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Governance in turbulent times

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TURBULENCE
IN SOCIAL GOVERNANCE PROCESSES:
AN OVERVIEW

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Abstract

Social turbulence differs from social change when societies experience relatively unusual or dramatic internal and/ or external discord and pressure to change (Sztompka, 2000; Weinstein, 2010; Harper and Leicht, 2018). As long as there has been social governance, groups, tribes, and nations have experienced turbulence from time to time (Chua, 2019; Drews, 1995). Turbulence in social processes varies greatly in sources, intensity, and perspective (Tarrow, 2022). This essay reviews the fundamental aspects of social turbulence in order to frame current issues creating contemporary turbulence, and in this essay, we pay special attention to internal turbulence trends by providing examples in various types of governments from autocratic to democratically oriented.

Keywords: social turbulence, extremism and radicalization, political upheaval, radicalism, social governance process**.**

1. Intensity of social turbulence

Some degree of social change and friction is essentially inevitable in all societies, even those considered 'stable' (Sztompka, 2000). Stable economic, social, legal, military regimes may either mitigate the need for social dynamism, or simply mask underlying dynamic tensions inherent in society. For example, the 'Edo' period in Japan (1603 to 1868) was a long peaceful and prosperous era with little social turbulence, and only ended when Western powers began forcing economic engagement starting in the late 1850s (Beasley, 2000). Moderate internal social turbulence occurred after the Meiji Revolution for the next 75 years which led to the establishment of an empire. Social chaos followed World War II, but was followed only a few decades later by the reestablishment of a successful economic restructuring and new social stability (Drucker, 1986).

Another class of examples of the social turbulence is when substantially different ethnic and religious groups live together because of increased likelihood of feelings of uncertainty (Hogg, 2021). For long periods a group may live and even thrive with different groups in close proximity, and yet when the conditions are ripe, social turbulence may erupt leading to conflict, ethnic cleansing, or even genocide (De Nevers, 1993). Jews in Europe have thrived for long periods in the occupations and areas that they have frequently been limited to, only to be occasionally subjected to pogroms, expulsions, and holocausts (Anderson, Johnson and Koyama, 2017). Northern Irish Catholics' resentment of English 'plantations', established in the late 1500s and 1600s when Catholics' land was confiscated by English and Scottish settlers, erupted in the 1960s into a low-level civil war for 30 years to the extent that walls had to be built to separate Catholic and Protestant communities (Cairns and Darby, 1998). The breakup of Yugoslavia in the 1990s led to a series of massive ethnic cleansing campaigns and outright atrocities in areas in which Christians and Muslims had lived in relative harmony under the dictatorship of Josip Tito for 35 years (Hayden, 2013).

For this essay, we will consider social turbulence to be periods in which *social frictions have escalated to a point in which tensions are at the surface of society, and at least occasional demonstrations of violence occur due to individual acts* (e.g., sectarian murders or assassinations) *or social outbursts such as riots*. Social turbulence inevitably means a more polarized society, with various groups more aware of differences and grievances, and less interested in social equanimity (Iyengar *et al.,* 2019; Guterres, 2021). Extreme social turbulence results in mass migrations, desires for secession, rebellions, revolts, wars, and so on (Ayers, 2005; Doyle, 2010; Nacos, Shapiro and Bloch-Elkon, 2020; Barnes, 2021; Greenblatt, 2022).

2. Fundamental sources of social turbulence

Social turbulence primarily derives from three main sources: natural causes, external causes and internal causes. These causes are not exclusive; in fact, the overlap of these sources is a primary reason for increasing intensity, and potentially social confusion about the original source of social turbulence (Sachs, 2006; West, 2016; Blight, 2021).

2.1. Natural causes

In prehistoric and ancient times, natural causes were frequently the single most important reason for social turbulence (Drews, 1995; Caseldine and Turney, 2010). Natural causes could include floods, droughts, and pandemics. Flooding of the Euphrates, Nile, Ganges, Indus, Yangtze, Yellow River, etc. brought soil regeneration in good times, but catastrophic flooding could displace entire populations for a generation. All societies have flood myths based on single events or a combination of events that severely disturbed civil society (Dundes, 1988). Early emperors, such as Emperor Gun and his son Yu the Great of China (about 2200 BCE) were made or dethroned based on their flood control efforts (Lewis, 2006). As late as 1931 the Great Flood of Central China weakened China in repelling the Japanese invasion of Manchuria (Luo *et al.,* 2015).

Long-term droughts cause large-scale turbulence in agricultural societies (Maughan *et al.,* 2022). Egyptian Pharaohs and Roman Emperors were held responsible for providing large granary storage for use in times of extended drought (Papazian, 2013; Cheung, 2021). While the Biblical story of Joseph (in the Book of Genesis) being the vizier in charge of grain storage for an unnamed Pharoah was much embellished, it does point to the widespread belief in Egypt and Rome that their rulers were responsible for mitigating widespread famines through planning. Even today the price of basic foodstuffs can bring down poor and struggling incipient democratic societies such as the fledgling Menshevik socialist Russian government who were brought down by the Bolsheviks whose slogan was 'peace, land, and bread' (Phillips, 2000).

Pandemics cannot only create social disturbance, but change the course of history for societies (Piret and Boivin, 2021). Native American societies were obliterated by a series of deadly diseases introduced by Europeans including smallpox, bubonic plague, chickenpox, cholera, diphtheria, influenza, malaria, measles, scarlet fever, typhoid, and tuberculosis, among others (Ramenofsky, 2003). These diseases were potent in European communities, but had far greater levels of morbidity in American communities in which no social immunity existed, a phenomenon known as the 'virgin soil effect'. Individual epidemics would frequently wipe out a quarter to a half of the native population, but the accumulated effects of these pandemics would substantially contribute to a population decline that has left Native Americans just 2% of the population (Thornton, 1987). The social turbulence faced in the U.S. during the COVID-19 pandemic, interacting with political ideologies, provide evidence that pandemics are still potent sources of social turbulence when they occur.

2.2. External sources of social turbulence

Social turbulence frequently occurs because of aggressive or hostile interactions with other nation states. Wars of conquest—for colonization, land and strategic resources—cause social disturbance. When nation states are the recipient of military strikes to damage them or invasions, the social turbulence caused is generally immense. Even the threat of attack is disruptive. Europe is full of historical examples of regime change such as invasions

by Germanic and Slavic people slowly overwhelming the Roman empire, Normans decapitating Anglo-Saxon society in 1066, and the Islamic incursions into the Balkans and Spain reaching as far as France and Vienna (Gibbon and Milman, 2003; Howard, 2009). Economic dominance by some countries can also be disruptive, especially when a local economic elite aligns itself more closely with rich countries than the poor of their own nation (Cardoso and Faleto, 1979).

Even when nations are the aggressor, social turbulence within them often occurs. The most famous example in the twentieth century was the case of the Soviet Union culminating in 1991, which had continually overextended itself after the Second World War in competing with the West (Sakwa, 2005). Without a military aggressor, the overreach of the Soviet Union against the West in terms of military spending, subsidizing vassal states, and an incompetently managed control economy led to the collapse of its 'empire' and the complete overhaul of its economic system (Zubok, 2021).

2.3. Internal sources of social turbulence

Internally generated types and sources of internal turbulence—the primary focus of this article—include economic, social, and national security concerns. Economic concerns that can cause significant social disturbance include economic downturns, economic domination or various types of work serfdom, and increasing economic competition. Economic downturns are most likely to cause social frustrations if the results of the recession and hardship are felt by some groups such as the poor or minorities, more than others leading to grievance, such as, famously, the recession in France just prior to the French Revolution and accompanying food riots (Sanyal, 2002). When downturns occur over a prolonged period, they may lead to the abrogation of rights of certain groups targeted as less powerful, indolent or being a drain on society. Prolonged downturns provide a fertile environment for demagogues, racists, and authoritarian leaders (Abel, 1986). Mature and growing economies may seek to leverage their wealth over other external groups using economic power or outright force to extract work at below-market valuation, leading to long-term resentment (see for example, the case of Asian woman workers in Kuwait: Shah, Al-Qudsi and Shah, 1991). Finally, increased competition can also result in the abrogation of the rights of some relatively powerless groups to enhance the position of a dominant group by changing laws or exercising political power to force economic stringency. This frequently leads to the 'sweatshop' phenomenon (Zwolinski, 2007).

Social concerns that can lead to social turbulence include various societal divisions, decreasing acceptance of inequality or inequities, or a rise of nationalism (Alexander, 2012). Social divisions can be based on race, class or caste, gender, religion, regions, and so on. When social exclusion is increasing, such divisions lead to racism, gender discrimination, religious intolerance, and even phenomena such as ethnic cleansing and genocide (Quarles, 1999; Pfundmair, 2019; Renström, Bäck and Knapton, 2020; Finkel *et al.*, 2020; Druckman, *et al.* 2021). While social divisions may be accepted for generations and centuries by those subject to various types of overt and covert discrimination or outright exclusion, various events or trends can trigger frustrations and angst and thus fuel social

disturbances and lead to social agitation, riots, and rebellions (Hayden, 2013). Extreme nationalism cannot only lead to external bellicosity, but cause substantial internal social disturbances as certain groups are viewed as more patriotic, and others viewed with suspicion (Mylonas and Tudor, 2021). Extreme nationalism encourages the advancement of militaristic leaders in democratic states, which in turn may even lead to changing to quasi or full dictatorships (Ben-Ghiat, 2020).

National security concerns refer to those cases in which external threats are perceived or demonstrated by other countries. Like extreme nationalism, national security threats encourage turning to military leaders and the suspension of some civil rights, although generally from a sense of protection and survival, rather than a sense of expansion, conquest, etc. (Patapan, 2022). Notably, the ancient Greeks and Romans suspended democratic conventions when invasions were imminent, and 'elected' a dictator who subsequently had relatively absolute rule until the emergency was over. Lucius Cincinnatus was elected by his fellow Romans to be a dictator for six months while fighting the Aequi in 458 B.C. (Ghibu, 2022). He quickly defeated the enemy, brought the rebel leaders to Rome in chains, resigned his dictatorship, and returned to his farm—within 18 days after his appointment! Unfortunately, for many young democracies, the return of power by 'temporary' dictators frequently does not occur (Ben-Ghiat, 2020). Before we examine the mechanisms of social turbulence, we take a brief look at the opposite—at what leads to a tighter, more cohesive society.

3. Factors reducing social resentment and the likelihood of turbulence

There are certainly many ways to conceptualize what leads to social cohesion and a sense of social inclusion in modern, democratic states that do not rely on force or religious edict (e.g., Bourdieu, 1986; Coleman, 1988; Bellah *et al.,* 1992; Galbraith, 1997; Roberts, 2020; ICCCR, 2020; Jackson, 2020). Here we will follow the general conceptualization utilized by Putnam and his colleagues/followers in various writings (e.g., Putnam, Leonardi, and Nanetti, 1994; Putnam, 2000). Nine concepts characterize social inclusion, which in turn reduce the likelihood of internal dissention. They are: (1) broadly shared norms and values, (2) a common identity, (3) perceptions of fairness across society, (4) a general sense of trust, (5) social reciprocity even with those of opposing ideologies, (6) bridging organizations and networks, (7) meaningful opportunities for participation in a variety of social contexts, (8) shared channels of communication and facts, and (9) an overall sense of cultural inclusion.

Examples of these 'inclusion' concepts are: (1) belief that no one is above the law, (2) pride of nation more than pride in region, (3) belief by the less advantaged that society is nonetheless just, (4) groups in society do not fear the power of other groups, (5) there is respect for one's opponents, (6) numerous organizations crosscut society regardless of class, ethnicity, etc., (7) social mobility exists, (8) the bulk of the news media report on news events in relatively unbiased manner, and (9) there is a sense that regardless of class, religion, ethnicity and so on, society pulls together for shared goals. (These concepts can

also be reversed, creating negative social capital and leading to enhanced differences in society (Satyanath, Voigtländer and Voth, 2017; Van Wart, McIntyre and Hall, 2023).

Using the U.S. as an example, American society evolved from a relatively militaristic, classist, and intolerant society to one that was far more inclusive by the end of the twentieth century. Examples of this overall trend include the cessation of repression of Native Americans, ending slavery, the empowerment of women, the increase in religious tolerance, the extension of education to all, increases in minority rights, and so on (e.g., Bordewich, 1997; Uslaner and Rothstein, 2016; Guterres, 2021).

Sadly, most social commentators assert that not only has the move toward the increase of social cohesion stalled some time ago (Brownstein, 2008; Mann and Ornstein, 2016), but has been subject to profound shocks since the largely unexpected election of Donald Trump as President in 2016 (Goodsell, 2019; Woodward and Costa, 2021; Barnes, 2021; Foa and Mounk, 2021; Raskin, 2022). That is, commentators of all ideological hues note the increasing social dissent and prospects for increasing turbulence. Next, we examine some of the concrete mechanisms of social exclusion and the resulting types of social turbulence that they can cause.

4. The mechanisms of social exclusion

Broadly speaking, exclusionary mechanisms fall into three broad fields: social, economic, and political. They may not seem intentional, and they may not be consciously coordinated, but they feed on each other and can easily create a cycle of increasing social turbulence.

Social exclusionary mechanisms may start with increasing religious intolerance and/or voluntary segregation of communities (Bishop, 2009; Muggah and Velshi, 2019) and educational systems (Ladson-Billings and Tate, 1995; Wallace-Wells, 2021). Partisan affiliation becomes a major factor in selective social association (Mason, 2018). News becomes segregated by political and religious beliefs (Chan, Lee and Chen, 2021). This can be further exacerbated by the sensationalizing and manipulating atypical events to suit audiences' stereotypes and play to their biases (Wilson, Parker and Feinberg, 2020). Exclusionary impetus can also be heightened by the ease and anonymity with which divisive and vicious commentary can be spread via such mechanisms as the internet (Ullmann and Tomalin, 2020). In turn, this can eventually lead to ideologically motivated crime and punishment, protests and riots, vigilantism, terrorism and extralegal community expulsions (Knapton, 2014; McAdam, 2018; Bateson, 2021).

Economic exclusion is increased by large individual and regional disparities in income and resources, especially when commodities considered basic become scarce or expensive (McCarty, Poole and Rosenthal, 2006). Large-scale job loss is a powerful cause of social anxiety, no matter whether it is an economic cycle or shift in the structure of the economy. The erosion of savings and social safety nets makes social turbulence more likely. Economic exclusion fosters a dysfunctional economic system that in turn leads to decline in the

standard of living for many and privation for some, as well as recession and/or hyperinflation (Piketty, 2013; Saez and Zucman, 2020).

Exclusionary mechanisms that are political tend to heighten differences with unaffiliated groups or provide 'insider' advantages (Renström, Bäck and Knapton, 2020). The number of 'safe' voting districts increases, and those districts allow legislators to become more extreme in their policy preferences (Brownstein, 2008; Mann and Ornstein, 2016). Legislative coalitions become less willing to compromise and then talk through the media rather than to each other (Green, 2019). Accusations of voting fraud, electoral gerrymandering, and political irregularities become more frequent and assertive (Agiesta, 2022; Yourish et al., 2022). Such trends, when combined with social and economic mechanisms of social exclusion can ultimately lead to coups and insurrections, civil wars, regional or ethnic subjection, or the splitting of entire countries (Cederman and Vogt, 2017). These more extreme political outcomes are generally the result of radicalization by a substantial portion of the population, and a greater likelihood of cultism (Tourish, 1998). The cycle of increasing extremism that leads to radicalization. See Table 1 for concrete examples of internal sources of social turbulence.

5. When increasing social exclusion leads to extremism and radicalization, political upheaval, and violence

Social turbulence often leads to heightened extremism which is when society has widely divergent notions of what is fair, who can be trusted, and how society should be organized (Jacobson, 2021; Updegrove et al., 2020). Societies can live in a state of relative extremism for generations and even centuries when conditions remain stable, and force can reinforce the status quo. For example, slave revolts occurred in not only ancient Rome, but in Spanish and English-speaking America, but were generally successfully suppressed because of one-sided power dynamics (French, 2004; Rasmussen and Drummond, 2011).

Radicalism, whose etymology means 'to the root' is when one or more groups feel the system must be fundamentally changed, by force or violence if necessary. Radicalism, as used here, does not refer to the left or right extremes simply because they have widely divergent views within a system, nor is it necessarily pejorative. Radicalism occurs whenever a group acts on the notion that any means to make substantial changes in the system is justified, no matter whether it is extralegal to that system or not (Knapton, 2014). For example, in the U.S. those who promoted witchcraft trials, those who deemed themselves 'patriots' in the American Revolution (Jasanoff, 2012; Taylor, 2016), those states that seceded in the U.S. Civil War, vigilantes in the Jim Crow Era (Du Bois, 2017; Vandal, 2000), and violent protesters and anti-government terrorists of the current era are all radicals on both the left and right, no matter whether one thinks their actions were justified or not.

The most typical 'movements' around the world after World War II (comprised of both extremists and radicals) were those on the left (Tarrow, 2022). In the subsequent half century India, Pakistan, most of Africa and the Middle East and other miscellaneous colonies became independent because of national pressures for fundamental change. The

Table 1: Examples of internal sources of social turbulence

	US examples	International examples
Economic		
Economic downturns, willingness to abrogate freedoms	Abrogation of minority rights right after Civil War: Jim Crow	Allure of strongmen: Germany under Hitler and Italy under Mussolini
Seeking economic advantage	Chinese workers in the mid-1800s	Indians working in South Africa
Increased economic competition, tough decisions that may adversely affect some more than others	Decrease in tax progressiveness under Reagan	Thatcher: closing down national mines Fall of the Soviet Union and unfair distribution of state assets
Social		
Racism, classism, religious intolerance, gender superiority (internal) Divisive leaders supporting superiority based on race, class (caste), or religion; targeted legislation, ethnic cleansing	Civil War and Jim Crow, Native Americans, slavery, Christian nationalism	Uyghurs in China Muslim minority in India Ethnic cleansing of Kurds, Christians, Yazidis in Turkey Rohingya Muslims in Myanmar Muslim and Tamil minorities in Sri Lanka
Decreasing acceptance of inequality or inequity (internal), leadership of grievance	'Me, too,' movement, Black Lives Matter	Neighborhood riots in Paris
Nationalism (external) Expansionist military leadership	Expansion into Native American land from 1603 to 1890 Mexican American War, Spanish American War, annexation of Hawaii, etc.	Chinese takeover of Hong Kong European conquest from 1500 to 1960 in Africa, Americas, Asia, Australia and the Pacific Russian imperialism under the Czars
National security		
National security threats from other countries; turn to 'dictators'; military leaders become national leaders	Alien and Sedition Acts under John Adams, Expansionist wars under Polk, Teddy Roosevelt, internment of Japanese American citizens during World War II	Election of 'dictators' in early Greece and Rome when threatened. External threats keep strongmen in power such as Putin and Netanyahu

collapse of the Union of Soviet Socialist Republics starting in the late 1980s allowed the constituent republics to become independent states. In Europe and the U.S. most protests, riots, and civil disturbances were by those who felt dispossessed or marginalized. However, by the 1980s in the U.S. a cultural backlash was beginning under the banner of 'family values'. The backlash was fully operationalized in 2009 when an activist Tea Party movement pushed for lower taxes, smaller government, and reduced social spending (except senior care programs). While Trump's election was unexpected for most people, the social turbulence stoking him had been long in the making and has continued since (Norris and Inglehart, 2019)

In the current day U.S.—in a trend also exhibited in China, India, Turkey, and numerous other countries—the push for anti-democratic measures at a minimum, and a suppression of minorities at its more extreme, is an example of widespread extremism moving to radicalization (Repucci, 2021; Abramowitz *et al*., 2021; Calhoun, Gaonkar and Taylor, 2022; Cilliza, 2020; DiMaggio, 2022; Gidengil, Stolle and Bergerson-Boutin, 2022). Conservatives increasingly embrace the notion of providing more support for religious organizations, 'locking up' political opponents, using flimsy reasons to allege treason, embracing violence against liberal or 'woke' individuals, curbing minority political and social rights, vigilantism, and so on (Nacos, Shapiro and Bloch-Elkon, 2020; Greenberg, 2022; Rothbart and Stebbins, 2022). Part of the rationale for such beliefs—by conservatives—is that various minority and/or nonconservative groups are damaging the fundamental values of the U.S. Important values include 'dominant' religious mores, notions of self-help, and the historical importance of the U.S. as a White, Christian nation (Hage, 1998; DiAngelo, 2018; Jardina, 2019; Whitehead and Perry, 2020). Conservatives in the non- and less-democratic states of China, India, and Turkey condemn and repress Uyghurs, Muslims, and Kurds respectively (e.g., see Roberts, 2021). Additionally, the shift of the right from the extreme to increasingly radical has resulted in an unusual shift in international relations. The right increasingly supports relationships with authoritarian states such as Russia and North Korea, and lags in its support of the Ukraine, Palestinians, and liberal European states (Britzky, 2022).

6. The importance of understanding contemporary social turbulence

An African proverb notes that 'there can be no peace without understanding'. So it is necessary to recognize that social turbulence usually has far deeper roots than apparent in contemporary events (Lieberman *et al*., 2019). Social turbulence is complex, emerging from interweaving sources. And finally, social turbulence as social dissension always has two sides (Graham, Haidt and Nosek, 2009).

Since, ironically, it is contemporary conservatives who are the most radical (Failla, 2021; Frum, 2022), it is important to examine their values if a reduction in social tension is to occur and not simply be met with force or acquiescence. Conservatives often believe that there is a surfeit of democracy which leads to anarchy, excess, usurpation, and decadence (Fawcett, 2022). They feel that their historical achievements ought to be respected.

They feel that they should be allowed to live in their own, relatively pure communities. And they feel anger at the progressive loss of control over these things in a more liberal era. Conservatives are radical in that they want to return to what they perceive as a bygone era and they are increasingly willing to do what it whatever it takes to achieve these ends (Hertel-Fernande, 2019; Kingzette *et al.*, 2021).

Liberals, on the other hand, want to continue the progressive trends that have typified many nation states for the last 75 years (Fawcett, 2018). They want greater movement in social equality, climate change reforms, and personal freedoms, no matter the various costs. They want greater integration and social flexibility. They want governments that protect minority rights and provide strong social safety needs. And they frequently want past wrongs acknowledged at a minimum, if not rectified in the present (Hudson, 2012). Liberals are also willing to do what they think it takes within democratic norms, but the quandary for them in democratic states is that they often no longer have the overall social consensus to move forward, and, in fact, may be unable to resist a rollback of what they feel that they have achieved (Walter, 2022).

Levitsky and Ziblatt (2018, 232) note that 'Previous generations of Europeans and Americans made extraordinary sacrifices to defend our democratic institutions against powerful external threats. Our generation, which grew up taking democracy for granted, now faces a different task: We must prevent it from dying from within'. As the frustration of those who were heretofore non-radicals grows, they will increasingly have to decide if they want to meet radicalization with understanding or their own style of radicalism or a combination of the two (Homer-Dixon, 2020; Brummel, 2021; French, 2020; Hall, 2021; Greenblatt, 2022; Kettl, 2022).

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TRUST AS A RELIANCE INTEREST: ADMINISTRATIVE LAW AND FINANCIAL REGULATION IN THE UNITED STATES AND ITS COMPARATIVE IMPLICATIONS*

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Abstract

This article argues that regulatory trust is established and maintained through a relationship between stakeholders and the government, with the former group of organizations and individuals relying on their understanding of this relationship. Federal administrative law in the United States makes the expectations about the regulatory environment on which stakeholders rely more meaningful by granting stakeholders the right to bring actions in court when their expectations are being (or seem likely to be) dashed. To make this argument, I begin with the threshold question of how courts serve as a forum for voicing claims of distrust in regulatory regimes. I then consider the importance of political accountability over regulatory decision making, illustrating the concerns about the structure of agencies that regulate consumer and housing finance. Next, I will discuss a second major challenge to trust that arises from the extent to which the authority of regulatory agencies is circumscribed by legislation. Along the way, I draw on the case law presented to argue that problems of trust in financial regulation center on the reliance interests of stakeholders. Finally, the argument suggests a research agenda into trust as a reliance interest that I sketch in the conclusion.

Keywords: trust, administrative law, financial regulation, regulatory agencies.

1. Introduction

The concept of trust is one of the most widely examined in the context of public administration (de Walle and Migchelbrink, 2022; Bouckaert, 2012), and what is more, the regulatory agency has emerged as a popular subject for understanding trust relationships between officials and stakeholders (Maman, Feldman and Levi-Faur 2022; Charron, Harring and Lapuente, 2021). Because regulatory agencies, and the policies they implement, are the subject of intense comparative study (Jordana, Fernández-i-Marín and Bianculli, 2018; Koop and Hanretty, 2018). As a result of this, trust in American regulators has and will continue to become the subject of comparative interest for scholars. I argue that federal administrative law in the United States provides a fertile source of arguments about the trust regulatory stakeholders have in regimes financial regulation. That it does so should be rather self-evident: regulated entities and organized stakeholder groups file lawsuits that challenge both the structure of regulatory agencies and their decisions.

The arguments in these legal cases offer an evocative portrait of the problems of trust in financial regulation in the contemporary American context, and they show how the law both shapes and is shaped by arguments with trust considerations at their core. My core argument in this essay is that these arguments conceive of 'trust as preserving a reliance interest' of regulated entities and stakeholders in the 'stability' of regulatory practices. The regulated rely on a relationship with (and among) regulators—the currency of which is 'expectation' about what the rules are and will continue to be. The enemy of expectation is the perception of arbitrary action. In this way, the law provides a way of unpacking the 'process' by which regulated entities and stakeholder groups come to trust regulatory regimes, a process that is often approached through surveys and the methods of social psychology (see Cannas, 2023). I will also advance the claim that the arguments in legal actions can help researchers to better understand how the process of trust is revealed, which can then inform research designs for making comparisons between regulatory trust in the United States (U.S.) and European jurisdictions.

Legal actions challenging agency structure and decision-making—and investing in the capacity for threatening such challenges—are costly actions that help to reveal the contours of trust in regulatory regimes. Gordon and Hafer (2005, p. 247) illustrate my claim by analogy:

> '*Lawsuits are costly, so litigants typically reach a settlement before going to trial. In order to improve his or her bargaining position, each party to the suit would like to be able to signal credibly to the other his or her willingness to spend a significant sum on a trial if a favorable settlement were not reached. While any costly action (i.e., "burning money") could indicate his or her willingness to go to trial, retaining an army of high-priced trial attorneys would be the most unambiguous gesture of a party's resolve in the contest*'.

When regulated entities and stakeholder groups develop expectations that a regulatory regime—that is, both institutions, such as a regulatory agency, and decision-making practices—creates uncertainty about the furtherance of their interests, federal administrative

law allows them to go to court to assert their claims about why the regime will do this. Regulated entities and stakeholder groups have strong incentives to expend the resources to argue to a court because the law provides a credible strategy of influence. Whether they win or lose a particular case, litigants' arguments become a part of the narrative by which the court maintains its credibility, which, of course, relates to litigants' trust in it (Popelier *et al.*, 2022). Thus, in the U.S., it is difficult to understand why regulatory regimes hold or lack trust from stakeholders without a careful look at the arguments before federal courts[1].

To illustrate the importance of legal argument as a source of information about stakeholder trust, I focus on the case of financial regulation. Within this domain, I discuss challenges to the structure and decision making of agencies that regulate a wide variety of substantive problems from consumer and housing finance to the oversight of business accounting practices to the regulation of securities and trade. This sector provides an excellent source of case law that evokes the primary problems of trust that are important enough for stakeholders to invest in the judicial process and how courts address those problems.

This essay proceeds as follows. First, I address the threshold question of how courts serve as a forum for voicing claims of distrust in regulatory regimes. Doing this also illustrates the basic structure of administrative law in the U.S. Second, I turn to the importance of political accountability over regulatory decision making to trust, illustrating the concerns about the structure of agencies that regulate consumer and housing finance. Third, I discuss a second major challenge to trust that arises from the extent to which the authority of regulatory agencies is circumscribed by legislation. This introduces the oft-cited 'uneasy' constitutional position of administrative agencies in the U.S., which distinguishes it from the civil law systems of continental Europe. Fourth, I draw on the case law presented to argue that problems of trust in financial regulation center on the reliance interests of stakeholders. That is, trust is established through a relationship between regulated entities and stakeholders and the government, with these groups of organizations and individuals relying on their understanding of this relationship. American administrative law makes those expectations meaningful through stakeholders' right to bring actions in court when they are being (or seem likely to be) dashed. Fifth, I conclude by sketching elements of a comparative research agenda into trust as a reliance interest.

2. Courts and trust

In a policy brief entitled 'Assessing Social and Political Trust: A Systematic Review', collaborators on a large-scale European project on trust in regulation expressed the view 'that trust is not just a matter of vertical relations between citizens and public authorities. Instead, attention should also be given to horizontal trust relationships between actors that

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1 In American federalism, state administrative law also plays an important role in some areas and embraces the same framework discussed here (Bonfield, 1986). Given this correspondence and my focus on contemporary financial regulation, I focus on federal actions in this essay.

are part of the rule-making process, such as public agencies and courts' (TiGRE project, undated; see also Popelier *et al.*, 2022). Addressing these relationships in the U.S. context requires a brief introduction to federal administrative law, which this section provides. There are two basic kinds of regulatory trust problems voiced through arguments before the American courts. A belief that past action by a regulator was, in fact, unexpected leads to an argument about the 'process' of agency decision making. A belief that future unexpected action will occur leads to an argument about defects in the 'structure' an administrative agency.

2.1. Challenging process

The Administrative Procedure Act of 1946 (APA) provides regulated entities with a set of tools to use in court to ensure that any regulatory practices are in accordance with the law, enacted through legally proscribed methods, and applied in a fair method. In the present context of financial regulation, this is important because many legal standards applied to banks and other financial institutions are established by agency rulemaking rather than statute. For example, 12 U.S.C. § 3907(b)(1) gives agencies the authority to classify any bank practice as unsafe because it fails to maintain a stock of capital at or above some minimum level. The APA allows courts to set aside an agency action that is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law', 5 U.S.C. § 706. This standard is commonly used where agency rulemaking is highly technical and rests on empirical information, which is frequent in the context of financial regulation. As we shall see, one recurrent argument for arbitrariness is that an agency's decision ignores the economic costs of a regulated firm or sector of operations.

Judicial review of agency rulemaking is common, and it is designed to be that way. The U.S. Supreme Court has held that there is a 'strong presumption that Congress intends judicial review of administrative action' (see Bowen v. Mich. Acad. of Family Phys.), 476 U.S. 667, 670 (1986). That said, the presence of review is not meant to shift regulatory decision-making to the courts. Regarding the standard in 5 U.S.C. § 706 quoted above, the Supreme Court has held that '[t]he scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgement for that of the agency' (Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.), 463 U.S. 29, 43 (1983). Moreover, in 'SEC v. Chenery Corp.', 332 U.S. 194, 196 (1947), it further circumscribed the role of the court when regulatory decisions are reviewed, holding that a court may not 'supply a reasoned basis for the agency's action that the agency itself has not given'.

The APA is not the only place where standards for the decision making of regulatory agencies are found. Importantly, some actions raise constitutional questions. For instance, a federal appeals court held that an administrative law judge (ALJ) who held office in the Securities and Exchange Commission (SEC) violated the Appointments Clause of the U.S. Constitution when he presided over the plaintiff's hearing in the case. In that decision, the court clarified that there is significant judicial authority over such standards: 'When it has faced a case or controversy concerning separation of powers, the Supreme Court has

determined whether the legislative or executive branches or both have violated the Constitution' (Bandimere v. United States SEC), 844 F.3d 1168, 1185-88 (10th Cir. 2016). Consequently, the decision-making process in regulatory agencies can lead to mistrust when it creates questions about how it respects the very 'structure' of the U.S. government. Indeed, the debate over the APA itself was deeply rooted in such questions, with fears that agencies combined the powers of 'judge, jury and prosecutor' (Bertelli and Lynn, 2006, p. 88, quoting Walter Gellhorn). How agencies make their decisions is inextricably intertwined with the trust of those they regulate, and particularly with questions about how those decisions might upset expectations about the regulatory environment, either because they are arbitrary or because they are (more or less) immune to political accountability (see Bertelli, 2024 forthcoming).

Sunstein and Vermeule (2020) have recently argued that there are three values the regulatory process ought to embrace in order for it to be legitimate, and legitimacy so achieved enhances the trust of regulated entities and stakeholders. They go so far as to suggest 'that there is an *optimal* level of *transparency, retroactivity, and intelligibility*, and to arrive at the optimal level, trade-offs must be made, including consideration of costs of multiple kinds' (Sunstein and Vermeule, 2020, p. 98, emphasis added). To see this, consider their claim that '[n]o one should deny that people in the private sector are sometimes concerned about a lack of sufficient transparency and intelligibility' (Sunstein and Vermeule, 2020, p. 100). Nonetheless, regulations might lose important nuance if they indeed become simpler and more comprehensible. What is optimal is some 'balance' among these values. One way to think of the trust content of legal arguments, then, would be to consider how they think about the interplay of transparency, retroactivity and intelligibility.

First, when there is a failure of transparency, parties affected are not made aware of the rules with which they must comply (Sunstein and Vermeule, 2020, p. 100). Transparency is very important (see e.g., Grimmelikhuijsen *et al.*, 2013). I argue here that transparency is a 'vehicle' that allows stakeholders to become informed of the expectations about what the rules are and will be going forward. Importantly, this means that it is not a first-order value for courts, like justice or fairness, but a second-order value that promotes mechanisms for achieving justice or fairness. At the elite level of regulatory stakeholders, transparency does not promote trust on its own. What it does is to allow for stakeholders who challenge the process of regulatory decision making to have better information about the subject of that challenge. When decision making is transparent, it informs arguments about, for instance, the fairness of regulatory decisions.

Second, and related, many contemporary critics of the administrative state are concerned with an 'abuse of retroactivity, in the sense that people cannot rely on current rules, and are under threat of change' (Sunstein and Vermeule, 2020, p. 57). In 1988, the Supreme Court prohibited administrative retroactivity unless Congress had explicitly authorized it: 'retroactivity is not favored in the law' (Bowen v. Georgetown Univ. Hosp.), 488 U.S. 204, 208 (1988). Retroactivity 'weakens' expectations for the most straightforward of reasons. When taking an action such as making a strategic business investment, a regulated entity would have reasonably relied upon and conditioned its action on what

the rules were. Should a later change in those rules mean that such reliance was misguided, expectations are upended, and trust is diminished with them.

Third, regulatory decisions ought not to bring one rule (or set of rules) into contradiction with another. The Supreme Court has held that agencies must supply a rationale for adopting a new policy that is 'different' from its prior policy, that is, agencies may not 'depart from prior policy *sub silentio* or simply disregard rules that are still on the books' (Sunstein and Vermeule, 2020, p. 75, quoting 'FCC v. Fox Television Stations, Inc.', 556 U.S. 502, 2009). Contradictions clearly 'weaken' expectations. That case, 'FCC v. Fox', arose when a musician and a presenter used vulgarities during an awards program. The Federal Communications Commission (FCC) had previously held that a sprinkling of bad words did not make a broadcaster liable for the kind of 'indecency' prohibited in its regulations, it nevertheless served notice of a violation. While the FCC claimed that Fox, the broadcaster, had formed its expectations from 'staff letters' and statements that did not constitute its official position, the U.S. Court of Appeals for the Second Circuit considered its action 'arbitrary and capricious' under the APA standard mentioned above. While the majority opinion disagreed, holding that an agency need not show that a new rule improves upon the old, but only that the new rule is 'permissible'. Such an authorization condition was too weak for a minority of justices, and a pair of dissenting opinions by Justice Stevens and Justice Breyer suggested that, at a minimum, the FCC ought to explain 'why' it was making this change. The difference between requiring authorization and requiring rationale is evocative of the effect of retroactivity on expectations. If an unexpected change need only be authorized, it remains difficult to incorporate exactly what has changed in the regulatory environment into stakeholder expectations. If, however, a rationale is required, the model whereby a stakeholder forms its expectations can be updated accordingly. The rationale requirement does more to maintain trust, I think, than the authorization condition because it also contributes to an *ex post* accountability of the court to the rule of law and to the people (see Mansbridge, 2009).

The transparency, retroactivity, and non-contradiction (or intelligibility) principles that Sunstein and Vermeule (2020) set out are an important set of considerations that influence the expectations stakeholders have about their regulatory environment. Still, my principal argument is simpler: 'when expectations are sullied, trust in those who make regulations diminishes'. And because regulation is made in discussion (and negotiation) with stakeholders, the TiGRE project's focus on a relationship among stakeholders, agencies and courts is the appropriate lens to understand how these and other principles can enhance trust in the process by which regulatory regimes are implemented.

2.2. Challenging structure

The structure and organization of a regulatory agency influences stakeholders' expectations about what the rules it makes will be and how they will impact the choices those stakeholders must make in the regular course of business. Constitutional challenges to agency structures manifest distrust in that they express a view that an agency so conceived is unlikely to produce stable rules on which stakeholders can rely. That is, the structure of

an agency makes arbitrary action more likely, or because it is sufficiently removed from democratic deliberation, it cannot contribute to self-government.

The independence of regulators is possibly the preeminent structural concern in cases challenging structure. On the one hand, independence from politics increases trust as it divorces regulatory choices from the pulling and hauling of partisan politics. On the other hand, independence from politics changes the contours of democratic input. That distance can lead both citizens and stakeholders to perceive that regulations are made without regard to the democratic ideal of self-government, weakening their trust in regulatory regimes. Administrative law weighs in on this trade-off by giving independent regulators substantial discretion, but also requires them to satisfy certain standards which are enforced by courts (e.g., Quintyn and Taylor, 2004). For example, commission structures allow for presidential appointments, but they also stagger terms and distribute power across multiple persons. This balances between political control and its connection to the people through representatives and the fears of stakeholders that a single, unguided regulator is more likely to take arbitrary action.

Political appointments are indeed an important way in which federal administrative law has addressed the mechanism of enhancing trust through political accountability. The structure of agencies varies greatly, but it has two basic forms that have been recognized by the courts. These forms differ in how they promote political control. Executive agencies are headed by an administrator who the President appoints (and takes office on the condition of Senate confirmation) and who the President 'can' remove without cause. Political control happens prospectively through appointments and retrospectively through removals. Independent commissions have a shared decision-making structure where several commissioners are appointed by the President (subject to Senate confirmation), but whom the President 'cannot' remove without cause. Political control comes only prospectively through appointments. The Supreme Court has held in 'Myers v. United States', 272 U.S. 52 (1925), that limiting the President's removal power requires approval from the Senate because the President is empowered by the Constitution to remove any executive officer. In 'Humphrey's Executor v. United States', 295 U.S. 602 (1935), the Supreme Court distinguished 'Myers' and held that the President's ability to control the actions of the executive branch has limits, and these are meant to ensure the protections (and effective decision-making independence) that Congress gave to the heads of independent agencies in enabling legislation.

3. Challenges to Agency Structure

Executive agencies and independent commissions in the U.S. are in a delicate balance. In this section, I discuss challenges to the structure of several financial regulatory agencies that evoke the constitutional issues presented by each form.

3.1. The Consumer Financial Protection Bureau

The Consumer Financial Protection Bureau (CFPB) was created by Congress after the 2008 financial crisis. The agency is tasked with ensuring that consumer debt products are safe and transparent. At the time of challenges to its structure that I review below, the CFPB was headed by a single director, appointed by the President, with the advice and consent of the Senate, to serve for a fixed, five-year term and removable only for cause. This structure, which was championed by Senator and later Democratic presidential candidate Elizabeth Warren, sits uncomfortably between the executive agency and commission and has been a flashpoint in political debates. Mick Mulvaney, who served as Acting Director of the CFPB during the Trump administration went so far to write in the official Semi-Annual Report of the Board (Bureau of Consumer Financial Protection, 2018):

> '*The best that any Bureau Director can do on his own is to fulfill his responsibilities with humility and prudence, and to temper his decisions with the knowledge that the power he wields could all too easily be used to harm consumers, destroy businesses, or arbitrarily remake American financial markets*'.

Throughout its short history, the CFPB received critical coverage in the press, as exemplified by the following (McCoy, 2017):

> '*[Financial service providers] say the consumer bureau has imposed unnecessary regulations that hurt business while failing to protect consumers. One example is the CFPB's recent regulatory crackdown on payday lending, loans that cash-strapped consumers take to make ends meet until their next paycheck. Although the consumer bureau contended that such high-interest loans mired workers in a never-ending borrowing cycle, payday lenders say they provide a service that consumers need and want*'.

All of this came to a crescendo in a series of court cases that challenged its structure as independent but also headed by a single administrator.

Seila Law is a California based firm that provides legal services regarding debt. In 2017, the CFPB investigated Seila Law to determine whether it had engaged in unlawful acts relating to its debt relief services. The law firm, given standing by the CFPB's investigation, argued that the structure of the CFPB is unconstitutional because the single director, removable-only-for-cause, independence structure violates separation of powers principles. The Supreme Court agreed, holding that '[t]he CFPB's single-Director structure contravenes this carefully calibrated system [of a balance of separated powers] by vesting significant governmental power in the hands of a single individual accountable to no one' (see Seila Law, LLC v. CFPB), 140 S. Ct. 2183, 2203 (June 29, 2020). The Court explained the separation of powers in American government as one that aims to 'divide power everywhere except for the Presidency, and render the President directly accountable to the people through regular elections' (2203). 'In that scheme', the opinion continued, 'individual executive officials will still wield significant authority, but that authority remains subject to the ongoing supervision and control of the elected President' (2203). The CFPB struc-

ture 'lacks a foundation in historical practice and clashes with constitutional structure by concentrating power in a unilateral actor insulated from Presidential control' (2192). The separation of powers requires that an individual who heads an agency, with 'the authority to bring the coercive power of the state to bear on millions of private citizens and businesses' must be removable by the President at will (2200-01).

