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Stability of Constitutional Systems
The Concept Based on Cohesion, Solidarity, and Trust

The notion of **stability** is often used to describe the state of any system (i.e., stable or unstable) and as such, it has strong underlying functional connotations. The system is an abstract notion that refers to *a whole* made up of *an external boundary* and *internal subsystems*. This notion is broadly used both in natural and social sciences. In the latter group, namely in sociology, the notion of the system has been developed as a fundamental category upon which various theoretical perspectives are grounded, such as functionalism, structural-functionalism, neo-functionalism, and social system theory. Social relations, social order, social structure, role, status, etc. encapsulate the most general properties of social life in a particular system, such as cohesion, solidarity, and trust. Importantly, all three concepts are fundamentally related to the notion of stability.

As a property of a system, stability can vary depending on its relation with the environment, the orderliness of its components (in terms of their mutual relations and relation with the system as a whole), and their specific functioning. The general premise is that a system's survival (functioning) is dependent on the ability to maintain a boundary with the environment and on the ability of its subsystems to function properly (increase chances of survival). If the subsystem fails to perform (is impaired) or its function is not picked up by another subsystem (compensated), then stability of the system, even its survival, would be at stake. The notion of "equilibrium," borrowed from physics and popularised by Pareto, was used to describe the optimum level of system stability. The idea was that a system is routinely in the state of "equilibrium" unless disturbed by external forces and that it returns to its original state after the period of instability has passed. Since the notion was criticised for favouring the *status quo* and treating every social change as an aberration – "equilibrium" has come to stand for a state of maximum stability.

While the notion of stability has mostly positive connotations there can be negative connotations as well. For example, when it comes to the process of EU enlargement, the Western Balkan countries are sometimes described as "stabilitocracies." This term is used to describe the slow and ineffective process of EU accession of the WB6 countries, inhibited both by *status quo* veto-players and the intent of EU, as Kmezić notes: "to trade its own rule of law conditionality for other interests, namely for stability in its immediate neighborhood." Negative effects of "stabilitocracy" can be seen in the deep-rooted system of state capture, mostly via the use of judicial apparatus, low level of institutional trust – specifically to judicial institutions, and low level of trust in the process of EU-accession-related reforms. In "stabilitocracy" one finds a lack of clarity and credibility of EU conditionality on the supply side of EU accession processes and strategies, and obstructionist potential of gatekeeper elites and legacies of the

past on the demand side, namely concerning domestic drive for reforms. The "stabilitocracy" notion contains the same baseline logic as the classical notion of "equilibrium": favouring the *status quo* and treating social change as an aberration or, at least, as a vehicle of instability that would compromise (perceived) already loosely integrated, barely-holding-it-together systems such as political systems found in the Western Balkans Region, namely Bosnia and Herzegovina (BiH). In this way, stability becomes the primary system imperative that persists despite internal conflicts, disarrays, dysfunctionalities, and other sources of strain, pushed by both internal and external decision-makers.

Speaking about political systems and using them as a segue for exploring other notions in this entry, modern societies, as social systems, followed the trajectory of concentrating their political functions in constitutional form. As Thornhill asserts, constitutions and their normative reserves have proven to be vital for the stability of modern societies and the legitimacy of their political institutions. Modern societies are often described in terms of complex social systems with highly developed, relatively autonomous (and autopoietic), and differentiated subsystems such as political, legal, economic, security, education, etc. A legal subsystem is, in socio-legal literature, often recognised as one of the most important factors of stabilisation. For example, Luhmann maintained that a legal subsystem is unrivalled in stabilising normative expectations throughout a social system as a whole. Thornhill provides an example of the Polish Constitutional Tribunal playing a key stabilisation role in the Polish state in the transitional period between 1992 and 1997, explaining how modern social systems rely on different institutional apparatuses (subsystems) to compensate for the failure of other subsystems' to perform their function.

Besides describing the functional performance of subsystems, stability also describes the orderliness of relations between subsystems (structure). Another notion used to describe this very state is that of *integration* (see: Integration, Fragmentation, Coordination and Accommodation). However, notions that are usually used for describing states and processes of integration in social units are those of cohesion, solidarity, and trust.

It is important to note that the basis of cohesion, solidarity, and trust, and, more generally, social integration, is basic consensus on a set of key values and norms that relate to key goals and the means of realisation of those goals. This is also a basis for any social unit and its particular identity regardless of the type of social unit, such as group, category, organisation, or institution. The degree of cohesion, solidarity, and trust is thus dependent on the degree of adherence to the social unit's key goals and means, or values and norms. The said adherence itself is dependent on internal factors such as motivational (socialisation and social control) and organisational (a division of labour in society), and on external factors such as social change and adversity (i.e., conflict with another social unit). Notions of cohesion, solidarity, and trust are interrelated but mutually distinctive with respect to an epistemological and methodological application, and their role in a broader theoretical framework. Cohesion is often used as an analytical and descriptive notion, solidarity is a fundamental concept in sociology, and trust is a multifaceted notion used in different fields of scientific inquiry.

