

Through a reading of the Dublin documents this article seeks to reflect on two aspects: one, how the limits of asylum-seeking in the Dublin System are constructed; and two, how these borders are then challenged in those cases where an appeal is lodged. The aim, therefore, is not to present the Finnish line of conduct regarding Dublin cases. Furthermore, as the asylum protocols are confidential, this article does not make any direct references to the cases studied.

❧

This paper starts by presenting the asylum process in general, and the definitions related to asylum-seeking, moving then more specifically towards the discussion on EU asylum harmonisation and the Dublin procedure, as well as the rationalities behind the developments in this field. Finally, the article will move to consider more specifically what asylum-seeking looks like in the European Union Dublin System. Fi-

nally, the discussion part returns to reflect upon the question of distancing.

Naming and Framing Asylum-Seeking

When discussing asylum, the distinction between asylum applicants and refugees is often emphasised, and for the purpose of this article it is also important. 'Asylum seeker' is here understood as someone asking to become recognised as a 'refugee'. Asylum seeker is thus an uncertain category, someone still in the margin of discretion, whereas refugee is a "legitimate" status, someone whose protection already belongs to the obligations of states under international law[8]. In order to make a distinction between these two concepts, certain admittance categories are applied. The contemporary criteria for legitimate flight dates back to the post World War II period and can be found in the 1951 Geneva Convention[9].

Narratives on asylum are related to inclusion and exclusion; they are very much about labelling, defining and drawing distinction between what the applicants are and what they are seen as not being. Distinctions are often made with the help of counter concepts, for example, between "*bona fide*" and "bogus" applicants; between those who are genuinely in need of international protection and those who are regarded not being.

---

8 The principle of non-refoulement; Article 33 United Nations Convention Relating to the Status of Refugees (1951): "No Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

9 The Article 1 of the United Nations Convention Relating to the Status of Refugees (1951) defines a 'refugee' as a person "who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

International law texts make a distinction between political and economical reasons for leaving one's country of origin, the first one being the paradigmatic reason for legitimate flight and the latter for illegitimate flight (See e.g. Goodwin-Gill & McAdam 2007, 15). This is the so-called refugee/migrant nexus. What is also often emphasised is that in reality the boundaries between the two concepts are not always so easy to distinguish and in the current debate they seem to overlap quite a lot. As Zimmermann (2009, 74) writes, asylum has come more frequently to be understood as a back door to immigration, often an uncontrollable one. On the other hand, the different EU policy documents often closely link asylum-seeking with migration, and with the "fight against illegal migration"[10]. Further, instead of talking so much about 'political asylum', the focus today is more on 'humanitarian migration'.

Decisions on asylum are of the most difficult administrative decisions to make in regard to the evaluation of the grounds and the personal narrative of the applicant, and in regard to considering the possible consequences of the decision (Thoma 2006, 86). The question of what might happen to the applicant once returned to the state of origin is crucial, the decision clearly having a considerable meaning for the person it concerns. In the process, the applicant should be able to provide evidence and to convince the decision maker that she or he has a 'well-founded fear of persecution' in the country of origin, and would thus be in need of international protection.

Asylum-seeking should be understood as a process where certain kinds of arguments are legitimate and where the applicant should meet a certain admission criteria. The decision maker then has the authority to give the applicant a status, and in this sense an "existence", or to deny it. As Shumam and Bohmer (2004, 398) write, in this process lawyers play a significant part in assisting the claimant and in reframing the personal narrative to meet the legal criteria. Also, when reflecting on the Dublin appeals, one notes that those representing the claimant, the lawyers, social workers, doctors, or representatives of different or-

---

10 Cf. Council of the European Union 2004: The Hague Programme: strengthening freedom, security and justice in the European Union 16054/04.

112

ganisations, have a central role in defining and in speaking for the applicant, and in this sense also in making the applicant more "visible" in the decision-making.