The 'Seila Law' case had not been the only time the structure was at issue before the courts. In 'PHH Corp. v. CFPB', 881 F.3d 75, 82 (D.C. Cir. 2018), the CFPB filed a Notice of Charges in 2014 against PHH, a large mortgage lender, challenging their mortgage insurance premiums. PHH made a very similar argument to the one with which Seila Law won its case. Yet the U.S. Court of Appeals for the District of Columbia Circuit ruled—a ruling now overturned by the 'Seila Law' case—that the CFPB's structure and independence was constitutional. The opinion stated that 'Congress and the President have historically countenanced sole-headed financial regulatory bodies' (80) and '[i]t remains unexplained why we would assess the challenged removal restriction with reference to the liberty of financial services providers, and not more broadly to the liberty of the individuals and families who are their providers' (106). The court countenances the concern that agencies regulating financial actors could be prone to overreaching in the name of protecting individuals, while being less concerned about limiting financial institutions. This muddles the expectations of the latter, resulting in their distrust of the regulatory scheme. A dissenting opinion by Judge Henderson gave a clear voice to that distrust: 'The CFPB flunked 'Rule of Law 101' and was called out for 'gamesmanship' and 'absurd[]' reasoning' (150). Moreover, she contended that '[t]he administrative agencies sprawled across Washington, D.C.—especially the 'independent' ones—do not fit comfortably within the text and structure of the Constitution' (140). While the dissent did not 'question the importance of protecting consumers', it contended that 'an agency cannot be considered 'impartial[]' under Humphrey's Executor if in partisan fashion it uniformly crusades for one segment of the populace against others. Consistent with its design, that is what the CFPB has done' (149).

In a subsequent case, the CFPB sued a legal support firm for violations of the Consumer Financial Protection Act. The firm, RD Legal Funding, moved to dismiss the complaint, *inter alia*, because the CFPB is unconstitutionally structured (CFPB v. RD Legal Funding, LLC), 332 F. Supp. 3d 729, 745 (S.D.N.Y. 2018). The U.S. District Court for the Southern District of New York held that the CFPB's single-director leadership structure is unconstitutional, adopting some of the logic of Judge (now Justice) Kavanaugh's dissent in 'PHH Corp.' rather than that of the majority.

> *'Respectfully, the Court disagrees with the holding of the en banc court [in PHH Corp] and instead adopts Sections I-IV of Judge Brett Kavanaugh's dissent…, where, based on considerations of history, liberty, and presidential authority, Judge Kavanaugh concluded that the CFPB 'is unconstitutionally structured because it is an independent agency that exercises substantial executive power and is headed by a single Director' (784, quoting PHH Corp., 881 F.3d at 198).*

The 'Seila Law' case followed and agreed, but it did not hold that the CFPB could no longer operate. In 'Seila Law', the Supreme Court held that the provision regarding the CFPB Director's removal was severable. The CFPB continues to operate, but the President can now remove the Director at any time, for any reason. The CFPB filed formal ratifications in all other pending enforcement actions, and most other courts have upheld the CFPB's pending enforcement actions. For example, on remand, the court found that CFPB's suit against Seila Law could continue. An enduring issue for the agency deals with enforcement actions that were initiated at a time when its structure violated the Constitution. Parties will likely continue to challenge the CFPB's ratifications of their enforcement actions (Lev and Williams, 2021). Once the structure has been successfully challenged, the decisions taken under that structure come to occupy a precarious position.

3.2. The Federal Housing Finance Agency

Like the CFPB, the Federal Housing Finance Agency (FHFA) was created in 2008, but its role was to assume responsibility for 'Fannie Mae' and 'Freddie Mac', two government-sponsored enterprises (GSEs) that aim to create a secondary market for mortgages. The FHFA complements the CFPB and has a similar structure. The difference is that FHFA (primarily) regulates GSEs rather than private actors. In the specific case of FHFA, the GSEs that it regulates are privately owned by shareholders but operate under a public charter that includes conditions private companies do not face. One such condition is that Fannie Mae and Freddie Mac provide the U.S. Treasury Department nearly all of their net worth each quarter as a dividend.

In 'Collins v. Mnuchin', 938 F.3d 553 (2019), the FHFA secured financing from the Treasury to keep the two GSEs afloat, and shareholders objected to this agreement (562–63). The shareholders alleged that the Treasury and the FHFA simply took their money when they agreed in 2012 to a 'net worth sweep' (566–68). The shareholders' argument was that the structure of the FHFA is unconstitutional. The U.S. Court of Appeals for the Third Circuit agreed in two ways (587–88). On the issue of abuse of power, the court found that '[u]nder traditional principles of insolvency, investors and the market reasonably expect a conservator to 'operate, rehabilitate, and restore the health of the troubled institution,' not summarily take its property', but the action by the Treasury and FHFA at issue 'inverts traditional conservatorship' (585). The problem of trust is that the 'net worth sweep' upends shareholder expectations about how the regulatory regime influences the value of their holdings.

The Court also held that the structure of the FHFA was unconstitutional, focusing once again on the single directorship with removal only for cause. As the Court put it, '[a] single agency director lacks the checks inherent in multilateral decision making and is more difficult for the president to influence' (587–88). The separation of powers preserves 'multilateral decision making', which slows rule change and makes expectations about a regulatory environment more stable. On appeal as 'Collins v. Yellen', 141 S. Ct. 1761, 1787 (2021), the Supreme Court held that the for-cause restriction on removal violates the Constitution. Writing for the Court, Justice Alito explained that 'the FHFA's powers ...

differ critically from those of most conservators and receivers. It can subordinate the best interests of the company to its own best interests and those of the public' (1785). This substitution of interests disrupts expectations and lowers trust on the part of regulated entities and stakeholders. However, in dissent, Justice Sotomayor clearly presented the independence-as-credible-commitment logic and tied it to public trust: 'The public has long accepted (indeed, expected) that financial regulators will best perform their duties if separated from the political exigencies and pressures of the present moment' (1807).

'Collins' differs from 'Seila Law' in a crucial way. In order to get retrospective relief from an FHFA decision, 'Collins' requires plaintiffs to show that if the statutory removal protection were not in place, then the President would have removed the administrator to prevent finalizing the agency action. This means that plaintiffs have a much lower likelihood of a successful retrospective challenge against the FHFA than the CFPB (Walker, 2021). Such differences in treatment across policy domains surely pose trust questions for regulated entities and stakeholders under various regulatory regimes.

3.3. Public Company Accounting Oversight Board

The Public Company Accounting Oversight Board (PCAOB) was created as a part of a series of accounting reforms in the Sarbanes-Oxley Act of 2002 in the wake of the Enron meltdown. The PCAOB regulates accounting firms and can initiate investigations and is a sub-agency within the SEC that has five members appointed by the SEC. Its original structure protected PCAOB members by two layers of for-cause limitations on their removal. Under 15 U. S. C. §§7211 the SEC could only remove a PCAOB member for cause, and the President could remove a member only if her actions rose to the 'inefficiency, neglect of duty, or malfeasance in office' standard in the 'Humphrey's Executor' case described in the preceding section (295 U. S., at 620).

In 'Free Enterprise Fund v. PCAOB', 561 U.S. 477 (2010), the PCAOB began an investigation into the accounting firm of Beckstead and Watts, a member of an organized interest group called the Free Enterprise Fund, which brought the action against the Board. The Free Enterprise Fund argued that the PCAOB structure was unconstitutional (487), and the court agreed, leaving in place the for-cause protection at the SEC, while invalidating the presidential restriction (496). Justice Roberts wrote: 'The President therefore cannot hold the Commission fully accountable for the Board's conduct ... [a]nd even if the President disagrees with their determination, he is powerless to intervene' (496). In striking down the removal restriction for the President, the Roberts opinion restricted the reach of its holding to the unique situation of the PCAOB, distinguishing the official Humphrey's Executor from the 'inferior officers' on the Board. Justice Breyer dissented, arguing that this attempt to restrict the holding was ambiguous and created uncertainty that could lead to the unconstitutionality of thousands of offices. Roberts retorted: 'The growth of the Executive Branch, which now wields vast power and touches almost every aspect of daily life, heightens the concern that it may slip from the Executive's control, and thus from that of the people. This concern is largely absent from the dissent's paean to the administrative state' (499). The disagreement between Roberts and Breyer in 'Free Enterprise Fund' high-

lights the competing problems underlying trust in regulatory regimes that we have been discussing. For Roberts, too much independence leads to inconsistent expectations about the effect of elections on policymaking. For Breyer, trying to make the PCAOB more in line with other independent agencies challenges the stable principle in 'Humphrey's Executor', throwing the whole administrative state into ambiguous territory.

I think that the cases reviewed in this section show that the relationship between the structure of agencies and stakeholder expectations about their process of decision making are correlated and raise constitutional questions. In the next section, I turn to challenges to the decision-making process of regulatory agencies to illustrate that the reliance interest and expectations of stakeholders remain crucial to visualizing their legal arguments through the lens of trust.

4. Challenges to agency discretion and to its exercise

The relationship between the structure of an administrative agency and its process of making decisions is clearly visible when confronting the question of what legal authority an administrative agency has been given by Congress. It is hardly surprising that it is difficult to circumscribe the four corners of an agency's authority, but the threshold problem of whether it can have any authority in the first place, while resolvable and latent in much administrative law, is non-trivial in the American context. I begin with this authorization question and then turn to the concern that once authorized, an agency must interpret its own enabling law. Then, I discuss how courts consider the process of decision making.

The non-delegation doctrine states that Congress cannot alienate its legislative powers to other entities, and this includes, specifically, the executive branch. For the separation-of-powers to work, it is important that the separate branches of government be authorized to and in fact deploy their enumerated powers. Article I of the Constitution states that '[a]ll legislative powers herein granted shall be vested in a Congress of the United States'. This clause does not explicitly prohibit Congress from delegating its 'legislative powers', but it does not grant Congress that authority either. In 'Wayman v. Southard', 23 U.S. 1 (1825), Chief Justice Marshall states that Congress does have the power to delegate its Article I authority but leaves the extent of permissible delegations opaque. As the administrative state expanded, broad delegations of legislative authority were permitted by the courts, while the non-delegation doctrine remained dormant in constitutional law. In 'Whitman v. American Trucking Associations', 531 U.S. 457 (2001), the Supreme Court held that when Congress delegates decision-making to agencies, enabling legislation must present an 'intelligible principle' to guide what the agency is authorized to do. While that may be a low bar, the non-delegation doctrine remains latent.

The non-delegation doctrine is thus hard to enforce. I have been arguing that the trust of regulatory authority is based on stakeholder expectations, and in this case, these are expectations that even broad powers will not be arbitrarily exercised because to do so would be to undermine the reliance interest stakeholders have made in a regulatory regime. In this way, the reliance interest at the heart of this essay begins with the authorization of

delegated powers. Because the Constitution does not speak to delegation, any regulatory regime created through delegation requires a reliance interest in the intelligibility and predictability of regulations that are promulgated as well as in the authority regulators have to use—and not to abuse—their delegated powers. That is, 'regulated parties should know what is required of them so they may act accordingly ... precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way', (FCC v. Fox Television Stations, Inc.', 132 S. Ct. 2307, 2317 (2012).

How do agencies themselves appropriately understand how much authority they have and over what domains it extends? In determining whether statutory authority has been exceeded, courts grant varying degrees of deference to agency's own interpretations of what authority they have. 'Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,' 467 U.S. 837 (1984) provides a rather permissive, two-step test for determining whether an agency 'has stayed within the bounds of its statutory authority', 'City of Arlington v. FCC', 569 U.S. 290, 297 (2013). The first step is to ask whether Congress directly spoke to the precise issue at bar. The second step is to ask whether agency's answer to the first question is 'based on permissible construction of the statute' 'Chevron', 467 U.S. at 842–43. If the agency has articulated a reasonable interpretation, the court will defer to its interpretation rather than substitute its own. Essentially, then, 'Chevron' allows agency interpretations to fill gaps in legislation, and those efforts 'are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute' (844). The 'Chevron' test supports stakeholders' reliance interest by allowing regulatory agencies, with which they have a relationship of trust, to maintain expectations about the rules they promulgate without concern that courts will change those rules as long as those agencies make reasonable inferences about what authority they do have.

There are limits to the applicability of the 'Chevron' standard, and, indeed, the entire standard is being challenged before the Supreme Court during the current term in the case of 'Loper Bright Enterprises v. Raimondo' (Docket No. 22–451). When multiple agencies are authorized under the same statute, they each have the authority to interpret it, and courts must resolve inconsistent views about what agencies can do, 'Collins v. NTSB', 351 F.3d 1246, 1253 (D.C. Cir. 2003). This exception is relevant in the case of financial regulation because many statutes in this domain are administered by multiple agencies and because the presence of multiple agencies might lead to unintelligible rules that confuse expectations and reduce trust. The U.S. Court of Appeals for the District of Columbia Circuit declined to use 'Chevron' deference for agencies' interpretations of the Federal Deposit Insurance Act because several agencies enforce it, 'Proffitt v. FDIC', 200 F.3d 855, 863 n.7 (D.C. Cir. 2000).

Courts also consider what kind of process a regulatory agency must take when deciding how to make rules. 'Motor Vehicle Mfrs. Ass'n of US, Inc. v. State Farm Mut. Auto. Ins. Co.', 463 U.S. 29, 42 (1983) states: 'The agency must examine the relevant data and articulate a satisfactory explanation for its action'. This implies a 'searching and careful' review of agency decision-making 'Citizens to Preserve Overton Park v. Volpe', 401 U.S. 402 (1971). Review of agency decision-making is, however, limited by 'Vermont Yankee

Nuclear Power Corp. v. Natural Res. Def. Council, Inc.', 435 U.S. 519, 525, 549 (1978), which held that courts may not impose additional procedures on agencies beyond those required in the APA. Courts are not experts. If allowed to tell an agency how to go about making regulations, courts could upset stakeholder expectations and diminish trust in the predictability of a regulatory regime.

Trust is associated with the 'reasonable' use of discretion (see Bertelli, 2021; Bertelli and Schwartz, 2023). While this statement realistically depicts the authority of a regulatory agency, discretion has become highly politicized in contemporary financial regulation and correlates with the reliance interest underlying trust. Consider the following: 'Backers of tougher rules established after the 2007–2009 financial crisis insist allowing regulators to identify specific firms for stricter scrutiny as key cogs of the financial system is a critical cool. But conservative critics argued the [Financial Stability Oversight Council] applied the power in an inconsistent and opaque fashion' (Schroeder, 2018). And consider the words of then White House Counsel Don McGahn to the 2017 Federalist Society National Lawyers Convention (Nielson, 2017):

> *'The government has an obligation to clearly inform parties of the rules that will apply to them. Anyone who is engaged with the regulatory state over the last several decades knows that agencies have often taken precisely the opposite approach. Far too often agencies issue vague regulations or in some cases, no regulations at all. Then they interpret those vague regulations through byzantine interpretive rules, guidance documents, or so-called 'Dear Colleague' letters. To administrative law experts, these are known by the Orwellian term "subregulatory actions." But whatever you call them, they are illegitimate'.*

Such sentiment makes cases that challenge an agency's decision-making fertile ground for understanding trust in regulatory regimes.

4.1. Securities and Exchange Commission

The Securities and Exchange Commission (SEC) was created in the aftermath of the Wall Street crash of 1929. Its purpose is to enforce laws against securities market manipulation. The SEC is an independent agency with five commissioners who are appointed by the President with the advice and consent of the Senate.

In 'Lindeen v. SEC', 825 F.3d 646, 648 (D.C. Cir. 2016), the Commission made a new rule that pre-empted registration under state law and the qualification requirements for a subset of securities. The petitioners filed the action to review the SEC's definition of a 'qualified purchaser' in the statute (652–53). The U.S. Court of Appeals for the District of Columbia Circuit held that the agency's definition must be reasonable, and the SEC's definition was reasonable. Agencies 'enjoy broad discretion' in defining the ambiguous terms in a statute (653). The opinion stated: 'After acknowledging that eliminating state-level review might reduce investor protection, the SEC explained that '[s]everal factors could mitigate' the risk" (652). 'Lindeen' illustrates how questions of statutory interpretation by agencies both abound and relate to the process of rulemaking. Moreover, political

accountability survives under this kind of broad deference. If Congress (or a new partisan composition of it) does not like this interpretation, it can enact a new statute. The reliance interest of stakeholders cannot be so strong as to overturn the Article I authority of Congress to make laws.

Questions of authority and process often coincide in litigation. In 'Chamber of Commerce of the United States v. SEC', 412 F.3d 133, 137 (D.C. Cir. 2005), plaintiffs challenged two corporate governance conditions required by the SEC. The challenged provisions mandated that a corporate board must have at least 75% independent directors and an independent chairman to engage in certain transactions otherwise prohibited by the Investment Company Act (137–38). The court held that while the SEC did not exceed its authority in adopting the conditions, but it did violate the APA by failing to adequately consider the costs that mutual funds would incur (145). As noted, a frequent argument is that in the process of making regulations, agencies do not adequately consider the economic costs that will be imposed on regulated entities. In 'Business Roundtable v. SEC', 647 F.3d 1144 (D.C. Cir. 2011), the Business Roundtable and the Chamber of Commerce, both organized stakeholder groups with members that issue publicly traded securities, requested review of an SEC rule that requires public companies to provide shareholders with information any candidates for their boards of directors nominated by shareholders (1146). The petitioners argued that the SEC's rule violated the APA because the SEC failed to consider the rule's effect on competition (1147). The U.S. Court of Appeals for the District of Columbia Circuit held that the SEC acted arbitrarily because it failed to adequately assess economic costs of the rule.

> '*We agree with the petitioners and hold the Commission acted arbitrarily and capriciously for having failed once against—as it did most recently in American Equity Investment Life Insurance Company v. SEC, 613 F.3d 166, 167-18 (D.C. Cir. 2010), and before that in Chamber of Commerce of the United States v. SEC, 412 F.3d 133136 (D.C. Cir. 2005)—adequately assess the economic effects of a new rule. Here the Commission inconsistently and opportunistically framed the costs and benefits of the rule; failed adequately to quantify the certain costs or to explain why those costs could not be quantified; neglected to support its predictive judgements; contradicted itself; and failed to respond to substantial problems raised by commenters (1148–49)*'.

'Business Roundtable' suggests that in financial regulation, agency 'reasoning, which fails to view a cost at the margin, is illogical and, in an economic analysis, unacceptable' (1152). It brings a financial accounting to the reliance interest of stakeholders. It is expensive to distribute information to all stakeholders of a publicly traded company. If the courts allowed the agency to exclude economic costs from its decision-making process, that would create a great deal of uncertainty for regulated firms. The opinion continued: 'By ducking serious evaluation of the costs that could be imposed upon companies from use of the rule by shareholders representing special interests, particularly union and government pension funds, we think the Commission acted arbitrarily' (1153). Economic costs are a

major part of the expectations-generating models of firms regulated by the SEC. They can rely on a rulemaking process only if these costs are accounted for in SEC decision making.

4.2. Federal Trade Commission

The Federal Trade Commission (FTC) was established in 1914 under the Federal Trade Commission Act, which was a response to the 19th century age of large and monopolistic trusts. The FTC is an independent agency with a mission to enforce antitrust law and protect consumers. It is composed of five Commissioners who each serve seven-year terms. Commissioners are nominated by the President and subject to Senate confirmation, and no more than three FTC members can be of the same political party. The Chair serves at the President's pleasure and thus can be removed at will.

A challenge to the authority of the FTC arose in 'American Financial Services Assoc. v. FTC', 767 F.2d 957 (D.C. Cir. 1985). In the case, American Financial Services Association and the South Carolina Department of Consumer Affairs sought review of the FTC's Trade Regulation Rule on Credit practices. The Credit Practices Rule, which provides, *inter alia*, restraints on creditors regarding the use of contract clauses it has found to harm consumers. Petitioners claimed that in promulgating the rule, the FTC acted beyond its authority to define unfair acts and practices (962-64). The U.S. Court of Appeals for the District of Columbia Circuit disagreed.

> '*While we agree with petitioners that the Commission cannot be allowed to intervene at will whenever it believes the market is not producing the "best deal" for consumers, we nonetheless believe that this court would be overstepping its authority if we were to mandate, as petitioners urge, that the Commission's unfairness authority is limited solely to the regulation of conduct involving deception, coercion or the withholding of material information (982)*'.

The court promotes regulated entities' reliance interests but clearly places limitations on it in order to balance the separation of powers and maintain the deference given to agencies that, as I have discussed, promotes reliance interests as well. In 'American Financial Services', the definition of unfairness could not be conceived so broadly as to upset reasonable expectations about what contract provisions are permissible. Moreover, 'American Financial Services' also raises the question of what it means for the SEC to consider economic interests. The opinion states: 'Petitioner's argument harbors a fundamental misconception about the nature of the Commission's required cost-benefit analysis. Petitioners would require that the Commission's predictions or conclusions be based on rigorous, quantitative economic analysis' (986). Thirty years later, the Supreme Court did require agencies to consider costs before deciding to regulate in 'Michigan v. Environmental Protection Agency', 576 U.S. 743 (2015). While the FTC claimed in 'American Financial Services' that 'a full evaluation of the economic impact of the rule would have to await its implementation', the decision might be different were the case to be litigated today.

4.3. The National Credit Union Administration

The National Credit Union Administration (NCUA) was created in 1970 to supervise federal credit units which provide credit at reasonable rates and banking services to people of small means. The three-member board is appointed by the President and confirmed by the Senate. Board members serve on six-year terms.

'American Bankers Association v. NCUA', 934 F.3d 649 (D.C. Cir. 2019) offers a very close look at the relationship between agency authority and process. The NCUA promulgated a rule that makes it easier for community credit unions to expand their geographical coverage to reach more potential members (656). The American Bankers Association (ABA) is a stakeholder group that represents competitors to credit unions, and it challenged the rule on behalf of its members. The ABA claimed that the rule changes were arbitrary and capricious and entitled to no deference under 'Chevron' (660). The U.S. District Court for the District of Columbia Circuit agreed, stating that one change precipitated by the rule could not be allowed because the NCUA had not adequately explained it, and thus eliminated it as 'arbitrary and capricious' under the APA (669). The court reasoned that '[l]ongstanding principles of administrative law teach us to give federal agencies breathing room when they make policy and 'resolv[e] the struggle between competing views of the public interest'' (656, citing 'Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.', 467 U.S. 837, 866, 1984). Moreover, 'Congress often expects agencies, with their political accountability, 'bod[ies] of experience[,] and informed judgment,' to make sound interpretive choices with 'the force of law'' (656, citing 'United States v. Mead Corp.', 533 U.S. 218, 227, 229, 2001). While agencies enjoy deference, they enjoy more when they explain the reasons for their decisions.

4.4. The Financial Stability Oversight Council

The Financial Stability Oversight Council (FCOS), like the CFPB and FHFA, was created after the 2008 financial crisis in the Dodd-Frank Wall Street Reform and Consumer Protection Act. Among other responsibilities, the FCOS places certain non-bank financial entities under the supervision by the Board of Governors of the Federal Reserve System. The Treasury Secretary is the head of the FSOC. The Council is composed of ten voting members (nine *ex officio* members and one independent insurance expert appointed by the President with the advice and consent of the Senate) and five non-voting members.

MetLife, an insurance company, challenged an FSOC's finding of 'material financial distress' that would lead to stricter government oversight, 'MetLife, Inc. v. Fin. Stability Oversight Council', 177 F. Supp. 3d 219, 223–25 (D.D.C. 2016). The FSOC designated MetLife as one of the non-bank financial entities that needed additional supervision after its finding of 'material financial distress'. The U.S. District Court for the District of Columbia rescinded the FSOC's determination because it departed from two of its own without explanation or recognition of the same. The court also found that FSOC purposefully omitted any consideration of the cost that closer oversight would bring to MetLife. FSOC insisted that it did not change its position, but the court rejected that argument, stating that 'the

requirement that an agency provide a reasonable explanation for the deviating action *per se* entails acknowledging that it is changing position' (235 citing 'FCC v. Fox Television Stations, Inc.', 556 U.S. 502, 515, 2009). As several other cases have shown, a failure to explain decisions and to consider the economic costs of a rule seems to compel courts to intervene and protect regulated entities' reliance on the existing regulatory framework.

4.5. The Centers for Disease Control

As in so many areas of life and law, the coronavirus pandemic has brought issues of agency decision-making before courts. The Centers for Disease Control (CDC) were jointly involved in one important case. The CDC is the national public health agency of the United States. Its main purpose is to protect public health and safety through prevention of disease, injury, and disability. The Director of the CDC may be a career employee or a political appointment that does not require Senate confirmation. The Director serves at the pleasure of the President.

The authority of the CDC to impose a moratorium on the eviction of tenants during the pandemic was the subject of 'Alabama Association of Realtors, *et al*. v. Department of Health and Human Services', On Application to Vacate Stay, No. 21A23 (Supreme Court of the United States, 2021). The CDC imposed a nationwide moratorium on evictions after the moratorium authorized by Congress expired. Associations of realtors and managers of rental properties in Alabama and Georgia sued to stop the moratorium. In a *Per Curiam* opinion, the court agreed, stating that '[i]t strains credulity to believe that this statute grants the CDC the sweeping authority that it asserts' (1). The opinion continues:

> '*It is indisputable that the public has a strong interest in combating the spread of the COVID-19 Delta variant. But our system does not permit agencies to act unlawfully even in pursuit of desirable ends. Cf. Youngstown Sheet & Tube Co. v. Sawyer, 343 U. S. 579, 582, 585–586 (1952) (concluding that even the Government's belief that its action [to seize and run steel mills during the Korean War] "was necessary to avert a national catastrophe" could not overcome a lack of congressional authorization). It is up to Congress, not the CDC, to decide whether the public interest merits further action here (8)*'.

While this case seems to stray from my present focus on financial regulation, the CFPB made a related rule that built on the CDC moratorium. It strengthened the CDC's eviction moratorium by requiring that all debt collectors pursuing an eviction provide written notice to tenants and the protections and rights provided by the CDC Eviction Moratorium (Bureau of Consumer Financial Protection, undated). While this rule is likely moot because it was based on the CDC moratorium, the CFPB's final rule making it harder to foreclosure did go into effect (Hicks and Lewis, 2021). This suggests that the CFPB is continuing to strengthen protections, and because the Supreme Court showed no appetite for the eviction protections, the CFPB shored up protection against foreclosure.

This back and forth between courts and multiple agencies shows that while the law provides a venue for arguing in favor of a reliance interest in a regulatory environment, that environment can go topsy-turvy as litigation unfolds.

5. Conclusions and implications for comparative research

I have argued that is difficult to understand the underlying problem of trust in regulatory structures in the U.S. without considering the arguments regulated entities and stakeholder groups make before courts. This is because it is impossible to understand the American administrative state without considering the pivotal role of judicial review in it. Both constitutional challenges to agency structure and APA review of agency decisions and of the process of making those decisions reveal important elements of trust. Trust in these cases is based in a reliance interest. Regulated entities rely on a model of what they expect the relevant regulatory landscape currently 'does' and subsequently 'will' look like.

When the structure of agencies pulls them too far away from democratic influence, the courts can be asked to review that structure. Several of the cases discussed above reviewed a novel structure of agencies created in response to the 2008 financial meltdown. This new structure disturbed expectations. The extreme independence—codified by the single-head, for-cause removal provisions—makes the agency too insulated from influence that stakeholder groups might put on political principals. The structure of the agency thus upsets the reliance interest regulated entities and stakeholders have formed, and this is articulated in the arguments before the court.

Regulated entities may feel that actions taken by an agency regarding rulemaking are upsetting their expectations about the regulatory environment on which they rely. The APA provides for relief against arbitrary and capricious action. The litigation reviewed above shows that while agencies enjoy rather broad deference in the process of regulatory policymaking, that deference is far from boundless. The arguments in these cases reveal when and why regulated entities and stakeholder groups have difficulty in developing a clear set of expectations about what the rules are and what they will be in the future.

In continental Europe, the importance of courts as a forum for voicing (dis)trust might seem peculiarly American. One reason for this is, of course, a significant difference in constitutional structure. The cases I have reviewed reflect disputes between individuals (or organizations) before courts and regulatory agencies, and they reveal an important limitation of administrative law in the U.S. It is widely recognized that the administrative state is built into the constitutions of the countries of continental Europe. Civil law systems and the primacy of statutory law within them provide a particularly strong separation of powers; and because power is exercised by public administration, it must be among those separate powers (see Bignami, 2012). But the United States turned 160 years old before it had an Administrative Procedure Act, and it does not direct agencies toward 'principles' of good public administration as does European law (Hoffmann, 2014; Bertelli, Falletti and Cannas, 2023; Bertelli *et al.*, 2023). Instead, as we have seen, its solution is political, inviting 'participation' in rulemaking by all interested through the notice-and-comment process of informal rulemaking and 'litigation' by all affected through judicial review in the regular courts. While continental European systems envision public administration as a separate power of the state, in the U.S, public agencies are a constitutional incongruity to be held in check by the people through the institutions we authorized back in 1789 (see

Cohen-Ilya and Porat, 2017). The French distrust in courts that 'led to an administrative law regime designed to protect prerogative rights of administration' cannot be more different than the American distrust of the public administration that makes the courts the forum for asserting individual rights against it (Bertelli, 2005, p. 137). I think that differences in the locus of suspicion—the courts or the public administration—go a long way toward understanding differences in the role of courts in matters of regulatory trust.

These differences form the basis for a fruitful comparative agenda on regulatory trust as a reliance interest. My call for such research would begin to enhance such comparisons in the public administration literature more generally. In a systematic review of leading public administration journals, Fiona Cece and I 'did not reveal any study that compares, for instance, how administrative law differs in its ... implications across civilian and common law systems' (Bertelli and Cece, 2020, p. 175). While there are many ways in which trust as a reliance interest might be studied, one possible route might be as follows.

In the first step, the U.S. cases that I have reviewed provide a rich source of scenarios that can be translated into vignettes that allow lawyers or law students to determine how they would be resolved in various jurisdictions. Because the cases themselves have been resolved by U.S. courts, they are 'anchored' such that lawyers or law students in other jurisdictions could resolve them under local law and reveal differences across jurisdictions. This is similar to a method in comparative law where hypothetical scenarios are created 'to see how they would be solved' by law in various jurisdictions (Cananea and Bussani, 2019, p. 222). For the comparisons to work, such scenarios must be comprehensible in the various systems under study, so the facts of the U.S. cases would have to be cleansed of specific references to American institutions and actors. This would allow the researcher to develop a reasonable 'expectation' of what the law requires in each jurisdiction. This is the kind of advice that stakeholders would ask their own legal counsel to provide, and it would certainly form their expectations.

In the second step, the vignettes, which the first step anchors in the law of each jurisdiction under study, could be placed on a survey given to a sample of stakeholders or regulated individuals. Vignettes, written with their legal resolution from the first step, could be used to judge their responses about trust as a reliance interest. To provide an adequate dependent variable, such questions should judge both stakeholders' 'expectation' of what the law requires and their 'reliance' on it. The expectation could be captured by asking whether the respondent would anticipate such a resolution of facts in the vignette. Then, respondents could then be asked whether they would rely on the resolution to guide their own actions.

Researchers might also vary characteristics of the agency 'structure' as well as the 'decisions' that are at issue in a vignette to see how that would change their expectations and reliance. Do changes in structure and the characteristics of decisions change the expert resolutions in the first step? Do they shift expectations and reliance by stakeholders in the second step? This kind of exploration would benefit tremendously from qualitative research designs as well, which could offer insight into the mechanisms behind expectation and reliance that might be at play more generally. Finally, observational data on the resolution

of actual disputes could be examined to uncover patterns of reliance, particularly when external shocks create quasi-experiments that shift expectations.

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CONFLICT MANAGEMENT
IN ROMANIAN SCHOOL COMMUNITIES:
AN EXAMINATION OF PRACTICES
IN CLUJ-NAPOCA HIGH SCHOOLS

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Abstract

This article delves into the nuanced landscape of conflict management within Romanian school communities, with a specific focus on administrators, teachers, students, and parents. This study conducted comprehensive research involving four high schools in Cluj-Napoca, employing a multifaceted approach incorporating focus groups and surveys. The findings of this investigation reveal a prominent trend in conflict resolution within these school communities: conflicts are primarily resolved through administrative decisions and sanctions. This predominant reliance on hierarchical authority structures to address disputes emerges as a dominant theme, while awareness and utilization of Alternative Dispute Resolution (ADR) methods are notably absent.

Keywords: conflict resolution, school communities, administrators, teachers, students, parents, alternative dispute resolution (ADR), administrative decisions, sanctions.

1. Introduction

The present article investigates how conflicts occurring within school communities in Romania are dealt with and explores potential venues to improve the results of the methods currently used. We defined a school community as a network of individuals connected to a particular school. It represents the group of people who contribute to and are affected by the school's educational environment and activities.

As key components of a school community, we considered the following: (i) students, who are the primary reason for a school's existence, as learners and beneficiaries of the educational programs and services offered by the school; (ii) teachers and educators who facilitate learning and create lesson plans and provide instruction to students; (iii) administrators and school leaders who oversee the overall management of the institution, set policies, and make important decisions regarding the school's functioning; and (iv) parents, the individuals responsible for the well-being and education of the students, who play an essential role in supporting their children.

Our research was divided into three major themes, each based on a specific research question:

a. The first theme was the existence of conflicts between the stakeholders mentioned above, the types of conflicts that occurred, and their sources. In this case, our research question was: what types of conflicts emerge within school communities in Cluj-Napoca, Romania, and what are their causes? In addition to the fact that we wanted to determine the typology and sources of school conflicts, we wanted to determine how all these stakeholders perceive these situations because there is a strong link between the way we perceive a conflict and the way we intervene to solve it.

b. The second theme of the study is conflict solving and procedures, and the research question is: What are the procedures (formal and informal) used by school communities to solve conflicts that emerge between stakeholders? This research question aims to determine the formal and informal procedures used by school stakeholders to solve or manage conflictual situations inside their schools. In this regard, we are interested in both official and informal procedures, but also in the way each group of stakeholders perceives their efficiency in dealing with conflict.

c. The final theme of this study is third-party intervention, which is based on the following research question: Is a third-party intervention mechanism involved in solving conflicts within school communities? We wanted to find out, first, if there is such a procedure inside the school communities that we study, and second, if there is a need for that. In addition, we wanted to see how school stakeholders perceived this in terms of efficiency in solving their conflicts.

To address these three research questions, we employed a mixed methods approach that combined qualitative and quantitative techniques (content analysis, focus groups, and an online survey) in four high schools in Cluj-Napoca, Romania. Our findings indicate the necessity of incorporating ADR mechanisms into existing formal procedures, which most school stakeholders perceive as ineffective in managing school conflicts. The results also

emphasize the need for school administrators to modify their management procedures by focusing on the core concepts of adaptive management, namely efficiency, and flexibility, to better meet the needs and interests of the school community in conflict resolution.

This article comprises the following sections: a literature review that establishes the theoretical foundation of our study, focusing on adaptive management/governance and Alternative Dispute Resolution (ADR), and a theoretical discussion on the typology of school conflicts. The methodology section outlines the research methods employed to address the three research questions, detailing the application of the methods, stakeholder characteristics, and their limitations. The study's main part consists of presenting the main results, discussing the findings, and critically analyzing them. The final part of the article concludes with the main findings.

2. Literature review

2.1. Adaptive management/governance

Governance refers to institutional arrangements that shape actors' decisions and behavior, including the exercise of authority within groups or organizations (Hatfield-Dodds, Nelson and Cook, 2007, p. 3). According to Ostrom (2005), institutions and institutional arrangements consist of rules and norms with formal enforceable principles backed by legal sanctions, shared values, and cultural traditions maintained by positive and negative rewards. This suggests that governance operates at multiple levels, and draws on various sources of authority. Specifically, institutions are governed by state laws, while individuals' behavior within an institution is influenced by its culture, norms, formal company policies, external laws, and broader social attitudes.

Management, on the other hand, refers to the processes of decision-making and coordination within a given institutional setting that involves identifying desired strategies and implementing these through physical activities and technologies (Burris, Drahos and Shearing, 2005). Management is expected to observe changing environments, translate these changes into decision premises for the organization, and steer new courses (Seidl, 2007).

Adaptive management/governance is a concept that focuses on the evolution of formal and informal institutions for the management and use of shared assets that promote the satisfaction of underlying human needs and preferences given changes in understanding, objectives, and the social, economic, and environmental context and it is based on the concepts of 'efficiency' and 'adoptability' of potential institutional arrangements (Bowles, 2003; Hatfield-Dodds, Nelson and Cook, 2007; Ostrom, 2005).

Improving institutional arrangements requires developing collective action strategies that are both 'efficiency enhancing' and 'adoptable', providing net welfare gains and being politically attractive within relevant decision structures and timeframes. In the context of conflict management in schools, school administrators must find efficient ways to solve conflicts within their school communities while improving relationships among the four stakeholders. These solutions must go beyond the traditional formal sanction system and be adapted to each specific situation involving each stakeholder in the decision-making

and implementation process. Adaptive management acts as a mediator between centralized expert management and decentralized resource management systems, recognizing that different types and sources of knowledge add value to decisions. Instead of rigid, centralized management, or informal management based on tradition, we can adapt and use both systems for different problems based on their efficiency in each specific case.

The sources and typology of school conflicts regarding school community conflicts include disagreements, tensions, or disputes (that can even turn violent at times) that arise among the four key stakeholders. If we look at the parties involved, we can identify the following types of school-community conflicts:

a. Parent–teacher conflicts: differences in opinion between parents and teachers regarding a student's academic performance, behavior, or educational needs.

b. Student–teacher conflicts: tensions between students and teachers over classroom rules, assignments, grading, or disciplinary actions. This type of conflict is the most common and usually constitutes the primary cause of the parent-teacher type of conflict.

c. Teacher–administrator conflicts: disagreements between teachers and school administrators concerning policies, curriculum decisions, or professional issues.

d. Teacher–teacher conflicts: disputes arising from competition for positions, resources, personal or professional values.

e. Parent–administrator conflicts: differences in opinion between parents and school administrators regarding school policies, disciplinary actions, or educational practices.

f. Student–student conflicts: conflicts between students, such as bullying, peer pressure, social cliques, or disputes over personal matters.

If we consider the issues at stake, school community conflicts might refer to the following:

a. Community–school conflicts: disagreements between the school and the local community regarding issues such as school zoning, funding, or the use of school facilities;

b. Cultural or value conflicts: conflicts arising from cultural differences, religious beliefs, or differing values within the school community;

c. Budget and resource allocation conflicts: disagreements over how limited resources, such as funding, technology, or educational materials, should be distributed among different programs or departments;

d. Curriculum and educational philosophy conflicts: disputes over the content, approach, or emphasis of the school's curriculum and educational methods;

e. Policy implementation conflicts: tensions arise when stakeholders disagree on the implementation of specific school policies or initiatives.

These conflicts can arise because of differing opinions, interests, priorities, or values among the individuals involved. Rahim (2001) summarizes the sources of school community conflicts in five categories: a. communication problems; b. role ambiguity; c. goal incompatibility or conflicts among the stakeholders of the school community; d. conflicts of interest or over resources; and e. differences in values.

2.2. Conflict management

In his seminal book, 'The Conflict-Positive Organization: Stimulate Diversity and Create Unity', Dean Tjosvold (1991) focuses on the idea of fostering positive conflict management within organizations, aiming to utilize conflicts as opportunities for growth, creativity, and increased collaboration. Tjosvold suggests that, instead of viewing conflicts as negative or disruptive, organizations can create an environment that encourages open dialogue, diverse perspectives, and constructive conflict resolution.

The same ideas are vehiculated in other publications by Louis Kriesberg (1998), Bernard Mayer (2012), Cloke and Goldsmith (2011), Stephen Robbins (1998) and Deutsch (1973). For all of them, conflict is an inherent part of life that cannot be avoided or eliminated. It serves as a necessary engine for evolution, improvement, and combating evil and unacceptable behavior at both individual and social levels. However, the way conflict is approached and managed determines whether it becomes destructive or positive. A confrontational zero-sum game approach can lead to negative and catastrophic consequences, whereas a collaborative approach that seeks inclusive and imaginative solutions can lead to positive change, improved relations, and stronger organizations and communities. Therefore, conflict is not inherently good or bad, but its nature depends on how it is handled.

Johnson and Johnson (1996) believe that conflicts are resolved constructively when they result in an outcome that satisfies all parties involved, improves the relationship between the disputing parties, and enhances the ability of the disputants to resolve future conflicts constructively. Adopting a collaborative approach to conflict resolution can offer numerous benefits to individuals, such as improved communication skills, enhanced problem-solving abilities, preserved relationships, reduced stress, and a sense of empowerment. It can also foster trust, develop leadership skills, and provide flexibility and adaptability.

2.3. Conflict management in schools

Valente, Lourenço and Németh (2020) view schools as a microcosm of society, where diverse perspectives and ways of being, thinking, and living are brought together, leading to daily conflicts. They argued that handling such situations requires learning, emphasizing the need for teachers to receive training in conflict management to effectively manage classroom conflicts and teach students to view and manage conflicts constructively.

Schools, as both communities of individuals and organizations, can benefit massively from implementing collaborative procedures to resolve conflicts that occur within their framework. As we have seen, conflicts are a natural part of the lives of individuals and organizations. However, when they occur in schools, they can be disruptive and cause problems for everyone who is part of the school community. Therefore, a better understanding of the possible venues for resolving conflicts in schools is extremely important for the schools themselves and the larger society.

Christopher Moore's masterpiece, 'The Mediation Process', illustrates the venues well across several editions (see Table 1). These venues are part of the conflict resolution

continuum, a sequence of conflict resolution methods that occur naturally, starting with private decisions by the parties involved, then involving a superior authority for workable solutions (Moore's third-party private decisions), and finally, more structured processes such as courts or law-making institutions (third-party public decisions). If all else fails, parties may resort to direct non-violent or violent actions, which Moore refers to as decisions imposed through extra-legal coercion.