On the Europeanised Asylum Policies – Rationalities of the Responsibility Allocation

As noted at the beginning of the article, the Dublin System is designed to allocate responsibility for asylum seekers in the area of the European Union. It is central to the construction of a common European asylum system (CEAS). While the idea of allocation of responsibility was initially part of the intergovernmental Schengen Convention, the Dublin Convention[11] was agreed upon in 1990 and became effective in 1997. It was further replaced by a community instrument, the so called Dublin II Regulation[12], in 2003.

The process of harmonisation of asylum policies started in Europe at the community level in the 1980s. This was related both to the creation of the inner market as well as to the rise of the numbers of asylum applicants arriving in Western Europe, which further increased with the end of the Cold War, as well as with the conflicts in the Former Yugoslavia and the Caucasus in the 1990s (Vevstad 1998, 224).

The core of the problematic related to the Dublin System is linked to the question of how to combine the European idea of the internal market with the movement of 'third country nationals', the growing numbers of asylum applicants and the ideals and obligations to international protection. As regards to political choices that have been made in relation to this, Guild (2006, 634) notes that in the creation of the inner market and in introducing the free movement of goods, persons, services and capital (Single European Act, 1986) asylum seekers and refugees were left out of the framework. These have thus remained as categories for which national borders still strictly matter, and as often

---

11 Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities – Dublin Convention (97/C 254/01).

12 Council Regulation (EC) 343/2003.

emphasised, for which external borders have become even stronger. This refers to stricter policies, such as stronger visa requirements, sanctions for airline carriers, and the introduction of legal concepts such as 'safe third countries' or 'safe countries of origin', which seek to diminish the "administrative burden" of asylum applications and to speed up the asylum process[13].

With the Amsterdam treaty which became effective in 1999, member states' cooperation on matters on asylum and migration was brought within the legal framework of European Community (EC) Law (Cf. Gil-Bazo 2006, 580-581). Thus, what had previously belonged strictly to the national sovereignty of the states, the right to control the entry of non-citizens, became a matter of common jurisdiction.[14]

Following this, the harmonisation and the efforts towards a common asylum system were agreed upon at the Tampere Summit in 1999. By definition the common system would mean that the EU states would apply the same criteria and standards in regard to international protection and those granted asylum would have a uniform status in the area of the European Union[15]. Even if this development has been warmly welcomed, the harmonisation road has in practice been rather slow and rocky, framed by the different asylum traditions, policies and practices of the European states, and quite clearly also the lack of political will[16]. The Stockholm programme has the ambitious aim of a common European asylum system by the end of the year 2012[17].

The Dublin Procedure

By laying the responsibility for the asylum application on the authorities of one state, the Dublin System aims to guarantee that applicants

---

13 For the 'safe country' concepts and their origins see e.g. Costello 2005.
14 For this development in the EU, see Lavenex 2006.
15 Cf. Presidency Conclusions, Tampere European Council 15 and 16 October 1999 (part 2).
16 Dagens Nyheter: "Låst om gemensamt asylsystem i EU" 15.7.2010.
17 Council of the European Union: The Stockholm Programme – an open and secure Europe serving and protecting citizens (2010/C 115/01).

would have effective access to the asylum procedure where the chances for international protection could be evaluated[18]. The original legitimisation of the system relates to tackling the phenomenon of 'refugees in orbit' in which no authorities from any state would willingly take responsibility for examining the asylum application and as a result the asylum seeker would be left travelling from one country to another in constant request for asylum (Cf. Melander 1978, 107). Moreover, the system should prevent the "abuse of asylum procedures" which refers to the idea that the same applicant submitted multiple asylum applications "with the sole aim of extending his stay in the European Union"[19].

The space without internal borders inevitably makes movement for 'EU citizens' easier, but also for 'third country nationals', so that 'irregular secondary movements' have increasingly become a source of interest and discomfort for the member states[20]. As Zimmermann (2009, 75) explains, the concept refers to asylum applicants or refugees who do not stay in the first country in which they arrive, but travel on to further destinations to claim asylum. This contradicts the state perspective according to which the notion of asylum does not leave room for choice on the part of the applicant; the idea is that should the applicant be in need of international protection, protection should be sought – and guaranteed – in the first country in which the asylum seeker arrives (Cf. Kloth 2001, 8). Thus, these "irregular movements" are often interpreted as voluntary, relating to economical or quality of life reasons, more than to the request of safety, which lies at the centre of the refugee paradigm formulated by the Geneva Convention (Zimmermann 2009, 75).

The Dublin regulation determines the responsibility for an asylum claim by a hierarchy of criteria, mainly following the principle that the state having played the most important part, i.e. usually the state through which the asylum seeker first entered the European Union, should be responsible for the claim. Family unity is, however, prioritised[21].

---

18 For the objectives, see Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities – Dublin Convention (97/C 254/01).
19 COM (2001) 447 final, p. 3.
20 For 'secondary movements' and the Dublin II Regulation, see also Battjes 2002.
21 Cf. Council Regulation (EC) 343/2003. The hierarchy of criteria is

According to the procedure, when a person applies for asylum, for example in Finland, and before doing this has travelled to Finland via countries such as Italy, Germany and Sweden, a request to "take back" or "take charge" is made to the state regarded as responsible for handling the claim[22]. The authorities of the state in question can then either accept the responsibility or refuse it, depending on the case and the grounds. The Dublin II Regulation gives specific time frames for this process.

The determination of grounds for asylum falls under the umbrella of the sovereignty of the respective EU states, and a rejected claim for asylum is applicable to all of them. However, the regulation does leave states with some manoeuvrability, by including two clauses that allow the states to assume responsibility in cases where they would not originally be responsible for it: the sovereignty clause (Art. 3.2); and the humanitarian clause (Art. 15), the purpose of the latter being mainly to unite families in certain circumstances.

The Dublin System allows asylum to be sought only once within the area of the European Union. Legitimising this, the system relies heavily on the notion of 'safetiness'. This refers to the idea that *vis-à-vis* all European Union states were determined 'safe' by the Amsterdam treaty, and furthermore that asylum-seekers can be sent to another member state for fair examination of the grounds for asylum (Cf. Battjes 2002, 186-187; Garlick 2006, 607). It is, however, important to note that the Dublin System is not closed; it allows states to send applicants beyond the European Union to a 'third country', and thus in reality the system does not guarantee that the application would be determined in one of the EU member states (Cf. Durieux 2009, 77).

---

roughly the following: (1) family unity and family members, (2) an issued visa, (3) illegal entry or stay, (4) an asylum application lodged.

22 See Articles 16-20 of the Council Regulation (EC) 343/2003 for the different criteria.

On the Dublin Paradigm of Asylum-Seeking
– De-dramatisation of the Narrative

When approaching a discussion of asylum-seeking in the Dublin System, it is important to note that as the focus lies on the question of responsibility, the core of the Dublin procedure is to determine the identity and the travel route of the applicant. To simplify this, all asylum applicants over 14 years of age are fingerprinted as a part of the asylum process[23]. The information on fingerprinting is sent to a central unit in Brussels where the fingerprints are matched with the ones already registered. If a match is found, the case becomes a 'Dublin case', meaning that the applicant has already been registered somewhere and the person can be sent to that state without evaluation of the grounds for asylum. Thus, with the help of biometric identification, the question of who the asylum seeker is – or who she or he claims to be – and how the person has arrived, is substantially simplified and can be determined without the ambiguity that personal testimony would leave. As van der Ploeg (1999, 301) describes: "Once a person is enrolled in the system, wherever in the European Union he or she travels, the appropriate machines will be able to 'read off' their body their status as refugees or illegal persons".