Table 1: Conflict Resolution Continuum

Private decisions of the parties involved				Third-party private decisions		Third-party public decisions		Decisions imposed through extra-legal coercion	
avoidance	negotiation	conciliation	mediation	Administrative decision	Arbitration	Court decision	Legislative decision	Direct non-violent action	Violence or threat to use violence

Source: Adapted from Moore (2003)

The methods can be grouped into categories based on the amount of control the parties have over the decisions regarding the resolution of their conflict (from maximum control, as in private decisions such as avoidance or negotiation, to minimum to no control as in courts or lawmakers' decisions) or based on a dichotomy between amiable/collaborative and adversarial/confrontational, where avoidance, negotiation, conciliation, and mediation are seen as amiable, and the rest as confrontational.

What is important for our study is the identification of the venues that are commonly used in our school communities and how effective they seem to be. Anticipating the results of our research, it appears that most conflicts within school communities in Romania tend to be addressed using two of the methods described in the continuum: avoidance and administrative decisions. Therefore, we strive to define them more granularly.

Avoidance is a strategy for resolving conflicts in which individuals or parties choose to ignore or sidestep the issue rather than address it directly. This approach involves evading conflict, hoping that it will resolve itself or that time will lessen its intensity. Although avoidance may seem to be a convenient solution in certain situations, it is important to understand its potential advantages and disadvantages. On the one hand, avoidance can provide immediate relief from the stress of confronting conflict and allows individuals to distance themselves emotionally from the issue temporarily. However, this can lead to the persistence of the problem, potentially making it more significant when it resurfaces. Although avoidance can be a short-term strategy to manage immediate discomfort, it often leads to issues that remain unresolved and missed opportunities for growth and understanding. It can also be the cause of the intensification of conflict followed by violent eruptions, which can make the conflict extremely difficult to solve effectively and sustainably.

Using administrative decisions as a conflict resolution strategy involves relying on a higher authority or management to make a final decision. This approach can be useful when negotiation or other methods fail and time pressure is involved. One advantage is

that it draws upon authority and hierarchy within an organization or institution. A higher-level individual, such as a manager or administrator, is empowered to make a final decision that is considered final and binding. However, this method may not allow for the same level of creative problem-solving as direct negotiations, and parties may not fully accept the decision if they feel that their perspectives are not adequately considered.

Effective communication is key to ensuring that the decision is well understood by all parties and that they are informed of the rationale behind it. Administrative decisions are most suitable for conflicts where clear guidelines, regulations, or policies exist, and can guide the resolution process. It must be said that using administrative decisions as a conflict resolution strategy might not be suitable in situations in which parties' involvement and collaboration are important for maintaining ongoing relationships or achieving creative solutions.

We cannot finish our discussion without referring to punishment, a ubiquitous and essential tool in the arsenal of hierarchical organizations such as schools. Punishment is a disciplinary approach often used in schools to address misbehavior, maintain order, and deter students from engaging in undesirable actions. While punishment aims to correct misbehavior, it differs from conflict resolution. The latter seeks to resolve issues, restore relationships, and prevent future conflicts. In contrast, punishment focuses on imposing consequences for rule violations, with the main objective being to deter disruptive behavior. Punishment is often authoritative and one-sided, with the school administration or educators making decisions on the consequences.

While punishment can maintain order, it should be combined with effective conflict-resolution strategies. Conflict resolution helps community members understand the causes of conflicts, take responsibility for their actions, and learn how to resolve disputes. By integrating both approaches, schools can create a balanced environment that addresses immediate behavioral concerns and promotes conflict-resolution skills and positive relationships.

3. Methodology

As mentioned in the introduction of this article, our research was divided into three major themes, each based on a specific research question: (1) the existence of conflicts between the four stakeholders and the types of conflicts that occurred and their sources; (2) conflict solving and procedures; and (3) third-party intervention. Each theme was based on a specific research question, as follows:

1. What types of conflicts emerge within school communities in Cluj-Napoca, Romania, and what are their causes? In addition to the fact that we wanted to determine the typology and sources of school conflicts, we wanted to determine how all these stakeholders perceive these situations because there is a strong link between the way we perceive a conflict and the way we intervene to solve it.

2. What are the procedures (formal and informal) used by school communities to solve conflicts that emerge between stakeholders? This study examined the formal and

informal conflict resolution methods employed by school stakeholders. We are interested in both official and informal procedures, as well as the efficacy of these methods, as perceived by each stakeholder group.

3. Is a third-party intervention mechanism involved in solving conflicts within school communities? With this question, we wanted to find out, first, if there is such a procedure inside the school communities that we study, and second, if there is a need for that. In addition, we wanted to see how school stakeholders perceived this in terms of efficiency in solving their conflicts.

To respond to these three research questions, we used a mixed methods approach, which included qualitative and quantitative methods (content analysis, focus groups, and survey).

Our study involved four school communities from the city of Cluj-Napoca, those formed around the 'Nicolae Bălcescu', 'Lucian Blaga', 'Onisifor Ghibu' and 'Eugen Pora' High Schools. They are all public schools that are funded entirely by the government. Owing to the centralized nature of the Romanian education system, there are minimal differences between schools of the same level in terms of curriculum, funding, human resource policies, hiring practices, administrative structures, and regulations. Therefore, any variations are primarily influenced by the quality of human resources rather than structural or geographical factors. As a result, our sample of schools is still relevant to this study, and the findings can be generalized to the entire country. Any differences observed are attributed to the individual skills of community members in implementing conflict-resolution procedures rather than differences in institutionalization or regulations.

We used a qualitative approach to our research, consisting of two research methods: content analysis and focus groups.

Content analysis is a research technique used to identify specific words, themes, or concepts within qualitative data. Using content analysis, researchers can quantify and analyze the presence, meanings, and relationships of words, themes, or concepts (Columbia University, n.d.). In this study, we examined the conflict management procedures of four high schools by searching their websites. The results of our analysis are presented in the results section.

Focus groups provide a means of gaining insight into people's thoughts and experiences. They allow us to understand not only what people think but also how and why they think that way. In a focus group, participants can contradict, support, or complete each other's opinions, making it an effective method for group discussion.

At this stage of our research, we left out the parents because we wanted to focus, for the moment, only on the conflicts between administrators, teachers, and students, restricting our study only to the physical perimeter of the schools. Also, although a very important part of the school communities, parents are somehow 'outsiders' (Romanian regulations don't even allow the parents to enter freely the school space—facilities and courtyard— without proper and prior permission from the administration or by being summoned by it) and we wanted to concentrate on what methods of conflict resolution are used inside

the schools and how aware were administrators, teachers and students of possible alternatives to what is currently in use.

For our research, we had nine focus groups, three for each high school (Nicolae Bălcescu, Lucian Blaga, Onisifor Ghibu), with the following composition:

a. Administrators: In each high school, we met with the principal, the vice-principal, the coordinator of the Students Council, the coordinator for the formal and extra-curricular educational activities, the school psychologist, and three members of the Professorial Council.

b. Professors: There were between 8 and 40 participants, all professors without any administrative responsibilities.

c. Students: In each case, we met with 12 students who were part of the Students' Council and were also the representatives of their classes.

For every meeting, we divided the discussion into three major themes with their related questions: (1) existence of conflict; (2) conflict solving and procedures; and (3) third-party intervention.

Beyond the content analysis and focus groups, we also conducted an online survey dedicated only to students, a survey based on a semi-structured questionnaire consisting of 12 questions, using a Likert scale to measure responses. The questionnaire was answered by 112 students from all four high schools. The survey measured the existence of a formal or administrative method of solving conflicts in schools and whether it is efficient, if the students have ever been informed about alternative methods of solving conflicts, and, if so, we questioned their utility and efficiency. The two alternative methods mentioned in the survey were mediation and peer mediation, and, in the end, we measured the need for such alternative methods.

As in the case of the focus group, we organized the questions into three major themes:

1. Existence and efficiency of the formal/administrative method of solving conflicts in schools;

2. Knowledge of the use and efficiency of alternative methods for solving conflicts in schools; and

3. The need for alternative methods to solving conflicts in schools

4. Results and discussions

4.1. Content analysis – institutions and procedures

Romanian schools mainly use administrative decisions to deal with conflicts if we are to read their official Internal and Student Regulations. We can illustrate this by looking at two schools from the city of Cluj-Napoca: 'Lucian Blaga' Theoretical High School and 'Nicolae Bălcescu' Theoretical High School. They have multiple regulations open to the public. While analyzing them, it is clear that there is no alternative conflict resolution method for administrative decisions. In the case of 'Nicolae Bălcescu' Theoretical High School, there are few mentions of the management of conflicts, beginning with some of

the attributions of the teacher on duty:

> 'The teacher on duty is a temporary member of the planning committee school service and has the following responsibilities: the teacher who finishes the service, together with the one who starts the service, ensures student safety during breaks in the sector, checks the order and discipline during breaks, and takes measures to mitigate conflicts in school and inform school management'.

The last one may seem like there can be some methods of conflict de-escalation, but there is no mention of that, so it can only be assumed.

There is also a Commission for the Prevention and Elimination of Violence, Corruption, and Discrimination in the School Environment and the Promotion of Interculturality, but we could not find a list of its responsibilities in the regulations.

In cases of conflict between students, bullying, absenteeism, use of drugs, alcohol, etc., the most commonly used method is punishment. The students from the 'Nicolae Bălcescu' Theoretical High School, who commit deeds that violate the legal provisions in force, including school regulations, will be sanctioned according to their severity. The sanctions that can be gradually applied to students are as follows:

a. individual observation;
b. written reprimand;
c. temporary or permanent withdrawal of merit scholarship, social scholarship, or professional scholarship;
d. disciplinary transfer to a parallel class in the same educational unit;
e. notice of expulsion; and
f. expulsion.

In most cases, sanctions can be doubled by decreasing the behavior grade. The sanctions can be contested within five working days, except in cases in which the student is expelled from all schools without the right to re-register for a while.

'Lucian Blaga' Theoretical High School also has a Commission for the Prevention and Elimination of Violence, Corruption, and Discrimination in the School Environment and the Promotion of Interculturality. The main responsibilities for preventing and combating discrimination and promoting interculturality are as follows:

a. to collaborate with the local public administration authorities, and with the representatives of the police to increase security in the Theoretical High School 'Lucian Blaga' in Cluj-Napoca.
b. to elaborate reports regarding the safety of preschoolers/students from the Theoretical High School 'Lucian Blaga' from Cluj-Napoca;
c. to propose to the management of the Theoretical High School 'Lucian Blaga' from Cluj-Napoca specific measures, results after the analysis of the risk factors and of the specific situation, which will have as a consequence increasing the safety of preschoolers/students and staff in the unit and prevention of juvenile delinquency on the premises and in the areas adjacent to the high school.

d. to promote the principles of an inclusive school. Prevention and elimination of the phenomenon of school segregation, which is a serious form of discrimination, is imperative for the implementation of the principles of an inclusive school.

e. to prevent and mediate conflicts arising as a result of the application of measures aimed at observance of the principles of an inclusive school, even though mediation only appears once in these regulations, there may be talking inside the school about some other methods in solving conflict, other than the administrative one.

At 'Lucian Blaga' Theoretical High School we find the same sanctions. The sanctions applied to students are as follows:

a. individual observation;

b. written reprimand handed to the legal guardian or the person (over 18 years old) under signature; the sanction is recorded in the report of the class council presented to the teaching council at the end of the semester or school year; the document number is entered in the catalog; it can be accompanied by a decrease in the grade for behavior;

c. temporary or permanent withdrawal of the merit scholarship, of the social scholarship: it is followed by a decrease in the grade for behavior;

d. disciplinary transfer to a parallel class is followed by a decrease in grade for behavior;

e. notice of expulsion; and

f. expulsion.

Some other sanctions that are related to conflict and that are in more detail are the trivial language towards the school staff is sanctioned according to the decision of the class council, respectively the Teachers' Council of the school. Aggression is sanctioned by lowering the grade for behavior by up to 4 points, depending on the gravity of the deed. Students responsible for bullying should work for the benefit of the community by cleaning their classrooms and the schoolyard.

All of the above sanctions are meant to discourage deviant behavior; however, as Shahmohammadi (2014) noted, all of them provoke negative feelings and, later, will generate new negative behaviors because they are applied without taking into account the needs, and personal conflicts, problems, and students' expectations.

Because the students in our focus group are a part of the Students' Council in their schools and Students' Advocate appears frequently in this paper, these two and their attributions will be defined next.

4.1.1. The Students' Council

The main purpose of a Students' Council is to provide students with a platform to express their opinions and implement their ideas. The establishment of a students' board was a requirement when Romania joined the European Union. Students require a structure in which they can charge and organize themselves. The responsibilities of the Students' Council include representing and defending student interests and rights, facilitating communication between students and teachers, discussing students' proposals and planning future projects, motivating students to participate in extracurricular activities, identifying

and addressing problems faced by students, improving the disciplinary situation in the school, ensuring compliance with school regulations, and organizing community actions, such as fundraising and environmental initiatives.

4.1.2. The Students' Advocate

The primary goal of this department is to protect students' rights and mediate student problems. It operates independently and is accountable only to the Students' School Council plenary and/or Board of Directors. The department's objectives include upholding human and student rights, respecting diversity from ethnic, religious, cultural, and gender perspectives, ensuring equal opportunities for all students, promoting cooperation and support between students, and fostering a stable cooperation system with the family and community.

This department is one that, by law, should be responsible for mediating conflicts, although not many students know about it, and it is not used as much as we are about to see from our focus group discussions.

The following conclusions can be drawn from the regulations and the Student Council and Students Advocate responsibilities:

a. no regulation implies mediation beforehand of the sanctions, so there is no trying to have a discussion;
b. all conflicts are taken as facts, and one or both parties are sanctioned accordingly; and
c. the Student Council and Students Advocate are trying to implicate themselves more in the student's life so that they can help minimize violence and maximize discussion before any other action is taken.

4.2. Focus groups

4.2.1. Existence of conflict

The results of our focus groups on this topic are not uniform and the reason can be, as mentioned in the introductory section, the differences between the managerial and individual skills of each individual who took part in this study, the social desirability aspect, or the lack of information about these types of situations.

a. Administrators

After the introduction of all the participants, we asked them a general question: 'How do you see conflicts, and what conflicts appear in your daily activities at school?' In two of the cases, the administrators rushed to tell us that in their schools there is no conflict or small isolated incidents, at most, and that everything is done in a very professional way:

> 'There is no conflict in our school because everyone fulfills their duties and responsibilities, and communication between us is great. We have very good students who want to study and do not have trouble.'
> 'There is no conflict in our school because the teachers and administrators act by clear rules, so everyone knows what his colleague or superior wants to do.

There are also no conflicts with the students; they quarrel sometimes, as all children do, but we did not have serious conflicts between them. We try to listen to them, and we also have a permanent link with the parents via our WhatsApp group.'

In the third case, however, the situation turned 180 degrees; the principal and the rest of the participants admitted that the situation was bad and that they needed all the help to educate everyone about how conflicts can be solved efficiently.

'Thank you for taking this initiative - the situation is bad, there are many conflicts at each level, and we, as managers, instead of concentrating on our organizational responsibilities, have our schedules full of this kind of situation. We need someone to teach us about conflict management, and we are willing to do anything that is needed for that.'

b. Teachers

In the case of teachers talking about the types of conflicts occurring in their schools, all of the participants admitted that there are conflicts between themselves, between them and the administration, between them and their students, and between students, and the phenomenon is not as isolated as the administrators mentioned in their focus groups.

'Yes, there are conflicts, of course. Some of our colleagues are favored by the management, there are differences between generations of teachers, there is a lack of resources with some favoring obtaining what they want, and the rest are left to manage on their own. We have students who talk bad to us, come to the class, ignore us, bully, yes, we have a lot.'

c. Students

After the introduction of all the participants, we asked them a general question 'How do you see conflicts, and what conflicts appear in your daily activities at school?'. They immediately told us that there are many conflicting situations between themselves and between themselves and their professors and that the atmosphere during classes is very tense because of them:

'I don't think you have the time to listen to us about all that is happening here. Every day, it seems it gets worse, we fight a lot, and some colleagues talk badly to the professors; in turn, they give us low grades for nothing, and the principal is taking sides with the professors and completely ignores us. The situation is so bad that we don't even have the right to go outside the courtyard because the guardian has strict responsibilities to control us.'

Another student from a different high school told us about the existence of the same problems in her classroom:

'Oh, we can tell you stories (everyone laughs)... we have bullying, every day, we have teachers who don't respect us and we talk bad in front of them, and now we have a situation with the grades, we were told that the grades we receive for

the BAC simulation will not be mentioned in our semestrial grades but one of our professors didn't keep his word and now some of us fail to pass the class, no one is communicating with us, it's like we don't even exist unless it is something that generates good publicity for the school. Like extracurricular activities, everyone asks for our opinion.'

The same person who gave us the last quote immediately started telling us about a recent conflict that her class witnessed between one of their colleagues and one of their professors, and that they were unanimously disappointed with how their colleague reacted, saying that they did not get the chance to share their opinions as members of the Students' Council, which is a daily problem for them—the lack of voice that is given to this organism in numerous conflicts.

'Why do we even have this Council? Just to look good and respect, in theory, the student's opinion? We wanted to bring a certain situation in front of the Teachers' Council about a shameful situation between a colleague and a professor and to talk about what needed to be done (the punishment) and all it was in vain, no one heard us. It is the same with the Students' Advocate, he has a responsibility but only in theory, and no one is asking him to participate in any decision made about the punishment of a student.'

During a conversation with one of the groups, they mentioned a conflict involving a high school student who had allegedly consumed alcohol before class. The student's behavior grade decreased by four points, and all students were prohibited from entering school grounds during school hours. We inquired about their involvement in the situation and whether they were consulted. The group agreed that they should have been consulted and offered their assistance, but their opinions were not requested, not even by the Students' Advocate. They believed that the punishment was unfair, as all students were punished for one person's mistake, and the administration should have consulted the Students' Council and the Students' Advocate for the case and punishment.

All three groups agreed that bullying is the most common form of conflict between their colleagues and that there are some cases when things get physical, mostly when it comes to doing certain activities altogether, like projects; some of them would refuse, and sometimes raise conflicts, and their concern is the fact that they do not have the skills to manage (themselves or their professors) this type of situation:

'Bullying? Every day, not even every day, every break. There are 3–4 in each class that are doing this, the professors know them, and the principal also but they intervene only in the worst-case scenario if the physical abuse is so bad that the beaten one needs medical assistance. The truth is that no one knows how to handle them. I'm a girl, what can I do to stop them? The administration has the means to manage them, but they intervene too late and with the same punishment, decreasing their behavioral grade or asking for the parents to come to school, which is not efficient.'

4.2.2. Conflict-solving and procedures

The second proposed topic for the participants was the formal procedure for solving conflicts in each high school. As in the case of the first topic, we still have differences between the three groups regarding the formal procedure, even if, as we presented earlier, there are clear regulations regarding it.

a. Administrators

The management of each high school informed us about their responsibilities in designing procedures for managing conflicts within their organization. The majority of them are the same as those at the national level, but each high school can have its own rules and procedures, the only condition being that they will not contradict national laws.

> 'As I told you, luckily, we don't have conflicts here, but there is the Internal Code of Conduct that is posted on our website and everyone can consult it. There are a couple of instances here. First, each professor is responsible for his class so he is the one who must manage the conflict if we speak about a conflict with a student. If things are very serious or there is a conflict between the teachers, the situation is brought to me and, if it is something minor or I have all the information about it, I make a decision based on the gravity, or, I call for the Teachers' Council where we decide.'

The manager of another high school also mentioned the procedure at her institution:

> 'In our case, we encourage everyone to be open to this situation. The conflict is brought in front of us and the principal and the Teachers' Council have the final word. In most of the cases, we have a punishment according to our Code of Conduct.'

According to our participants, the principal is informed about a conflict and makes the final decision either directly or through the Teachers Council. However, none of the administrators mentioned the internal Commission for the Prevention and Elimination of Violence, Corruption, and Discrimination or the Antibulling Commission, which should be part of the formal conflict management procedures. The Students' Council and Students' Advocate are mentioned only as consultants without any decision-making power.

> 'Well, yes, they exist and function and we call for their opinion mostly for the extracurricular activities. We didn't need the Students' Advocate so much because we didn't have conflicts, he was there to help his colleague 'defend' himself for the wrong he did, and, as I told you, we make a decision based on the deed.'

b. Teachers

The participants from this group confirmed what the management had already told us, and the decision was made by the principal or inside the Teachers' Council, based on the gravity of the situation and the internal rules of the school.

c. Students

The procedure, explained by the students, looks like this: the conflict is first brought to the attention of the head teacher, the Students' Advocate should be at this time present and see what he can do to defend the students' rights and if he can help in other ways. If the conflict persists, or if the situation is of immediate importance, the conflict is brought up to the principal, where it can go in two directions: the principal writes up a report or calls the Teachers' Council to decide what should be done.

The majority of our focus group participants believed that the Students' Advocate should compile a report that includes the student's perspective, their rights, and any violations they have experienced. This report should be presented to the principal, and if there is a Teachers' Council, the Students' Advocate should participate and present the case to all the teachers. Many teachers do not seem to take student concerns seriously, leading to a lack of trust. Students also feel that they are not informed about conflicts and are only sought after when their help is beneficial to the school.

4.2.3. Third-party involvement

Another important aspect that we were interested in was the involvement of or need for third-party intervention in their conflicts. We started with a question regarding possible help from the Parents' Council and the school psychologist, or if the three groups ever requested help from them. Based on all three focus groups, we understood that sometimes the parents do interfere in conflicts, but the Parents' Council is rather passive when it comes to conflict resolution.

a. Administrators

First, administrators seek input from parents on financial matters, extracurricular events, and preparation for the final exams. Second, they view the Parents' Council as a source of information rather than as a partner in day-to-day management, including conflict resolution. Teachers primarily focus on academic responsibilities rather than on management. School psychologists are valued for their support but are not seen as mediators or conflict managers.

b. Teachers

Most teachers consider that parents are important in the management of conflicts, but they find them heavily biased in favor of their children and, therefore, are not well placed to play the role of a third party who is supposed to be neutral and impartial. They expressed interest in having external help, such as professional mediators or facilitators, but confessed that they did not know much about these procedures and how effective they would be. Teachers told us that they were interested in learning more about ADR methods and how they could become more prepared to deal effectively with conflicts in their schools.

c. Students

When we asked the students if they would like the parents to be more active, they did not consider it necessary, but they did consider it necessary that the head teacher get

involved more in the conflicts, and if they think it is right, they can call upon the Parents Council to step in. They perceive the head teacher as the manager of their class and one of the first teachers responsible for guiding them and solving their conflicts. Unfortunately, most students consider the head teacher passive, and, more importantly, they do not trust him when a colleague must be defended in front of the principal.

The students had a mixed reaction to the school psychologist. While they recognized his role in resolving conflicts and wanted to have a close relationship with him, they were also disappointed by his lack of involvement in solving or mediating conflicts. Some students and their colleagues face family issues that affect their school performance, and they believe that psychologists can help them overcome these situations. They consider him an ally to mediate conflicts caused by teachers who neglect students' problems. However, the students were disappointed that the psychologist was not more proactive in dealing with conflicting situations and was reluctant to intervene in administrative decisions.

Lastly, we asked the students what they would think about bringing a school mediator, a trained person who is in contact with everybody, and an impartial and neutral person who helps solve the school conflicts; this idea was received with great interest; they would very much like the presence of a mediator if that person is open to everybody, especially students, and that can even repair the student-teacher relationship because this is a very important message that the students shared with us, as long as the student-teacher relationship is a good one, conflicts will lower in intensity and impact.

4.3. The Survey*

As in the case of the focus group, we organized the questions into three major themes:
a. the existence and efficiency of the formal/administrative method for solving conflicts in schools;
b. knowledge of the use and efficiency of alternative methods for solving conflicts in schools; and
c. the need for alternative methods to solving conflicts in schools.

4.3.1. Existence and efficiency of the formal/administrative method of solving conflicts in schools

First, we wanted to know whether the students knew about the formal procedures of conflict resolution used in their high school and what they felt about their efficiency.

The first question in the survey referred to the existence of such a procedure. The results are not surprising, as there is no significant extreme, but that is not something that we expected since a quarter of our respondents do not see formal procedures as an actual method of solving conflicts, with 27.7% responding that there is no formal procedure for solving conflicts in their school. Almost the same percentage (24.1%) were in the neutral

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* The survey was designed and managed by MA student Dora Gabrian under the supervision of the authors, and it was part of her dissertation. She kindly allowed us to use it in this article.

zone (neither agreeing nor disagreeing), a result that may be due to the lack of communication between the administrators and students regarding these procedures or the student's lack of interest in them. On the other hand, almost half of the respondents knew about the existence of a formal procedure for solving conflicts, with 19.6% agreeing and 28.6% strongly agreeing.

These results depict more than two possible ideas: the lack of information that the students have when it comes to schools' regulations (both because of the way the school communicates them via the website of each school and the lack of interest of the students regarding them) or the fact that, as noted previously, students do not see these administrative methods as having an impact on solving the conflict.

The second question was related to the efficiency and utility of formal procedures. In this case, we can see a greater difference between the responses that solidify our previous findings from the focus group regarding formal methods not being efficient. The majority (63.4%) disagreed or completely disagreed with the efficiency and utility of the formal procedures, 11.5% were neutral to this situation (neither agreeing nor disagreeing), and 25.1% agreed and strongly agreed, meaning that some students appreciated the formal method or that they were not aware of any alternative methods, so they see the formal one as useful and efficient because it is the only one available.

4.3.2. Knowledge of the use and efficiency of alternative methods for solving conflicts in schools

After asking questions about the existence, usefulness, and efficiency of the formal method, we moved on to determine if the students had been exposed to alternative methods of conflict resolution, in general, and to mediation and peer mediation, in particular.

Regarding the existence of an alternative method to the administrative one, 64.3% of the students said they disagreed or strongly disagreed, and no members of the school presented them with any alternative methods. We also had 17% neutral responders, but 18.9% of the students agreed or strongly agreed that they had been exposed to such methods. As can be seen, 61 of the 112 students never met with alternative methods of solving conflicts.

Going further, we took two examples of alternative methods to solve conflicts that were used in schools in other countries and obtained significant results. We started by asking if the students knew about the existence of mediation while giving them a short definition of this method. With 59% of students not being exposed to this method, it is very clear that mediation is not a subject much discussed in schools. Neutral responders accounted for 17% while 24,1% of the students agreed or completely agreed.

As some students were exposed to mediation, we expected that we would have very similar percentages regarding the use of mediation in their schools. Here, it is interesting to note the high percentage of neutral answers; there are many cases where respondents are not sure about their answers, so they use neutrality as a safe zone for answering. The percentage of neutral answers was 28%; students likely heard about mediation in courses such as Civics or History, but they did not know if it was being used in school as a method. Students who said they agree with mediation being currently used in schools are 20.5%,

which can be from the heads of each class or members of the Students' Council who are often put in the situation to conciliate other colleagues.

The third question related to mediation in schools is about its efficiency: If mediation is used, did it indeed work efficiently? Here, we have a large percentage when it comes to disagreeing and strongly disagreeing (54.5%). This could be partly because even people who were not exposed to mediation in school answered, which may have contributed to the high percentage. We have 24.1% neutral answers, meaning that either the mediation may have worked at the time but was not efficient in the long run, or they did not feel like it worked but did not feel like it was a total failure. Although there was a high percentage of extreme disagreement, 21.4% of the students felt that the mediation method was efficient and helpful in solving their conflicts.

The second example of an alternative method that can be used to solve conflicts in schools is peer mediation. We wanted to see if this is a method that the students know of if it is used in schools, and if so, if it is efficient. As for the questions before, we gave a short definition of peer mediation, in general, so that the students could understand what it entails, and we asked if this is a method that they have been exposed to in the school environment.

It is clear to us that peer mediation is even less known than mediation, and that is shown in our results: 74.1% of students have never been exposed to this method, so it is not discussed in schools. We had 14 neutral respondents, a percentage of 12.5%. We can see from the neutral answers that some students are unsure if they have been or have not been exposed to such methods. Only 13.4% of our respondents knew something about it; this knowledge could come from the individual interests of the students or perhaps some students practicing peer mediation without knowing the concept.

We asked the question if peer mediation is used in high schools today. From the answers that we got to the previous question, it comes as no surprise that peer mediation is not used in schools today; the students who disagree and completely disagree represent 76.8% of all. Here, we have a small growth in neutral respondents; 17% of students do not know if these methods are in use or maybe they are superficial. Only seven students out of 112 felt that the peer mediation method was being used in their school or classroom, marking up 6.3%.

4.3.3. The need for alternative methods to solving conflicts in schools

Since we saw the existence of a formal method of solving conflicts in school, we saw that if the students knew about alternative methods to solve conflicts in schools, where the results showed a lack of these methods, we wanted to see if there was a need and a wish for these alternative methods to be used in the future. From the representatives of the Students Council, we noticed a great need to learn how to solve their conflicts, so we wanted to see the general opinion of all students regarding a possible peer mediation program implementation and whether it would bring efficiency in solving future conflicts.

The results show the benefit of implementing such a method in Romanian high schools, with 81.2% (22.3% agree, 58.9% completely agree) of the students agreeing that this method would make the process of resolving conflicts in school more efficient. The neutral responses were 12.5% and 6.3% disagreed.

5. General conclusions

In Romanian high schools, the most used method for solving conflicts is administrative decisions, which often take the form of sanctions. In this context, we underline the importance of the Students' Council and Students' Advocates in helping students understand and defend their rights. These two organisms may be helpful in the implementation of alternative dispute resolution methods, especially peer mediation, in Romanian high schools.

Do students have information about constructive conflict resolution? The short answer was mostly no. Some of them know there are other ways of solving conflicts than the formal ones, but they do not know what exactly they imply; some may know from home, some may know as a result of individual study, and a very small number have had these methods explained to them in school.

Other conclusions drawn were the effects of the current rigid system of conflict resolution in schools and the possible benefits of implementing alternative methods for conflict resolution. In our research, we could see the negative effects of the rigid sanctions system—the students who refuse most of the time to go to their teachers for help fear that they will be sanctioned without the possibility of having a constructive discussion. If they get a sanction, they usually do not understand why they got it, but most importantly, they would not reflect upon their actions and most probably would repeat them, risking further penalties.

Addressing conflicts in schools openly and using alternative dispute resolution (ADR) methods are crucial for several reasons.

1. Maintaining a positive learning environment: Conflicts can disrupt the learning environment in schools, affecting not only the directly involved students but also their peers and teachers. Open communication and ADR help to restore a harmonious atmosphere, allowing everyone to focus on education.
2. Teaching conflict resolution skills: Schools can model healthy conflict resolution for students by openly discussing conflicts and using ADR methods. It teaches students essential life skills, including effective communication, empathy, and compromise, which they can use in various situations throughout their lives.
3. Preventing escalation: Ignoring conflicts or allowing them to fester can lead to more significant issues. Open dialogue and ADR methods allow conflicts to be addressed early, reducing the likelihood of escalation to more serious problems or even violence.
4. Promoting inclusivity and equity: Open discussions about conflicts can uncover underlying issues related to discrimination, bullying, or inequity. Addressing these issues through ADR methods can lead to fairer and more inclusive school environments.
5. Building trust and relationships: Encouraging open communication and ADR methods foster trust among students, teachers, and parents. Trust is essential for effective learning and collaboration within school communities.
6. Promoting restorative justice: ADR methods often align with the principles of restorative justice, which focus on repairing harm and restoring relationships, rather than

punitive measures. This approach can be particularly beneficial in school settings because it encourages empathy and personal growth.

7. Supporting individual growth: Openly addressing conflicts and using ADR methods can help individuals involved in conflicts learn from their experiences and develop skills for better future interactions. This could lead to personal growth and development.

8. Self-governance is possible and often desirable in contrast to the common argument that externally imposed management is the best or only sustainable form of governance. By encouraging a more diverse perspective on conflict management decision-making processes and involving all the school community stakeholders in this action, school administrators will satisfy multiple values and interests that will lead to a more efficient way of conflict management.

9. Conflicts are not fixed or straightforward, and cannot be easily settled. Although school regulations provide quick and efficient solutions, the best way to resolve conflicts is through collaboration and involving all parties in the decision-making process. This approach ensures a win-win situation for everyone involved. Additionally, the ADR method recognizes that each conflict is unique and requires a tailored approach rather than using a one-size-fits-all solution for all types of conflicts.

10. Our study can set the basis for a peer-mediation program in Romania with the same guiding principles as those in Europe and the USA. In this study, we attempted to cover a blank spot in the European peer-mediation literature and align our school community policies with those already developed in other countries. Simultaneously, together with the pilot project already run by the authors of this article, our study can become an example of good practices regarding efficient conflict management mechanisms in schools.

In conclusion, there should be more about conflict resolution in Romanian schools than about administrative decisions and sanctions. Addressing conflicts in schools openly and using alternative dispute-resolution methods are essential for creating a safe, inclusive, and productive learning environment. It not only resolves immediate issues but also equips students with valuable life skills and contributes to the overall well-being of the school community.

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ROMANIAN NGOs' EFFORTS TO ADVOCATE ON BEHALF OF MARGINALIZED GROUPS AND PREVENT SOCIAL TURBULENCE

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Abstract

While Romania has undergone huge progress during the last 30 years, the situation of marginalized groups hasn't progressed as well as the country's rapid economic development. The plight of vulnerable groups such as unhoused people, persons with disabilities, and the LGBTQ community continues to be a source of social turbulence, as they are consistently facing exclusion. Authorities do not prioritize their integration within society and there is a lack of policies to deal with these issues, leading to the appearance of extremely polarizing movements such as the 2018 referendum initiative to ban same-sex unions. This paper aims to analyze three case studies where advocacy organizations championed the cause of the above-mentioned groups, in order to increase visibility, representation, and integration, and pinpoint best practices for organizations advocating on behalf of disadvantaged groups. The three main best practices we have learned regarding advocacy projects targeting public policy for marginalized groups are: a. always put a local group at the center of the project, b. bring outside partners or mentors who can bring advocacy skills to the project, c. look for other, supplemental, positive outcomes, that usually tend to come up in the work with marginalized groups.

Keywords: marginalized, groups public policy, advocacy, best practices, homeless, disabled, LGBTQ, NGO, Romania.

1. Improving public policy through advocacy for disadvantaged groups

Advocacy for better public policy outcomes coming from outside groups—policy advocacy, in short—has long been considered one of the best methods to ensure improved outcomes for disadvantaged people, whether we are talking about democratizing access to education (ProQuest (Firm) and Gatta, 2006), improving public health (Wade *et al.*, 2019), nutrition (Cullerton *et al.*, 2018), gender rights (Orr and Conner, 2020), refugee rights (Fehsenfeld *et al.*, 2019) and other issues.

That is not to say that public authorities are automatically neglectful of these groups, or do not necessarily care about their plight. But it has been proved time and again, that the definitions and policies that the public authorities use to determine how to allocate funds can result in a lack of equity and fewer benefits for disadvantaged groups (Rowangould *et al.*, 2016). This is why even when the public sector is already involved with a certain issue, research and policies championed by outside, independent groups on those issues, can greatly help with the design of public policy (Morris, 2015).

Using outside advocacy to change public policy in various fields can be done through various methods, both through advocacy from academic and research groups (Gur-Arie *et al.*, 2022) or advocacy made by representative groups, such as non-profits, for those communities affected by the policy. However, it is generally agreed that while 'researchers can play a role in advocacy efforts, although [...] disadvantaged people, who have direct contact with or experience of hardship, can be particularly persuasive in advocacy efforts' (Farrer *et al.*, 2015, p. 393). This is why non-profits and civic movements that serve various groups, including disadvantaged ones, often get involved in policy advocacy, which may greatly help constituencies that didn't previously have a voice (MacIndoe, 2014).

Obviously, advocacy looking to influence public policy is not only performed by non-profits, as advocacy is also being done by the private sector. Various commercial interests (Irwin, 2014), such as the banking sector (Adel Abdel-Baki, 2014), or charities funded by various industries (Steele *et al.*, 2019) can be especially active. But non-profits and civic groups have in many countries a primacy over the idea of public policy advocacy, as they are a 'location for collective action' (Grønbjerg and Prakash, 2017, p. 880). As a non-profit, civic or independent group, these entities may pursue a large array of goals in relation to public policy and the public sector. They may be looking to ensure funding for their activities (Barr and Johnson, 2021) or for various groups that they are serving: as some researchers are calling it, 'advocacy for social benefits versus organizational benefits' (Garrow and Hasenfeld, 2012, p. 80). Also, at times these organizations may have trouble deciding whether to focus more on service provision for their constituency, or on advocacy (Elsana, 2021). But the influence of non-profits on public policy is considered important enough that, in many countries, the public sector is looking not just to partner with these organizations, but also to find the most efficient way to fund this sector, not just for service delivery but also for advocacy (Onyx *et al.*, 2008).

That doesn't mean that relationships between public authorities and organizations that advocate on behalf of various groups are not without their challenges. Governments have

to become more 'adaptive' since they face more uncertainty and change than ever (Țiclău, Hințea and Andrianu, 2020, p. 175). This and various other issues always come up to increase complexity for these organizations and their advocacy, such as austerity or budget cuts, which can greatly limit progress on social issues (Whitacre, 2020). Also, organizations need to take great care in choosing advocating strategies, in order to ensure the best outcomes in relation to the public authority they are looking to influence. This means that advocate organizations and leaders will need to choose between a range of 'softer' (that is more institutional forms of advocacy), rather than more openly challenging forms of activism (Onyx *et al.*, 2010, p. 41), while showing resilience in the face of bigger than ever financial pressures and ever more complex government regulation (Țiclău, Hințea and Trofin, 2021).

2. Defining success when it comes to advocating for improved public policy

Coming up with a clear definition of what makes a successful advocacy campaign can be a complex endeavor. Based on the type of organization, success may mean different things: for some, it is about capacity building and positive program outcomes, for others, it may be about more funding or more services delivered (Strang, 2018).

In order to understand which are the core items that are strongly linked to advocacy success, we need to look at those organizations for which advocacy and policy change are core values, as opposed to focusing purely on delivering services (Silverman and Patterson, 2011). When looking at those items that are considered strong success indicators in advocacy campaigns for marginalized groups, three such indicators regularly come up:

1. The level of change in legislation and public policy outlook, whether on the short or long term. This indicator is the most predictable since advocacy in itself is about influencing the public sector and public policy in order to obtain the best outcomes for a certain group. That being said, linking advocacy success only to the level of policy change is wrong, as 'social change advocacy outcomes are difficult to predict because of the complexity of political and social systems' (Klugman and Jassat, 2016, p. 9).

2. Raising the level of mobilization, empowerment and involvement in policy matters of the marginalized group that the organization is advocating for. Making sure that their constituents' voice is being heard is time and again mentioned by organizations as the main positive outcome for various advocacy campaigns on behalf of disadvantaged persons (Brown *et al.*, 2013; Dillard *et al.*, 2018). Since, in most cases, they occupy marginal spaces in society, these people are struggling for recognition and to be heard (Ridley *et al.*, 2018). Thus, mobilization is a huge indicator of progress for these groups. Also, building capacity is much easier when the community is mobilized and feeling empowered (Sharpe *et al.*, 2015).

3. Changing beliefs and perceptions of the particular group that organizations are advocating for. This is especially important since the public sector may be designing policies or acting towards certain groups based on outdated or flat-out wrong ideas of that group, so changing them is very important (Unerman and O'Dwyer, 2006).

Obviously, not every group assigns the same level of importance to each of these indicators. While most advocacy groups may place legislation change at the forefront of their efforts, many times they may focus more on mobilization or changing perceptions. LGBT groups have a very strong focus on changing perceptions of their community (Lipka, 2011), most likely because all disadvantaged groups face huge amounts of very public stigma in daily life (Thaker *et al*., 2018). Instead, since the main barriers people with disabilities have to face are caused by legislation and public policy (Holness and Rule, 2014), their focus first and foremost is on policy change. The same focus on policy change can be found in the case of non-profits who are advocating on behalf of unhoused persons (Pekkanen *et al*., 2014).

Since advocacy organizations and the groups they are representing are hugely varied, other success indicators are also used, such as the well-being of people with disabilities (Tilley *et al*., 2020), or spurring people into 'early action' (Wightman, 2013, p. 30), but these are not nearly as often used as those mentioned above.

3. Methodology

For the purpose of this article, we have selected three case studies, based on campaigns led by advocacy groups and organizations on behalf of marginalized groups in Romania. All of these took place in urban areas, and they all meet the outlined success indicators for advocacy projects on behalf of the marginalized. They all determined either legislation and policy changes, or a change in the policy outlook, managed to mobilize their constituents, and also focused on changing perceptions about these groups.

The first of these projects is called 'Homeless Citizens' Voice', a project that started in Bucharest in 2021, and is focused on bringing the problem of homeless citizens in Bucharest on the agenda of the local authorities through advocacy.

The second project, run by the local civic group Dizabil.eu in the Moldavian city of Focșani, was centered on drawing the 'Accessibility map of Focșani' in order to involve local authorities towards increasing the accessibility of the city and public institutions through infrastructure for people with disabilities.

The third of these is linked to the successful organization of the first Pride March in the city of Iași in 2021, only the third city in Romania to host a Pride March.

We will analyze these projects that advocate for three types of marginalized groups in order to extract the necessary lessons and highlight the best practices to be followed when advocating for their rights. Overall, this may help not only to better integrate these groups but also to prevent the social turbulence that inherently appears when discrimination happens on a large scale.

Going further, we will first present the current situation for each of these disadvantaged groups. Then, we will analyze the three projects in more detail. We believe that the good practices that we can glean from these projects are applicable not just in Romania but in a majority of other countries that are facing similar issues. Better services, hosting capacity, and recognition of the needs unhoused people have, which are covered in the

'Homeless Citizens Voice' are also very commonly being addressed as important issues in Western countries. The problems of proper spaces and infrastructure for people with disabilities, covered in the Disabil.eu project, are a target of public policies in the West, and so is the issue of ensuring less stigma and more participation for the LGBT community.

However, developing countries are now going through the stages of social and economic development that Romania has also traversed quite recently. Thus, they can also put to good use these best practices regarding advocacy on behalf of marginalized groups, as their evolution is probably quite similar to Romania's.

4. Post-communism upheaval and its effects on marginalized groups

The transition from communism to a democratic regime has been, without a doubt, one of the biggest transitions in Romania's short but tumultuous history as a modern state. The country went through a lot of turmoil in its evolution from communist to a newly democratic state, and then to a European Union member (Papadimitriou and Phinnemore, 2008). While that evolution has largely been positive and beneficial, with Romania recently becoming a high-income economy, it has also left a lot of people behind which has become a huge source of social turbulence.

One of the deciding factors for this turmoil was economic upheaval, as Romania transitioned from a centrally planned, communist economy to a free market, which in turn led to the loss of jobs and poverty for the more vulnerable groups (Pasti, 1997) and a decline in social welfare, public health and standards of living for many people (Wolchik and Curry, 2015), directly increasing problems for marginalized groups.

What also didn't help was that the structural reforms that were supposed to go together with all these changes happened very slowly, leading foreign observers to say that in Romania 'political reform [...] seems more posturing than process' (Carothers, 1996, p. v), as reform only really happened when local and central institutions were actually convinced of its urgency and need or were being pushed by foreign donors. It is true that the pace was accelerated during the 2000s, as accession talks into the European Union became a huge objective, so Romania was under a lot of pressure to implement European policies and standards (Vadasan and Parean, 2013). Thus, slowly, but surely, as living standards started to improve, many people became less vulnerable. The economic progress the country has gone through during the last decades is undeniable. Yet the improvement in the lives of marginalized groups hasn't managed to stay on the same level as Romania's rapid economic development (Ruegg *et al.*, 2006).

In the following chapters we will cover in more detail the situation of some of Romania's most significant marginalized groups.

5. Homelessness—a post-communist problem

Post-1989, one of Romania's biggest social challenges was that of homeless people. 'Housing for everybody' had been a big priority of the communist regime, which meant

most citizens had a rather secure housing situation until 1990. The transition to a market-based economy and the recessionary cycles that followed changed that situation radically. The previous safety net that existed during communism all but collapsed, which for more vulnerable groups meant a loss of income, status, and many times, a loss of housing.

A starting point for the homelessness problem is considered by many to be the appearance of Bucharest's first 'ghettos', where certain areas started attracting poorer people affected by low income and education, which excluded them 'from social participation and from getting access to urban zones with good habitations' (Mionel and Neguț, 2011, p. 197). This was further exacerbated by the fact that many people who were displaced by the 1990s economic turmoil moved to Bucharest, looking for economic opportunity. However, a lot of them ended up unhoused and extremely vulnerable.

The way urban spaces were designed in post-communist Bucharest heavily encouraged class separation, with high-rise towers and new buildings becoming a symbol of the elite and middle-class, to be kept as far away from marginalized groups as possible (O'Neill, 2022). This newly marginalized group found itself continuously pushed towards the periphery, out of the central districts that usually command more resources (Teodorescu, 2019). Another problem was that of stigma; with studies showing that in the 2000s stigma levels regarding homeless people in cities such as Bucharest, Kiev or Zagreb were much higher than in Western European capitals, making their resettlement much harder (Brandon *et al*., 2000).

Homeless people face problems that range from basic ones such as food poverty (Ionita, 2018) to more complex ones such as health issues, especially for diseases that require constant, uninterrupted treatment, such as tuberculosis (Popescu-Hagen *et al*., 2016). At this juncture, the homeless are among the vulnerable groups in Romania with the lowest degree of coverage from social services.

Actually, it is the lack of involvement in local decision-making, whether it is about housing or about more general issues, that is the other problem that the unhoused face, besides the lack of decent living standards. People from vulnerable groups, including those with housing issues face exclusion from local policymaking that is the result of the authorities' actions (Teodorescu, 2019) but also self-exclusion, as they don't feel like they have the right to participate in decision-making. This is usually the result of years of policing interventions from the authorities that are more focused on 'control and regimentation' rather than on harm reduction and recognizing the alternative spaces that at times these people build for themselves (Lancione, 2019, p. 548).

6. People with disability, a category Romania is still slow to integrate

While the images coming out in the 1990s from 'Ceausescu's orphanages' have been relegated to the distant past, the situation of disabled people in Romania is still very complex.

This has brought growing concern about the way Romania is integrating people with disabilities, with EU publication Euractiv recently stating that 'out of the 100,000 hand-

icapped children and children with special needs (the two categories are different), only 8,000 are currently integrated across Romanian schools' (Ribout, 2020). According to a report from the European Bank for Reconstruction and Development, estimates regarding the number of people with disabilities vary between 850,000 people with disabilities (national data) and 326,000 people (European data), with employment at 14.9%, compared to the national average of 64.6% (Ergon Associates, 2020).

Time and again, research shows that while Romania is a European Union member fully committed to upholding standards regarding this group, there is a huge gap between state policies and the reality. These are caused by: 1. a medicalized approach, 2. cultural lag, and 3. downright opposition to implementing EU laws and directives in this field (Fylling *et al*., 2020). Seeing disability almost exclusively through medical lenses further justifies patriarchal attitudes towards this group, and also a poor adaptation of Romanian practices to international ones (Baciu and Lazar, 2017). Many times, doctors label disabled people as 'social cases', a medical designation meant to protect them but that at many times further hinders their integration prospects. This happens so much that certain researchers have taken to calling 'social cases' the 'New Poor' of post-communist Romania (Friedman, 2009, p. 375).

This is compounded by a lack of options for caregivers (e.g. parents of children with disabilities). They are, in many cases, left without a feasible roadmap for their child's future, mainly because there are very few disability services, as a result of a lack of policies in that field (Ion and Lightfoot, 2023). A study regarding mothers' experience when being told by doctors that their child had a disability, retained two main terms they used to describe their experience: 'uncertainty' and 'disempowering bureaucracy' (Collins and Coughlan, 2016).

To be fair, Romania has legislation promoting the hiring of disabled persons, with most workplaces having an obligation to hire a certain number of disabled persons and to offer certain benefits. Also, many 'social enterprises' that offer opportunities to disabled workers have been set up and become a success, which offers a lot of hope for the future of this group in terms of employment (Geta, 2022).

However, disabled people, even when employed, have to deal with infrastructure badly adapted for their needs, and also social stigma (Birau *et al*., 2019). Since, traditionally, most spaces, public or private, are not built to take into account their needs, disabled people permanently live in 'spaces [that] are currently organized to keep disabled people 'in their place' and 'written' to convey to disabled people that they are 'out of place'' (Kitchin, 1998, p. 343). People with disability live in 'distorted spaces', that do not welcome them in any sense, which only supports the view that 'disability is a form of oppression which is socio-spatially produced rather than naturally given' (Gleeson, 1996, p. 387). In the case of the disabled, the space itself is the most powerful exclusionary element, which makes them one of the most marginalized social categories.

7. LGBTQ—a community still fighting for visibility and equality

Another legacy of discrimination that the new democracy had to inherit from the communist regime was the complete criminalization of homosexual activities. It took Romania more than 10 years to finally decriminalize homosexual acts, in 2001, under intense pressure to meet the standards of the European Union it was hoping to become a member of. It is notable that it took Romania much more to reach that point than other post-communist countries, and that it was more about respecting European principles than about acceptance of the idea of equal rights standards (Weyembergh and Cârstocea, 2006). This is why, though the law marked a very important moment, negative discourse that saw the LGBTQ community as a 'negative import from occidental societies' (Nimu, 2015, p. 77) remained pervasive in Romanian society.

This culminated in the infamous 2018 referendum that sought to change the definition of marriage in Romania's Constitution to where it could only take place between a man and a woman, rather than between two individuals as the initial text stated. The referendum gathered over 3 million signatures and was considered by many 'a battleground in the transatlantic backlash against LGBTQ rights' because of the involvement of various US religious organizations in its financing and running (Norris, 2017a). In the end, it was defeated through a general boycott (Cojocariu, 2017), but it is highly debatable whether Romanians boycotted the referendum in order to truly support the LGBTQ community, or whether it was a reaction against the interest groups (politicians, religious organizations) that pushed for the initiative (Voiculescu and Groza, 2021).

It is also clear that one of the 'engines' that propelled initiatives such as the 2018 referendum was that the public at large still wasn't very positive towards LGBTQ rights. At the beginning of the 2010s, 46% of Romanians thought that homosexuals should not be 'free to live life as they wish', although people with better education, living in urban areas, and who have experienced 'nonconformist family arrangements' were more positive towards socially accepting same-sex couples (Andreescu, 2011, p. 209). That LGBTQ rights lack recognition at the general population's level was also shown by opinion polls that took place before the 2018 referendum. Although more respondents were favorable regarding a LGBTQ person's right to adopt a child than to marriage between two same-sex persons, over half of them were against any sort of rights for this group (Fulga, 2017). Once again, visibility in the eyes of the general population is a huge problem, with a majority of respondents having never seen LGBTQ couples in public.

Faced with these issues, the LGBTQ organizations' main strategy was to increase visibility, both in order to combat the above-mentioned issues, but also to show solidarity and to increase the community's sense of self-worth (Norris, 2017b). One of the main strategies in order to gain visibility was the organizing of marches for gay rights, or gay parades as they are more commonly known. The first one ever in Romanian history took place in 2005 in Bucharest, under the name GayFest, and kept taking place every year, in spite of active opposition from conservative groups. Since 2014, the march has been taking name under the Bucharest Pride moniker. In 2017, Cluj Pride started taking place yearly in Cluj, while in 2021 the city of Iași started hosting the Iași Pride.

8. 'Homeless Citizens' Voice'

'Homeless Citizens' Voice' is an ongoing project that started in Bucharest in 2021. Homelessness has always been a focus for Carusel Association (www.carusel.org), one of the most active local organizations and service providers for marginalized communities in the capital. Among other projects, Carusel runs four community centers (including in Ferentari, one of the poorest areas in the city), and various social assistance initiatives aimed at providing food and health services for people in need.

One of the problems that the organization kept bumping into was the lack of focus from local authorities on providing housing and social services for the homeless. Thus, Carusel started a project in partnership with the Resource Center for Public Participation (www.CeRe.ong), advocating for homeless people, for a better understanding of their needs, for more involvement of this vulnerable group in the decision-making, and for their voice to be heard. A very important output of the project was the report named 'Voice of Citizens without Shelter. A diagnosis of the services offered by the municipality to homeless people' (CeRe, Carusel, 2021).

The report identified a large number of issues that greatly and negatively impact homeless people's experience living in Bucharest. Amongst them are low shelter capacity, the lack of a residential component, no options for families, insufficient healthcare services, and a lack of information (see table 1).

Another big part of the project was a series of conversations with various people with housing issues, who use various community centers in Bucharest.

These discussions paint a picture of neglect on the part of the authorities, who make few efforts to both increase the capacity of the shelters and adapt their services to the needs of the unhoused. The answers also show that they deal with a striking lack of safety, with homeless people avoiding police for fear of getting a ticket instead of help. The report also offers an overall description and analysis of the types of services and shelters that are available in each of Bucharest's six sectors.

Initially, the report was meant to be used as a way to continue to advocate on behalf of the homeless with local authorities. However, another very positive externality of the project was that, since the report was released during the COVID-19 pandemic, it could well be used as a solution for the vaccination of people without IDs. Therefore, the organizers of the project reached out to authorities in charge of the vaccination, in order to propose a mobile vaccination campaign that would also include homeless people without ID documents. Both for this occasion and for the future, including homeless people in vaccination campaigns may be of great help, considering the many territorial disparities in COVID-19 vaccination campaigns in the country (Marin, 2023).

9. An effective accessibility map, in the service of people with disabilities

DizAbil.eu is a civic group that was set up 10 years ago in the city of Focșani, Romania. Initially organized as a group to help disabled people to meet, socialize, and have discussions about their rights, it quickly became more militant and started advocating for the

Table 1: General situation of accommodation capacity and funds for social services for the homeless, based on responses received to requests made on the basis of Law 544/2001 (May 2021)

Institutions	Accomodation capacity in overnight shelters for adult persons	Recorded homeless persons - year 2020	Estimated funds for social services for the homeless- year 2021	Funds allocated for 2020	Funds allocated for 2019	Funds allocated for 2018
City Hall-Sector 1	60	80	4.500.000	2.685.432	2.671.952	3.051.360
City Hall-Sector 2	48	199	600.000	537.000	542.000	337.000
City Hall-Sector 3	80*	261	2.300.000		7.850.000	
City Hall-Sector 4	50**	78	103.809		325.247	
City Hall-Sector 5	21	55	2.256.150	934.648	556.605	na
City Hall-Sector 6	60	109	928.000	927.678	689.405	495.319
Bucharest City Hall	247	1244	7.160.412	15.212.777	11.437.200	16.908.000

*44 residential, 36 overnight shelter
**at the moment, the capacity is zero (the shelter has become a center for institutionalized quarantine)

Source: Excerpt from the report 'Voice of Citizens without Shelter. A diagnosis of the services offered by the municipality to homeless people' (Resource Center for Public Participation, 2021)

accessibility of public spaces and institutions. Thus, it was no surprise when in 2021 they decided to run 'Accessibility map of Focşani', a project aimed at helping the authorities to increase accessibility for people with disabilities. The main tool created through this project, with the aid of volunteers, was an interactive map that contained both public outside spaces, such as parks, streets, and sidewalks, and spaces in public buildings, such as local administration offices, sports arenas, and theatres.

While the project was mainly financed through the StartONG program, the organization also benefited from mentoring from other organizations such as CIVICA Association and the Resource Center for Public Participation, through the 'Civic steps for a strong community' program. The mentoring covered especially advocacy training, regarding ways to position the organization in relation to local authorities, in order to be able to continue its efforts and build on past successes.

The launch event of the accessibility map, at the end of 2021, had a positive outcome, attracting the presence of the city's mayor, its two vice mayors, and several managers of social services and educational institutions. What was even more surprising, especially considering Romanian authorities' usual lack of prioritizing when it comes to accessibility infrastructure, was that the authorities had an immediate reaction to the identified problems, complied with the group's requirements, and made most of the pinpointed areas accessible very quickly.

This made it possible for the civic group to continue asking for accessibility improvements for such important city buildings as the National Theatre in Focşani, and its multipurpose Sports Arena. While the National Theatre got a rolling wheelchair to help disabled people have easy access, the Arena also got several temporary fixes, with discussions ongoing regarding full accessibility.

Here too, besides the immediate (successful) objective of rendering key areas in the city more accessible, another positive externality was the opening of a communication channel with the representatives of public authorities. This allowed DizAbil.eu to take its accessibility efforts to the next level, by being able to communicate with the authorities quicker, and get quicker results.

10. The first Pride March in Iaşi, an amazing opportunity for LGBTQ advocacy

RiseOut is an NGO, formerly a civic group set up in 2016, with the purpose of offering support to the LGBTQ community in Iaşi. As such, it has continuously fought for equality and recognition of same-sex rights, in an environment not exactly conducive to tolerance. The capital of Romania has had a gay rights march since 2005, and Cluj, a university city comparable to Iaşi, had its first Gay Pride in 2017. But in Iaşi, the opposition of local authorities meant that organizers of any LGBTQ public event had problems finding a location, and obtaining the proper approvals became very hard.

That was also the problem when in 2021, RiseOut set out to organize the first Iaşi Pride Festival. In this case also, the organization wasn't on its own, as it was being mentored on

advocacy issues through the 'Civic steps for a strong community' program, while also having the support of ACCEPT, an LGBTQ organization with a national reach. The cultural events within the festival all took place in private locations. All requests for events to take place in locations that were under the authority of Iași City Hall were eventually denied. However, the organizers didn't give up and managed to attract funds in order to hold the events.

Having the support and the benefit of ACCEPT's experience, which had organized The Bucharest March Pride, RiseOut decided to ask the local authorities for the necessary permits and approvals in order to hold the first event. While the first round of requests was denied, a second round of talks produced better results, with the necessary permits from the Local Council being released, although the Iași mayor Mihai Chirica kept affirming his opposition to the project (Drăgan, 2021).

Thus, despite a last-minute request from the mayor to cancel the march, the first Gay Pride took place in Iași on October 1, 2021. The event was a success, with no unpleasant incidents, good collaboration with the police, and excellent coverage in both local and national mass media.

The organization reached its primary objective—to offer much-needed visibility to the LGBTQ community in Iași, by finally managing to convince the authorities to allow gay marches to happen. After this success, in 2022 the Iași Gay Pride took place without a hitch and received the proper authorizations not only from the Local Council but this time also from the mayor—a huge advocacy success, as it was an important moment of recognition of the LGBTQ community's right to freedom of assembly.

But it also offered other positive outcomes. First, a newfound relationship with local authorities, which changed their attitude towards the organization and its initiatives, but also renewed interest from financing organizations, for whom the Gay Pride was proof of RiseOut's grassroots capabilities.

11. Conclusions

When looking at these three case studies, obviously the biggest contributor to their success is the amazing work of the volunteers who, against the indifference and sometimes downright opposition of authorities, have managed to advance the situation of marginalized groups.

However, there are a few fundamental characteristics that we can see in each of these projects and seem to contribute heavily to their success. These are:

A. Local groups. Literature on local NGOs already shows that they can help enormously by bringing usually overlooked aspects to the attention of the public, from marginalized groups to issues such as the environmental impact of various projects (Gavrilidis *et al.*, 2022). The activities and positive influence, especially in terms of social services and the impact that local NGOs can have in their area have been documented all over Romania (Ateșoae, 2018). Local actors are very important when it comes to forming social networks, by bringing together the relevant partners in the area, for interventions meant

to deliver services and bring about change (Lam *et al.*, 2020). Even when efforts are led by a public sector entity, it is important that local NGOs are involved, in order to both understand and analyze problems on the ground and then deploy services and solutions through a range of local partners, rather than just through public sector workers (Vrabie and Dudian, 2021).

There is no denying that their impact, especially on the marginalized groups that are neglected by the state, is immense (Heemeryck, 2018). Research has shown time and again that the best way for the public sector to deliver social assistance services in a holistic manner is to partner with organizations from the private and non-governmental sectors (Androniceanu and Tvaronavičienė, 2019). Beyond services, local organizations, as part of civil society, can provide counterpoints to the official authority position in a given field (since authorities will tend to claim that everything is OK in their area), in a word provide 'counter-accounts' to the official position on a matter they are dealing with, such as the situation of marginalized groups (Apostol, 2015).

But nowhere are all the advantages brought by local NGOs' activities more visible than in these case studies, highlighting how important the 'localness' of the organizations that organized the aforementioned projects is. They are all local organizations that started as civic groups, fully immersed in the local community and exclusively dedicated to the problems of a particular marginalized group. While RiseOut was set up 7 years ago, Carusel and Dizabil.eu have over 10 years of continuous activity with vulnerable groups. This is essential to the success of each of these projects, as they bring a wealth of experience, understanding of their beneficiary's needs, and relationship with authorities and various stakeholders.

These are not just NGOs that are looking to move on to the next project. Thus, it is very clear that putting local civic groups and organizations at the center of advocacy efforts for marginalized groups is essential for the success and long-term resilience of these efforts.

B. Bringing in outside NGO partners or mentors who can bring advocacy skills to the project. While these local organizations have excellent knowledge of the on-the-ground situation, they may not always be able to handle the complexity that arises from advocacy activities. Advocacy is about conducting research, crafting the messages, and designing the communication materials that will help a certain campaign break through the clutter and get the message to its intended recipients, about organizing events that will attract rather than keep away various stakeholders and get them to collaborate with the organization in question. This adds a lot of complexity.

That's why it is meaningful that the organizations who did the projects in our case studies all had as either partners or mentors other NGOs with a lot of experience in advocacy. Carusel went into the project regarding homeless people as a full partnership with the Resource Center for Public Participation (CeRe), an organization with a storied 17-year experience in projects dealing with public participation, making public institutions more transparent and involving citizens in community projects. CeRe also runs a six-week advocacy exchange program in the USA.

It is understandable why this project was best approached as a partnership between the two NGOs, since it is quite large. Analyzing the resources, budgets, and policies of six different sectoral city halls in Bucharest, writing and communicating with social services in each sector, and communicating based on the findings, were just a few of the advocacy tasks in this project.

Our other two case studies opted for mentorships from organizations well-versed in advocacy, and using that sort of expertise was very important for the outcome of the project. Both projects took place for shorter periods of time, but they were no less important, dealing with entrenched views in the local administration about how to manage the marginalized groups these two NGOs represented, and sometimes with downright opposition. But working with organizations that had already fought some of these battles, as was the case with ACCEPT consulting on the Gay Pride in Iași, brought a lot of understanding regarding how to talk to the authorities, tone of voice, the legal documents that were needed, and many other elements regarding communication with local and state institutions.

In both cases, extensive communication and negotiation were needed in order to reach a positive outcome. This is where advice from mentors and outside help, either as a partnership or in other forms, can help greatly. For future efforts where local organizations deal with advocacy efforts on behalf of marginalized groups, mentorships and partnerships with organizations with advocacy experience can greatly improve the efforts to promote the cause of marginalized groups.

C. Besides each project's main objective, the organizers must look for, and recognize opportunities for other positive outcomes, that usually tend to come up in the work with marginalized groups. As each of these three case studies shows us, working with marginalized groups can offer positive externalities that organizers may not have foreseen.

This becomes very clear when we are looking at the fact that, although the 'Homeless Citizens' Voice' project was first and foremost focused on improving representation and advocating for unhoused people, it could also be used as a solution for the vaccination of people without ID. Thus, a project aimed at a vulnerable group can come up with multiple positive outputs, even though they weren't planned for. It is the same with the other two projects; beyond their stated objectives, which they accomplished, they also managed to open communication lines with the administration, attract new financing, and re-energize their own organizations. Making these groups more visible in the eyes of authorities and the general public unlocks a lot of that potential, bringing with it other unexpected but very positive outcomes.

It is for this reason that the work of advocacy organizations with marginalized groups is so important and needs to be encouraged. Increasing the visibility and representation of these groups in relation to the authorities and the public will not only make things better for these groups but also open up new, sometimes unexpected avenues for future development and prevent social turbulence.

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NEW PUBLIC SERVICE BARGAIN: TIME FOR PARADIGM SHIFT IN TURBULENT TIMES?

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Abstract

Europe and North America are facing demographic changes with an aging population and declining birth rates. This has implications for the labor market and the workforce of the future. An existential crisis for public institutions is that the public sector is no longer the employer of choice. The public sector is already facing challenges in recruitment, filling vacancies with competent and talented personnel, and retaining public servants. The paradigm shifts in the state from public administration to new public management and new public governance in part underlies this declining interest in public service with the introduction of neo-liberal public sector reforms over the decades, downsizing of the state, relatively lower pay, and various austerity measures. The article revisits these paradigm shifts of the state, providing a review and discussing the impact of these shifts. Furthermore, the article argues for a new paradigm shift. A New Public Service Bargain, which recognizes and values public service because it is the human resource capacity of the state that is key to addressing crises, wicked policy problems and turbulent times.

Keywords: human resources, public service bargain, talent management, new public management, new public governance.

1. Introduction

Much has been written about governance and paradigm shifts of the state from public administration (PA) to new public management (NPM), and to new public governance (NPG). The article revisits these paradigm shifts as a context and contributes to a scholarly debate as to whether these paradigm shifts have enabled the state to deal with turbulent times. The article also calls for a paradigm shift that recognizes the human resource capacity of public institutions to address wicked policy problems (Massey, 2022) and challenges in turbulent times.

Hood (1991) described the paradigm shift from PA to NPM as the value base of the state, focused on the efficacy of the market and drawing upon private sector principles of competition to drive public sector efficiencies. The criticisms of the state saw the introduction of neo-liberal public sector reforms and ever-increasing differentiation of the state (Rhodes, 1997). The hollowing-out of the state and increasing involvement of the private sector such as contracting-out was described as a form of governance with a move towards privatization, entrepreneurialism and competition (Massey and Pyper, 2005). Although there have over the years been many scholarly debates and publications of the positive and negative outcomes of these paradigm shifts (see Massey and Pyper, 2005; Pollitt and Bouckaert, 2011), this article aims to open a debate as to whether public sector reforms prepared governments for dealing with turbulent times and wicked policy problems, or whether it has contributed to the hollowing-out of the state in its capacity to address wicked policy problems and manage crises. Particular attention is paid to the human resource capacity and challenges faced by the government in this debate.

The article is structured in three sections. The first section provides a review of paradigm shifts in the state and draws upon contemporary research of the impact of NPM. The second section provides a discussion of a challenge governments face, specifically the challenge of human resource capacity of the public sector and the implications for dealing with turbulent times, crises and wicked policy problems. The article draws upon the experience of Europe and North America as illustrative of countries that first implemented NPM, have the longest experience of neo-liberal public sector reforms, and embraced NPG. The final section of the article concludes and makes an argument for a new paradigm shift—a New Public Service Bargain.

2. Paradigm shifts of the state—revisiting debates

2.1. Public administration and New Public Management

Public administration in practice (as opposed to the scholarly field) is often associated with bureaucracy, rule-bound *modus operandi* of government, an adherence to standardized procedures, inflexibility, impervious to change and thereby slow, inefficient and wasteful (Meier and Hill, 2007; Barberis, 2011). However, Du Gay (2000; 2005) challenges denunciations of bureaucracy by arguing that it is not in decline after the introduction of NPM reforms, but that bureaucracy has become a pervasive form of organization. Ac-

cording to Barberis (2011) public administration in the form of the Weberian bureaucracy is still a prevalent form of organization.

The Weberian perspective views bureaucracy as a rational institution which advances authority (Weber, 1968) through the formal enactment of laws (Mommsen, 1974; Blau and Meyer, 1987). The characteristics of a Weberian bureaucracy with fixed and official jurisdictional areas ordered by laws and rules, hierarchy, officialdom, and meritorious careers are all pervasive aspects of government (Meier and Hill, 2007; Barberis, 2011). Arguably, bureaucracy in contemporary government still plays an important role in the machinery of government and the policy process. It does so by virtue of its expertise, information and knowledge (Peters, 2001; Page and Jenkins, 2005). These resources are concentrated in bureaucracies with the technical expertise and monopoly of information to inform the policy process (Peters, 2001).

The Weberian bureaucracy with an emphasis on qualified officials with the appropriate skills and experience, and longevity of office provides bureaucrats with the argument that they have more intimate knowledge of the policy area, should be in control of making the policy and be principal advisors to politicians on policy (Peters, 2001). A second role of the bureaucracy is its linkage between interest groups, non-state actors and policy stakeholders with the political arena (Peters, 2001). Bureaucrats are the interface between the politicians, particularly those within the executive branch of government, and various organizations and even individual citizens who wish to influence the policy process (see Aberbach, Putnam and Rockman, 1981). Politicians, particularly those within the executive, are dependent upon bureaucrats who fashion policies that they believe may be politically palatable to their political leaders (Page and Jenkins, 2005). Bureaucrats' permanence and stability enables them to gain expertise, knowledge and information about a policy area over a long period of time (Page and Jenkins, 2005). Additionally, it allows for continuity particularly in turbulent times. The relationship between bureaucrats and politicians, i.e. the political-administrative interface is explained through a public service bargain where politicians normally expect a degree of loyalty and competence from bureaucrats and in return bureaucrats expect a mixture of tangible and intangible rewards such as a permanent career and good remuneration (Hood and Lodge, 2006). Thus, an important role of the bureaucracy is its expertise in informing policy decisions, and therefore many scholars argue that despite NPM reforms, PA is still relevant (Du Guy, 2005). However, is a career in public service still an attractive option, or has NPM eroded the public service bargain?

The role of bureaucracy with its rule adherence, permanence and monopolist role in the policy process came under increasing criticism from neo-liberalist agendas (Massey and Pyper, 2005). The view of 'big government' saw a revisionist view of bureaucracy with criticisms of bureaucratic pathologies and inefficiencies crowding-out the market (see Thompson and Miller, 2003). These neo-liberal views saw reforms of the public sector in the form of NPM (Massey and Pyper, 2005; Pollitt and Bouckaert, 2011) and thus bureaucracy, rather than being viewed as Weberian rational and efficient administrative organization, became synonymous with inefficiency through rule-bound, monopolistic behavior.

In the UK Thatcherism saw the introduction of neo-liberal reforms of state with privatization of public services, sale of public assets, contracting out of public services to the private sector, agencification of public agencies, introduction of market principles such as competition and performance management (Massey and Pyper, 2005). In the US reforms of the state saw the re-inventing of government with President Clinton and Vice-President Gore drawing upon the work of Osborne and Gaebler (1992). This paradigm shift in the state was opening the state up to free market forces, competition and the reduction in the size of the state.

As De Vries and Nemec (2013) argues, the neo-liberal roots of NPM told society that it would be better off if the public sector was downsized and the number of public officials could be decreased by privatization and economic liberalization. De Vries and Nemec's (2013) review of NPM reforms offers a valuable insight into the debates of paradigm shifts of the state. Although they acknowledge that neo-liberal principles of NPM was a free market ideology, De Vries and Nemec (2013) observed that NPM on the one hand aimed to improve the quality of the public service delivery on behalf of its customers, and on the other hand the need to downsize the public service, because in neo-liberal terms the private sector was superior in delivering services and performance than the public sector. Drechsler (2005), examining the rise and demise of NPM, argued that NPM was no longer a viable concept, yet evidence of the pervasiveness of NPM exists (De Vries and Nemec, 2013). There have been debates as to whether NPM is still relevant, whether it still exists, whether we are in an era of public governance.

2.2. Governance and New Public Governance

Rhodes (2011, p. 33) argued that governance '[...] signifies a change in the meaning of government, referring to new processes of governing; or changed conditions of ordered rule; or new methods by which society is governed.' Thus, the link to NPM is the decreasing role of the state, the paradigm shift toward NPM and the downsizing of the state to involving the private sector and other sectors of society in the delivery of services and involvement in public policy processes. Governance was therefore referred to the ever-increasing variety of domains (e.g. supranational, national and sub-national) and actors (e.g. from the political, public, private, civil society and community realms) involved in the policy process (Richards and Smith, 2002; Rhodes, 1997; 2008). Governance is often used within the context of NPM with the government moving from a hierarchical mode of service delivery to reforming the public sector (as described above) with the integration of non-state actors such as civil, the private sector and other society sectors (Fairholm, 2010). Lynn (2010, p. 671) defines governance as the 'action or manner of governing—that is, of directing, guiding, or regulating individuals, organizations, or nations in conduct or actions.' This somewhat broad and all-encompassing definition illustrates that government is no longer directly involved in governing, but is steering others in the policy process. Rhodes (1996; 1997) argued that neoliberal NPM reforms of the government resulted in a differentiated polity with authority of the state being 'hollowed-out'.

Rhodes (2008; 2011) defined governance as self-organizing, inter-organizational networks with the following characteristics: interdependence between organizations; the continuing interactions between network members require a need to exchange resources and negotiate shared purposes; interactions are game-like and rooted in trust; and there is a significant degree of autonomy from the state. The conceptualization of governance therefore involved trust, interdependence, an exchange of resources, shared purpose and autonomy from the state. Scholars argue that governance involves the functional interdependence between public, private and civil society actors in policy formulation and implementation with government increasingly dependent and inter-dependent on cooperation and joint resource mobilization of policy actors outside traditional hierarchical governmental institutions (Börzel and Heard-Lauréote, 2009). Key to the concept of governance is networks which have resulted in new forms of structural relationships, interdependencies and dynamics between actors for the mobilization of resources between actors where resources are widely dispersed (Kooiman, 1993). Thus, governance is a much broader term than government with public resources and services provided by any permutation of government, private and civil society organizations such as the voluntary sector (Rhodes, 2008; Pierre and Peters, 2000).

Scholars observed that public services were increasingly being decentralized within the context of new forms of governance arrangements towards public governance with the co-governance and co-production of services (Johnson and Osborne, 2003; Kooiman, 1993). Yet, despite this emerging consensus that policy is being formulated and implemented through a permutation of state and non-state actors in a variety of public governance arrangements debates remain. Osborne (2010, p. 9) described the increasingly complex, plural and fragmented nature of public policy and service delivery as NPG. Osborne (2011) argued that NPM was a transitory stage in the evolution from PA to NPG. He acknowledged that there is a co-existence of PA and NPM, and there are elements of an overlap among the paradigm shifts of the state (Osborne, 2011). He argues however, that there is evidence to support the case that '[...] the time of NPM has...been a relatively short-lived and transient one between the statist and bureaucratic tradition of PA and the...pluralist tradition of NPG' (Osborne, 2011, p. 419). NPG draws upon institutional and network theory with a plurality of state and non-state actors involved in networks, negotiations and contractual relations (Osborne, 2010). What then has been the impact of these paradigm shifts on the state, and moreover the state's capacity to deal with turbulent times and wicked policy problems?

2.3. The impact of paradigm shifts

Despite the voluminous scholarly contributions on neo-liberal public sector reforms, the impact of reforms remains opaque. Pollitt (2005) acknowledges that although the broad aims of producing more efficient, effective and responsive public services may have been widely shared, the mixtures of strategies, priorities, styles and methods adopted by different governments have varied very widely. Thus, making it difficult to undertake evaluative studies as governments have started at different points in the implementation of

NPM type public sector reforms and have implemented reforms in different ways (Pollitt, 2005). He also argues that evaluation of the impact of NPM is dependent on how results are measured, arguing there are limitations in studies:

a. An absence of reliable baseline measures, so that before-and-after comparisons become speculative;
b. An absence of benchmarking, where for example productivity gains of a privatized company may be positively evaluated without comparable data for non-privatized companies over the same period;
c. Limited or no gathering of the views of service users;
d. Scarcity or absence of data on transitional costs;
e. Scarcity or absence of data on step-changes in transactional costs and/or on other continuing 'side effects' such as the loss of trust or a degree of value confusion;
f. Opinion gathering being limited to, or biased towards, senior staff as some middle- and lower-level staff are often more critical of reforms;
g. Little analysis of contextual variations which may mean that a similar type of reform will work well in one situation or locality, but not in another;
h. Limited or no attention to attribution problems, i.e. often several reforms have proceeded simultaneously, and external conditions have also been changing, which makes it hard confidently to attribute results to specific reforms;
i. Narrow range of criteria applied to the findings (e.g., productivity measures only, with no attention to equity, to staff morale or to externalities), which most of the evaluations fail to distinguish between and/or miss out altogether many of the types of results (Pollitt, 2005, pp. 280–281).

A recent study that attempted to measure the impact of NPM on the state was a large-scale study across Europe, which found mixed results on measures common to NPM type reforms in the public sector. The study focused on five key structural and NPM reforms prominent within central governments across Europe, including downsizing (i.e., reforms aimed at cutting costs, through redundancies, closures or terminations); agencification (i.e., reforms that create quasi-autonomous agencies in place of government ministries); contracting-out (i.e., reforms that put public services out to competitive tender); customer orientation (i.e., reforms that increase communication between public service providers and users), and flexible employment practices (i.e., reforms that make civil service careers more flexible and less hierarchically organized) (Hammerschmid *et al.*, 2019). The study involved a survey of top public sector executives in twenty European countries and showed that major structural reforms involving downsizing and contracting-out of public services resulted in improved efficiency, but less impact for performance (Hammerschmid *et al.*, 2019). Downsizing was associated with declining service quality, and contracting-out had a positive relationship with policy coordination (Hammerschmid *et al.*, 2019). Customer orientation had a strong connection with service quality and policy coordination, and on overall public administration performance (Hammerschmid *et al.*, 2019). The study also found that downsizing and contracting-out had a positive relationship with costs

and efficiency. Importantly the study showed efficiency improvements may come at a price because in pursuit of downsizing there was a reduction in public service quality (Hammerschmid *et al*., 2019). However, the study showed a positive connection between contracting-out and policy coordination, which the authors argue may suggest that contractors' managerial capabilities are an additional source for government (Hammerschmid *et al*., 2019). Hammerschmid *et al*. (2019) conclude from their study that gains in efficiency do not appear to be bringing the many other performance benefits that advocates of NPM reforms assert.

Equally, there have been debates on the impact and efficacy of NPG, but the problem here too is on results and measurement. This is partly because the NPG remains conceptually underdeveloped (Torfing and Triantafillou, 2013), but proponents have argued that NPG has allowed for more inclusion of non-governmental actors in public policy and service delivery, which increases the legitimacy of decision-making (Börzel and Risse, 2010). This perhaps explains the findings of the Hammerschmid *et al*. (2019) on contracting-out and policy coordination. According to Brandsen and Johnston (2018) there are advantages to NPG and collaborations between state and non-state actors. Firstly, there is a pooling of resources and scaling of economies through mutual interdependence of resources among state and non-state actors, which has the potential to improve the quality of public services. Secondly, there is a perceived legitimacy that the collective effort of state and non-state actors incorporates the knowledge of all affected by a service and therefore there is a collective ownership (Brandsen and Johnston, 2018). Third, there is the assumption of responsiveness in effort to improve service delivery through collective effort (Brandsen and Johnston, 2018). However, there are issues with NPG. Firstly, there are problems of coordination across actors, institutions, and networks (Brandsen and Johnston, 2018). Organizations have different modes of operations and procedures, power balances and agendas, and the sheer logistics of working in different locations results in a trade-off between inclusion of relevant actors and organizations to increase legitimacy and time to reach decisions (Huxham and Vangen, 1996; Brandsen and Johnston, 2018). There is also the threat of accountability being fragmented with an increasing number of organizations and actors collaborating in NPG networks, which could result in diffused roles and responsibilities (Brandsen and Johnston, 2018). Some studies have also shown the asymmetries of resource, information and power among NPG actors and organizations which risks exclusion and a lack of representativity and legitimacy (Brandsen and Johnston 2018).

The debates on the paradigm shifts will no doubt continue in public administration scholarship, but this article calls for a closer examination and understanding of how these shifts have enabled or hollowed-out the human resource capacity of the state to address turbulent times. Indeed, as Pollitt (2005) notes when measuring results little attention is paid to human resource issues such as equity, staff morale, motivation, etc. It is pertinent to note that paradigm shifts in the state were invariably a response to economic recessions (1970s and 1980s) and the financial crisis (2008) with resultant austerity measures by governments. NPM was in response to reducing the role of the state, downsizing and increasing efficiencies through market forces with the mantra of 'doing more with less.' NPG

was a response to involving non-state actors in the delivery of services and public policy processes during a period of austerity following the financial crisis with a mantra of 'you do more we do less.' Crisis precipitated paradigm shifts in the state.

An aspect of the governments' capacity to address turbulent times, crises and wicked policy problems rests on its workforce. Although there have been technological developments and smarter working in both the public and private sector, much of the public sector is still very much dependent on the human element in the delivery of services from front-line workers (e.g., police, nurses, teachers, social workers, etc.) to strategic policy practitioners (e.g., foreign affairs, trade negotiators, defense policy, etc.). The size of the public sector workforce of course varies globally. Data for OECD countries in 2019 showed that the average public sector employment rate was almost eighteen percent (OECD, 2021). What are the human resource challenges for the state and its future capacity to deal with turbulent times?

3. Human resource capacity challenges

Research has demonstrated a demographic challenge for the public and private sector with declining birth rates and an aging workforce across Europe and North America (Burke and Ng, 2006; Ng and Johnson, 2015). There is also growing evidence that Millennials espouse different values and attitudes, and form different expectations about work (Lyons and Kuron, 2014) such as a high degree of preference for materialistic rewards (Twenge and Kasser, 2013) and value leisure time over work (Twenge *et al*., 2010). With the paradigm shifts in the state, changing demography and changing career preferences in a digital economy, particularly post-Covid, there are implications for the state in its capacity to deal with turbulent times, particularly given human resource challenges and the public sector competing with the other sectors to attract talent.

3.1. Public sector attraction

Public institutions have difficulty in attracting skilled and talented personnel to work in the public sector. This is an existential crisis because if there are declining rates of public employees there is less capacity for the government to deliver upon services and deal with turbulent times. Furthermore, the inability to attract talented individuals to work in the public sector, has implications also for the formulation and implementation of public policies, particularly policies to address wicked policy problems.

Fowler and Birdsall (2019) showed that the public sector often faces difficulties in attracting and recruiting competent personnel and are receiving fewer applicants despite increasing vacancies. According to Sievert, Vogel and Feeney (2022) this reduced interest in public sector employment is due to poor working conditions, low salary (compared to the private sector), and the retirement of the baby boomer generation. There are also other factors such as poor bureaucratic reputation including anti-government rhetoric, which aggravate the recruiting difficulties (Bankins and Waterhouse, 2019; Johnston, Kravariti and Alberti, 2023). These challenging circumstances are especially problematic in countries

where the public workforce faces a large number of retirements (Sievert, Vogel and Feeney, 2022). A key element in the resulting 'war for talent' is the government's ability to attract personnel (Sievert, Vogel and Feeney, 2022). Such is the concern for the challenges that the US federal government faces in recruitment, that the US House of Congress commissioned a report, entitled *Inspired to Service*, published in March 2020, it notes that:

> 'The Federal civil service personnel systems require urgent attention. The difficulties facing Government hiring are so severe that the Government Accountability Office identifies strategic human capital management as a 'high risk' area in need of transformation if the Government is to work effectively and efficiently. Existing practices block younger Americans and workers with critical skills from entering public service and jeopardize the ability of Federal agencies to replenish their workforce in the face of a looming wave of retirements' (National Commission on Military, National, and Public Service, 2020, p. 10).

The US federal government on the basis of the recommendations contained within the report are considering a national service program and reforming recruitment, offering competitive benefits, and reforming human resource practices across the federal government.

The career preferences of Millennials and university students show a declining trend in a public service career. Rose's (2012) study of students in two Mid-west US universities, showed that a lack of confidence in government and negative perceptions of public sector work, did not make a career in public service attractive for students. Hinna *et al.* (2021) study of UK and Italian undergraduate students found a positive relationship between public service motivation and public sector job preferences among Italian students, but not with the British students. Hinna *et al.* (2021) argue that the UK has implemented more NPM-style reforms than Italy, and that this could be impacting on public sector recruitment. In other words, continuous NPM reforms in many countries make public sector employment highly unattractive to young job market candidates and found that graduates prefer employment in the private or not-for-profit sector (Hinna *et al.*, 2021). Much of the research on career choices and preferences tends to employ opportunistic sampling of undergraduate and postgraduate students, tends to be smaller sampling, and focuses on public service motivation or pro-social behaviors (see Ballart and Rico, 2018; Van der Wal and Oosterbaan, 2013).