The most important part of the substantial asylum procedure, the question of whether the applicant would have a 'well-founded fear of persecution' in the country of origin, is outside the Dublin procedure. Paradigmatically, the focus lies in the procedural, that is, finding the *responsible state*, rather than in the substantial matters. Thus the question is not, whether the applicant is in need of international protection, or whether she or he qualifies as a *bona fide* refugee. From the procedural side this question is not evoked in the interview phase, nor regarded as controversial in regard to the decision-making.

Given the logic and the rationality of the system, the idea that the most difficult, time and resource consuming part of the asylum process is ruled out might seem obvious, as a matter of course, especially given the premise that all member states are 'safe' and provide fair treatment for the applicant. This is further related to the logic which does not

---

23   The Eurodac fingerprinting system; Council Regulation No 2725/2000.

oblige member states to provide an opportunity for the applicant to appeal against the transfer decision or that the possible appeal would have a suspending effect[24].

As a UNHCR report (2006, 19) points out, even if not obliged to, all member states provide applicants an opportunity to appeal and to challenge the transfer to the responsible state. However, the report further raises the question of whether the right can be effectively claimed. Portugal is the only member state where the appeal automatically delays the transfer. In Finland, the appeal can be difficult in practice to constitute, as the applicant can be transferred from the country immediately after having been notified about the decision. (Cf. UNHCR 2006, 19–20) The administrative court can, however, order an injunction to prevent the transfer.

Depoliticisation of the Consequences

The Dublin procedure rules out the most difficult and most dramatic part of the asylum process: the evaluation of the grounds for political asylum. It also excludes the evaluation of the consequences of the decision: the question of what might happen to the applicant once having been turned away from the country.

This is due to the idea of 'safetiness' of the EU states, the underlying notion being that all states are "good Europeans" that fulfil their human rights obligations (Guild 2006, 643). This notion, however, becomes highly problematic in situations where the premises of the system are not actually realistic. In the case of the common asylum system still under construction, this refers to the fragmented national asylum policies of the EU states. The outcome of the decision has depended on the state responsible, i.e. states have had different national procedures relating to asylum seekers coming from certain countries or areas, which has

---

24 This was clearly articulated by the European Commission: "Since a transfer to another Member State is not likely to cause the person concerned serious loss that is hard to make good, it is not necessary for the performance of the transfer to be suspended pending the outcome of the proceedings". (COM (2001) 447 final, p. 19)

allowed some human rights organisations to keep referring to asylum-seeking in Europe as an "asylum lottery" (Cf. ECRE 2009, 3).

If the practices and conditions vary between the different member states, so does the meaning of the Dublin System for these respective states. For example, Finland being situated in Northern Europe is rarely a first country of destination for the applicants, and therefore receives a larger number of 'outgoing transfers' than 'incoming' ones. The opposite is the case in regard to the Southern states, the 'transit countries' via which applicants or 'illegal immigrants' arrive in the EU (Papadimitriou & Papageorgiou 2005, 304; UNHCR 2006)[25]. The system puts the most pressure on states situated on the Southern and Eastern borders of the Union. These are also usually the states with already over burdened asylum systems and the most criticised reception conditions (Cf. Garlick 2006).

There are other core problems connected to 'safetiness' from the point of view of Dublin asylum- seeking. One is that the states seem to be reluctant to challenge it. The rationale behind this relates to the *raison d'être* of the common regime: it is a system which relies on the functioning co-operation between member states, on the inter state 'trust' and 'solidarity'. The idea that returning the applicant to another EU state would be regarded as inhuman treatment *per se* would clearly not suit the picture (See also Papadimitriou & Papageorgiou 2005). Another problem is that decisions resulting in the shift of responsibility to a state challenging the safety assumption are less likely to happen because, despite the rhetoric focusing on it, the responsibility is viewed negatively in this context (Cf. Guild 2006, 637). This in turn relates to what is termed as "downwards harmonisation", in which, instead of trying to live up to the common standards, states are criticised for applying a peculiar negative market logic, and as adopting measures according to the lowest common denominator in order to not to seem too tempting for the asylum applicants (Cf. Costello 2005).