A study, using a large-scale survey and employing an experimental research design of members of the public in the UK and US, found that people in general did not find the police organizationally attractive (Johnston, Kravariti and Alberti, 2023). The results of the study showed that people found the police generally unattractive as an employment option, did not find the police reputationally prestigious, and had no intention to pursue employment in the police. Although sector specific, the study nevertheless revealed the reputation of the police, particularly after the murders of George Floyd in the US, and employment in the police was not an attractive career prospect. The US police faces a historic workforce crisis with difficulties in attracting and retaining police officers (Mellen, 2021). The challenges of attracting individuals are not unique to the police.

The National Foundation for Educational Research (NFER) (2023) in the UK found there was 20% less recruitment for teacher training courses from the previous year. Furthermore, Schools in England posted 93% more vacancies in 2022/23 compared to the year before the Covid pandemic (NFER, 2023). NFER (2023) noted that the declining retention rates and historically low teacher recruitment figures point to the deteriorating competitiveness of teaching compared to other occupations, in both pay and working conditions, which requires urgent policy action by the government. In the UK, the National Health Service (NHS) in 2023, showed that the number of students on nursing courses declined by more than 13% compared to 2022, despite government efforts to increase the number of nurses in the NHS (Walker, 2023). In the social care sector, social workers numbers are declining. In 2021 social worker vacancies increased by 21% (Department of Education, 2023) and a report showed a quarter of social workers have left the profession in 2022 (Social Work England, 2023). As noted, poor working conditions, low salaries, managerial pressures, decades of NPM type reforms, and poor bureaucratic reputation of public sector organizations, have led to poor retention of personnel and challenges in recruiting competent and talented personnel.

3.2. New public service bargain—a paradigm shift

There is a need to explore ways in which to attract and retain good human resource capacity of the state, and for the public administration scholarly community to improve understandings of the human aspect of public service. There are ways in which this could be achieved. Although improving salaries and working conditions would be a start, governments are often limited by the extent to which it can compete with other sectors. Thus, what is necessary is a New Public Service Bargain. As discussed above, the debates about the Weberian bureaucracy will remain (see Peters, 2001; Du Guy 2005), but NPM is still pervasive in the public sector (De Vries and Nemec, 2013) as is the state working with non-state actors as part of the paradigm shift of the state towards NPG (Osborne, 2010; Brandsen and Johnston, 2018). This article therefore calls upon the public administration scholarly community, as an agenda for future research, to explore and improve understandings of ways to improve the human resource capacity of the state. A New Public Service Bargain is suggested through creating meaningful work, managing talent in the public sector, ensuring a work-life balance, and compensatory remuneration to the extent public servants feel valued, work is rewarding, and the public sector becomes an attractive career prospect.

Ng, Gossett and Winter (2016) argue that what attracts Millennials to the public sector is meaningful work, job security and work-life balance. Henstra and McGowan (2016) reviewing graduate admission essays of students seeking entry into a Canadian Masters in Public Service (MPS) program, found several major themes from the students' statements that led them to apply to an MPS program: witnessing other people's disadvantage or hardship, being personally exposed to discriminatory treatment, desiring meaningful employment experience, wanting to serve as change agents, hoping to work towards solving social problems, improving government programs and services, and enhancing the

lives of the next generation of Canadians. Thus, a desire to make a difference to society for Millennials would constitute meaningful work. However, as Perry, Hondeghem, and Wise (2010) note, individuals' public service motivation and performing meaningful public service is often for rational, self-interested, or instrumental reasons. Thus, a New Public Service Bargain would involve creating meaningful work where public servants and potential applicants feel that they can make a difference to society, and be motivated to serve the public, but this is rewarded through good working conditions, pay and opportunities for the talent to be nurtured.

NPM reforms and budget cuts have left many local and central governments failing to define and attract the talent they needed for the future (Hay Group 2011; Kravariti and Johnston, 2020). There is a need for research on the challenges and the impact of austerity measures on the public sector's capacity to attract, manage and deploy talent in order to address turbulent times and wicked policy problems (see Kravariti and Johnston, 2020). Talent management in the public sector is described as: 'The implementation of key procedures to ensure public sector employees possess the competencies, knowledge and core values in order to address complex contemporary challenges and fulfill public sector strategic objectives for the common good. (Kravariti and Johnston, 2020, p. 81). Kravariti and Johnston (2020) argue that talent management in the public sector needs to integrate the societal impact into its objectives so that the public sector's core scope and common good objectives (Thunnissen, Boselie and Fruytier, 2013) are part of HR-related practices such as succession planning, which could ensure talented employees develop and enhance their career progression within the sector (Kock and Burke, 2008) so that rewards sustain public sector employees' self-motivation to achieve organizational goals (Rana, Goer and Rastogi, 2013).

A New Public Service Bargain should also recognize the desire by personnel for better working conditions and work-life balance. Particularly, in a post-Covid era personnel now value their time with family and personal time away from work (see Johnston *et al.*, 2023). As noted by Ng, Gossett and Winter (2016) Millennials desire more of work-life balance as part of their assessment in applying for jobs. It is important to note that a lack of a work-life balance leads to stress and burnout (see Clark, 2000). Although, work-life conflict has been viewed as a barrier to women's formal employment and career progression (Eby *et al*., 2005; Gamble, 2006), recent research has shown that when men and women in higher education in the UK and Spain anticipate work-life conflict, there is a reluctance to take on more demanding and work intensification roles (Pasamar, Johnston and Tanwar, 2020). Thus, to attract and nurture talent the introduction of working conditions that enable a work-life balance, rather than the managerialism and increased job demands, would be desirable. As Hammerschmid *et al.* (2019) noted from their study that flexible forms of employment appeared to be a reliable strategy for public sector improvement. According to Hammerschmid *et al.* (2019) flexible forms of work may contribute to positive cultural change within public organizations.

4. Conclusion

The article has provided a review of debates of the paradigm shifts in the state and reforms of the public sector over the decades. It could be argued that these neo-liberal type reforms of the public sector hollowed-out the capacity of the state to address challenges in turbulent times with an erosion of the human resource capacity of the state to deal with crises and wicked policy problems. The article calls for a New Public Service Bargain, where talented, skilled and competent individuals are attracted to public service, where their ambitions and aspirations are nurtured, and where the talents are retained within public service to meet increasing public service delivery challenges and to formulate public policies that address wicked policy problems, crises and turbulent times.

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'NON-STANDARD' POLITICAL PARTIES AND THE CAPACITY TO GOVERN IN TURBULENT TIMES: SLOVAKIA 2020–2022

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Abstract

This article evaluates whether the failures of the two coalition governments that presided over Slovakia between March 2020 and September 2022 should be connected primarily to the two crises of the investigated period (COVID-19 and the war in Ukraine), or whether other critical factors were involved. Our findings highlight the limited performance of public administration in Slovakia and the very limited capacity of both governments to govern during the selected period. We confirmed that the coalition governments were created from 'non-standard' political parties, and the leadership was problematic. We do not insist that these factors are interrelated, but the possibility should be the focus of further research.

Keywords: 'non-standard' political party, Slovakia, crisis, governance, capacity to govern.

1. Introduction

The 2020–2022 Slovak Republic governments under prime ministers Igor Matovič (March 2020 to April 2021) and Eduard Heger (April 2021 to May 2023) represented a very interesting period that should be investigated in depth by political and administrative sciences. In the national parliamentary elections on February 29, 2020, the opposition, led by the movement OĽaNO (headed by Matovič), achieved a clear victory. OĽaNO (Ordinary People and Independent Personalities) itself received 25% of the votes and won the elections. With other opposition parties—Sme Rodina (We Are Family), SaS (Freedom and Solidarity), and Za ľudí (For the People)—the new coalition achieved a constitutional majority in Parliament: 95 seats out of 150. However, after one year, in March 2021, Prime Minister Matovič was forced to resign (the formal resignation on April 1, 2021); after two years, a no-confidence vote in Parliament formally ended the dominance of the coalition government created by the 2020 elections. At that time, the trust in the government in Slovakia decreased by approximately 20%, to the lowest level in the European Union.

What happened between 2020 and 2022? Was the failure of the coalition government to stay in power and to retain the public trust connected solely with the two crises of the investigated period—COVID-19 and the Ukrainian war—and their impact on citizens? Or did other factors serve as catalysts? Could the character of the parties from the coalition and the personalities of the prime ministers have played a role?

This article responds to these questions using qualitative research methods. The term 'non-standard' political party will be used. This term is not yet fully anchored within political and administrative sciences theory; it is primarily used by authors from Central and Eastern Europe (CEE), where this phenomenon seems more common. The added value of this article is twofold: it introduces the interesting circumstances of the 2020–2022 Slovak governments, and it enriches the scarce literature concerning the relationship between the character of the parties in power (including their leaders) and the public administration performance of a country.

2. Theoretical background

Three critical terms create the theoretical background for this article: 'capacity to govern', 'governance in turbulent times', and 'non-standard political party'. The first two terms have been sufficiently investigated in the existing literature. The third term is not yet fully anchored and therefore deserves special attention.

2.1. Capacity to govern

The term 'capacity to govern' became a topic of debate in political and administrative sciences at the beginning of this century when Yehezkel Dror published his well-known book *The Capacity to Govern* (Dror, 2001). A complex text on the capacity to govern was later delivered by Van Popering *et al.* (2022). The authors conducted a literature review and organized focus groups. Based on their results, they proposed the following five elements of governance capacity: (1) collective action, (2) coordination, (3) resilience,

(4) learning, and (5) resources. They also provided a definition (Van Popering *et al.*, 2022, p. 1770): 'governance capacity is the potential of actors to coordinate their actions and the deployment of resources in the pursuit of collective issues'.

The term 'capacity to govern' is significantly interlinked with the terms 'good governance' and 'quality of governance', which seem to be more frequently used, especially in political documents. The Support for Improvement in Governance and Management (SIGMA–OECD), a joint initiative of the OECD and the European Union, has been working on principles of good governance since the end of the last century; its principles cover six core areas (SIGMA, 2017): the strategic framework of public administration reform, policy development and co-ordination, public service and human resource management, accountability, service delivery, and public financial management. In 2018, the Economic and Social Council of the United Nations endorsed the eleven principles of effective governance for sustainable development. The eleven principles are (United Nations, 2018): competence, sound policymaking, collaboration, integrity, transparency, independent oversight, leaving no one behind, non-discrimination, participation, subsidiarity, and intergenerational equity.

In the CEE region, the Network of Institutes and Schools of Public Administration in Central and Eastern Europe (NISPAcee) think tank organized activities connected to the topic of 'the capacity to govern'. These activities included a high-level meeting titled 'The Capacity to Govern in Central and Eastern Europe', held in Prague on December 18–20, 2003, under the auspices of the Prime Minister of the Czech Republic, Vladimír Špidla, and the 11th NISPAcee Annual Conference in Bucharest, Romania, in 2003, under the heading 'Enhancing the Capacities to Govern: Challenges Facing the CEE Countries'.

At the conference in Bucharest, Dror (2004, pp. 23–25) proposed nine recommendations to the CEE governments supporting the increase of their capacity to govern: facilitate better public understanding about main policy issues, upgrade government morality, assure the democratic concentration of power, build a central 'strategic brain', upgrade the understanding of situations and dynamics, institutionalize appropriate choice processes, improve governmental learning, assure high-quality crisis coping, and provide politicians with learning opportunities and incentives. Martin Potůček (2004, p. 28) favored the term 'good governance'. Potůček proposed (2004, p. 29) ten critical factors that affect the quality of governance: an analytical basis for decision-making; communication in the public space; strategic thinking and governance; the democratic mediation of interests; the transparency of political parties; the accountability of the government; the interweaving of politics, the market, and the media; an appropriate approach to social exclusion; education in public policy and administration; and the global context of policy-making.

2.2. Governance in turbulent times

The specific characteristics of governance in turbulent times have only recently become a focus of academic research. In 2018, Ansell and Trondal (2018, p. 1) defined turbulence as 'situations where events, demands, and support interact and change in highly variable, inconsistent, unexpected, or unpredictable ways'. Ansell, Sørensen and Torfing (2023, p. 3)

expressed the opinion 'that turbulence has become a chronic and endemic condition for modern governance'. They also argued that 'the key property for relating stability to change in a new way is robustness' (Ansell, Sørensen and Torfing, 2023, p. 8).

The concept of robustness is rather new. It is connected with names like Ansell, Sørensen and Torfing (2021), Capano and Woo (2018), Ferraro, Etzioni and Gehman (2015), and Trondal, Haslerud and Kühn (2021). According to these authors, robust governance systems must be able to change to preserve their functionality in the face of turbulence. Ansell, Sørensen and Torfing (2021, p. 952) also stressed that a robust governance system is an environment 'where creative and agile public organizations adapt to the emergence of new disruptive problems by building networks and partnerships with the private sector and civil society'.

The recent European-funded project Robust Governance in Turbulent Times (https://robust-crisis-governance.eu/ (ROBUST)) proposed that robustness should include the abilities to be innovative and to adapt, constituted by interactivity in multi-level governance, hybridity in governance, democracy, and law, and negotiability of societal intelligence. It operationalized robustness by connecting it with two dimensions (legs): adaptiveness and innovativeness. Governments should be able to adapt existing forms of public policy, regulation, and services to the unpredictable dynamics of the crisis and to deliver innovative new forms of public policy, regulation, and services in response (Nõmmik *et al.*, 2023).

2.3. Non-standard political party

The concept of 'non-standard' political formations was introduced to the specific national context by the Slovak political scientist Grigorij Mesežnikov (Mesežnikov, 1995, pp. 106–107). According to Mesežnikov, 'standard' political parties could be placed within a traditional conservative-liberal-social democratic spectrum, and 'non-standard' political formations were parties or movements that were distinguished by a propensity to national and social populism, authoritarianism, radicalism, extremism, and an inclination toward confrontational politics and strong leadership. The Austrian economist Joachim Becker uses the term 'non-standard parties' and contrasts it with the term 'traditional parties' (Becker, 2014).

In the Czech Republic, one specific form of the 'non-standard' political party was defined by Hloušek and Kopeček (2017). They used the term 'entrepreneurial political party', adding that most parties of this variety established a profile by protesting against the existing party elites and criticizing them for merging with the state. Hloušek and Kopeček (2017, p. 83) stated that 'non-standard' political parties are typified by institutional un-rootedness and have three basic features: '(1) the central role of the leader and his private initiative, (2) the party as a personal vehicle, and (3) the crucial formative influence of a leader over the political project'. Juraj Marušiak (2023) added one more specific feature of 'non-standard' political parties: the non-existence of local and regional structures.

It is necessary to stress that the term 'non-standard political party' can be misused in many ways and is currently often used in a negative sense by politicians in the context of

political competition. Marušiak (2023, 183) argued: 'It follows then that the marking of the party as 'standard' or 'non-standard' was used instrumentally, in order to disqualify political opponents'. Taking this into account, in this article we use the term 'non-standard' very carefully and with quotation marks. Marušiak (2023) also argued that certain trends toward oligarchizing the decision-making process at the expense of intraparty democracy also exist in Western democracies. He noted that this phenomenon was mentioned by Moisey Ostrogorski in 1902 in relation to the 'traditional' political parties in the United Kingdom. Marušiak (2023) stressed that a trend toward the 'presidentialization' of power was present in many contemporary European political parties.

3. Methodology

For this article, we used the case study method, a standard method of qualitative research (Ochrana, 2019). We selected the country Slovakia and the period from 2020 to 2022. When the new government took office on March 21, 2020, it benefited from a high level of public trust of almost 60%. At the end of the investigated period, trust in the government in Slovakia had decreased below 20%, the lowest in the EU-27. The two ruling governments lost most of their trust in them during the investigated period, and existing evaluations have suggested that the public administration performance in Slovakia deteriorated.

Both governments that were in power during the investigated period of 2020 to 2022 consisted of the same four political parties, although a different prime minister was appointed in 2021. At least three of the four parties had a specific ('non-standard') character—OĽaNO, Sme rodina, and Za ľudí (the fourth political party, SaS, is marginally 'non-standard').

The period from 2020 to 2022 was a turbulent time for Slovakia. The COVID-19 crisis started in spring 2020 and lasted for three years: the crisis situation status due to COVID-19 was announced in Slovakia on March 12, 2020, and formally ended on September 15, 2023, when it was abolished by the ruling government. On February 24, 2022, the Russian Federation started an attack on Ukraine, with massive consequences for Slovakia, particularly the challenges of migration and high inflation. This study investigates which factors other than crises should be considered to explain the visible failure of the 2020–2022 Slovak governments, with a focus on the character of the ruling governments and their leaders. The research questions are:

RQ1: How did the Slovak public administration performance develop during the 2020-2022 period?

RQ2: What was the capacity to govern of the 2020-2022 Slovak governments? Did they deliver 'robust' governance?

The first research question will be addressed based on the contents of regular European public administration country reports (European Commission, n.d.). These reports are

prepared by top public administration experts and then checked and approved by both the European Union and the respective member state, so their contents should be reliable.

The second research question will be addressed based on the expert opinion method. Based on a literature review, we prepared a short questionnaire and sent it to top Slovak public administration experts. The list of experts is described in Table 1.

Table 1: Structure of contacted experts

	Position of expert	Experience
1	Senior civil servant	More than 40 years
2	Retired senior civil servant	More than 40 years
3	Policy advisor	25 years
4	Entrepreneur with public administration experience	30 years
5	Academic person with public administration profile	30 years
6	Academic person with public administration profile	25 years
7	Academic person with public administration profile	25 years

Source: Authors

4. Case study: Slovakia between spring 2020 and summer 2022

This case study delivers the background of what happened in Slovakia from 2020 to 2022 and offers a comprehensive response to the first research question concerning how public administration performance developed during this period.

4.1. Background

From 2016 to 2020, the political party Smer (Direction) led the government coalition. The period was connected with many corruption scandals. Journalist Ján Kuciak, who was investigating tax fraud in connection with Slovak politicians, and his fiancée Martina Kušnírová were shot to death in their home in Veľká Mača on February 21, 2018. This set off protests related to the abuse of power in the government; the protests forced Prime Minister Robert Fico to resign. He was replaced in 2018 by Prime Minister Peter Pellegrini from the same party. One of the main themes of the 2020 election campaign was the issue of systemic corruption in the country; opposition parties successfully used this theme to gain popularity.

National elections were held on February 29, 2020. The political movement OĽaNO was met with great success. It was headed by Igor Matovič, who promised that his government, if elected, would be a strict fighter against corruption. OĽaNO received approximately 25% of the votes and created a ruling coalition with another political movement, Sme Rodina, and two political parties—SaS and Za ľudí. This coalition reached a constitutional majority in Parliament, with 95 deputies out of 150. The new coalition government came to power on March 21, 2020, just at the start of the COVID-19 crisis. At the time

of its start, the new government, which promised to be strictly anti-corruption and citizen-oriented, benefited from a high level of public trust.

Immediately after coming into power, the new government had to cope with the unprecedented COVID-19 crisis. It is fair to stress that the previous government under Prime Minister Pellegrini had implemented the first measures related to the COVID-19 crisis even before the first case appeared in Slovakia on March 6, 2020. It also introduced a comprehensive set of anti-pandemic measures. An emergency situation was declared on March 11. The restrictive measures were similar to those of other countries—closing schools, banning all mass activities, closing borders, introducing compulsory home quarantine, closing most shops and services, and ordering the use of protective face masks everywhere. Thanks to the fast and comprehensive response, dominantly connected to the Pellegrini government, Slovakia was probably the most successful country in the European Union in the fight against COVID-19, based on mortality and morbidity data. Slovakia registered 1,951 cases and only 28 people were reported to have died of COVID-19 as of July 15, 2020 (Nemec, Malý and Chubarova, 2021), when most measures were repealed.

When the COVID-19 situation started to worsen in late July as the number of infected cases began to increase, the Matovič government did not manage to react in time or with the necessary measures. In early September, Matovič (based on his own opinion) rejected proposals from epidemiologists for the immediate reintroduction of strict anti-pandemic measures. However, on September 25, he changed the rhetoric, telling people that strict measures were necessary because the citizens lacked self-discipline. In late October, Matovič initiated a unique experiment—blanket antigen testing of almost the entire population. Testing during the first stage was carried out in three phases; in the second phase, 3,625,332 people were tested, with 38,359 positive results. This mass testing was presented by Matovič as a 'nuclear option'; however, most experts did not share his optimism and the data did not show any significant longer-term impact on COVID-19 morbidity (for more see Klimovský, Malý and Nemec, 2021).

Matovič, following his own opinion about the great success of mass testing, tried to repeat this experiment in January 2021. However, he did not find support within his government or from academia; an atmosphere of distrust was created as a result. Matovič openly attacked anybody (including some people from within his ruling coalition) who presented a different opinion. The tensions driven by Matovič's words and actions were stressful for all the relevant stakeholders. As a result, the functionality of the government was paralyzed by early spring 2021 and Matovič was forced to resign. He was replaced by Prime Minister Heger from the same political party, and Matovič was transferred to the position of minister of finance. The ruling coalition continued to have a constitutional majority in the national parliament. Prime Minister Heger and his administration prepared a programmatic statement for 2021–2024, which was essentially a continuation of the programmatic statement from 2020. The government also prepared a Slovak recovery and resilience plan.

The government of Prime Minister Heger survived a bit more than one year. His failure cannot be directly connected with the new crisis of the war in Ukraine, which started

in February 2022 and had a major impact on Slovakia, especially in the form of a huge number of arriving refugees and massive inflation. In the summer of 2022, the tensions between the members of the coalition became critical, very much because of Matovič's expressions and proposals—Matovič remained the leader of OĽaNO even after he resigned from his position as prime minister. The political party SaS left the coalition by August 31, 2022, and all of the ministers who were from this party resigned in early September. SaS switched to the opposition, with a formal majority in Parliament: 82 of 150 deputies. The tensions in Parliament increased after this move. On December 15, 2022, Parliament expressed no confidence in the ruling government by 78 votes, forcing the resignation of the Heger government. The President appointed the Heger government to rule temporarily until there could be extraordinary elections. The term of the extraordinary elections was set by Parliament to the latest possible day—September 30, 2023. The Heger government did not manage to stay in office to this date; it was replaced on May 15, 2023, by the 'professional' government of Prime Minister Ľudovít Ódor. The direct reasons for this change were the corruption scandal of one of the ministers and the subsequent resignation of other ministers of the Heger government.

The OĽaNO government was in office for a very short period—from March 2020 to September (or formally to December) 2022. Over slightly more than two years, the number of coalition deputies in Parliament decreased from 95 to 72 and the public trust in the government decreased to the lowest level in the European Union. Such a failure is unusual in Europe and probably even worldwide. All governments had to cope with COVID-19 and introduce unpopular measures; we are not aware of any other government experiencing such a massive loss of power and trust.

The fact that the coalition failed was confirmed by the national elections on September 30, 2023. Robert Fico's political party Smer won the elections with 23% of votes and was given a chance to form a new government. OĽaNO (with its new coalition partners) received only 8.9%; SaS got 6.3%. The two other members of the former coalition, Za ľudí and Sme Rodina, did not pass the threshold. On October 25, 2023, Fico was formally appointed as the new prime minister by the president.

4.2. Public administration performance in Slovakia 2020–2022

Before starting the analysis, it is necessary to mention two key external challenges of the investigated period—the COVID-19 crisis and the war in Ukraine. The issue of the COVID-19 crisis was described in detail above. The war in Ukraine also significantly affected Slovakia. Between the start of the war in February 2022 and mid-May 2023, 1.4 million Ukrainian citizens crossed the Slovak border, and almost 116,000 of them received the status of temporary refugee placement. The massive inflow of refugees created the need to deliver a comprehensive set of public services, including health care, education, employment opportunities, housing, etc. Volunteers and non-governmental organizations helped, but the demand on the public administration bodies was extraordinary. Massive financial resources were invested to help. Beyond the direct impacts, the crisis was connected with massive inflation, especially due to the excessive increase in energy prices. The

management of this crisis was not perfect, but much more successful than the management of the COVID-19 crisis, thanks to the actors involved. However, some questions and doubts have arisen about the legality of the actions of the temporary government after December 2022, especially regarding the supply of weapons to Ukraine. Moreover, the destabilization of the Slovak public finances is at least partly connected to this factor.

Overall performance

World Bank data suggest that the overall government effectiveness in Slovakia decreased (especially comparatively) during the investigated period (Table 2). Slovakia is now ranked as one of the lowest performing countries in the European Union—only Bulgaria, Romania, and Poland (the position of Poland might be disputable) are lower.

Table 2: Government effectiveness in Slovakia 2019−2022

	2019	2020	2021	2022
Percentile rank	71.4	69	68.6	63.7
Score	0.5	0.5	0.5	0.4

Source: World Bank (n.d.)

The Eurobarometer data measured the level of trust in the government in Slovakia in mid-2022 as the lowest in the EU-27, at slightly over 20%; this dropped to 18% at the end of 2022 (Prime Minister Heger's government was still in power at that time).

Public finances deteriorated as public revenues decreased and public spending increased significantly. The deficit was approximately 5.4% of the GDP in 2020 and 2021 (still 2% in 2022), far over the Maastricht criteria maximum level of 3%. The government debt level crossed the 'magic' reference value of 60% of GDP in 2021; it returned to 58% in 2022, especially thanks to legislatively defined automatic mechanisms. The health of Slovak public finance was certainly affected by COVID-19 and the war in Ukraine and the resultant massive inflation; however, the long-term problems such as pension reform and health care financing, stressed by the European Commission (2022) in the context of the European Semester, remain unsolved.

The fight against corruption was the officially stated priority of the Slovak governments in power after March 2020. During 2021 and 2022, the number of investigated cases significantly increased in comparison to the past, and top civil servants and judges were among those under criminal investigation for corruption. A few of those who were investigated have already been sentenced.

However, there are several 'buts' related to the fight against corruption. There is an ongoing discussion about the legality of some investigations, as in many cases the evidence was based only on the statements of those under investigation or was collected illegally. The prosecutor general's office used the right to stop the investigation of misconducted cases (paragraph 363 of the Penalty Code) for almost 30 cases (Benedikovičová and Prušová, 2023). These 'stops' are the subject of massive polemics in Slovak society, with no definitive conclusions reached.

High level politicians from the 'anti-corruption' governments are included in the investigations. The government appointed by Prime Minister Heger collapsed in May 2023 because of a corruption scandal involving the Minister of Agriculture. In August 2023, the National Criminal Investigation Agency started investigating the director of the Slovak Secret Service, the previous director of the Secret Service (appointed in 2020), and the director of the National Security Office.

Coordination, policy-making, and implementation

The European Semester 2022 country report on Slovakia was rather critical regarding coordination: 'The low capacity of the public administration is a serious bottleneck for investments and reforms. The lack of human resource management, effective governance, and coordination across areas such as administration, justice, services to people and businesses and research and innovation often result in delayed or only partial implementation of reforms' (European Commission, 2022, p. 9). It can be concluded that the overall coordination capacity of the government did not increase during the period under review.

In terms of policy making, Prime Minister Heger's government prepared and submitted Slovakia's recovery and resilience plan. However, the implementation of this plan met several problems. We provide one example related to this. In the area of education, controversial decisions were made at the higher education level. The new university law no. 412/2022 was voted by Parliament in March 2022, with the official aim of improving the quality of higher education. However, this law significantly decreased academic autonomy, especially at the faculty level. Most Slovak universities went on strike the day Parliament voted on this law.

The most critical issue to mention in this section is the legislative 'mass'. Following standard procedures, all new laws are subject to public consultations and ex-ante regulatory impact analysis. However, such a comprehensive ex-ante assessment can be bypassed for emergency procedures, for parliament-sponsored laws, or when the particular law also deals with issues beyond its own scope.

All bypass options were 'overutilized' during the investigated period. Approximately 50% of the laws passed in 2020 were emergency procedure laws; this was dramatically up from 16% in 2021 and was used many times in cases with no actual time pressure. Parliament-sponsored laws represented approximately 20% of the laws passed in 2020; this rose to almost 50% in 2021. The transparency of the legislative process decreased. According to Šťastná (2022), during the period from January 1, 2022, to June 30, 2022, a total of 183 draft laws were submitted to Parliament. However, only 17 of them followed the Slov-lex system, which is the main tool for public consultations on draft laws.

Civil service

Using the argument that the government needed tools to remove 'old, corrupted structures,' the Slovak Parliament amended Civil Service Law no. 55/2017 on October 7, 2021. The most critical aspect of this change was the fact that the new legislation allowed politically appointed general directors to dismiss any 'leading' civil servant without explicit reasoning. The same principle applied also to the policy of civil service. This change was an

important step back toward the politicization of the civil service (for more see Staroňová and Rybář, 2021). This change fully contradicted the promises of an evaluated government that had been made in the programmatic statement—promises to build a professional, educated, and stable civil service based on a transparent and predictable management system. In 2020, the heads of the district state administration offices were appointed by Prime Minister Matovič without any competition.

Transparency and accountability

The transparency data provided by the European Commission might be influenced by some methodological problems (Table 3). In any case, Slovakia was at the bottom of the list for the European Union in 2022 (26th place for transparency and 25th place for open data).

Table 3: Transparency of government in Slovakia 2020–2022

	2018	2019	2020	2021	2022
Government transparency	x	51.15	51.16	38.43	55.58
Maturity of open data	73.60	n.a.	53.04	50.08	59.37

Source: European Union (2022)

Accountability and particularly accountability mechanisms were another problematic issue. The Supreme Audit Office delivered interesting performance reports; however, the impacts of these reports were insufficient as the reports were not regularly used as a resource for changing and improving public administration practices in the country. The position of ombudsperson was neglected by the elevated ruling coalition. In 2021, Parliament did not accept the annual ombudsperson report. The institution of ombudsperson was non-functional from late March to early November 2022.

Service provision and digitalization

Digitalization was an area with some absolute, but very limited relative progress. The Eurostat data related to the quality and scope of the Slovak e-government are available and presented in Table 4.

Table 4: E-government developments in Slovakia 2020–2022

	2019	2020	2021	2022
E-government users interacting with public authorities (%)	51.28	58.95	61.84	55.95
E-government users obtaining information from public authorities (%)	47.22	51.39	51.84	n.a.
E-government users downloading official forms (%)	25.2	27.52	29.69	n.a.
E-government users submitting completed forms (%)	17.73	19.22	25.17	n.a.

Source: Eurostat

Taking into account the large sums of resources used to improve IT services for citizens and the fact that digitalization was a priority of the recovery and resilience plan, progress

has been very slow. The positive fact is that the Ministry of Economy prepared three sets of proposals on how to decrease the bureaucratic burden ('Podnikateľské kiľečko'), with approximately 1,500 measures to improve the situation. The law against bureaucracy prepared by the previous government (law no. 177/2018) was amended and now codifies the principle 'once is enough' (information that is already in the state registries cannot be requested by state bodies). However, the 'digital gap' has been ineffectively addressed. Marginal social groups, which represent a significant percentage of the population, often do not have access to digital services. Purchasing laptops for minorities in 2022 was an example of ineffective policies—most pupils who received such laptops did not have access to electricity.

5. Capacity to govern (in turbulent times)

This section responds to the second research question using the expert method (Table 5). We did not split the 2020–2022 period into two subperiods (Matovič and Heger periods), as the structure of the government did not change significantly in 2021 when Matovič was forced to resign from the position of prime minister.

Table 5: The capacity to govern of the Slovak government 2020–2022

	Yes	Partly	No
General capacity to govern			
Did the government have sufficient capacity to deliver evidence-based policy making?	x	xxxx	xx
Did the government manage to coordinate the implementation of public policies?		xx	xxxxx
Did the government cooperate with all stakeholders?		xxxx	xxx
Did the government have the capacity to learn?		xx	xxxxx
Did the government use available resources in efficient and effective ways to achieve the public policy priorities?		xx	xxxxx
Was the government accountable?		x	xxxxxx
Did the civil service function apolitically and professionally?	x	xxxx	xx
Did the government act in transparent ways?		xxxx	xxx
Capacity to govern in turbulent times			
Did the government have the capacity to adapt its policies, regulations, and service delivery to rapid changes during crises?		xxxx	xxx
Did the government have the capacity to implement innovative solutions in public policy, regulations, and service delivery in reaction to crises?		xxx	xxxx
Final score	34 out of 140 as maximum		

Note: the score is calculated as follows: yes=2 points, partly=1 point, no=0 points

Source: Authors

According to expert opinions, the final score of the 2020–2022 Slovak governments is rather low. The results certainly should not be considered to apply uniformly to all ministries; some examples of good practices were visible.

One interviewed expert characterized the ruling governments as follows:

'Prime Minister Matovič's government was chaotic and vulgar. It started with a constitutional majority in Parliament and a high level of trust. However, it lost this majority and trust very fast. Prime Minister Heger tried to be more moderate, but did not have real power in his hands, as Mr. Matovič remained the leading figure within OĽaNO. [Heger's] definite switch from the destructive leadership of Mr. Matovič [Heger established his own political party in March 2023] came too late. Both prime ministers might be characterized as 'micromanagers'. They did not have the capacity to delegate, also because of a lack of human capacities within OĽaNO. Mr. Matovič surrounded himself with 'toxic' personalities with their own interests and the will to advocate and execute any absurd decision. Both prime ministers, especially Mr. Matovič, fully trusted their own analytical capacities, and because of this they did not cooperate with experts who offered capacities and solutions.'

The fact that the capacity of the evaluated governments to govern was very limited and the quality of their crisis management very problematic was also stressed in other interesting comments provided by our experts, in addition to their 'scoring exercise'. We quote the most representative one:

'The evaluated governments would cause critical problems also in non 'multi-crises' times (COVID-19, war in Ukraine, refugee crisis, energy crisis...). They undermined the principle of subsidiarity, the concept of the rule of law, the fiscal discipline, the principle of mutual respect, and presented several 'nuclear options' that were not to the benefit of the population.'

6. Discussion

This section adds to the analysis beyond the specific dimension of this article—the fact that the ruling coalition in Slovakia during 2020–2022 was an entity that cannot be labeled as a fully 'standard' political party and the fact that the quality of leadership during the period was disputable.

Two out of the four members of the coalition were not political parties, but political movements, including the leading member OĽaNO. Both of these members were clear examples of 'non-standard' political subjects (Table 6).

From 2011 to 2019, the only ruling person within OĽaNO was Igor Matovič. The original statute of OĽaNO directly stated that the leader acts in all matters and approves all matters. In 2019, the OĽaNO Presidium was created to reflect changes in the legislature preventing parties without collective bodies from being candidates in the parliamentary elections. The regional structures of OĽaNO were initiated only after the 2020 election victory. OĽaNO does not have a clear ideological orientation; the movement builds on popular issues and promises to deal with them.

Table 6: Ruling coalition in Slovakia 2020–2022

	Established	Organizational form	The central role of the leader and his private initiative	The party as a personal vehicle	The crucial formative influence of a leader over the political project	The existence of local and regional structures
OĽaNO	2011	Movement	Yes	Yes	Yes	Yes, but not from the beginning
SaS	2009	Party	Partly	Partly	Partly	Yes
Sme rodina	2015	Movement	Yes	Yes	Yes	Yes, but not from the beginning
Za ľudí	2019	Party	Yes, for the original leader Kiska	n.a	n.a	No

Source: Authors

Sme Rodina is very similar. Its leader Boris Kollár has built this movement on his own personality. Decision-making within the movement is centralistic and formally collective. Regional structures exist, but the real power is in the hands of one person. The movement does not have a clear ideological orientation; similar to OĽaNO, it builds on populist issues. Mr. Kollár is a wealthy entrepreneur.

The political party Za ľudí is a very unusual case. The party was created by the former Slovak president Andrej Kiska, who resigned from the party 'for health reasons' in early 2020, soon after the elections, after several scandals connected with his name. Za ľudí was initially yet another example of a 'one man' party; after Kiska's resignation, the party started to lose its homogeneity. Over the course of the investigated period, most of its members of parliament moved to various parliamentary clubs. As a result, Za ľudí had disappeared as a real political subject by 2021.

The only at least 'semi-standard' political party within the 2020–2022 ruling coalition was SaS. This party somehow 'fulfilled' most of the criteria of a 'standard' political party. The position of SaS within the coalition was very specific, as its leader Richard Sulík was not afraid to oppose most of the problematic proposals by Mr. Matovič, even in public. SaS 'organized' the end of both the Matovič and Heger governments.

The issue of leadership is connected especially with Prime Minister Matovič. He had experience in top-level politics, having spent a few electoral periods as a member of parliament and as the leader of one of the opposition parties. However, the fact that he had absolutely no personal practical experience with executive power in March 2020 and the fact that his communication style was rather problematic quickly became visible. Prime Minister Matovič showed a nearly nonexistent capacity to consult public policies regularly or systematically, especially during the COVID-19 crisis. In this period, despite his lack of medical expertise or executive experience, he tried to behave as a dominant leader, suggesting 'camera ready' solutions. Many advisory body proposals were rejected and even publicly mocked directly by him.

The most visible issues were his public statements in the position of the Prime Minister and later as the Minister of Finance. For example, when most medical experts protested in October 2020 against blanket testing, he publicly insulted them in retaliation. He also publicly accused his coalition partner and leader of the political party SaS of 'killing' thousands of Slovak people by blocking the second phase of the blanket testing. Hate and mutual slander had been part of the Slovak political scene before, especially during Prime Minister Mečiar's government. However, their presence increased significantly as the result of Mr. Matovič's actions.

7. Conclusions

The goal of this article was to respond to interesting questions connected with the ruling coalition and its government during 2020–2022 in Slovakia, as formulated in the introduction. The specific sub-goal was to contribute to the need to 'anchor' the term 'non-standard' in reference to a political party. The goals were operationalized via research questions.

Our analysis suggests that the performance of the Slovak public administration appeared relatively poor in the 2020–2022 period. It also suggests that both Slovak governments faced a limited capacity to govern and a very limited ability to govern in turbulent times in the period under review. The discussion section adds the specific dimension of 'non-standard' political party and 'non-standard' leadership to our analysis. These two phenomena seem very visible in Slovakia during the 2020–2022 period. We do not intend to establish or even quantify any direct relations between the government performance and the government structure. This would be too ambitious, taking into account the extreme difficulty of such research. We leave this issue as a challenge for future research.

The direct contribution of our research is the attempt to suggest that our three investigated areas may have mutual influence; greater focus in this direction should be the challenge for future research. For example, to better understand current democracy, such research should include: (1) elections can be won on popular and narrow topics like corruption; however, trust in government is based on its capacity to rule the state in full complexity; (2) a limited capacity to agree on priorities is a typical feature of all coalitions, but this is especially true if non-standard political parties are involved; and (3) each government and politician behaves as they are allowed to do.

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MANAGERS' DECISION-MAKING STRATEGIES DURING CRISES: BOUNDED RATIONALITY AND INTUITION —AN INTERPLAY

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Abstract

The article discusses managers' decision-making strategies that encompass risk, time pressure, and uncertainty into a heuristic logic of obligation to act. It highlights the performative features of metacognitive processes that put intuition into use within the framework of bounded rationality and emotional intelligence. Among the threats that leaders face when confronted with intuitive decision-making are failure, blame, and reputational damage, with ensuing restoration tactics. The implications for impactful managerial practices concern ways to reconcile short-term acceptability with collective rationality outcomes of actionable decisions.

Keywords: crisis, decision-making, management, bounded rationality, leadership, intuition.

1. Preliminary considerations on crisis context, bounded rationality and crisis leadership

Making or reaching decisions is a key managerial responsibility in both public and private organizations. Decision-making processes are highly dependent on the main actor, the decider, and the context. Crisis generates uncertainty and determines significant changes in the context with a major impact on the quality and consequences of the decisions made by organizational leaders.

In this paper, we will discuss the decision-making processes in the time of crisis, the interplay between management and crisis, and between rationality and uncertainty. There are various definitions of management. Following its etymological origin (derived from the Latin *manum agree* = 'to lead by hand'; and French '*manège*'—training area for horses and riders), management is the function of administration of an organization through organizing, planning, leadership, control, motivation, communication, staffing and assessment. According to the area of authority and hierarchical rank, a people-and-project manager puts to work various resources, such as human capital and intangible assets (i.e., trust, expertise, dedication, energy, work ethic) as well as money, time, information, materials, and technology.

Rosenthal (2001, p. 10) defined crisis as 'a serious threat to the basic structures or the fundamental values and norms of a system, which under time pressure and highly uncertain circumstances necessitates making vital decisions'. Okoli and Watt (2018, p. 1124) argue that a crisis represents 'an uncertain situation possessing latent risks and opportunities that must be resolved within a given timeframe'. Another dimension that Smith and Elliott (2006) highlight is the exposure of an embedded vulnerability: crises will normally be 'triggered' by an incident or another set of circumstances (these can be internal or external to the organization), which exposes the inherent vulnerability that has been embedded within the 'system' over time.

Wu *et al.* (2021) conceptualize crisis as unusual and abnormal events that occur infrequently, for which organizations and leaders have little preparation and experience in managing. Other features that enable crises to function as organizational game-changers and opportunities for turnaround management are their unexpectedness, salience, significant impact, and disruptive potential that requires urgent response. The underlying assumption is that a crisis entails a disruption from old paths that generates both risk and opportunity (Preda and Stan, 2016).

The challenges of crisis management concern threat, urgency, an element of surprise, requirements for swift response, unpredictable unfolding, and high-stake situations which require leaders to act as both humble and transformational enablers of common interest rather than providers of ready-made ultimate and universal solutions. Venette (2003, p. 5) argues that 'crisis is a process of transformation where the old system can no longer be maintained'. The current crisis is a long one—dating back to 2008, it spans the lifetime of Gen Z. Risk management defines the approach to assessing potential threats and finding the best ways to avoid those threats. Crisis management deals with threats before, during,

and after the negative event; it 'is the process by which an organization deals with a disruptive and unexpected event that threatens to harm the organization or its stakeholders' (Venette, 2003, p. 6).

Summing up the theories, we can identify three elements common to any crisis: (a) a threat/external danger, a potential risk; (b) the surprise, the lack of anticipation that generates uncertainty, and (c) the lack of time for decision and reaction.

Decision-making generates cognitive dissonance and sunken cost bias because it sacrifices the benefits of other options for the sake of the chosen alternative, so it incurs a loss regardless of the outcome (Alkhawlani, Bohari and Shamsuddin, 2021). The word 'problem' comes from Greek, where it designates an obstacle, a hindrance or a setback that blocks the way. Problem-solving involves decision-making, as a problem is 'the discrepancy between real and ideal' (DuBrin, 2005, p. 79), which drives the need for change. Identifying and defining the problem is the first stage of rational decision-making. Mapping this issue of concern puts pressure on decision-makers to find a timely and effective resolution for crisis management, to fight against adverse consequences (Coccia, 2020). Uncomplicated problems drive standard or routine decisions, whereas complex and emerging problems require non-routine, innovative decisions that question and confront uncertainty avoidance.

Following several decades of revolutions, wars, terrorist attacks, mass refugees, and economic crises, the last four years have been a succession of profound crises, starting with the pandemic and continuing with the recent wars in Ukraine and Israel. Nations, organizations, and individuals face conflicts and deal with threats on a regular basis.

Historical breakouts are opportunities for unfreezing old ways of organizational behavior and acting on transition models to reinvent and refreeze new attitudes, skills, systems, and practices (Lewin, 1947). This change takes into account the relative inertia and path dependency characteristic of cultural immersion into taken-for-granted assumptions and scripts (Burnes, 2020). According to management coach Peter Hawking (2005), it is not advisable for leaders to push harder when they encounter resistance to change, but to understand the needs that remain unaddressed and therefore cause path dependency.

2. Heuristic, subjective, biased or nonrational?

Making decisions in peaceful periods involves data analyses and rationality while crises create uncertainty, lack of reliable data, and a 'bounded rationality'. Bounded rationality refers to the constraints of casual and tense situations that require a timely readjustment to an elusive purpose based on incomplete and imperfect information. Herbert Simon (1955) coined the concept, arguing that human rationality is limited by environmental factors and in-built cognitive limitations. Therefore, decision heuristics such as anchoring, framing, and filtering mechanisms operate under uncertainty and generate adequate (even not ideal) solutions by simplifying purely rational algo-rhythms (Kahnemann, 2003). Rötheli (2010, p. 123) discusses how 'bounded rationality creates a reproductive cycle that links current financial crises with previous ones: Bounded rationality in the form of over-optimism and over-confidence led bank management to take on ever larger challenges'.

The decision-makers' agility to consult and maintain the feeling of belonging, affiliation, and consensus-building is essential in this ecosystem. A decision that a group of representatives reached will be more acceptable than that of a single individual. Further scrutiny is welcomed into the dynamics of participatory decision-making when democratic mechanisms are under attack. The adaptive value of ecological rationality and intuitive design based on fast-and-frugal heuristics to streamline better decisions represents an alternative to rigid bureaucratic guidelines (Raab and Gigerenzer, 2015). When Kodak or Nokia disregarded the obligation to take immediate action and stay abreast of digitalization change, their hesitation proved fatal. Kodak survived and thrived for a hundred years (from 1892 to the 1990s, when failure to transition to digital photography signed off its demise).

There is a gap between an organization's natural capacity to adapt and the unsustainable speed of change. Lean satisficing heuristics replace optimizing algorithms (Mousavi and Gigerenzer, 2014). Strategies constantly shift; nowadays, they are built on a weekly, at best monthly basis, whereas a 5-year plan was the rule 30 years ago. There is pressure to peddle harder or smarter, more collaboratively, to enable and release synergy. Hawking (2005) considers that the purpose creates the team; what is more, organizations, such as families and democracies, are a team of teams created for a shared purpose. He views musketeers as a model of teaming that works as long as what they can do together is better than what they can do apart.

Managers of large international corporations admit that about half of their professional decisions are gut decisions, based on their experience after having considered all the data available (Raab and Gigerenzer, 2015). Yet, few would admit that publicly and, instead, ask employees or, as a more expensive option, engage a consulting firm to back up their gut decision. Flyvbjerg (2018) provides examples of heuristics applied in master building project management. A successful project is fast-paced, rhythmic and modular or scalable in terms of replicability instead of one-off. Managers constantly seek standardized, simplified shortcuts that streamline bureaucratic procedures. They apply a business model based on overselling and finding quick fixes instead of permanent resolutions. What is more, 'You need strong bridges upstream and downstream. You need a strong federation of the builder-buyer-user. When programs run into problems and partners become contractual it is especially important to reinforce the bridges from top to bottom, through informal meetings in which problems can be surfaced early and solved' (Flyvbjerg, 2018, p. 11).

Agile management focuses on decision-makers as satisficers rather than optimizers as their bounded rationality leads to the delivery of minimum viable products and 'ship unfinished', showing bona fide at a draft level rather than level up. Flyvbjerg (2018) also offers an illustration of the garbage bin principle of starting from the solution and working out the problem: 'Think from right to left ... and then manage from left to right. In other words, focus your leadership on program outcomes and how the program will get there. Then plan and execute from the left of the Gantt chart to the right. Focus on the endgame' (Flyvbjerg, 2018, p. 22).

There is also a conceptual delineation to be drawn between nonrational and irrational processes. Irrational is the opposite of rational decision-making in the sense that the

actions it triggers are not adapted to the sought-after goals and go against logic. Nonrational decision-making occurs rapidly, is reactive and based on intuition, or its assessment is subjective, biased, common-sense or judgmental (Hernandez, 2014). Leaders sometimes reach nonrational decisions for the same aim as with rational decisions—that is, to seek acceptance. Legitimacy hence appears as a supportive, participatory authority-exercising alternative to the 'carrot vs. stick'. These two traditional power mechanisms of coercion and inducement are both unsustainable, 'often unavailable, in short supply, or costly to use' (Bernstein, 2011, p. 18) in today's organizations grounded on cost optimization, scarcity of resources, and the philosophy of thrift.

Intuitive decision-making is constantly associated with cooperative improvisation and synergy achieved through diligent practice like in a jazz band (Ingram, 2021). However, team cooperation is not always the most appropriate and effective response to adversity. Inclusion of all members considered equal is most suitable in conjunctive tasks where more heads are better than one, whereas equality and undisputed solidarity are of the essence. However, in disjunctive situations, individual merit and unequal contributions focused on a diversity outlook can prove more fruitful, whereas democratic, collectivistic decision-making can lead to groupthink—a simple, undebated consensus that jeopardizes success. This was found to be true in an archival meta-analysis of five decades of group decision-making in Himalayan expeditions wherein the pattern of blurring the influence of a more knowledgeable leader repeatedly triggered a chain reaction of incidents and even deaths. Therefore, inclusion and collectivism are best put to use for business as usual, and diversity and meritocracy are for outstanding circumstances that require top performers to make an impact (Chatman *et al.*, 2019).

These pseudo- or alter-rational decision processes are vested as tacit knowledge and heuristics. They emphasize the 'trust the process' idea according to which, in US president Dwight Eisenhower's words: 'Plans are worthless, but planning is everything'. Daniel Johnson launched in 1991 the 4D model of time management (cited in Wise, 1991), a.k.a. the Eisenhower decision matrix, in which time managers deliberate between important and urgent tasks that need to be done, important and non-urgent ones to be deferred by decision on their timing, unimportant but urgent tasks to be delegated and unimportant, not urgent activities to be dropped or deleted.

An application of heuristic decision-making targets time budgets. Following the principle of 'take the elephant and cut it into pieces', a coach teaches leaders how to take out the least value creating activities from their time budgets and measure ROI (return-on-investment) for every segment of their work. Micro heuristics apply to life coaching by selective mechanisms for the sake of efficiency and cost optimization—closing some tabs and paths in order to remain centered and grounded on a specific line and clear-cut direction (Hawking, 2005). Trained intuition used with reflexive discernment marks the difference between a repository of biases and one of the patterns, constantly updated and readily retrievable in complex situations that demand instantaneous decision-making affordances (Hurteau *et al.*, 2020). Tacit or implicit knowledge is a metacognitive performance that lacks a discursive explanation of the process thereof and whose mental flow is alogical in

the sense that it transcends conventional reasoning and acts upon a logic of its own, which neither supports nor invalidates the formal logical schemata designated as algorithms.

In a standard, rational decision-making process, progress is linear and the sequence of stages is predetermined, as follows:
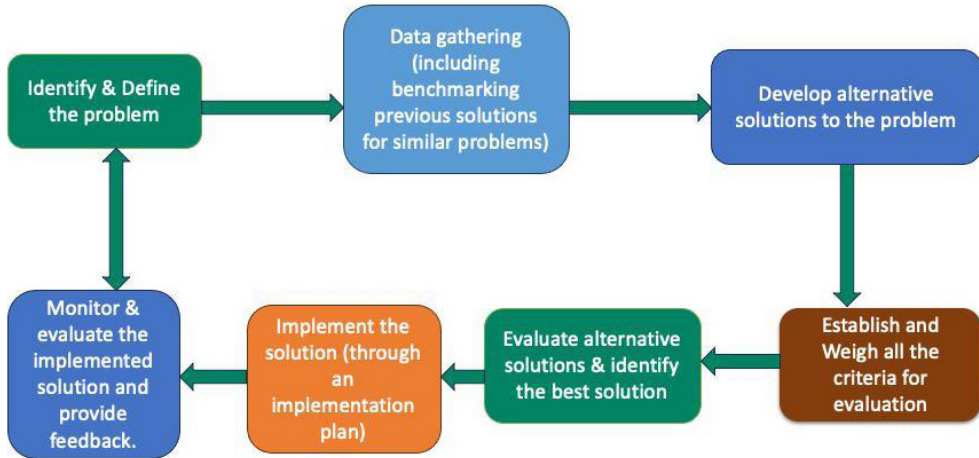

Figure 1: The stages of rational decision-making

Source: Preda (2006)

The fourth stage requires decision-makers to establish and weigh criteria in the respective order of priority and hierarchy to validly evaluate the alternative solutions. The above model involves stability of the context, of the environment, during the decision-making process. Any change in the initial parameters and any missing data will change the hierarchy and the relevance of the alternative solutions.

3. Risk and intuition

Risk is a significant concept that involves uncertainty and bounded rationality. Uncertainty is produced by limited or non-factual information (Zamfir, 1990; Raab and Gigerenzer, 2015; Kahnemann, 2003). In times of crisis, the classical rational decision model is no longer actionable. The decision logic 'if (X)–then (Y)' does not operate anymore because the initial conditions, (X), are fluctuating and their consequences, the outcomes, (Y), are no longer predictable. In a normative system endowed with Weberian legal and rational authority, rules cannot bend as seamlessly as reality does. Accelerated adjustments and alignments in response to crisis centralize power as in the government being empowered to pass on ordinances, requisition properties or resort to direct acquisitions. Rational models are replaced by incremental, step-by-step or garbage can models.

No economist really anticipated the crisis of 1929–1933, 1973 or 2008. Seemingly optimal, rational decisions later proved weak or downright catastrophic. Transformational

leaders seem utopian visionaries, and their solutions preposterous, until the event that they foresaw occurs. Before the flood, Noah's idea of designing and building an ark on a mountain was believed to be absurd, however in a changed context, in the flood, his decision became ideal and the other resolutions were downgraded to the level of absurdity (Preda, 2006).

When rationality is limited, something else must replace it in the decision-making process. And that almost irrational 'something' is intuition, a mix of small 'signals', experience and emotions, defined as 'a judgment that appears quickly in consciousness, whose underlying reasons we are not fully aware of, and is strong enough to act upon' (Mousavi and Gigerenzer, 2014, p. 1672), Intuition etymologically comes from 'in-tuir', meaning 'to scrutinize and regard from within', and is a combination of feeling and thinking. Hurteau *et al.* (2020, pp. 226–227) provide memorable instances of intuition: 'when Michelangelo looked at a block of marble, he knew, based on his intuition and experience, what figure was imprisoned within. (…) Albert Einstein once said that <the intuitive mind is a sacred gift and the rational mind is a faithful servant. We have created a society that honors the servant and has forgotten the gift>'. Dane, Rockmann and Pratt (2012) examined how the effectiveness of intuitive decision-making is correlated with domain expertise and epistemic authority, so intuition is an educated guess or a model of aligning disparate cognitive streams that are data-driven. Traditional rationality is undermined by the crisis conditions that favor fast-paced choice while bypassing thorough deliberation (Sayegh, Anthony and Perrewé, 2004).

Emotions play an important role across intuitive decision processes. The charismatic leader's empathic response acts as an uncertainty absorber and legitimacy enhancer meant to elicit uncritical compliance with both process and decision outcome.

4. Actionable decision-making and collective rationality

Hence, decisions under crisis that were unacceptable under normal circumstances can be reassessed as acceptable with some limitations. Classical, rational criteria of the cost-benefit logic (i.e., profit margin, market share, cashflow or other performance metrics) fade in the face of imperative needs for survival vs. disappearance (for an individual, company, community). Extreme solutions, forbidden under everyday norms, can be socially or even legally approved in times of individual (self-defense in a violent attack) or collective crisis (wars, pandemic). This decision framework disrupts the Cartesian superiority of reason. Once neglected, emotions and subconscious insights that carry truth but no logic resurge as paramount to performative decision-making, following the societal emphasis on empowerment for personal growth and wellbeing. As people-orientation precluded task- and result-orientation, business gurus claim EQ beats IQ in predicting a leader's success in all walks of life. Or, paraphrasing Peter Drucker's famous quote about culture and strategy, 'EQ eats IQ for breakfast' (Drucker, 1954/2006 in Myers, 2018). The informal, outspoken, and playful leader replaces the rational, uptight, cold, and calculated manager.

A practical guide issued by the Australian Government (2018) recommends: 'In crisis management, stakeholders tend to demand action very quickly and by doing so create an 'obligation to act' by the organization'. This guide strenuously advises—even urges—leaders to be hands-on and quick to act while learning to increase their awareness of cognitive bias such as anchoring (over-reliance on the first convenient piece of information), confirmation bias or self-fulfilling prophecy and overconfidence bias (the narcissistic belief that the leader is responsible for finding the best solution and putting pressure on oneself alone instead of acting as facilitator for the team). Contingency planning in public governance for crisis management is criticized as overly precautionary since it aims first and foremost to avoid worst-case scenarios, with the trackability and traceability of decisions for transparency purposes delaying the much-needed resolution. 'Softball' cooperation is much more time-consuming than directive, 'hardball' decision-making.

Nobel award-winner Elinor Ostrom proved that common goods imply collective decision-making because individual decisions lead to the exhaustion of these resources. A risky turn of events requires the transition from individual to collective interests and collective rationality. As Peter Drucker (1954/2006) states: 'Leaders get the culture that they collectively create'. External threats increase internal cohesion as well as the groups' propensity to react emotionally to them, like crowds would do (Preda, 2006)

5. Blame avoidance dissonance

One of the challenges for managers during a crisis is to make decisions in uncertainty and under time pressure; quick reaction is essential, and hesitation can be fatal. But this type of decision involves risks of failure and potential blame. Risk-averse leaders respond to crises by blame avoidance motivation, defined as the attempt to evade accountability that translates into penalty for mistakes and potential undesired consequences. This goes against public service motivation, defined as 'an individual's predisposition to respond to motives grounded primarily or uniquely in public institutions and organizations, including attraction to policy making, commitment to the public interest, compassion, and self-sacrifice' (Zhu *et al.*, 2023). The collision between the two—serving public good and warding off potential reputation damage—creates the blame avoidance dilemma. This dissonance increases in power asymmetry situations such as the authoritarian regime in People's Republic of China (PRC) wherein local government leaders are held responsible for crisis and sanctioned for ineffective coping. To dodge accountability pressures or avoid their escalation, public bureaucrats might prefer inaction over action according to the 'better safe than sorry', 'play-it-by-the-rules' conservative principle or abide by the letter rather than the spirit of the law (Qin, 2022). Thus, they miss out on opportunities and jeopardize long-term aims for the sake of saving face.

Using the metaphors of foxes and lions, Hinterleitner and Sager (2017) discuss anticipatory agency strategies in which 'fox-type' officeholders intend to minimize the risk of blame-attracting events following their decisions. In contrast, reactive presentational

strategies involve image repairing in the aftermath of a crisis and belong to 'lion-type' street-level bureaucrats.

6. Crisis management and decision-making in public administration

Crisis management is a headline priority on the public governance agenda. Public managers' decision-making abilities are impactful for the whole community when the fight for performance is on and when navigating critical times.

What type of decision-making mechanisms do governments employ before and after a crisis? In a recent analysis of public management's responses to shock or adversity, which showcases the covid pandemic, Ţiclău, Hinţea and Andrianu (2020) found these adaptive resources to include decisional frameworks influenced by the resilient outline at play in their organizational systems. Resilient leadership is important in both preparing and recovering from turbulence, which is widespread in today's risk society. This ecosystem features complex unpredictability and interdependence, carrying turbulence both inside the organizations and in their external environment. Decision-making tactics enable collective rationality to help communities develop their ability to 'bounce back, adapt to a new reality and develop instruments or mechanisms to deal with future changes (Ţiclău, Hinţea and Andrianu, 2020, p. 171).

In a complementary approach, Tokakis, Polychronioua and Boustras (2019) discuss radical and moderate decision-making models in the crisis cycle that include three stages: pre-crisis, crisis unfolding, and post-crisis interval. Their survey, conducted with top and middle managers from ministries and public safety services in Greece, revealed tensions of legitimacy and shifting authority across shifting circumstances. Whereas radical crisis managers might wish to exploit the crisis turbulence to the profit of their symbolic capital, more moderate reform leaders appear driven by 'the imperative to minimize damage, alleviate pain and restore order' in their agency for collective good (Tokakis, Polychronioua and Boustras, 2019, p. 41).

This line of thought favors the investment in governmental capacity building, grounded in the attempt to repurpose the centralized internal training strategy for improved crisis responsiveness on behalf of the team leader and its members. Stronger collaborative decision-making is essential for bridging the gap between leadership and collective rationality. These formal channels, participative workstreams, and normative procedures facilitate crisis prevention and crisis preparation in the case of safety incidents. Situated knowledge on the dynamics of the crisis management team members' ability to reach decisions under the pressure of unexpected and intractable crisis suggests this ability acts as a predictor of both crisis acknowledgement and containment (Tokakis, Polychronioua and Boustras, 2019). Since in some countries, such as the former communist ones, public managers have a cultural deficit of monitoring and evaluation which 'seems to be the Achilles heel' (Hinţea, Profiroiu and Ţiclău, 2015, p. 42) of the public administration processes even before crises, then we can expect their decisions' rational component during crises to become weaker.

From a different perspective, Hannah, Baekkeskov and Tubakovic (2022) contribute to the direction of assessing crisis manageability by comparing adverse events to more gradual forms of change. They envision crisis as shattering paradigms and claim that stakeholders appeal to collective reasoning to attain a common goal through a temporary alignment of wills. This is in line with Hawking's (2005) claim that the purpose created the organization, which stays united as long as what its members can do together is better than what they can do apart. From a political leadership standpoint, Paskalev (2020) considers the rationality gap to represent the contradiction between public opinion and collective reasoning that stems from a collective decision-maker. Popular will gets constantly frustrated throughout the political process, however democratic it might be.

The crisis aggravates this disruptive clash between what society wants and what it needs, between hedonistic outlooks and austere, duty-based vocabularies of motives. This rationality gap leads to public managers losing popularity and confidence.

So public managers, like their private sector counterparts, avoid reaching unpopular decisions even more diligently in times of crisis when citizens have to deal with widespread frustration. Technocracy is in theory a de-politized answer to the rationality gap, however, like in the case of collective reasoning, it still puts into question the in-built, systemic vulnerability to power relations and manipulation. Also, technocracy runs the risk of disapproval from non-expert members of the organization, who witness their beliefs being discarded and consider expertise as demeaning to the common good and hence illegitimate (Paskalev, 2020).

Furthermore, Heidemann (2018) examines the idea that public sector decision-makers should not shy away from their leadership accountability. Their mission is not only to track but also to shape the organizational members' position as stance-taking individuals. Grassroots mobilization through collective action transcends societal crises by means of socio-linguistic practices that provide multidimensional understandings of the role of collective rationality across public governance and public resourcing management. Democratic consultation and inclusiveness are necessary but not sufficient for leaders' decision-making in times of social instability.

The assessment of decisions and decisions-makers, public or private, should also consider the context of the process, its timing, available information, and configuration, legislation, values, informal norms, and beliefs, of all variables at that moment. Judged in the light of today's criteria (i.e. human rights, minorities' rights, civil rights, etc.), many premodern societies and their leaders should be condemned and deleted from history for promoting discrimination accepting slavery, violence, unethical behavior, etc. On this background of overlapping historical contexts, we have seen debates and controversies that surround the tearing down of statues representing former leaders (not just dictators and war criminals) on debatable grounds. On this background, we have seen on the front stage many populist leaders submitting their beliefs to the will of the crowds in order to avoid blame and get public acceptance.

7. Conclusions

Effective crisis leaders convince people to focus on collective goals, build an environment of trust, reform the organization's culture, make wise and rapid decisions, and take courageous action. Transformational leaders have the ability to transfer their enthusiasm and authority and transmit inspirational motivation to their subordinates, which leads to better interaction during crises.

Dealing with uncertainty requires knowledge, but not necessarily an exhaustive use of information. In many business situations, effective heuristic decision-making deliberately ignores information and, hence, uses fewer, simpler and more straightforward resources. What brought us here most likely will not take us any further, so the managers' visionary role in designing and implementing new decision pathways is vital.

Leaders' crisis management should steer away from two sources of misinformation: (1) insufficient collection and processing of insight, and (2) deficit in communicating insight. Authority under crisis relies on the correctness of decisions as assessed in the short run and maintained after the crisis, to validate the quality of decisions mid- and long-term.

Still, because human memory functions differently in the short vs. mid and long term, the less risky decisions appear to be the populist ones, which seem good for the moment but bad on a longer time frame. This short-term populist decision has face validity, followers accept it for the time being and later on forget and hence forgive those who made the decision. Conversely, a decision that is unpopular for now but correct in the long term sets the occasion for the public to condemn the decision-maker, and later on sinks into oblivion, so that people no longer care and leaders are not rewarded for being right or visionary. In this sense, Leonard Saffir (1999, p. 51) urges that: 'In crisis management, be quick with the facts, slow with the blame'.

Emotional intelligence comprises self-knowledge (including the capacity to detect weak signals), agility (intuition and the instinct to combine), as well as self-control, empathy, and persuasion. The best option would be to rely on specialists who combine all these ingredients with experience and objective knowledge rather than trust charismatic non-experts who solely use the emotional toolkit. In other words, the best option in crisis management is the interplay between expert-based bounded rationality and leaders' intuition.

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POLITICIZATION OF PUBLIC ADMINISTRATION IN ROMANIA AND ITS CONSEQUENCES FOR GOVERNANCE IN TURBULENT TIMES

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Abstract

The article aims to analyze the level of politicization of civil service in Romania, its goals, and consequences. We adopted a rather narrow perspective on politicization and we concentrated mainly on analyzing the recruitment, promotion, and dismissal of civil servants based on political criteria. The research findings were used to discuss the consequences of politicization on the governance of public institutions during turbulent times. In this regard, we conducted an email-based survey of the civil servants. The majority of the sample was composed of graduates of public administration programs at four major universities in Romania, who work in public institutions. We collected the data between May and November 2023 and we obtained 211 valid questionnaires. We found that appointments based on political criteria lower the work motivation of public employees, and increase the level of incompetence and instability of public institutions. The most affected are public employees in management positions, those who have longer work experience in the public sector, and those who work in public institutions that are part of central administration. Therefore, frequent changes based on political criteria lower the capacity of public institutions to respond to disruptive events by generating a loss of expertise, instability, and discontinuity in policy implementation. However, turbulent times require flexibility and adaptation to unexpected and unpredictable events, and political appointees might be more responsive and cooperative.

Keywords: politicization, patronage, instability, governance, turbulent times, Romania.

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1. Introduction

The article aims to analyze the politicization of public administration in Romania and its implications for governance in turbulent times. We adopted a rather narrow perspective on politicization and we concentrated mainly on analyzing the recruitment, promotion, and dismissal of civil servants based on political criteria, and the consequences of politicization on the functioning of public institutions. Politicization can influence how prepared public institutions are for challenges generated by crises. Ansell, Trondal and Øgård (2017) define turbulence as events that are unexpected, unpredictable, and inconsistent, but turbulence may also refer to non-crisis situations caused by technological changes. Elected or appointed politicians are those who prepare, adopt, and implement public policies, and manage on a day-to-day basis public institution. The changing environment of public institutions affects the continuity of public policy implementation (Howlett and Ramesh, 2023), and frequent changes in political decision-makers, and extensive politicization of public institutions might further impact the efficiency of public policies (Bach, Meyer-Sahling and Staroňová, 2020). Therefore, during turbulent times, public administration should ensure stability and routine (Trondal, 2023), but at the same time, decision-makers should develop new knowledge and practices, and adapt to shifting conditions (Lund and Lotte, 2023; Țiclău, Hințea and Andrianu, 2020). Adaptability and professionalization of decision-makers are important to ensure the quality of public services delivered to citizens. At the same time, there is the dilemma of whether the recruitment of loyal, political employees in the civil service, who lack professional expertise but are responsive to the political leaders reduces the preparedness of public institutions to crises.

There are few systematic studies regarding the impact of politicization during turbulent times (Bach, Meyer-Sahling and Staroňová, 2020). Even more, there are few studies conducted on politicization in Romania even though this phenomenon is still prevailing in the former communist countries (Meyer-Sahling and Veen, 2012; Staroňová and Rybár, 2020; Kohoutek and Nekola, 2021). The legacies of the relatively weak institutions of former communist countries provided the grounds for the emergence of political patronage of the recruitment in the civil service and of many policy domains (Kopecký and Spirova, 2011). Studies showed that even though former communist countries adopted reforms for civil service professionalization during the pre-accession to the European Union, politicization increased afterward and politicians found informal practices to appoint loyal subordinates, reward party clientele or extract public resources (Gajduschek and Staroňová, 2023; Tomić and Pavlović, 2023; Čehovin and Haček, 2015). These practices generated a movement back toward patronage (Peters and Bianchi, 2023; Staroňová and Rybár, 2020). However, the study conducted by Duong (2021) on the Vietnamese authoritarian regime showed that the politicization of public institutions does not exclude meritocratic recruitment and promotion in the civil service.

The existing studies conducted on politicization in Romania showed it is widespread at all levels of public administration (Radu, 2014; Volintiru, 2015). A survey based on in-depth expert interviews conducted between December 2012 and February 2013, as part

of an international comparative study, highlighted that Romania had one of the highest scores of party patronage in the European Union, and in domains such as economics, media, and healthcare the political influence was higher comparatively with other domains (Volintiru, 2015). The survey conducted by Andrei, Profiroiu and Oancea (2012) found a small percentage of civil servants belonging to political parties, but political party affiliation was an important factor in the promotion of employees to management positions (even though it was more important for public institutions at the central level than for public institutions at local level). Efforts to depoliticize and professionalize some categories of public employees, such as prefects, did not succeed and eventually were reversed. An analysis of the biographies of the prefects conducted in 2021 showed high levels of politicization, and criteria such as fidelity and belonging to a political party were the main conditions for the appointment of prefects (Profiroiu and Negoiță, 2021). To limit the influence of politicians on the recruitment of civil servants, political advisers were appointed to the dignitaries' cabinets (Cobârzan, 2008; Radu and Radu, 2019), but this measure did not reduce the politicization of public institutions. The few appointments of technocratic ministers in Romanian cabinets did not reverse the impact of politicization (Raiu and Mina-Raiu, 2023).

In the following section of the article, we analyze the scope and consequences of politicization. In section three, we analyze the legislation regarding the relationship between political and administrative positions in Romania, while in section four we present the research methodology. We present the research findings in section five, and in the last section of the article, we summarize the main results and discuss the consequences of politicization for governance during turbulent times.

2. Making sense of politicization: definition, goals, forms, and consequences

The dilemma of whether civil servants should be loyal to decision-makers, or they should exhibit neutral competence toward their superiors is a long-lasting one (Peters and Pierre, 2004; Christensen and Opstrup, 2018; Ebinger, Veit and Fromm, 2019), and it has a large impact on the effectiveness of public institutions. Politicians have to balance the demand for neutral competence and responsive competence (Aberbach and Rockman, 1994) when they decide on the appointment of their personal advisers and top civil servants. Neutral competence means that civil servants carry out tasks objectively, in the best possible way, without regard to the political party in power, to protect the public interest. On the other hand, responsive competence means that elected politicians have a legitimate claim for the support and cooperation of the civil servants in carrying out their decisions or political-tactical issues. Even though countries having different administrative traditions approached this dilemma differently, politicization remains an important problem that hinders the activity of public institutions (Peters, 2012).

The concepts of politicization, patronage, and clientelism are connected and are often used interchangeably. Even though politicization and patronage are more similar concepts, there are more significant differences between these and clientelism. Clientelism looks at

party politics and it is a form of exchange of electoral favors of the governing political parties (Volintiru, 2015; Gherghina and Volintiru, 2021). Politicization is a form of controlling the government, and most often refers to the recruitment, selection, promotion, reward, and dismissal of public servants based on political criteria and loyalty (Peter and Pierre, 2004; Duong, 2021; Kopecký *et al.*, 2016; Shaw and Eichbaum, 2020). Even though most often politicization refers to civil servants' recruitment or dismissal (Bach, 2020), it also involves the use of political considerations in the decision-making process and the allocation of resources or public contracts based on political interests (Van de Walle, 2018). The following subsections will investigate the main goals and forms of politicization and its consequences on the functioning of public institutions.

2.1. Goals of politicizations

The goals of politicization vary across administrative traditions and political systems (Ebinger, Veit and Fromm, 2019), and politicization has both positive and negative consequences (Bach, 2020; Kim, Jung and Kim, 2022). The main motivation to influence civil servants' appointments is to ensure partisan allies (Bach, 2020) and the responsiveness of civil servants to steer better policy-making, implementation, and evaluation (Peters, 2012; Peters and Bianchi, 2023).

Another important goal of the political appointments in key positions is to retain control over public institutions and public resources (Tomić and Pavlović, 2023), and therefore to influence the policy processes (Staroňová and Rybár, 2020). In countries with extensive politicization, politicization is used to reward loyal supporters and party members with jobs in public institutions (Kopecký *et al.*, 2016). In some cases, politicization includes the allocation of different forms of rewards, public contracts, or projects (Kopecký *et al*., 2016) or the creation of coordination institutions at the governmental level (Rouban, 2012). Voters adhere to a political party to have access to jobs in public institutions (Peters and Bianchi, 2023), and this is a form of vote buying when voters are promised public jobs (Volintiru, 2015). Peters *et al.* (2022) argue that the goal of politicization in developing countries is to provide jobs for party members and loyal people, while in developed countries, politicization is used to control the policy-making process.

2.2. Forms of politicization

Politicization can result from formal legislative arrangements regarding the functioning of public institutions or can be the choice of political leaders. There are several mechanisms to make political appointments and they can take the form of direct, formal, functional, or administrative politicization (Peters and Pierre, 2004; Hustedt and Salomonsen, 2014). The most obvious form is direct politicization (Peters, 2012), which takes place when political leaders directly appoint political loyalists. This form of politicization is rarer and legal rules limit it. However, when formal-legal rules allow ministers to choose top-level bureaucrats without major procedural restraints, such as entrance criteria, it is formal politicization (Meyer-Sahling, 2001). Functional politicization refers to the political behavior of civil servants who perform activities that are considered political (Peters and Pierre, 2004).

This can take more subtle forms, such as the replacement of career civil servants who do not meet the requirements of political leaders with other career civil servants who are perceived to be more compatible and trustworthy (Christensen, Klemmensen and Opstrup, 2014). Van Dorp (2023) draws attention to 'proxy politics' or anticipatory politicization as a form of functional politicization, that takes place when civil servants self-politicize in anticipation of the ministers' needs by 'self-censorship or anticipatory compliance' (Van Dorp, 2023, p. 427). In addition, the study conducted by Grøn *et al.* (2022) showed that demographic dissimilarities between career civil servants and political leaders increase the risk of turnover in anticipation of political changes in public institutions.

A mechanism to control the activity of government or a policy domain is to create redundant structures (Peters, 2012) that monitor the activity of career civil servants. The most important redundant structures are the ministerial cabinets where ministerial advisers are appointed. They perform political tasks in addition to providing expertise on policy choices (Shaw and Eichbaum, 2020; Staroňová and Rybár, 2023).

The extent of politicization of the civil service varies across countries. There are countries with mass politicization that is spread throughout the administrative system, and countries that professionalized their civil service and eliminated mass politicization but continue to have elite politicization (Peters and Bianchi, 2023). In this case, elite politicization refers to the appointment of highly qualified advisers to assist political leaders in governing better.

Several studies showed that the degree of politicization differs across public organizations with differences existing between ministries and agencies (Kopecký *et al.*, 2016; Bach, Hammerschmid and Löffler, 2020) and that the resistance of bureaucrats can also affect the level of politicization (Cooper, 2018). Van de Walle (2018) found that the size of a public institution has no impact on perceived politicization; on the contrary, the field of the public sector influences the level of politicization. Contrary to the expectations, civil servants sitting lower in the organization hierarchy perceived more politicization compared with top officials.

2.3. Consequences of politicization

Mechanisms of politicization have consequences on the performance of civil service and the efficiency of public institutions. The outcomes depend on administrative traditions and the process of political appointments in public institutions (Cooper, 2018). There are important differences in how merit and non-merit criteria are prioritized across different countries (Cooper, 2021; Askim, Bach and Christensen, 2024). In countries with Germanic and Napoleonic traditions, recruitment based on political and personal connections is more extensive compared with the Nordic and Westminster countries (Cooper, 2021; Bach, Hammerschmid and Löffler, 2020). However, the appointment based on political criteria does not imply a lack of professional competence (Rouban, 2012; Bach and Veit, 2018). Germany is well-known for the 'professional politicization' of senior civil servants (Peters, 2012), which involves the recruitment of members of political parties, who are highly qualified professionals (Ebinger, Veit and Fromm, 2019; Veit and Scholz, 2016).

The majority of the outcomes of politicization are negative. The direct and extensive politicization leads to lower professional qualifications or incompetence among the administrative workforce as poorly qualified individuals who lack relevant expertise are recruited (Hustedt and Salomonsen, 2014). Reduced civil servants' expertise impedes the performance of public institutions and reduces the work motivation of public employees (Kim, Jung and Kim, 2022). A high turnover of senior civil servants and the instability of governments affect the continuity of policy implementation, and therefore the policy success. Not only the dismissals of senior civil servants grounded on political criteria are problematic for public institutions, but also the voluntary departures caused by personal conflicts between political leaders and executives, distrust, or loyalty issues (Rattus and Randma-Liiv, 2019).

Although the politicization of the civil service is much criticized, when the selection of loyal employees is from highly qualified individuals, it enhances the overall expertise of public institutions (Bach, 2020). In addition, the direct political control of the actions of the bureaucracy is a democratic process (Peters, 2012), and could be desirable to overcome bureaucratic resistance (Rouban, 2012). When civil servants are more responsive to the priorities of democratically elected politicians, this might lead to greater correspondence between public policies and electoral results (Peters and Pierre, 2004). For example, research conducted on Iran (Peters *et al.*, 2022, p. 22) showed positive consequences of civil service politicization, such as higher commitment and motivation, innovation, and responsiveness.

Overall, politicization is a pervasive issue that lowers the capabilities of public employees, corruption, and lowers trust in public institutions and political leaders (Peters *et al.*, 2022). When political appointments duplicate the existing positions, the government becomes big, loses resources, and the work commitment of non-political civil servants lowers.

3. Romanian legislation regarding the relationship between political and administrative positions

In Romania, even though a clear distinction between political and administrative positions exists in public institutions, in reality, this distinction is rather blurred, and the practice illustrates that there are situations when civil servants are appointed based on political and loyalty criteria, rather than knowledge, expertise or professional experience. At the level of each ministry, the minister is helped by deputy ministers (called secretaries of state), and sub-secretaries of state, and all of them are politically appointed. The number of secretaries of state varies between 2 and 7, depending on the size of the ministry, while the number of sub-secretaries of state varies between 1 and 4. All of them have dignitaries' cabinets where advisers are appointed mainly on political and loyalty criteria (Radu and Radu, 2019). The recruitment of civil servants should be based on professional criteria, but, informally, they are sometimes appointed based on political criteria. According to art. 436 of the Administrative Code (Government Ordinance no. 57/2019), civil servants are allowed to be members of political parties, but they must refrain from the public expression or

manifestation of their political beliefs and preferences, and they should not favor any political party when they exercise their public function. According to art. 436, civil servants are prohibited from: participating in the collection of funds for the activity of political parties, providing logistical support to candidates for positions of public dignity, displaying, within public institutions, insignia or objects inscribed with the logo and or name of the political parties, using the documents they carry out in the exercise of their official duties to express or manifest their political beliefs, and participating in public meetings of a political nature during working time.

Civil servants have the right to move to political positions, and during this time their appointment as civil servants is suspended and they can return to this position after the political appointment ends. According to the art. 420 of the Administrative Code, civil servants have the right to be elected or appointed to a position of authority or public dignity. This situation is encountered in the case of civil servants who have expertise in a field and are appointed temporarily in positions of public dignity, such as secretaries of state. After their mandate ends, they return to their previous positions. Civil servants can carry out remunerated activities in the public and private sectors, but they have to comply with the legal provisions regarding incompatibilities and conflicts of interest.

4. Methodology

The research aims to analyze the perception of public employees on the politicization of public institutions, the scope of politicization, and its consequences. The research findings are used to discuss the consequences of politicization on the governance of public institutions during turbulent times. In this regard, we conducted an email-based survey of the civil servants.

Measuring the public administration politicization in Romania is difficult because it is a widespread phenomenon and very sensitive. Therefore, to collect accurate and honest information, we decided to ask the graduates of public administration programs of four universities in Romania, who worked in public institutions at local, county, and central levels, to fill out a questionnaire. In addition, we asked people working in public institutions whom we knew to answer the survey and distribute the questionnaire to their colleagues. We assumed that by emailing directly public institutions and asking them to distribute the questionnaire to their public employees we would obtain more inaccurate and dishonest answers than sending the questionnaire to the graduates of public administration programs and other public employees we knew. We were aware that our decision would lead to a reduced number of questionnaires since the sample of graduates of public administration programs is much smaller compared to the population of civil servants. However, we decided to value the quality of the responses rather than the higher number of filled-out questionnaires.

The majority of the sample was formed of graduates of the following universities: Babeș-Bolyai University in Cluj-Napoca and its branch campuses in Bistrița, Reșița, Satu-Mare and Sfântu Gheorghe, Academy of Economic Studies in Bucharest, National University

of Political Studies and Public Administration in Bucharest, and Alexandru Ioan Cuza University in Iaşi. Therefore, we aimed to have respondents from all regions of Romania and all administrative levels. We collected the data between May and November 2023 and obtained 211 questionnaires. The number of responses is not statistically representative of the entire population of public employees. Even though some of the responses had missing answers to some questions, we decided to keep all the questionnaires received. We estimated that any answer was valuable since it was very difficult to collect them.

5. Results

The majority of the respondents were females, representing 65.40% of the sample, while 34.60% of them were males (see Table 1). 33.33% of the respondents had a work experience of less than 5 years in the institution where they were employed, 27.62% had an experience between 6 and 10 years, 25.24% worked between 11 and 20 years, and 12.38% worked more than 20 years. The majority of the respondents worked in an institution located in the urban area (75.24%), in an institution that was part of local administration (56.40%), and had the status of civil servants (53.85%).

Table 1: Description of the sample

1.	Gender	Female	138	65.40%
		Male	73	34.60%
2.	Work experience in the public sector	Less than 5 years	71	33.65%
		Between 6 and 10 years	58	27.49%
		Between 11 and 20 years	53	25.12%
		Over 20 years	26	12.32%
		No answer	3	1.42%
3.	Location of the public institution	Rural	52	24.76%
		Urban	158	75.24%
4.	Administrative level of the institution	Local level	119	56.40%
		County level	45	21.33%
		Central level	47	22.27%
5.	Category of employee in the public institution	Junior civil servants (employed less than one year)	6	2.88%
		Civil servants	111	53.85%
		Civil servants occupying management positions	35	16.83%
		Contractual employees	55	26.44%

Source: Authors' research

Respondents reported a low level of politicization in institutions where they work (see Table 2). For example, 20.88% of the respondents acknowledged that recruitment was always and very often made based on political criteria. 19.05% of the respondents answered that the promotions were always and very often politicized, while 8.09% of them said that dismissals were always and very often made on political criteria. When asked whether politicization was done without taking into consideration the professional background of the

candidates, 30.93% of the respondents answered that always and very often recruitments, promotions, and dismissals were made with the violation of professional competence. The percentage of those who answered that they 'do not know/do not answer' was high for all the options.