Here one should understand the limits and peculiarities of asylum-

---

25 For the negotiations over the Dublin II regulation and the tensions between the Northern and the Southern member states as well as for the EU relations in regard to the neighboring states in matters of asylum see Gil-Bazo 2006.

seeking in Europe, especially when the common system is still under construction: the European Union is aiming to be unified in matters of asylum, even if the context in practice consists of different national actors.

Chances to Act Politically in the Dublin Context?

When more explicitly addressing the question of what the chances are for asylum seekers to influence their situation in the Dublin context, one should first note that the system is, as it has been described, a mechanism for states to allocate responsibility and more specifically the focus is on the duties of the states rather than on the rights of the individuals. In this sense, the main actors in the process are the state units trying to agree on the responsibility rather than the individuals seeking asylum.

Therefore, the most relevant part of the Dublin process, the question of responsibility, can often be determined without the account of the asylum seeker with the biometric identification. From the state perspective this is to diminish the contingency of the personal narrative and the possible attempts from the applicant's side to prevent the turning away from the country. In the Finnish approach to the Dublin II Regulation, the applicants have a chance to speak on behalf of themselves in the interview phase where the identity and the travel route are being determined by the police or by the border authorities. Even if the examination related to the Dublin procedure is significantly narrower than an examination where refugee status would be determined, in principle it allows applicants to argue against their transfer and to give reasons why the application should be examined in the state where it has been lodged and not in the responsible state. Thus, when reading the applicants as 'occasional politicians', and relying on Hirschman's notion of 'voice' as political action *par excellence,* one can understand both the interview and the possible appeal to the administrative court as possibilities to argue on behalf of oneself and to challenge the situation, that is as occasions to act politically, even if in a framework of a strictly defined agenda.

A significant part of a Dubliner's asylum file is related to correspond-

ence between the authorities of different states trying to determine the responsibility. It should be noted that in the Finnish context the authority making the decision to transfer the applicant – once a state willing to receive the applicant has been found – does not meet the applicant in person but bases the decision on the interview protocol written either by the police or the border authority. In practice this document is the way for the applicant to become "visible" in the process of decision-making.

As noted earlier, asylum-seeking can be understood as a process where certain kinds of arguments are considered as legitimate, and thus as a process where the applicant should try to meet a certain admission criteria. In the Dublin paradigm of asylum-seeking the determination of refugee status is excluded. In this sense, one notices that no criteria even exist. Reasons related to international protection are left in a "legitimate vacuum"; even if these would be evoked by the applicant, in practice the decision-maker does not make reference to such grounds. From the point of view of Dublin decision-making these grounds never approach the status of relevance or are legitimately considered.

This in turn relates to the safety paradigm of the European Union. Regarding the most crucial question, the state responsibility and the grounds related to the question why the applicant should not be returned to the responsible state, the Dublin System presents itself as a context where the individual's narrative becomes secondary in relation to the objective of the common policy. For example, if the applicant presents claims relating to the different practices or differences in reception conditions, decision-making can override this by referring to the 'trust' between the member states, or deny the possibility to make an exception by referring to the 'sovereignty' of the respective responsible state. In this sense the question of asylum is depoliticised and de-dramatised as a question of common policy.

Although the idea of 'safetiness' seeks to undo and discredit claims related to the differences between practices among member states, nevertheless all appeals to the administrative court try to challenge this conception. Here one should note how the argument changes when being "Europeanised" in the Dublin System. In comparison with a "regular" asylum claim, the Dublin appeals argue only indirectly against

returning the applicant to their state of origin but above all against the transfer to the state determined to be responsible. The argument thus turns against the asylum practices, policies or reception conditions of other EU states. The fragmented state of the European asylum system is emphasised in the appeal letters and the different national practices are what the appeals plead to.