Table 2: Assessment of politicization of public institutions

		Never	Sometimes	Often	Very often	Always	I don't know/ I don't answer
1.	How often have hirings been made based on political criteria?	15.17%	31.75%	14.22%	14.22%	6.66%	18.01%
2.	How often have promotions been made based on political criteria?	24.29%	27.62%	10.48%	12.86%	6.19%	18.57%
3.	How often have public employees been dismissed from the institution (resigned or transferred to another public institution) based on political criteria?	35.24%	28.57%	8.57%	6.19%	1.90%	19.52%
4.	How often have hiring, promotion, and dismissal based on political criteria been made with the violation of professional competence?	20.92%	27.55%	16.84%	8.16%	5.61%	20.92%

Source: Authors' research

Respondents were provided with the following definition of politicization as the recruitment or promotion of employees based on political criteria, and they were asked to assess on a scale from 1 to 5 (where 1 represents 'very small degree' to 5 represents 'a very high degree') their perception of the politicization of public administration in Romania. Respondents reported a higher level of politicization compared to the level of politicization in the institution where they work (see Figure 1). 63.9% of them perceive that public
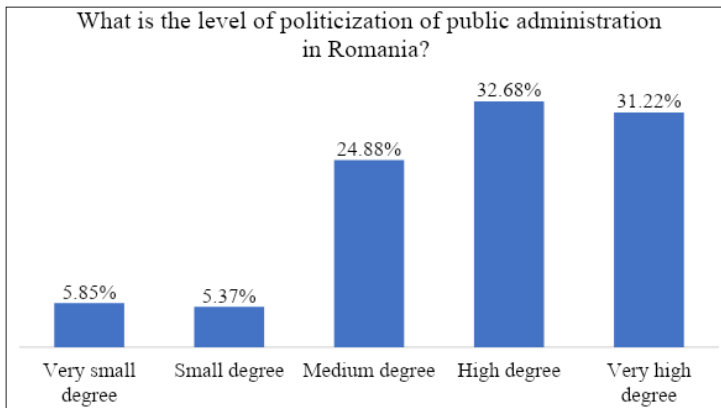

Figure 1: Perception of politicization of public administration in Romania

Source: Authors' research

administration in Romania is politicized to a high and very high degree. The reluctance to acknowledge the politicization of their institutions can be one of the possible explanations for the differences that we identified, or there can be other forms of politicization that are more important than recruitment and promotion based on political criteria.

When comparing the mean values of the perception of politicization among different categories of respondents, we did not find any statistically significant differences. Therefore, a general perception of a high level of politicization of public administration exists among all categories of the respondents.

We asked the respondents to assess the degree of importance of several motives for politicization in the institutions where they work. We cumulated the answers for the options to a high and very high degree, and the results showed that the main goals of politicization are to appoint loyal people who will execute decisions (48.66%) and to reward party members who helped in the electoral campaign (47.06%) (see Table 3). Other important reasons are to control public institutions (36.17%) and to respond to the request or pressure of a political party (35.14%). Controlling the access to financial resources of an institution plays a less important role in politicization (26.52%).

Table 3: Scope of politicization

Scope of politicization	To a high and very high degree	Mean	St. Deviation
Appointment of loyal persons in an institution to execute the decisions	48.66%	3.13	1.427
Rewarding people who helped in the electoral campaign (party members or people close to them)	47.06%	3.05	1.516
Controlling a public institution or a domain within a public institution	36.17%	2.71	1.482
Hiring was made at the request/pressure of the political party	35.14%	2.63	1.509
Controlling the access to financial resources of the institution	26.52%	2.50	1.471

Source: Authors' research

We also measured the perception of public employees on the impact of politicization on the activity of public institutions. We cumulated the answers for the options to a high degree and very high degree, and we found that politicization lowers the motivation of public employees (45.79%), and increases the level of incompetence (42.16%) and the instability of public institutions (38.62%). It also creates problems with the continuity of projects or strategies (36.02%). A small percentage of the respondents (7.45%) agreed that political appointees help public institutions function better because they collaborate better with the leaders of public institutions.

The opinion of the respondents is not uniform regarding the outcomes of politicization. We identified statistically significant differences depending on the location of the public institutions where respondents work, the administrative level of the institutions, and the position of the respondents in the institutions. We did not identify statistically significant differences in the outcomes of politicization depending on the gender of the respondents. Additionally, the majority of the respondents, disregarding their characteristics, perceive that politicization does not help public institutions function better.

Table 4: Outcomes of politicization

Outcomes of politicization	To a high and very high degree	Mean	St. Deviation
Appointments and promotions based on political criteria lowered the work motivation of public employees.	45.79%	3.13	1.489
The level of incompetence increased in public institutions as a consequence of political appointments.	42.16%	3.02	1.518
Political appointments led to institutional instability.	38.62%	2.85	1.447
The replacement of a public employee having vast experience led to the loss of an important expertise in a field.	36.02%	2.72	1.444
The replacement of public employees affected the continuity of a project or strategy implementation.	33.51%	2.69	1.462
The public institution functions better because people employed on political criteria collaborate better with the leader of the public institution	7.45%	1.83	1.015

Source: Authors' research

Public employees who work in public institutions located in urban areas perceive a higher impact of politicization compared to those who work in institutions located in rural areas (see Table 5). The effects such as demotivation, increased incompetence, instability, loss of expertise, and discontinuity of projects are significantly higher among public employees of institutions located in urban areas. The highest difference is in terms of lower work motivation (the mean value for urban institutions is 3.36, while the mean value for rural institutions is 2.42). Therefore, public employees working in urban institutions are more demotivated when appointments are made on political criteria in their institution.

Table 5: Differences in the outcomes of politicization depending on the location of the respondents

Location of the public institution		Lower work motivation	Increased incompetence	Institutional instability	Loss of expertise	Loss of continuity in project implementation
Rural	Mean	2.42	2.38	2.33	2.07	2.02
	N	45	45	46	45	45
Urban	Mean	3.36	3.24	3.04	2.94	2.92
	N	144	139	142	140	139
	Sig.	**<.001**	**<.001**	**.004**	**<.001**	**<.001**

Source: Authors' research

Civil servants occupying management positions are the most demotivated by politicization compared to other categories of public employees (see Table 6) (the mean value is 3.42 for civil servants occupying management positions, while the mean value for junior civil servants (having a work experience less than one year) is 1.83, and for contractual employees is 2.75). One possible explanation is that they interact more often with political heads of public institutions and, therefore, learn more often about the cases of recruitment of new employees based on political criteria or about the promotions of political protégées or the replacements of competent career civil servants. This might be an explanation for

the fact that civil servants occupying management positions perceive to a higher degree the negative impact of politicization on the continuity of project implementation. Civil servants occupying positions of execution perceive an increased level of incompetence in the institutions where they work. A possible explanation is that they notice more often when employees appointed on political criteria cannot perform their responsibilities because they lack the expertise or work experience.

Table 6: Differences in politicization outcomes depending on the category of public employee

Category of public employee		Lower work motivation	Increased incompetence	Institutional instability	Loss of expertise	Loss of continuity in project implementation
Junior civil servants	Mean	1.83	2.17	1.83	1.83	1.83
	N	6	6	6	6	6
Civil servants	Mean	3.29	3.28	2.91	2.88	2.82
	N	97	96	98	95	95
Civil servants occupying management position	Mean	3.42	3.16	3.21	2.94	3.13
	N	33	32	33	33	32
Contractual employees	Mean	2.75	2.50	2.59	2.35	2.31
	N	51	48	49	49	49
	Sig.	**0.016**	**0.014**	0.078	0.057	**0.029**

Source: Authors' research

When looking in more detail at the perceptions of the impact of politicization on public institutions located at different administrative levels, we found that politicization has a higher impact on institutions that are part of the central public administration (see Table 7). The most significant consequences are the increased incompetence (mean value for central administration is 3.45), the loss of expertise (3.11), and the loss of continuity in project implementation (3.30). In these cases, statistically significant differences exist among the perceptions of the employees from different administrative levels. The level

Table 7: Differences in politicization outcomes depending on the administrative level of public institutions

Administrative level of the public institution		Lower work motivation	Increased incompetence	Institutional instability	Loss of expertise	Loss of continuity in project implementation
Local level	Mean	2.89	2.79	2.67	2.46	2.43
	N	104	100	103	101	100
County level	Mean	3.33	3.11	2.82	2.92	2.64
	N	39	38	39	38	39
Central level	Mean	3.47	3.45	3.28	3.11	3.30
	N	47	47	47	47	46
	Sig.	0.055	**0.046**	0.057	**0.023**	**0.003**

Source: Authors' research

of specialization is higher at the governmental level, and therefore recruitment of incompetent people is more visible and has a higher impact on the activity of such institutions, while frequent political changes impact the continuity of projects and strategies. The research showed rather similar perceptions of public employees from different administrative levels that politicization lowers work motivation and increases institutional instability.

Recruitment based on political criteria impacts those employees with longer work experience in the public sector (see Table 8). For example, employees with work experience over 20 years reported the highest level of loss of motivation (mean value is 3.59) and the highest perception regarding discontinuity of project implementation. Civil servants who work for many years in a public institution witness many appointments, promotions, or changes based on political criteria, as well as the impact they have on the continuity of projects and strategies. Politicization lowers the work motivation of public employees who have a longer experience in the public sector and therefore their commitment to the performance of public institutions.

Table 8: Differences in politicization outcomes depending on the work experience

Work experience in the public sector		Lower work motivation	Increased incompetence	Institutional instability	Loss of expertise	Loss of continuity in project implementation
Less than 5 years	Mean	2.75	2.62	2.58	2.44	2.28
	N	67	63	65	63	64
Between 6 and 10 years	Mean	3.17	3.12	2.83	2.57	2.75
	N	53	52	54	53	53
Between 11 and 20 years	Mean	3.39	3.30	3.02	3.02	2.95
	N	46	47	45	46	44
Over 20 years	Mean	3.59	3.33	3.32	3.14	3.18
	N	22	21	22	22	22
	Sig.	**0.044**	0.068	0.158	0.079	**0.026**

Source: Authors' research

6. Conclusions and discussions on the impact of politicization on governance during turbulent times

The article analyzed the politicization of public administration in Romania, and we defined politicization as the recruitment, promotion, and dismissal of public employees based on political criteria. We found that the perception of politicization is much higher at the level of public administration in Romania compared to the perception of politicization of the institutions where respondents work. The main goals of politicization are to appoint loyal people who will execute decisions and to reward party members who helped in the electoral campaign.

The present research showed that appointments based on political criteria have significant negative outcomes on the management of public institutions. The most significant

effects are the reduced work motivation of public employees, increased level of incompetence, loss of expertise, and instability of public institutions. Civil servants occupying management positions and public employees who have a longer work experience in the public sector are the categories of employees most affected by politicization. The most significant impact on them is the lower work motivation. In addition, politicization has important consequences for employees who work in central public administration, and they perceive that politicization leads to a loss of expertise and an increased level of incompetence in public institutions, as well as a discontinuity in project or strategy implementation. The consequences of politicization are much more significant among employees working in institutions located in urban areas compared to rural areas.

Most of these results follow the findings of the previous studies; however, we aim to discuss their implications for the governance of public institutions during turbulent times. Governance during turbulent times requires innovation, flexibility, and adaptation to new and unpredictable circumstances, but stability and continuity in the functioning of public institutions and service delivery are equally important. The politicization of the public sector impairs the decision-making process and public policy implementation if appointed employees lack professional expertise. Appointments of loyal employees can be beneficial to achieving policy goals if they offer greater support and cooperation to political leaders in the implementation of public policies. Changes in the contexts of public institutions require dynamic robust policies that adapt policy goals and tools to the new circumstances (Howlett and Ramesh, 2023), and political appointees can be more flexible and responsive to such policy changes. In the long term, if political appointees lack professional expertise, the general level of professionalization of public employees lowers, and, as a consequence, the knowledge to conduct analyses to better substantiate policies is reduced. Overall, politicization weakens the capacity of public institutions to make good decisions in a rapidly changing environment. In addition, frequent political changes generate institutional instability and low work motivation that will impact the continuity of strategies implementation and the commitment of public employees to the goals and values of the public sector.

The article contributes to the literature on politicization because it presents original empirical findings on the extent, goals, and consequences of politicization in Romania. The present research has some limitations. The findings of the research cannot be generalized because the sample of respondents is not representative of the entire population of public employees. Even though we emailed the questionnaire directly to public employees to obtain accurate information, the non-response rate for the perception of politicization in the institutions where respondents worked was high. This illustrates that respondents were reluctant to honestly disclose the extent of politicization in their institutions or that politicization happens through other mechanisms than political recruitment in the civil service. Further research should combine surveys with in-depth interviews with civil servants or experts to grasp a better understanding of the mechanisms of politicization (Rouban, 2012).

There are no other studies conducted in Romania that use a similar methodology. However, the conclusion we reached that public employees perceive a high level of

politicization in public administration is similar to the finding reached by Volintiru (2015) who conducted research based on in-depth interviews. In 2013, when the research was conducted, Romania had one of the highest levels of party patronage in the European Union, and political influence impaired the performance of public institutions. Some other results of the present research are in contradiction with other studies. For example, we found that civil servants occupying management positions perceive more politicization compared with public employees sitting lower in the organizational hierarchy, which is in contradiction with the findings of Van de Walle (2018) who conducted a survey of public institutions in fifteen countries. We found a higher perception of politicization among employees of central public administration compared to the local administration, and Christensen, Klemmensen and Opstrup (2014) reached an opposing conclusion when analyzing politicization in Denmark. Therefore, the results on politicization should be interpreted taking into consideration the particularities of the formal institutions and particular practices of the country analyzed.

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E-GOVERNMENT, STRATEGIC PLANNING AND CO-PRODUCTION: CAN TECHNOLOGY PROMOTE GREATER CITIZEN ENGAGEMENT IN A RAPIDLY CHANGING AND TURBULENT WORLD: THE UNIVERSITY RESPONSE

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Abstract

Any large city mayor or public administrator has a sense that the world with which his/her city must interface is turbulent and changing exponentially faster. Advancing communication, transportation and other technologies have made the people of the world increasingly interconnected. Immediate crises such as financial collapse, pandemics, climate change and military tensions bring the negative side of this global phenomenon to the fore. Nevertheless, even in their absence, other incipient, but persistent, and portentous issues are increasingly demanding of public action. Simultaneously, pressure to engage all citizens in public policy debates and decision-making is growing and becoming central to trust in government and the survival of democracies.

The collision of the two forces, turbulence v. demand for increasing public debate and involvement, gives further salience to the notion that science-based technologies are charging ahead while the development of social technologies, such as democratic institutions, are lagging.

This paper looks at several approaches to citizen engagement: co-production, asset-oriented public management, strategic planning, and participatory modeling. It then addresses various forms of e-governance and investigates how new technologies might be used to expand and improve citizen engagement while allowing the government to deal with the more turbulent environment. Some criticisms and cautions are listed. Finally, the paper investigates how well higher education in public administration is responding to the collision through the offering of specialized courses and programs. The methodology was to catalog the course offerings of the top ranked PA programs. The conclusion is that these programs are not adequately responding to the issues presented in this paper.

Keywords: turbulence, e-government, co-production, asset-oriented, strategic, engagement.

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1. Introduction

This study looks at the turmoil of recent years, wars, financial crises, pandemics, and the accelerating pace of technological and social change. It asks, what are the effects of this turbulence on public administration. Specifically, it investigates the expanding demand and need for citizen involvement and engagement at a time when fast action on the part of public administrator experts is increasingly necessary. The general thesis is that the tension between these two simultaneous forces creates a new set of demands on public administration. While rapid technological change is partly the cause of the problem, it might also be an opportunity. The study views the pros and cons of the use of technology in promoting citizen engagement. Finally, it asks a question that has not been adequately discussed in the literature: are higher education institutions that are preparing people for work in public administration addressing the dilemma?

The methodology is to catalog course offerings by top ranked universities to see whether they are preparing future administrators for the more turbulent world. The outline of the paper is to look first at the background, problem, and need for this study. Second the paper will discuss the relevant literature and current practices regarding the use of technology to promote citizen involvement. It then states a hypothesis and lays out a methodology for testing whether higher education is responding to the described issue. Finally, this study draws some conclusions about the level of higher education response and the implications for theory, practice, and the field of public administration education. The outline of the paper follows that provided in the book, *The Hourglass: A Guide to Writing Research* (Hamlin, 2023).

2. Background, intellectual problem, and the need for research

Most mayors or public administrators of large cities probably have a sense that the world with which their city must interface is moving exponentially faster over time. Tumult can appear with little warning, and advancing communication, transportation and

other technologies have made the people of the world increasingly interconnect in ways that few consciously realize. Immediate crises such as financial collapse, pandemics, climate change and military tensions bring this global phenomenon to the fore. Yet, even in their absence, other incipient, but persistent, and portentous issues increasingly demand public action. In a world-wide, competitive, free-market economy, every city is in essence in competition with every other city for businesses, jobs, and economic stability, requiring constant policy readjustment.

Increasing turbulence might mean that public leaders feel the need to have their hands more firmly on the controls, relying heavily on technical expertise, with less time and patience to deal with the issues raised by average citizens. Yet, simultaneously, pressure to include all citizens in public policy debates and decision-making is growing. A better educated, affluent, connected, and aware population is demanding to play a greater role in the critical decisions that affect their lives. This demand may be, in part, their frustration with the current turmoil.

Trust in public officials may be at a historic low. It is theorized that engaged and involved populations have higher trust in government and less tendency to believe in conspiracies. Furthermore, involved citizens have a more realistic view of what the government does for them, as well as the limitations that governments face when trying to provide public services in an unpredictable environment.

The interaction of these two forces, rapid and turbulent change v. increasing public debate and involvement, can be seen to collide. Rapid change might seem to require greater demand for expertise and reliance on experts to navigate the more complex world, while greater need for citizen engagement might seem to suggest a more patient, common sense, approach to problems and opportunities. Citizen opinions can also change rapidly, and citizen involvement might create the potential for citizens to promote wrong decisions without the time for thorough discussion and education. The collision gives further salience to the notion that science-based technologies are charging ahead. New weapon systems, the application of AI, and new medicines are a few examples of technologies that can dramatically change public debate. While the development of social technologies, such as democratic institutions, are lagging. Because technology also impacts social structures, the science-social technology gap might explain many of the disruptions and challenges faced by public administration, particularly at the sub-national level where needed expertise is in short supply.

This interaction between the rapidity of change and the need for greater participation in public affairs can have both positive and negative consequences. This paper asks a more optimistic question: Can we have it both ways? Can digital technology be applied in ways that promote citizen involvement in decision-making and policy implementation while allowing public administrators to apply expertise to keep up with the tumultuous environment? If so, are future public administrators being prepared by their educational programs to accomplish this.

While the paper does not answer the questions, it provides a comparative international survey of several efforts to address the issue. Ancillary questions that have been raised by

many authors recently include: (1) has the pandemic promoted the use of technology in government?; (2) are these changes persisting after the pandemic?; (3) have the recent uses of technology improved citizen engagement?; and (4) are we training public administrators to navigate this new world of technology and citizen engagement.

3. The literature and current practice: using technology to promote citizen engagement

This section discusses several types of use of technology that have become common, and the research literature related to their effectiveness beginning with a general framework and definition of e-government.

(a) E-government

Many terms have been coined to describe the effect and use of digital technology in municipalities over the last two decades, including such things as smart cities, digital government, e-government and e-governance. 'Smart cities' might be the broadest term referring to all uses of technology by both the private and public sector to improve the function of urban environments including such diverse issues as traffic flow, individual communication, and the availability of health care services, to name a few. The operation of government is only part of the equation.

E-governance is the use of technology to enhance access to the delivery of government services to citizens, business partners and employees as well as NGOs and other enhancers of governance. E-government is a narrower concept that focuses on the function of governmental agencies. With advances in computing power, it is difficult to imagine any part of government that does not involve extensive technology and information generation (Gil-Garcia, 2017). So much data is generated that utilizing it might require big data methodologies (Höchtl, Parycek and Schölhammer, 2015).

E-government can be described as having three levels of citizen engagement: (1) one-way information provision, (2) two-way, transactional activities, and (3) use of technology to fully involve citizens in governmental endeavors.

Many states and municipalities brag about the amount of information they provide online, such as budgets, property tax rolls, meeting minutes and videos, crime information, and service schedules to name a few. This informational form of e-government is the most basic type. Yet even this basic informational role can be challenging for localities. Just keeping accurate and up-to-date data and making it available to citizens may be a challenge. Staff may need special training. Out-of-date information in a crisis or rapidly changing environment might do more harm than good. Also, given the continued existence of the digital divide, information might need to be delivered in multiple ways, and privacy concerns can create constraints. Paying trained staff to maintain information systems is expensive, particularly for a small municipality, and the information must be available in an easily understandable format that is meaningful to the average citizen.

A second level of e-government is where citizens carry out their relationship with the government via the internet, such as paying taxes, applying for licenses, registering

complaints, and responding to government opinion surveys, to name some examples. All these services require special software such as 'shopping carts' and payment acceptance programs, often provided by third parties. Most such services are offered by one or more separate departments of the government on the department's or division's web sites. For purposes of privacy and security, each often requires that the citizen establish an online account with an individual ID and password that only works for that service.

While we have not surveyed all systems, looking at those considered the best, gives an idea of the status of this level of e-government. The state of Michigan recently won an award from the Center for Digital Government for the best overall digital experience in the U.S. The state launched a website in 2022, linked to recently redesigned websites for all departments. In one location citizens can find links to approximately 250 governmental services. When citizens access 'Michigan.gov' and click on 'Online Services', they have direct access to all 250 services. A search box allows them to search for a service even if they don't know the exact name of the service, or which department or branch of the government provides the service. These 250 links offer continuously updated information, provide access to forms needed to apply for licenses, and ways to pay bills, and many other types of services. Possible common databases can be accessed to reduce redundancy and common IDs and passwords can be used on many sites. Services for businesses, corporations and NGOs are included.

While impressive, this level of e-governance relationship is still just transactional. E-government should no longer be just a one-way provision of information or even two-way in the sense of citizens providing information or making payments.

The latest e-government efforts should be graded on the degree of citizen engagement promoted, not just information provided, or transactions facilitated. The third level of e-government needs to be about involving stakeholders and building partnerships. It is about improving urban life through the improvement of democratic institutions, not just the function of physical activities or the flow of data.

E-government was promoted by the pandemic; but are the initiatives of the last few years surviving in the post-pandemic era (Steen and Branson, 2020). Furthermore, is e-government being used to increase deep citizen engagement? The literature contains much discussion about how and whether e-government promotes citizen engagement (Haller, Meng-Hao and Mossberger, 2010). Some have even questioned whether transactional-style e-government can sometimes inhibit real citizen involvement in governmental affairs (Lips, 2012). Some claim this happens by allowing public administrators to hide behind a notion that it takes more specialized expertise to properly analyze and utilize the data. Or, that transactional online services lead to a complacency about what can be accomplished online. So, the simple existence of e-government does not necessarily mean improved citizen engagement. Are public administrators educated and trained to administer e-government in a way that enhances engagement?

The following section investigates examples of several types of technology enhanced citizen engagement with examples from Eastern Europe, North America, and Asia.

Technology enhanced tools of citizen engagement: co-production, asset-oriented management, strategic planning and participatory modeling

Co-production – Co-production is a practice in the delivery of public goods and services where citizens are involved in the creation of public policies and their delivery. This contrasts with a transactional method of public service delivery where citizens are primarily consumers and are not involved in planning, design and production of public goods and services. In the transactional environment citizens are to depend on the experts in the public sector to design the correct public goods for them and then to consume those services. In-co-production, service providers and users work in partnership to reach outcomes that are satisfactory to all partners. Some would say that the approach is value driven, meaning that those who are affected by a governmental service bring that intimate knowledge about value to the table. This could be crucial in times of crisis. This approach might require a different set of skills and a different mindset on the part of those administering programs.

Since public-sector co-production involves citizens and public servants working as partners to achieve public goals, such a relationship requires clear communication, particularly about common goals, and a thorough understanding about what each partner has to offer (Boyle and Harris, 2020). This requires both mutual respect and knowledge of the skill, abilities, and attributes of all stakeholders. Citizens are not just clients or customers of public services, but contributors as equals. The education and training needed to prepare public administrators for this kind of role might be quite different from traditional public administration education.

Some claim the concept has been around for a long time. In 1983, Brudney and England (1983) indicated that 'coproduction consists of citizen involvement or participation (rather than bureaucratic responsiveness) in the delivery of urban services. Some say the term 'co-production' in the public sector has scholarly origins, in the work of Nobel Prize winner Elinor Ostrom (1996) and other economists from the 1970s who studied collaboration between government departments and citizens. They found that service delivery was more effective, even when less efficient, when greater collaboration between professional providers and service users existed. Does this conclusion hold true at a time of a fast-moving crisis, such as a pandemic.

In co-production, citizens cooperate with public agencies voluntarily. Loeffler and Bovaird (2016) said: 'Coproduction is public servants and citizens making better use of each other's assets and resources to achieve better outcomes or improved efficiency'. Some suggest that coproduction is a 'huge, untapped resource' that can trigger 'radical innovation in public services' (Osborne and Strokosch, 2013).

In the past decades, governments have (re)discovered the citizen as an important actor in the design, implementation, and monitoring of public policies and services (Brandsen, Verschuere and Steen, 2018). So, the concept of co-production existed well before the pandemic. Moreover, co-production can exist without digital applications. In some ways the pandemic's demand for social distancing was a challenge for such extensive citizen involvement, particularly for those citizens who did not have access to or readily use the internet.

Yet during the pandemic, co-production received attention as it rarely had before as governments needed the help and cooperation of citizens to fight the virus.

As with the description of e-government, co-production can be described as having different levels of engagement from simple voluntary participation and support of a particular governmental service to full involvement in the design, testing, and implementation of governmental activities.

An example with significant post-pandemic application, the Michigan Covid Alert system utilizes voluntary citizen participation to help track and control the spread of a virus. Michigan, and many other places, including Alabama, Colorado, Connecticut, Louisiana, Minnesota, Nevada, North Carolina, Pennsylvania, Utah, Virginia, and Washington (GAO, 2021) utilized a smart phone app, to help track and isolate disease (Weible *et al.*, 2020). If a person voluntarily downloads the app and signs up for the program, the app tracks their location and maps their movements in time and space. If the program volunteer tests positive and reports a positive test (voluntarily), the app notifies all participants who were near that person recently via a text message. It suggests that exposed persons might need to quarantine, or at least be tested. The system, known as MICOVID ALERT in Michigan, is totally voluntary and anonymous. There is no need for the affected individuals to know each other, know who tested positive or know where the potential exposure might have taken place. Mapping of the movements of self-reported positive individuals can help the state health department see patterns of disease transmission.

The U.S. General Accounting Office (GAO, 2021) investigated whether and when these kinds of apps work. They concluded that they work, meaning that in general the volunteers did what they were supposed to. A high percentage notified the app if they tested positive and self-isolated and were tested if they were notified of an exposure. It was less clear from the research, the extent to which the use of the apps affected the amount of disease. However, the GAO suggested that these apps might be useable in future pandemics or other health situations.

One obvious technology change impacting government and citizen involvement is the use of Zoom and related technologies. In Chicago, for example, some aldermen (city council members) hold monthly neighborhood meetings to which all citizens may connect. In the meeting citizens may discuss issues and present ideas. Special meetings have also been arranged for certain issues, such as a public hearing, when a developer requests a zoning change, for example. These kinds of meetings are not just arranged to broadcast information but rather to induce citizen input. In some cases, such meetings are legally required and have legal implications. These Zoom meetings have continued after the pandemic. What kind of training do public administrators need to engage citizens in this way?

The city of Chicago has for years had a participatory budgeting process. A certain part of the city's budget is set aside for neighborhood residents to decide how to use. Ideas for use of the funds are put forward at the neighborhood zoom meetings and discussed. A short list of the most popular projects is then presented for neighbors to vote on. During the pandemic this process went totally online with zoom meetings and online voting, which have continued. Some aldermen also continue to distribute a weekly newsletter

online to all citizens, which updates citizens on both city and neighborhood activities, such as the activities of local NGOs, and new businesses. The city of Cluj-Napoca in Romania offers a similar newsletter as do many cities around the world.

ICT-enabled co-production in Guangxi & Nanning – Guangxi Zhuang Autonomous Region is located in the southern part of the P.R.C, and administers the Beibu Gulf area. The capital city is Nanning. Due to the special geographic location and importance for economics and governance, the provincial government of the region designed and planned a comprehensive development agenda, in which ICT plays an important part.

In the Guangxi context, governments from the provincial level to the municipal level have promoted and mobilized different co-productions. Government-lead co-production, partnering with the private sector and citizens are becoming even more important in emergencies, like COVID-19. China-ASEAN Information Harbor Co., Ltd (CAIH), is a joint-stock, market-oriented info-tech company. The Guangxi government built the digital platform and developed certain apps with the technical support from CAIH with the aim to deliver real-time COVID news to the public, locate confirmed cases, vaccination spots, and report policies and measures for pandemic control and prevention. Citizen participation and cooperation in this process is the key point of doing such ICT-enabled co-production. Government is the policy maker and decision maker as well as the main body to collect data. IT company, CAIH mainly provides technical support to build the digital platform and develop apps with shared data to analyze the real-time mobility and show the real situation and results. At the information level, residents in Guangxi were informed by governments in different areas that they can get real time information and search what they wanted to know about the updated news on official portals.

In addition, citizens were told that they should register personal information through the app that checks their locations and confirms that they have no disease exposure. In this way citizens get assigned a QR code on their smartphone indicating their healthy status (Jiaying, 2020; Zhou, Xuefeng and Wang, 2020; Weiling, 2020). The app is similar to the Michigan Alert example discussed above, but goes beyond that function to act as a vaccination visa in some cases. Residents at some periods were required to show their green QR code to take public transit, for example. Residents were willing to participate and cooperate with governments to deal with the crisis partly due to the collaboration experiences they accumulated in the battle with SARS-1 in 2003.

Nanning, capital of Guangxi, plays a key role in implementing digital government and governance. Nanning Municipal Big Data Bureau aims to integrate information and digital data development and relevant projects, implementing digital Nanning construction initiative and coordinating and operating with other stakeholders. Both the provincial government and the municipal government receive political and financial support to promote digital governance transformation at the city level. Digital government, digital economy, digital society, and digital infrastructure are the main areas of Nanning smart city construction.

For example, under the guidance of Guangxi Big Data Bureau and implemented by Nanning Big Data Bureau, a digital online platform called Ai Nanning (Love Nanning)

is built with the technical support from Digital Guangxi Group, which is a public service platform for government affairs at the city level. It strives to provide public services, support government decision-making and collaborative governance, as well as integrate social resources to achieve a new industrial model of sustainable development. Big data is now being used to power AI information service platforms.

The core of this digital platform is people-oriented and service-oriented. The municipal government of Nanning makes the general plan of platform construction and provides financial support. Governments on the administrative-district level follow the plan and make specific recommendations based on the problems and demands of citizens. For example, it describes how to get online public services, contactless services, online identification of private information, online application for business, internet healthcare, internet education, internet recruitment, online interviews, online consultation, etc. Communities in these administrative districts as organizers and facilitators play a key role in doing investigations and communicating with residents.

As Nabatchi, Sancino and Sicilia stated, co-production usually refers to the direct involvement of citizen 'lay actors' with government in voluntarily providing public services that create value for their communities (Nabatchi, Sancino and Sicilia, 2017; McGranahan, 2015; Ostrom, 1996; Linders, 2011). Co-production can involve citizens and community groups, who are better aware of local conditions and help to assure that interventions reflect specific needs and customs (Ostrom, 1990, p. 92). People who work in communities are sometimes public servants, some are volunteers. They are familiar with the residents and their demands as well as the problems in daily management. Meanwhile, residents who would like to be involved in community's affairs communicate with community employees and discuss some issues. Meanwhile, administrative district governments would invite some of the representatives to have face-to-face communication and discussion and listen to their suggestions in order to find the best solutions to solve complicated problems and promote quality of service and public goods and co-design the digital service platform with technical support from companies, as a result, a comprehensive and digitalized governance platform is constructed and citizens can enjoy online services through the smartphone.

At present, Ai Nanning has been fully linked to the government affairs integration platform of Guangxi and Nanning. Services such as tax processing, provident fund deposits, degree inquiry, as well as the implementation of digital ID cards, motor vehicle driver's licenses, and social security e-cards can all be handled on mobile phones. Ai Nanning also allows people to purchase medicine with the social security e-cards in more than 6,000 drug stores in the region. The total number of registrations of Ai Nanning was more than 5 million in 2020.

Furthermore, the municipal government and the Big Data Bureau explore new aspects of digital society construction and deepen the implementation to develop internet healthcare, internet education, and internet elderly care services in order to promote the equity, inclusiveness, and convenience of public services and accelerate urban governance transformation and social governance innovation. Currently, the digital platform of Ai

Nanning has the capability to provide data service for 75 departments. Artificial intelligence can be used to personalize the citizens' access to relevant information.

Digital government played a crucial role in pandemic prevention and control and became a new driving force for shared and open data (United Nations, 2020). The UN research investigated the impact of digital government in decision-making, public service, societal governance, and pandemic prevention and control, and more specifically whether it created a new space and opportunity for co-production as an alternative paradigm for public management (Steen and Brandsen, 2020; Barbier and Burgess, 2020; Naidoo and Fisher, 2020; Li, 2020). Yet, are public managers being prepared for this new complex role?

Asset-oriented public management – Co-production is similar to asset-oriented or strength-based public management (Kretzmann and McKnight, 1993). This is when a community works with all stakeholders to identify the assets of a community. Its focus then becomes to utilize and enhance those assets. Assets might include the physical characteristics of a community such as location, structures, minerals, and climate: but, it also includes the skills, knowledge, commitment and other positive attributes of its citizens. Tapping these social assets may happen through civil society or just through the involvement of single individuals, or, highly engaged co-production.

Maybe asset-oriented public management takes some things a step further. Embedded in the asset-oriented concept is the notion that public management is more effective if it focuses on positive development, rather than continuously attempting to solve perceived problems. This requires the preparation of public administrators with a whole new mind set. In a turbulent world it becomes natural to focus on the negative. Yet, if the public administration focuses too much on identifying and resolving negatively-defined issues, a couple of things might happen, it is theorized. First, many public servants are trained in a particular expertise and hired into a position appropriate to that expertise. It is natural for them to look at community issues through the lens of that expertise and to look for and define problems related to their own expertise. Problems identified by professionals from outside the community, no matter what their expertise, might be different from the issues identified by citizens of the community. Also, since each professional group has its own disciplinary base, their view of issues might be less interdisciplinary and not be as holistic as that of the citizen dealing with issues personally every day. If you give a man a hammer, he will want to hit something with it, or, a little knowledge can be dangerous.

Second, a 'problem' or deficit-orientation, it is postulated, might lead to an unconscious negative perception of citizens by public servants, viewing them, at best, as inferior consumers needing to be taken care of rather than respected co-producers. In a turbulent world, 'experts' might unconsciously define something as a crisis as a way of keeping control and pushing aside 'inexpert' citizens. This situation can lead to minimization of potential citizen contribution to their own community. Such an environment might also induce an adversarial relationship between bureaucrats and citizens, weaken trust and cause low self-esteem by individuals and communities. How the asset-oriented mind set with a greater respect for citizen expertise and involvement plays out in a more turbulent world is still unclear.

Strategic planning – Community involvement in long-range planning is important so as to start with a common vision of the future for any community. Strategic planning or action planning is an attempt to translate long-term visions into short-range objects. These objectives should guide a plan of action that clearly identifies the tasks to be completed, when, who should carry the tasks out, and with what resources. In this case the word 'resources' does not just refer to money. Resources might include all the identified assets of a community including the time and talent of its citizens. Strategy means, using resources in the most effective way possible, by focusing thinking and action on that which is most important to achieve objectives. Moreover, strategy requires that the situation be continuously reassessed, and objectives, actions, tasks and the allocation of resources be periodically adjusted to address changes in the internal and external environment. Citizen involvement is crucial in every step of the process to keep the focus on the needs of the people, not just the visions of technocrats. In many ways, strategic planning with concomitant community action is the foundation of co-production (Hințea, 2008; Hințea and Neamțu, 2014; Hamlin *et al*., 2019).

The word 'strategy' also insinuates an iterative process critical for management in turbulent times, whereby the current situation is continuously monitored, planned actions reassessed and resources reallocated to meet current needs. In a volatile environment constant reassessment while preserving the long-term vision is a difficult skill.

Can the kind of involvement that is necessary be achieved online? The City of Cluj-Napoca, as an example, has engaged in two rounds of strategic planning involving extensive citizen input both face-to-face and online. The efforts were designed and managed by the Faculty of Political, Administrative and Communicative Sciences of Babeș-Bolyai University. The city has had a long-time focus on digital transformation (Fan, Urs and Hamlin, 2019) and a strong relationship with the university (Hințea, Hamlin and Neamțu, 2022).

Participatory modeling – Modeling is an exercise that tries to build simplified simulations that approximate some aspect of the real world. A key characteristic of any real-world system is that many variables affect many others. A system can be visualized as a tinker-toy in which the nodes are variables, and the sticks represent the relationship between connected variables. Participator modeling is where a group of citizens work together, perhaps using a simplistic-modeling computer app, to build a system model of some issue that concerns them. Through discussion, citizen participants decide which variables are most critical and how critical variables affect one another.

An important characteristic of systems that modeling can simulate is that an outside force affecting one part of the system often reverberates throughout the system. Often feedback loops are present. If one tries to push the system in one direction it becomes difficult to know what secondary and tertiary effects will occur. In the end, unexpected and unintended consequences often result. Public policy often fails because policy makers are not adequately sensitive to the potential for such secondary effects and unintended consequences.

Citizen engagement in public policy making can be difficult to manage or induce. Citizens might feel overwhelmed by the complexity of the systems they face. Or contrarily,

they might push hard for some policy without fully understanding how unintended consequences can come back to bite them. Participatory modeling might be a solution. Basically, citizens work together to build the computer model. They come to a consensus about what variables are critical to what they want to accomplish and what are the relationships between these variables. The modeling program can be a user-friendly app that is designed to build simplistic models that simulate the relevant systems. While model design must be controlled by participants, artificial intelligence may help to link the model process to existing big data. Some advocates of the use of artificial intelligence in urban management talk about using AI to build a digital twin city of an existing real city. It would be a big-data-based simulation of many of the interconnected systems of a city which could be used to test out policy proposals or respond quickly to crises.

At the least, the process can be highly educational, allowing citizens to see more clearly how things work. Citizens can test various ideas by feeding them into the model and seeing what happens. If a wicked feed-back loop produces unintended consequences citizens can see that their ideas might have flaws. Or, they might see that doing more than one thing produces positive synergies.

The participatory modeling process might get some people excited to learn more about the world around them and how they affect it. Models can be 'run' over and over to test how well they represent reality. Appropriately applied AI might help the model learn. Then, citizens can refine links and variables. Multiple iterations can also be used to try various ideas. Through modeling one can get a better sense as to which variables are most critical or impactful to outcomes and therefore have a better idea as to where to focus policy (Hubacek *et al.,* 2017). Participatory modeling can be a form of co-production and can help communities identify their most critical assets. It can also promote citizen engagement in the strategic planning process, in some cases utilizing AI. In times of crisis or rapid change, the model might help the community respond with a new strategy more quickly, without bypassing the perspectives of citizens.

Not only might public administrators need training in the specifics of modeling and how to engage citizens in using it, but having a systems-approach mindset might be valuable understanding for all aspects of public policy. Michigan State University has a faculty group working on participatory modeling and will hold a world-wide conference in June of 2024.

(b) **Problems, critique of use of technology to promote citizen involvement and respond to rapid change**

Is it possible that easy access to information reduces peoples' desire to get together and discuss outcomes? Haller, Meng-Hao and Mossberger (2010) look in-depth at whether e-government promotes citizen involvement. They concluded that even when e-government is only used for services and information it still increases citizen engagement suggesting that technology is transforming governance in multiple ways.

Privacy – There is also the obvious question of privacy. Both the MICOVID ALERT app and the Guangxi Healthy QR Code involve individuals providing personal information and allowing themselves to be tracked. Of course, smart phones already have significant

GPS and Bluetooth capability, and most people do not know to turn off locational services for all apps if they do not want to be tracked. Generally, governments that used this kind of app have promised anonymity and a process to destroy tracking data every 24 hours.

The privacy issue relates to all forms of data collection. To what extent should the data collected about an individual be the personal possession of that individual, or to what extent does society have the right to utilize information to the benefit of all of society?

Unconscious redlining – Then there also is the question of community privacy. A rational home buyer, as an example, or anyone choosing a residential location might want to look up data about the level of crime or disease or the quality of schools in each neighborhood they might potentially choose. They might look up the racial and ethnic composition of a location or even want to know the level of home ownership or mortgage debt in an area of a city. Many of these activities might be rational at the personal level, but one question to be answered about the transparent provision of data to the general public is how detailed should that data be, in terms of exact location or other details.

A neighborhood might be experiencing problems and might be working hard to solve those problems, but if the neighborhood is labeled as a problem area because of the data available to the public, solving those problems might become even more difficult, as potential residents and investors decide to shy away from the area. Official governmental census data often has rules blocking data that might allow a particular person to be identified, and conscious redlining by financial institutions is illegal in many countries, but the semi-conscious labeling of a neighborhood as problematic does not require that level of detail. Unconscious redlining is nearly impossible to guard against. So, the debate between the right to know v. the right to privacy is not just an individual thing and might be more salient as e-government efforts grow.

Digital Divide – One of the difficulties that digital government faces is that many people still do not have access to digital information and services, particularly in poorer communities and rural areas. As digital government grows, governments might assume that all the services they offer can be accessed by all citizens digitally. Some of these services, such as applying for a required license, might have legal consequences, putting the less digitally literate people at a disadvantage. In some countries, for example, some business taxes and other required filings must be filed online, even for very small businesses, and often using a third-party app. Such governments need to make sure that services are offered in a variety of ways.

Cluj-Napoca, Romania, a small city with five major universities, is considered one of the most tech-savvy cities in Central and Eastern Europe (Fan, Urs and Hamlin, 2019). The city is developing a new-town-in-town, full-service technology park entitled, Cluj Innovation City (Hamlin, 2017). However, the city government recognizes that a digital divide still exists in the city and the region. Most digital services also have a face-to-face component for those less digitally literate and the city provides locations where citizens can receive staff help to utilize digital services. It also offers free classes for individuals to learn how to use its digital services (Boc, 2022).

So, the dilemma presented in this paper is real and complex. The tensions related to the collision of a turbulent world and the simultaneous demand for greater citizen engagement

requires a new set of skills and abilities. The important question that this paper addresses is 'how are universities that are preparing future public administrators, responding to the rapidly changing environment?' Are universities preparing public servants to deal with rapid change, potential crises, and disruptions of all kinds, as well as the digital transformation, greater citizen engagement and/or the collision of these trends?

4. Hypothesis and null hypothesis

The hypothesis of this study can be stated as, 'University programs that prepare individuals for a career in public administration are responding to the more turbulent governance environment and to the use of technology in ways that allow for technology to be used to promote greater citizen engagement.' The null hypothesis, if evidence is lacking to support the hypothesis, is that they may not be preparing people well in this area.

5. Methodology

As a first attempt at finding out the answer to the stated research question, we looked at the curriculum and course offerings of the top 21 public administration programs as ranked by the US News and World Report. We identified a set of key words that epitomize the collision of engagement and rapid change and the use of technology. We looked for courses in the bachelor and MPA degree programs of these top schools. If the key word showed up in the title of any course, that university was counted toward the percentage of universities offering that type of course. Both required and elective courses were considered. Required courses offered as service courses to the PA program by other departments were also considered. All related programs offered by the university were considered, including MPP programs and mid-career training.

6. Results

Table 1 indicates the results of the survey of programs. Column one indicates the key words that were looked for in the course titles and curriculum. Column two indicates the estimated percent of programs that seem to address the issues presented here based on the keyword search.

Table 1: Percent of universities offering course with keyword in title

Course title, topic, or keyword	Approx. percent of schools offering keyword courses
Crisis / Emergency Management	28%
Strategic Management for Rapid Change	19%
Technology / E-Government / Smart Cities	31%
Innovation in The Public Sector	29%
Organizational Change	19%
Citizen Engagement	19%
Public/ Private Partnership	19%
Co-Production	0%
Asset-Oriented Public Management	0%
Participatory Modeling	0%

7. Analysis and study limitations

An analysis of the data indicates that Public Administration degree programs are NOT focusing on preparing future professionals in dealing with crises, rapid environmental change, fast-moving market forces, or the demand for increasing citizen engagement. Many of the largest, most established programs seem, in general, to be the least oriented in that direction. The programs of those institutions are highly fixed and perhaps less flexible with fewer electives. Even their elective offerings seem NOT to be addressing the issues raised in this paper. While students may be getting sound traditional training, their education with respect to the issues addressed in this paper seems to be based on on-the-job, trial-and-error, in an environment in which there is little time for trials and not much space for error. Governmental response to the pandemic and to recent wars, and its global effects has been both commendable and imperfect. Particularly at the subnational level many public administrators and their communities lacked the tools to respond. Those communities with on-going efforts to digitalize and involve citizens seemed to do better, but education and training of public administrators may not be providing them with the skills and tools they need.

Some of the skills and competencies discussed in this study might have an importance that goes beyond their application to the digital strategies mentioned in this paper. Might skills needed to fully engage citizens, apply a systems mindset, identify the assets of a community, respond to crises, and have basic digital competencies be necessary for all public administrators and be critical components of all PA curricula. Perhaps, PA as an academic discipline needs dramatic change.

This research and the results have limitations, but the study is considered to be illustrative of the issues raised. Some of the limitations are as follows:

1. Only courses or programs which have the key word in their title have been considered. Clearly, some of these subjects might be touched on in other standard courses (both required and elective). However, whether those topics are actually addressed would demand a study of standard syllabi for those courses (which often do not exist). And, even if included in the syllabi or course descriptions of courses, there is no guarantee that a particular faculty member will include the topics in any given year. Thus, we looked only at courses including the key words in the title as a sign of commitment to study the defined topics.

2. We only looked at the top 21 schools. The weighting within the top 21 list was not relevant, but the list of schools was limiting. On the other hand, to determine whether the profession is putting importance on these topics, one should look to the higher education professional leaders. It is probable that some smaller and newer PA degree programs have focused on the topics discussed here.

3. We only looked at courses in the PA program or probable elective departments linked to the PA program, e.g., a course in strategic planning found in an engineering department, not offered to PA students or oriented to their needs was not counted.

8. Summary and conclusion

The world faced by public administrators and particularly at the municipal level is changing at a rate exponentially faster over time, and crises impacting public administration are ever more prevalent. At the same time, the need for greater real engagement of citizens in the choice, design and delivery of public goods and services is also increasing, in part to reestablish trust in government, creating a kind of collision of forces. Careful and effective use of technology such as various forms of e-governance might be a way of mitigating the bad effects of this collision, but municipalities have not been keeping up in e-governance development. The pandemic's requirement for social distancing, touchless services and isolation may have stimulated some forms of e-governance and this paper described some examples. Necessity is the mother of invention. However, it is not yet clear how much of the changes that took place are lasting after the pandemic. Particularly difficult are those two-way and iterative forms of governance that promote deep citizen involvement and engagement.

A look at the course offerings of the top schools in public administration seems to imply that training of public administrators is also not keeping up with turbulent times, greater citizen engagement, and the use of technology to promote effective responses to these issues. Not only are universities not teaching courses in the specific strategies discussed in this paper such as co-production, asset-oriented public management, strategic planning, and participatory modeling, but they might also fall short in some areas that could be basic to all public administration including promoting deep citizen engagement, implementing systemic thinking, and providing foundational digital skills. Clearly, a more detailed look at curricula is needed to fully answer larger questions.

It may be that top schools are doing a good job of training future captains to use the wheels and levers to sail the ship of state. Yet, it may be a time when those leaders need to know how to use the instruments to fly an accelerating jet airplane through a storm while passengers are demanding greater access to the controls.

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TURBULENCE IN THE RELATIONSHIPS BETWEEN GOVERNMENTS AND HIGH TECH FIRMS

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Abstract

The turbulent times governments all over the world are facing include the transition towards the Fourth Industrial Revolution (4IR) in which the confluence of new technological developments result in major challenges for national as well as local governments. The confluence of the newly developed technologies is only possible if huge amounts of data can be stored and transmitted at high speed in, among others, hyperscale data centers (HDCs).

This paper focuses on the complex relation that arises between local governments - on whose soil the HDCs are built - and the high tech companies planning and building the HDCs. This relationship is characterized by an unequal playing field with local governments being no match for the high tech industry. The latter sometimes have annual turnovers 1000 times higher than those of local governments and impose rather different demands on decision making processes than governments do. They impose restrictions on the decision-making process that result in processes running counter to principles of good governance and, if exposed, result in a deterioration of institutional trust among the population.

This is illustrated through a case study in which a small municipality in the Netherlands was faced with an offer from Meta to make a huge investment in a hyperscale data center, provided the whole process towards the permits and the approval of the building would remain secretive. Shown is an imposed secrecy by the high tech firm and information revealed about the process afterward through the Freedom of Information Act disclosing many irregularities. This changed the existing trust in the municipality into complete distrust at the end of the process and eventually forced the High Tech company to withdraw.

The relevance of this paper for this special issue is that the case study shows that the new developments towards the 4IR require capacitated, knowledgeable and decisive local governments, which momentarily are not even present in a developed country like the Netherlands.

Keywords: transparency, trust and distrust, Freedom of Information Act, hyperscale data centers.

1. Introduction

The literature on the needed transparency of public policy processes and outcomes emphasizes its many positive effects, such as increased trust in government (Porumbescu, Meijer and Grimmelikhuijsen, 2022). It is, therefore, seen as one of the main elements of good governance (Rutherford and Wightman, 2021) and for this reason, by 2019, 119 countries have adopted Freedom of Information Acts (FOIA) (Feldman, 2019). The idea is that transparency reveals what is being done and why, that decision-makers anticipating that all information is revealed, will perform better, more efficient, and with more regulatory quality, resulting in more trust in public institutions.

For high tech businesses such principles seem to be a nuisance. This paper will argue that they prefer secrecy during decision-making processes, to downplay the negative side effects of their plans, and not to be restricted by the rule of law, or preconditions.

In the new era, with the emergence of the Fourth Industrial Revolution (4IR), these conflicting interests become increasingly problematic. The 4IR needs investments in infrastructure on the soil of municipalities and the latter have to make decisions regarding permits, regulations, environmental protection, and optionally putting restrictions on the new ICT developments. The public authorities can decide that the building blocks are only welcome if they meet the preconditions set by them in terms of, among others, sustainability, prevention of pollution, citizen rights, democracy, and economic fair play. However, they can only do so if they have the capacity to withstand the demands and interests of the high tech companies.

This paper argues that in case municipalities lack knowledge and decisiveness this can result in awkward decision-making processes in which in the end everybody loses. This applies especially to the transparency of such processes as it is one of the crucial dimensions of good governance. The hypothesis underlying this paper is that if voluntary transparency is lacking, public authorities are imposed by high tech companies to make decision-making processes and their outcomes secretive and if the contents of what is revealed afterwards through appeals on the Freedom of Information Act (FOIA) are negative, this can be extremely detrimental for the public authorities as well as for the plans of the high tech companies.

The goal of this article is, therefore, to present the argument that relations between governments and high tech companies are becoming more frequent and problematic in the prelude to the 4IR and that lacking capacities on the side of especially local authorities is likely to result in disappearing institutional trust. To achieve this goal, the research question underlying this article asks how (dis)trust unfolds in practice with little ex-ante transparency when ex-post transparency is created through an appeal on the FOIA.

A case study was conducted on an opaque policy process involving plans by Facebook (Meta) to build a hyperscale data center (HDC) in a small municipality in the Netherlands. Such HDCs are built all over the world by companies like Microsoft, Facebook, Amazon, and Google. Governments often welcome them and eagerly grant building permits. Norway, for instance, promised to lower taxes and slash red tape to attract HDCs. Saudi Arabia intends to invest 18 billion US $ to become the data center hub for the Middle East.

South Africa is extremely proud to host Africa's largest HDC (JOH1). Only a few critical voices are heard. The first came from a vice-mayor in the USA. He questioned the environmental costs related to building an HDC in his municipality. He pointed to the enormous energy and water consumption by HDCs, their noise levels, and landscape effects often kept hidden from the public.

This article is structured as follows:

- First, it addresses the theory behind the expected relation between transparency and trust as well as the distinction between the two kinds of transparency. This part embeds the research in existing theory and answers the sub-question, what is already known about the relation between transparency and trust, and what this research adds to this theory;
- The article continues with accounting for the research design. The peculiarities in the nature of the research necessitate justification and this is done in section 3;
- Subsequently, this article contextualizes the construction of HDCs—the topic of the case study. This is done by conceptualizing it as a global phenomenon that, together with other developments, belongs to the harbingers of the Fourth Industrial Revolution. The case study itself involves a factual description, focusing on specifics of the policy process and why this process can be called opaque. The last part of the case study addresses the interventions in the policy process by revealing information based on the FOIA;
- The article ends with reflections and an answer to the research question.

2. Mediating and moderating factors in the relationship between transparency and trust

Why would one expect that lacking transparency in public processes results in a decrease of trust in public institutions and authorities? Following the late Russell Hardin, trust is seen as a three-way relation of A trusting B to do X. Trust implies that A is confident or even knows that B is capable of doing X and that it is in the interest of B to act on behalf of A (Hardin, 1999, p. 24). This is known as the expectation of encapsulated interests (Hardin, 2013). Institutional trust concerns the confidence that a public administration's prime concern is the well-being of the residents and that it is capable of taking care thereof (De Vries and Sobis, 2018). Such trust can be based on past experiences in which B has built a reputation of being capable and acting with concern for the general well-being in mind, or on familiarity through which one is ensured that the values A and B adhere to coincide. Trust can also be based on actual or perceived knowledge about the capabilities of B and whether or not B has a prime concern for the interests of A in doing X.

This is where transparency enters the scene. Transparency means that citizens know what officials are doing, and why (Thomson, 1999, p. 182). Officials who do not disclose what they do and why act in secrecy. B increases the knowledge about B's trustworthiness by acting transparently. As Carolyn Ball wrote, 'Transparency, or the degree of openness in conveying information, is seen as a device signaling the trustworthiness of the actor'

(Ball, 2009, p. 297). More extensive definitions of transparency are similar in emphasizing openness and knowledge generation. Although there are historical differences in the meaning of transparency (Hood, 2006) and the supposed purposes for its promotion (Pozen, 2018), transparency is mostly seen as being about the demand for information, the ability to obtain information, and the supply and actual release of information by the government (Mitchell, 1998). As Grimmelikhuijsen *et al.* (2013, p. 576) note 'Most definitions of transparency relate to the extent to which an entity reveals relevant information about decision processes, procedures, functioning, and performance'.

The mediating factors relating transparent policies to trust are found in the accountability and public scrutiny generated, and the anticipation thereon by B. B is expected to make more efforts to have the process fulfill the requirements of good governance (accountability, responsiveness, effectiveness, efficiency, regulatory quality, applying the rule of law and controlling corruption) and to give convincing arguments for decisions regarding X, thus maintaining or even increasing the expectation or knowledge that B is trustworthy.

The peculiarity in this line of thinking, is the expectation that transparency by itself would result in trust, while it would be more likely that the contents of what is revealed through transparency are of utmost importance in this regard as well as whether transparency was voluntarily provided or imposed by an appeal on the FOIA (De Fine Licht, 2011). Relating transparency and trust theoretically through the mediating variables implies that the relationship depends on a lot of 'ifs'. If B (the authority) is capable of making the process as well as the outcomes thereof (X), conform to criteria of good governance, if the outcome is in line with the interests of A, then A will maintain or increase trust in B. If the contents of what becomes transparent are opposite, one would not expect a positive effect but a negative one instead. This argument finds support in the weak relationship between transparency and trust as found in empirical research (De Fine Licht, 2011; Grimmelikhuijsen *et al.*, 2013, p. 575).

The supposed relationship between transparency and trust also does not distinguish between two types of transparency. The first is voluntary ex-ante transparency, and the second is imposed ex-post transparency. This article argues that the positive effects on trust are more likely to occur in the case of voluntary ex-ante transparency in which the government willingly and by itself makes public processes and their outcomes transparent. Opposite effects are likely to occur in the case of imposed ex-post transparency. Ex-post transparency is imposed based on applicable laws and regulations such as the FOIA. Imposed ex-post transparency is likely to reveal what governments would like to have kept secret, i.e. that elements of good governance are compromised. This results in less trust that government acts on behalf of the citizens and is capable of acting.

The preliminary conclusion/hypothesis is that there are good reasons to expect a positive relation between transparency and trust, but that the existence thereof heavily depends on the contents of what is disclosed, and of whether the transparency involves voluntary ex-ante transparency or imposed ex-post transparency. The case study presented below illustrates how this works in practice.

3. Justification of the research design

This section reflects on the way this research was conducted. The author/researcher became involved in the case in the spring of 2021, through two journalists who asked for advice on the administrative process regarding an HDC built by Microsoft in the Netherlands. This resulted in cooperation with at first two investigative journalists from a national and a regional newspaper, and later on with journalists from other media as well. This continued until the end of the process in June 2022. This cooperation involved the interpretation of interviews and documents and included conducting (legal) proceedings under the FOIA to obtain otherwise classified information. The cooperation enabled access to extensive documentation and the transcripts of accompanying interviews with stakeholders. Later in the process, local council members and pressure groups asked the researcher to assist in gathering and analyzing additional information about HDCs. In that sense, the research changed from engaged research in a kind of action research understood as 'an approach to research that aims to both take action and create knowledge or theory about action' (Greenwood and Levin, 2006). Starting with helping out journalists slowly changed in contributing to the expertise of stakeholders and helping them in constructing strategies through combining the researchers' academic and the stakeholders' local knowledge, and through value-based research—in this case, based on the values of good governance (Greenwood and Levin, 2006). The authors mention that 'Action research aims to contribute to the practical concerns of people in an immediate problematic situation and to the goals of social science by joint collaboration within a mutually acceptable ethical framework' (Greenwood and Levin, 2006).

The growing involvement of the researcher can have ramifications for the validity and reliability of the presentation of the research and does result in several dilemmas. The literature on action research recommends a specific attitude on the part of the researcher. Such a researcher should, for instance, maintain the role of outsider and at the same time be committed to the concerns of the locals and develop an affinity with their concerns. The researcher should act in conformity with academic standards and simultaneously search for cooperation with stakeholders, and for knowledge that is relevant to the local stakeholders (Greenwood and Levin, 2006). Such dilemmas are not easy to handle as there is a very fine line between being an outsider and becoming too much involved, and between acting according to academic standards and influencing processes. For such reasons, scholarly journals are hesitant to publish action research (Erro-Garces and Alfaro-Tanco, 2020).

Nonetheless, action research also has its merits. First, it adds to the societal relevance of one's work; second, some universities encourage their staff to become involved in societal debates and action research is in line with such appeals; third, such research adds to the understanding how policy processes proceed regarding: a) the motives and strategies stakeholders in policy processes use to achieve their goals; b) the impact of media coverage; and c) the subject at stake—in this case, the necessity and side-effects of HDCs.

The validity of this research is ensured by giving beforehand the indicators for the three main variables at stake and focusing the presentation of the case study on the appearance of these indicators, e.g. (the lack of) transparency, process irregularities, and (dis)trust. As

mentioned in the previous section, a distinction is made between voluntary ex-ante transparency and imposed ex-post transparency.

Lacking voluntary ex-ante transparency in public processes is indicated by authorities telling that the process needs to be kept secret, by keeping the information disclosed as limited as possible and excluding relevant stakeholders from participation in the process; by denying publicity to (parts of) the policy process; by concealing relevant facts and information during the process; and by failing to account for what one does and has been doing, and for instance, by signing confidentiality clauses.

Imposed ex-post transparency refers to information published retrospectively about what has happened during the process and why. It is either based on a voluntary or reluctant positive response to an appeal on the FOIA, or on a judge's decision to have documents made public. Inherent to imposed ex-post transparency is that information is made public retrospectively and that it is disclosed because of legal requirements. In the Netherlands, the FOIA refers to policy documents, emails, apps, and whatever other medium is used and stored.

Irregularities in a policy process are indicated by parts of the process that run counter to existing policies, the law, directives, or regulations; the provision of misinformation; the exaggeration of positive effects; and the minimizing of negative effects of the plan, and in general the principles of good governance.

To indicate the level of trust and distrust a continuum is developed. Table 1 gives the distinguished stages on this continuum. In the second column, the indicators for each level of trust are found, and in the third column how this relates to the principle of encapsulated interests.

The reliability of the case study is ensured by staying close to the facts. Nearly all sentences in the case study below have reference to a publication in documents on public websites, articles in newspapers, and/or interviews published in the media. In this way, the research becomes independent of the perspective of the researcher. Any other researcher should yield the same description using these data.

4. The case study

4.1. The context of HDCs

The need to construct data centers fits into the establishment of the fourth industrial revolution (4IR). The 4IR can be defined as a process in which due to a range of simultaneously emerging novel technologies and the confluence thereof, decision-making in all sectors radically changes, which results in various opportunities and challenges (De Vries and Kroukamp, 2022).

The confluence of technologies is only possible if huge amounts of data can be stored and transmitted at high speed. In that respect three developments are crucial: the investments in fiber optic cables, the launch of mini satellites in the Spacex program to establish a global broadband network, and the building of HDCs.

Table 1: A trust-distrust continuum

Type of trust	Indicators	In terms of encapsulated interests
Complete trust	Acceptance how things are organized by the authorities is self-evident. No questions are asked and only supportive remarks are made	Confidence that authorities take the interest of the people into account when making decisions
Compromised trust	Uncertainty arises about the merits of a public process. Questions are asked about these uncertainties	Confidence, but authorities have to account for the uncertainties to show to the people they do take their interests into account in making decisions
Distrust based opposition	Some people turn against the process and start criticizing it	Confidence fades as people judge that the public process runs counter to their interests
Distrust based organization	People start to organize themselves to become a stakeholder in need to be included in the process	People organize themselves based on shared disagreement about policy processes as organized by the authorities. They judge their participation in public processes necessary to have authorities take their interest into account when making decisions
Distrust based activism	People publicly express their discontent with the process	People openly demonstrate their discontent and campaign against the authorities as they have lost faith that the authorities take their interests into account
Complete distrust	People demand a changed composition of the authority	People vote authorities out as the majority of them judge them to have neglected to take their interests into account.

Source: The author

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By the end of 2017, just over 8 million data centers were in operation worldwide, of which nearly 400 of HDC size. At the end of 2021, the number of data centers reduced to just below 8 million, but the number of HDCs increased to 700 worldwide. Data centers are called hyperscale (HDC) when they consist of over 5,000 servers with power over 25+ megawatts and cover a surface area of over 10,000 square feet. These are the lower boundaries. The 'Citadel' in Reno, Nevada, USA is about 7.2 million square feet, and the HDC Meta planned in the Netherlands would cover 460 million square feet. HDCs contain cabling, switches, routers, and firewalls that mutually connect servers and connect them to the outside world. The HDC of Microsoft in Quincy, Washington State, for instance, comprises 24,000 km of fiber cable with millions of servers.

The main management functions of data centers are to provide space for backups on a scheduled basis, to store what is known as 'the cloud' to provide provisions to use applications, documentation, and printer facilities; the setup of a helpdesk, as well as the installation of monitoring, patching, remediation, and threat management systems (Hertvik, 2016). One or more enterprises can store data, make use of the applications, and use computing power. If multiple companies/organizations make use of the facility, one talks of colocation data centers where the space and resources of the data center are rented out.

HDCs have externalities in the usage of high amounts of energy to cool the servers to a temperature below 25° Celsius; the use of fresh water in case the outside temperature rises above 25° Celsius; the storage of diesel fuel for the emergency generations used in case of power cuts; the noise produced when cooling the servers, and landscape effects due to their enormous size.

These externalities are not trifles. The externalities involved in the HDC central in the case study presented below would have been significant:

- Estimations from the company itself were that once the HDC would be in full operation, it would use over 2.3 million cubic meters of drinking water a year to cool its servers. The gross use of water in this data center is estimated to be equal to the average usage of over 13,000 households.
- The HDC was estimated to consume at least 1.3 Terawatts hour/year of electrical power. This would be equal to the energy usage of all households in the city of Amsterdam. This is a lower threshold as the company asked the Dutch government for a 2 TWh/year substation to ensure its power supply.
- The cooling of thousands of servers makes a lot of noise. Inside the HDCs, the noise level generated by the cooling system can be up to 80 Db. If a data center is not properly designed, part of this noise can also burden people living nearby.
- There are landscape effects. The box of bricks Meta would like to have built would have approximately a surface area of 140,000 sq meters.

By the way, these facts were only disclosed at the end of the policy process. During the first 15 months of the process, nobody knew and, therefore, nobody bothered about these side effects of HDCs.

4.2. The opaqueness of the policy process regarding Meta's plans to build an HDC in a small Dutch municipality

The process described covers a period of 2.5 years (2019–2022) and involved plans by Facebook (now Meta) to build an HDC in the small municipality (23,400 inhabitants) of Zeewolde in the Netherlands. It would become the third HDC in the Netherlands as Microsoft and Google had already built HDCs elsewhere. In 2018, during the World Economic Forum in Davos, representatives of Facebook had their first confidential talks with the Dutch Prime Minister about these plans. In 2019 they refreshed their contacts and met with the Netherlands Foreign Investment Agency (NFIA). This agency drove them around the Netherlands in search of a suitable location. The available areas were, however, all too small. Needed was at least 150 ha for what would become the largest HDC in Europe. Facebook said to be willing to invest an enormous amount of money. The agency, however, said 'Sorry, we cannot help you'.

Nonetheless, through personal connections in a consultancy firm called Arcadis of which the CEO regularly meets one of the aldermen of the municipality on the soccer field, Facebook's attention is drawn to opportunities this municipality could offer (NRC, 31-3-2022, p. E5). Without notifying the NFIA agency, representatives of Meta and officials from Zeewolde meet in the fall of 2019. The municipality is enthusiastic as the planned investments would account for a profit of 18.2 million euros for the municipality in building fees. This is huge given a yearly municipal budget of just over 100 million euros.

Meta is told that there are only minor issues, easy to be solved, and all conditions asked for will be met. One of those conditions is that everything should remain secret until a complete agreement is reached. The amount of money involved in the investment, and even the name of the investor, e.g., Meta, are not to be disclosed. To arrange that, Meta gives the project the appealing name—at least in the Netherlands—of 'Tulip' and sets up a subsidiary company under the equally appealing name of Polderworks BV. The secrecy is needed, because already at that time it was clear that the plan runs counter to national policies that stipulate the positioning of HDCs at the border of the country whereas this municipality is right in the middle. Polderworks also demands a substation to get a direct connection to the high voltage power grid to be certain of electricity even in case of power cuts. The national policy is that in case of power failures, households and hospitals are on top of the priority list, and companies such as Meta are at the bottom. Meta would like to reverse this to minimize risks. Third, the area on which the HDC would be built has an agricultural destination. National policies stipulate that the government shall not facilitate the change of agricultural land into an industrial area. If one intends to change the destination of land, the municipal council has to change the zoning plan. This needs the approval of the mid-level government (the province), and the national government for the approval of those parts of the plans that run counter to national legislation and national policies.

This is all the more crucial in this case as half of the area Meta wants to buy is not the property of the municipality but is leased to farmers by the Central Government Real

Estate Agency. This is an agency at arm's length from the Ministry of Economic Affairs and is only allowed to sell acres of land in their possession when there is an open tender e.g. with competition; if the destination of the land does not change; and when the buyer complies with conditions to be set by this agency. So, three layers of government and several agencies are involved in granting authorization. Administrators at the national level are already at an early stage skeptical about the plans as these are not in coherence with the legislation in force.

The solution Meta and the municipality opt for is to work behind closed doors. Meta wants to make the process as secretive as possible and compels its counterparts to sign confidentiality clauses. The company returns e-mails if the name of Meta is mentioned therein, requesting a new mail with the same content but without mentioning 'Meta'. If the public authorities would not comply, the plans would be off. Meta repeatedly threatens to make this investment in another country. The idea must have been that making deals without any publicity would prevent protests, and in the end, the HDC including all the facilities would be an accomplished fact. The high stakes involved made the municipality, the province, and the national government consent to this secrecy.

The secrecy is first seen in the municipality. At the end of a council meeting in the Dutch municipality on December 19, 2019, the members were asked to stay a little longer, because the Municipal Executive wants to have a secret meeting afterward (Stentor, January 22, 2022). In that meeting, the alderman confidentially reveals what he calls 'a plan from a tech company to make huge investments' in the municipality. Neither the exact figure nor the name of the investing company is disclosed.

In this secret meeting, the council was informed for two reasons. First, the alderman responsible for such affairs was proud of the planned investment in his municipality. The building fees would solve the financial problems of the municipality, it would mean additional employment, and the investors promised to show social responsibility in the form of philanthropy for local activities. Second, such investments need the approval of the council in the change of the zoning plan. Hardly any questions are posed by the council members and all of them tell the alderman to carry on as desired. The local council trusts the alderman to bring the projects to a good conclusion to the satisfaction of everyone.

Given the agreed secrecy, for the next 15 months, no information about this project is provided to anyone. Only a draft design of the intended change in the zoning plan is submitted to the local council. It specifies the investigations needed according to the national government, the province, water boards, and agencies, before the decision to change the zoning plan can be made.

As of February 2021, the situation changed. The largest national newspaper publishes an article on its front page about the enormous water consumption and electricity use of the Microsoft HDC already operational elsewhere in the Netherlands. This news attracts attention from other newspapers, the radio, and television. It is approximately at the same time the municipality publishes its proposal to change the zoning plan. An information meeting with farmers in the area results in informative questions, especially about water consumption and what this would imply for their business. These are the

first signs of compromised trust. The response from the advisor the municipality hired to co-coordinate the process is meant to reassure the farmers by telling them that 'HDCs hardly use any water … This is only on very hot days … A housing block in the same place would use three times the amount of water the HDC would consume', according to the advisor. This advisor is the director of the Dutch Data Center Association (DDCA), a lobby organization with the mission to strengthen economic growth and the profiling of data centers in society (Dutch Data Center Association, undated1; Nieuwe Oogst, March 13, 2021). This response is quite opposite to the content of the newspaper articles saying that HDCs consume millions of liters of water a year. The same advisor calls the content of the newspaper 'grossly exaggerated' (Stentor, March 29, 2021). Another critical point is the use of chemicals in the cooling water, and the temperature of the water being discharged. According to the advisor, only a small amount of salt would be added to the water needed to cool the HDC. As to the temperature of the discharged water, this would all fall within environmental regulations.

At the time, the accuracy of all this cannot exactly be determined as the Environmental Impact Assessment (EIA) on the HDC is not yet published. The content of the version produced was judged to be insufficient by the Committee on EIAs. The contradictions about water and electricity consumption do result in the emergence of a countermovement. In the municipality, a pressure group is set up, called: 'Foundation Data Trick Zeewolde', e.g. the opposition becomes organized and wants a seat at the table. They doubt whether the authorities take their interests sufficiently into account. Political parties in the national parliament and the provincial council also start asking critical questions. The newspapers keep on reporting. They receive additional information through the FOIA. The publication of the contents thereof results in 160 critical comments on the proposed change in the zoning plan submitted by various organizations. The trust in the process is not what it used to be anymore. The comments also question the noise produced by the planned facility, the landscape effects, the impossibility to re-use the water discharged for heating houses, the use of chemicals in the cooling system, the costs involved, the disputed employment the planned data center would entail, the protection of rare and protected species, and the absence of any form of public participation.

Due to this new information, and the continuing secrecy of the municipality, the protests intensify and widen. Protesters from very different backgrounds join hands. It concerns the nearby farmers, the Foundation Data Trick Zeewolde, the residents, politicians at the provincial and national level, and later on also the international environmentalist activist group called 'Extinction Rebellion'.

Confronted with the growing protests, the municipal authorities offer to have a meeting about the plans with the newly established Foundation but only behind closed doors. This is refused by the Foundation pointing out that the process has already stayed secret for too long. It takes until October 2021 before a discussion in the local council on the plans is organized by the municipality. However, as instructed by the mayor and alderman, the discussion in this meeting has to take place without any documentation and without already adopting a position on the data center. The only outcome is that it is seen as pitiful that the

residents have not been involved at an earlier stage. As the mayor told, this is unfortunate but an accomplished fact: 'We have to learn from this'.

The disapproval of the EIA, the large number of comments on the concept zoning plan in need of a municipal response, and the increasing protests cause a delay in the decision-making process in the local council. At first, the decision about the zoning plan was planned for June 2021, later on for October, and finally, it is set for December 2021. The documentation arrives only a couple of weeks before the council has to discuss the change in the zoning plan and vote on it. The documentation is still incomplete as there is still no certainty about possibilities to re-use the water discharged by the HDC, the text of the anterior agreement between the municipality and Meta is missing, the conditions set to the facility remain secret, and information is lacking about the real employment involved. Members of the council complain: 'two weeks before we have to decide we get a couple of thousands of pages on information ... We are continuously running behind the facts' (Stentor, December 1, 2021). Another local councilor: 'How could I read and understand all this information within such a limited time?' The mayor, reacting to the growing opposition to the opaqueness of the process fulminates 'We have done everything in a very transparent way' (AD, December 14, 2021). The majority of the council supports the mayor, 'Enough research has been done. We can now launch the discussion and reach conclusions'.

The residents, the nearby farmers, the foundation, and the international pressure group called 'Extinction Rebellion' intensify their protests. They start demonstrating for weeks in a row. They occupy the entrance hall of the city hall a few days before the voting takes place, block city hall with tractors, and send hate mail to the councilors in favor of the HDC. These actions are indicative of having reached the next phase in distrust, e.g. activism. Despite this unrest, on December 16, 2021, a majority of the municipal council approves the change in the zoning plan thus paving the way for the HDC.

One would expect this to be the end of the process. However, in March 2022, a seeming *deus ex machina* occurs. Local elections take place and the two parties that opposed the plan get 67.8% of the votes. The outcome is indicative of reaching complete distrust. The existing authorities are voted out. This changes the situation quite fundamentally. The winning parties will now occupy the alderman seats and become the new local authority. They cannot accomplish much as for months after the elections the previous alderman, as well as the mayor—who is not an elected politician in the Netherlands and stays in office—tell everyone that the construction of the HDC has to be seen as an accomplished fact. According to them, whatever the election results, there is nothing to be done anymore to prevent it.

The outcomes of the local elections do worry national politicians. Their interpretation is that if the process to establish the HDC results in such a political landslide, politicians might need to start listening and action at the national level might be required. The majority in parliament, previously in favor of HDCs, now approves a motion to halt the process. Even the responsible minister changes his views by ordering that new HDCs should only be built along the borders of the country, although he immediately adds that the building of the HDC in this municipality is an accomplished fact. The Central Government Real

Estate Agency becomes firmer in its demands concerning the sale of the area. In June 2022, Meta backs down. At first, they pause their plans, and later, they abandon their plans to build the HDC in this municipality. The official reason the company gives is that they want to be seen as a good neighbor and seeing the resistance, this is not possible anymore in this municipality.

4.3. Increasing transparency through the Freedom of Information Act

During the process, many appeals on the FOIA were made. The first one refers to the process resulting in the construction of an HDC by Microsoft in another province. It showed the enormous consumption of water and electricity by HDCs, the discharged cooling water containing chemicals, the noise produced by cooling the servers up to 80–90 Db inside the building, and, the omission of making an EIA through planning five HDCs, each one sized just below the threshold making an EIA necessary. It also showed that governments are hardly aware of the side effects and do not even know who the competent authority for granting permits is. Furthermore, the documents showed that government authorities had failed to set even minimum conditions for the construction of HDCs. It seemed to be sufficient that the company told that the HDC would conform to sustainability requirements. Provincial representatives boasted that the construction thereof contributes to the province becoming the most sustainable and innovative data center hub in Europe (Dutch IT Channel, 2022). But as one local councilor said after the Microsoft HDC was built: 'Indeed, the company demonstrated goodwill in response to questions about its contribution to the green, circular economy. It was so gentle to paint the walls of the building in a green color... This was the only green thing notable from the building' (www.rtl.nl, December 19, 2021). These publications resulted in the first critical question regarding the Meta HDC.

The second set of documents released because of an appeal on the FOIA revealed details of the process in Zeewolde from the perspective of the national government. The documents reveal why the national government was so eager to attract data centers to the Netherlands. This was based on information from a lobby group, e.g. the DDCA. DDCA had told the government that 25% of Dutch GDP depends on the presence of data centers and that these data centers only consume 10% of the national energy. Administrators of the Department of Economic Affairs judged the first figure to be exaggerated. The second figure contradicted the public response to figures published in the newspapers during the process. Perhaps DDCA is not aware of its report as in public, it still argues that data centers consume only 0.39% of total energy (Dutch Data Center Association, undated2). This resulted in the widening and intensification of protests against the Meta HDC. The municipality added to this unrest by remaining secretive. It only published what was minimally required, e.g. the proposal to change the zoning plan. Nevertheless, even this proposal increased the criticism as it revealed that Polderworks had paid much less for the hectares of land, than its actual worth. Regarding the supposed employment the HDC would entail, publications pointed out that this kind of industry is extremely extensive with less than 400 employees on an industrial area of 166 hectares.

The third set of documents obtained through an appeal on the FOIA unraveled parts of the process followed in the municipality. These showed that officials in the national administration had been skeptical about the sustainability of Meta's and its coherence to national policies. The documents also show that already early in the process representatives of Meta had tried to bypass those administrators by going directly to the responsible political authorities. These direct contacts resulted in the consent of the Minister of Economic Affairs provided that the local and provincial authorities would explicitly show their approval of the plan. This approval was subsequently expressed in a letter from the provincial governor and the mayor of the municipality in the fall of 2020. In this letter, both authorities state their support and argue that the national policies that inhibit the construction in this municipality were never secured in law and could therefore easily be bypassed. The publication of this letter one year later, resulted in an outcry, especially from the provincial council. According to them, the governor could only have sent such a support letter on behalf of the province after the provincial council had approved the construction of the HDC. The provincial council had at the time not been informed about the letter nor been properly informed about the plan. This resulted in a motion of sadness—which is a motion just somewhat less serious than a motion of no-confidence—adopted unanimously by the provincial council.

These publications happened in the weeks before the municipal council had to vote on the zoning plan, and added to the unrest and protests in the municipality as it showed the secrecy of the process and the presentation of the outcome as an accomplished fact already set in the previous year. In the municipality it resulted in demonstrations, blockades, and occupying city hall.

The provincial council demanded a detailed fact file on the whole process. This fact file which appeared some months later—just before the local elections—showed the frequency of the consultations between the municipality and the province, the weekly consultations between the two governmental levels and Polderworks on behalf of Meta, and the close cooperation within this group to point Polderworks to all the necessary permits, and the support given to Polderworks in receiving those licenses.

This fact file also revealed that the policy network preparing the licenses needed for the HDC consisted of a very small group. Included were only delegates from the municipality, the province, the regional environmental service, an external advisor from DCC (DGMR, undated), and a representative from a company hired by Meta to represent them, e.g. Arcadis. The composition of the group was such that critical voices were absent and groupthink in favor of the HDC prevailed. Both advising companies not only prepared all the requests for licenses but also conducted the 'independent' research needed. The latter mentioned company, for instance, did the modeling of the facility, and the Environmental Impact Assessment. Such research should have been done by an independent organization but this was not the case here. This resulted in peculiar contents of the EIA. The EIA did hardly pay attention to the use of water or electricity. This was defended by saying that the usage of water and electricity 'is spatially irrelevant' (Telegraaf, March 19, 2021). Also, in other aspects, the EIA was of dubious quality. In its reassurance that the landscape effects

were minimal, the report mentions that—even though the total roof surface of the HDC would be 140,000 m^2—'the planting of groups of trees around the building creates the image of a typical farm in a large agricultural field' and 'the building creates a rhythm and makes the attention escape from the buildings in a visually attractive pattern' (Arcadis, 2021). Reading such sentences is indicative of an EIA meant to support the facility instead of giving an independent account of all effects.

Further publications in the media pointed out that the energy consumption of this single HDC would be higher than the total energy consumption of a city like Amsterdam, and that the green energy produced by the recently built wind turbines in the region would all be consumed by this one HDC. This made the unrest again intensify.

Concluding, the documents revealed through the FOIA and publications on their contents in the media were not neutral in their impact. Each time new information was published, the distrust increased. Until the publication of the first information, there had been hardly any doubts about the HDC. Of course, the contents of the publications in the newspaper were highly contested by lobby organizations such as the DDCA. The unintended consequence of these comments was that they added to the distrust in the process. The representative of the municipality had to tell repeatedly to critics that the plans in this municipality are completely different from the ones in the other province (Stentor, 6 April 2021). According to her, the noise produced would be just a buzzing sound, the water consumption would be irrelevant as the HDC would not use drinking water but only very limited amounts of surface water, the warming effect of the discharged water on the surrounding canal would be very limited, and the increased criticism regarding the HDC would all be due to the unjust negative reporting in the media. Unfortunately, in the end nobody believed the municipal authorities anymore.

5. Discussion and conclusions

The case described illustrates how high tech companies proceed in their plans to get HDCs built and the complexity of the relationship between them and public authorities. Understanding such processes is important as many countries in the world are faced with requests to build HDCs. Many of these countries experience frequent power cuts and have limited water resources, such as South Africa, or Nigeria, making the water and energy consumption of HDCs problematic. With a yearly turnover larger than many national budgets and in the Netherlands thousand times the yearly budget of the municipality involved, high tech companies use their power to get things done their way. If their plans run counter to national policies, even governments with the reputation of being transparent (World Bank, 2022) consent to requested secrecy. Such secrecy is needed in moving around prevailing policies, to bypass the skeptical part of the administrations, and in the attempts to put direct pressure on political authorities. Authorities even agree with the dissemination of misinformation in their eagerness to attract these investments. The remark in response to a critical question, as made by the representative of the lobby organization hired by the municipality, that 'a housing block in the same place would use three times the amount of water the HDC would consume' is most telling.

The case is also illustrative concerning the power of the FOIA in revealing what otherwise would not have been disclosed and the impact thereof. The secrecy of the process during the first 15 months was not disputed. This secrecy was made possible because of the beforehand existing complete trust in the municipal authorities. Only after investigative journalists started to publish about the negative side-effects of HDCs, was this secrecy perceived as problematic. It resulted first in a few informative questions but when the answers were shown wrong, it resulted soon after in hundreds of critical questions. The second indicator of the impact of the FOIA on distrust is that publications revealed through an appeal on the FOIA in the fall of 2021, resulted in an intensification of the protests in which otherwise very different groups (farmers and Extinction Rebellion) joined hands. Indicative of the growing distrust was also the unanimous approval of the motion of sadness in the provincial council. The main indicator for the intensified and widened distrust is found in the outcome of the local elections in the spring of 2022. The ruling parties in the municipality who had supported the plan were obliterated. Within a year complete trust had changed into complete distrust.

The growing distrust is, therefore, only partly due to the absent voluntary ex-ante transparency. More important is the misinformation released by the municipality, and especially the imposed ex-post transparency revealing all the mishaps in the process. The inner circle could have anticipated these appeals to the FOIA, but it failed to do so. Instead, the concerted group coordinating the process must have erroneously thought they could act as they did without any consequence.

The main conclusion cannot but be that momentarily governments are no match for the all-powerful high-tech business. The threat of the latter to make their investments elsewhere, the requirement that no preconditions are imposed on their plans, that the decision-making process should be secretive, their downsizing of the negative side-effects, and the submissiveness of public authorities in this unequal playing field result in public decision-making processes not at all in conformity with principles of good governance.

When the process is nonetheless revealed, because a judge orders that the Freedom of Information Act applies, and when this information reveals inconsistencies and irregularities in an otherwise secretive policy process, this case has shown that this can be detrimental for institutional trust. In the end everybody has lost. The FOIA is a powerful instrument for stakeholders, academicians, and journalists in revealing information otherwise not disclosed. This is still poorly understood by policymakers. As the case study shows, not anticipating this power, can disrupt the outcome of even the most desired projects.

The turbulent new era in which the role of high-tech companies becomes larger and larger, and their relations with public authorities more intense, requires a decisive government, knowledgeable, willing to or be pushed to conform to the principles of good governance, and able to resist the demands of high tech companies. This requires a combination of capacitating public authorities through thorough training, through public administration scholars willing to assist and to do action research, and through investigative journalism to keep the public informed and to keep the authorities on their toes.

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