In the cases studied for this article, the only exception to the safety paradigm in the Finnish context relates to Greece. Finnish authorities stopped returning applicants to Greece in 2005 for a period of time due to a specific Greek legislative practice. The particular practice meant that returning applicants to Greece might have prevented the applicants from having access back to the asylum process once they left the country arbitrarily[26]. Concerns over the practices in Greece have been voiced also more recently[27].

<center>❦</center>

Overall the Dublin context may seem to be a framework where legitimate reasons are hard to find, or in which words do not seem to matter so much. There are, however, a few exceptions. Even if, in practice, decision-making within the Dublin framework does not take, or even has to take, any stand on reasons relating to international protection or to differences among state practices, some stands on grounds related to humanitarian matters, such as health or family ties, are taken. Hence, what finally becomes political, i.e. contradictory in the Dublin context in regard to decision-making, relates to matters that would often be characterised as 'non-political'. In this sense, and quite paradoxically in relation to asylum-seeking, one can claim that presenting oneself as

---

26 More of the Greek conduct, see Papadimitrou & Papageorgiou 2005.

27 E.g. UNHCR Position on the Return of Asylum-Seekers to Greece under the "Dublin Regulation" (15.4.2008). See also EU Observer: "Finland halts migrant transfer to Greece after UN criticism" (21.4.2008). In the case M.S.S vs. Belgium and Greece (21.1.2011) the European Court of Human Rights ruled that returning asylum applicants to Greece violated the European Convention on Human Rights (Articles 3 & 13).

'non–political' would actually be in the interest of the applicant[28].

Nevertheless, such a 'non-political' presentation concerns matters that are perhaps beyond the words of the applicant. Therefore, in these cases the role of the persons representing the asylum seeker and the role of the "expert" — the statements by doctors, for example — play a crucial role in defining the applicant when evaluating of the credibility of the case. In the research material represented here, the exceptions related either to cases in which the applicant's health hindered removal from the country, or to cases in which the reason concerned applicants who were minors or family ties.

Concluding Remarks

When approaching asylum-seeking in the European Union Dublin System, this article has sought to offer a different approach to the European asylum framework, but in addition to provide a perspective on the question of distancing. As explained in the beginning, distancing here relates to the specific research setting, which explores Dublin asylum-seeking through looking at administrative documents, more specifically "Dublin cases". Likewise a form of distancing was present in the research process when writing oneself into the Dublin framework, into its rules, logic and into its language, and finally in noting how easily the complex bureaucracy becomes normalised in the process. When reading the protocols, I found myself surprisingly disposed to adopting the decision-making perspective and beginning to evaluate the Dublin applicants' "credibility". This happened even if the regular rules and assumptions related to asylum-seeking clearly do not apply in the Dublin process, and as emphasised, the personal narrative and the grounds for asylum-seeking are not a matter of focus for the decision-making, and as a result, these narratives often remain fragmentary and patchy. As the one making the decision does not meet the applicant in person, I was in practice reading the same texts as the person charged with deciding

28 Here a reference can be made to Carl Schmitt in his writing in *Der Begriff des Politischen* (1963, 21) about a way to act politically by presenting oneself as unpolitical and the opponent as political.

on a Dublin case. For the reasons explained in this article, it was finally not very difficult to guess the outcome of different cases, or even how the decisions would be legitimated.

As important as it was, at first, to become familiar with the context and with its rationalities, another central aspect of the process was to draw some distance by "writing oneself out", or by "de-familiarising" oneself. In this study this meant approaching the topic from a point of view completely different to that of the Dublin logic. Asylum-seeking in the Dublin System can be characterised as "demanding the impossible": the chances for the claims to succeed are very narrow. The point of view of political agency allowed me not only to problematise the Dublin framework but also, eventually, to reveal something about EU asylum dynamics, controversies, and tensions relating to the common policy.

As Guild (2006, 636) writes, in the Dublin System asylum seekers are seen not so much as bearers of effective rights but as objects of state acts. From the state perspective they are rather voiceless objects of transfer, and agency is in this sense not part of the picture. The core of the Dublin problematic is of course political: what rights asylum applicants in general are allowed to have in the context of the European Union. Among the EU states there is no political will for a system that would allow the applicants to have more choice in regard to the country of asylum[29].

As is often emphasised, in Europe the measures adopted in relation to asylum-seekers have focused on tightening control. The critics have claimed that this approach has not been successful but rather counter-productive[30]. In relation to this, it seems that many applicants choose to try to influence their situation by disappearing before the actual transfer takes place. One of the paradoxes related to the Dublin framework is that the Dublin System meets difficulties when the applicants act in a way that is called "abusing the system" and of which the rhetoric of the system is legitimated such as when the asylum seekers move on or try

---

29 This is clearly stated by the European Commission in COM (2008) 820, p. 5.
30 See ECRE 2009. This relates e.g. to the low number of transfers that actually take place.

to hide their identity in order to prevent their transfer. As the chains of responsibility become more complicated along the way, it might actually be easier to allow the applicant access to substantive evaluation rather than to try and find a state that would agree to accept the responsibility.

The main problematic concerning the allocation of responsibility relates to the question how to combine international protection to the area without internal borders. On the one hand, the Dublin System seeks to ensure that applications for asylum will be examined. On the other hand, one should understand here the narrowness and the limits of the responsibility rhetoric, especially in situations where the premises of the system do not actually come true.

References

Primary sources

Commission of the European Communities: Proposal for a COUNCIL REGULATION establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. COM(2001) 447 final 26.07.2001.

Commission of the European Communities: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Recast) COM(2008) 820 final. 3.12.2008.

Convention Relating to the Status of Refugees, 28.7.1951.

Council of the European Union: Presidency Conclusions. Tampere European Council 15 and 16 October 1999.

Council of the European Union: The Hague Programme: strengthening freedom, security and justice in the European Union (16054/04), 13 December 2004.

Council of the European Union: The Stockholm Programme – an

open and secure Europe serving and protecting citizens (2010/C 115/01), 4 May 2010.

Council Regulation No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.

Council Regulation No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

ECRE 2006: Report on the Application of the Dublin II Regulation in Europe.

<http://www.ecre.org/component/content/article/135.html>   [Accessed 13 February 2013]

ECRE 2009: Comments from the European Council on Refugees and Exiles on the European Commission Proposal to Recast the Dublin Regulation. <http://www.ecre.org/topics/areas-of-work/introduction/133.html> [Accessed 13 February 2013]

European Court of Human Rights: Case of M.S.S. vs. Belgium and Greece (Application no. 30696/09) 21.1.2011.

UNHCR 2006: UN High Commissioner for Refugees, The Dublin II Regulation. A UNHCR Discussion Paper, April 2006.

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4445fe344> [Accessed 13 February 2013]

UNHCR 2008: UN High Commissioner for Refugees, UNHCR Position on the Return of Asylum-Seekers to Greece under the "Dublin Regulation", 15 April 2008.

<http://www.unhcr.org/refworld/docid/4805bde42.html> [Accessed 13 February 2013]

Secondary sources

Battjes, H., 2002. A Balance Between Fairness and Efficiency? The Directive on International Protection and the Dublin Regulation. *European Journal of Migration and Law*, 4, pp. 159-192.

Costello, C., 2005. The Asylum Procedures Directive and the Prolifera-

tion of Safe Country Practices: Deterrence, Deflection and the Dismantling of International Protection? *European Journal of Migration and Law,* 7, pp. 35-69.

Dagens Nyheter 15.7.2010. Låst om gemensamt asylsystem i EU. <http://www.dn.se/nyheter/varlden/last-om-gemensamt-asylsystem-i-eu> [Accessed 13 February 2013]

Durieux, J.-F., 2009. Protection Where? – or When?: First asylum, deflection policies and the significance of time. *International Journal of Refugee Law,* 21, pp. 75-80.

EU Observer 21.4.2008. Finland halts migrant transfer to Greece after UN criticism. <http://euobserver.com/?aid=26016> [Accessed 13 February 2013]

Garlick, M., 2006. The EU Discussions on Extraterritorial Processing: Solution or Conundrum? *International Journal of Refugee Law,* 18, pp. 601-629.

Gil-Bazo, M.-T., 2006. The Practice of Mediterranean States in the Context of the European Union's Justice and Home Affairs External Dimension. The Safe Third Country Concept Revisited. *International Journal of Refugee Law*, 18(3-4), pp. 571-600.

Goodwin-Gill, G. S. & McAdam, J., 2007. *The Refugee in International Law*. Oxford: Oxford University Press.

Guild, E., 2006. The Europeanisation of Europe's Asylum Policy. *International Journal of Refugee Law*, 18, pp. 630-651.

Hirschman, A. O., 1970. *Exit, Voice and Loyalty. Responses to Decline in Firms, Organizations, and States*. Cambridge, Massachusetts: Harvard University Press.

Kloth, K., 2001. The Dublin Convention on Asylum: A General Presentation. In: C. Faria, ed. 2001. *The Dublin Convention on Asylum. Between Reality and Aspirations.* Maastricht: European Institute of Public Administration, pp. 7-26.

Lavenex, S., 2006. Towards the constitutionalization of aliens' rights in the European Union? *Journal of European Public Policy,* 13(8), pp. 1284–1301.

Marx, R., 2001. Adjusting the Dublin Convention: New Approaches to Member State Responsibility for Asylum Applications. *European Journal of Migration and Law*, 3, pp. 7-22.

Melander, G., 1978. *Refugees in orbit*. Paris: International University Exchange Fund.

Palonen, K., 1999. Max Weber's Reconceptualization of Freedom. *Political Theory*, 27(4), pp. 523–544.

Papadimitriou, P. N. & Papageorgiou, I. F., 2005. The New 'Dubliners': Implementation of European Council Regulation 343/2003 (Dublin-II) by the Greek Authorities. *Journal of Refugee Studies*, 18(3), pp. 299–318.

van der Ploeg, I., 1999. The illegal body: 'Eurodac' and the politics of biometric identification. *Ethics and Information Technology*, 1, pp. 295–302.

Schmitt, C., 1963. *Der Begriff des Politischen*. Berlin: Duncker & Humblot.

Shumam, A. & Bohmer, C., 2004. Representing Trauma: Political Asylum Narrative. *The Journal of American Folklore*, 117(466), pp. 394–414.

Thomas, R., 2006. Assessing the Credibility of Asylum Claims: EU and UK Approaches Examined. *European Journal of Migration and Law*, 8, pp. 79–96.

Vevstad, V., 1998. *Refugee Protection: a European Challenge*. Oslo: Tano Aschehoug.

Weber, M., 1988/1919. Politik als Beruf. In: *Gesammelte Politische Schriften*. Tübingen: Mohr, pp. 505–560.

Zimmermann, S. E., 2009. Irregular Secondary Movements to Europe: Seeking Asylum beyond Refuge. *Journal of Refugee Studies*, 22(1), pp. 74–96.

Notes on Contributors

Anna Björk is Post-Doctoral Research Fellow in Political Science at the University of Jyväskylä

Taru Haapala is Post-Doctoral Research Fellow in Political Science at the University of Jyväskylä

Hanna-Mari Kivistö is Research Fellow in Political Science at the University of Jyväskylä

Anna Kronlund is Research Fellow in Political Science at the University of Jyväskylä

Kari Palonen is Professor of Political Science at the University of Jyväskylä

Tuula Vaarakallio is Senior Researcher in Political Science at the University of Jyväskylä