In the context of social units such as social groups, **cohesion** implies *stability of relations between group members*. Since it is dependent on the degree of adherence to the group's goals and means (values and norms), a group may either purposely deploy a set of processes and mechanisms to increase it or find itself in a situation of externally pressured change or adversity that produce the same effect – most effectively if the survival of the group is at stake, or its identity is under threat. Cohesion may be maintained more easily in less complex groups consisting of fewer members with a lesser relational distance between them. More complex groups, consisting of large numbers of members and higher relational distances between them need to put more effort in maintaining cohesion. Modern complex groups, such as religious, ethnic, and national groups, especially if co-extensive as is the case in BiH with Bosniaks, Croats, and Serbs, utilise different processes and mechanisms to increase cohesion. It appears that the most effective way to increase it concerns the so-called "identity politics" or strategy of identity construction based on the oppositional dichotomy of *Us-Them* as *Us versus Them*. This simply comes down to the construction of *Other* (*Them*) as a source of existential threat, hitherto a source of increased cohesion of the *Us* group. This also implies that cohesion may be a product of both consensual and coercive action.

The notion of **solidarity** denotes only *consensual action*. As theorised most notably by Durkheim, solidarity stands for the *basis of group formation and cohesiveness*. It also denotes a *sense of belongingness* that an individual experiences in social life and pertains to the direction of conduct toward mutuality and interconnectedness that characterises social behaviour and interaction. Durkheim argued that solidarity embeds social obligations or social norms through which members are obliged but not forced to participate in group activities and that the acceptance of the norms is consequential of acceptance of the group's entitlement to demand commitment. Social solidarity is based on social consciousness (moral or value-normative consensus) and the division of labour in society. Solidarity varies across social groups in the same way cohesion varies, namely concerning complexity, membership quantity, and relational distance between members. Durkheim considered that solidarity could be analysed only indirectly, namely via analysis of the law, which he understood as an external symbol of social solidarity. Following this methodological proposition, he distinguished between real and positive solidarity – the former prevalent in property law (relations between social actors and things) and the latter prevalent in other areas of law regulating social relationships – and between mechanic and organic solidarity – the former prevalent in criminal law and the latter prevalent in "cooperative law" (i.e., constitutional or contractual law). In a broader sense, solidarity relates to the extension of our borders of *Us*: from our primary groups to members of other groups in our society, to members of different societies, and even to the whole of humanity. There is certainly a humanistic sense in the notion of solidarity prevalent in acts of solidarity toward strangers. In normative ethics, such a sense is grounded in the moral duties bounding all members of mankind and universal in their scope. Acts of solidarity, and even mechanisms of solidarity – grounded not on ethics but political and legal arrangements – are not solely acts nor solely mechanisms deprived of deeper social implications. *Au contraire*, they are constitutive actions that lay the foundation for social cooperation, which is the potential for higher-patterned social relations, operating not just as conduits for human

sociability but also as means of construction of society. In this sense, the notion of solidarity transcends the scope of meanings belonging to the notion of stability, describing a higher and deeper order of things in the social universe. Modern complex groups, as is the case in BiH, extend their social cooperation, regardless of their identity affiliation in events of urgency. One such event in BiH was the catastrophic floods in 2014 during which citizens showed solidarity while the entities' authorities were lagging with a fast response or any response at all. For example, the citizens of the municipality of Doboj in the Republic of Srpska (RS) were helped by the citizens from the surrounding municipalities in the Federation of BiH (FBiH), such as Tešanj. Usually, issues of solidarity arise over the redistribution of wealth such as in Belgium, Canada, and Spain. In BiH, this seemingly does not happen since, for example, the fiscal system has been redesigned to match the redistribution.

Still, one can hardly imagine stability, cohesion, and solidarity as nodes of social order without trust. The notion of ***trust*** is multifaceted and has a plethora of relational meanings depending on the specific context of its use. Some of the more general meanings of the notion include *personal disposition* (trusting) *or quality* (trustworthy), *part of social relationships*, or *part of economic exchange*. The trust consists of two basic elements: *beliefs and commitments*. Trust is not only a calculating relationship based on rationality but also a psychological impulse. The decision to trust may be based on three grounds: reflected trustworthiness, personal trustfulness, and trust culture. In social sciences, the notion of trust is usually understood as a cultural or economic resource necessary for the viable functioning of society and an indispensable ingredient of viable economic systems. Trusting is considered a crucial strategy for dealing with uncertainty, unpredictability, and the risk of ever-growing complexity generated by modernity. Generally, trust is attached to two basic phenomena: human actions and the future. This is why Stzompka defines it as "a bet about future contingent actions of others." In this sense, trust can be scaled from the least demanding or weakest to the most demanding, strongest, or most risky bets of trust. One example of the most demanding/most risky bets can be found in what Barber terms as "fiduciary trust": defined as "duties in certain situations to place others' interests before our own." In social sciences, namely in sociology and political science, trust is analysed in the context of culture. The notion of trust in this sense implies cultural values, norms, and attitudes or cultural environment that either encourages or discourages trust. Cultures can themselves be distinguished on this basis: high-trust or low-trust, depending on values and norms that encourage social trust and its reciprocity. Values and norms are related to normative expectations, namely with normative obligations to trust and normative obligations to be trustworthy, credible, or reliable. If these values and norms become institutionalised and rooted in the cultural structures of society, trust becomes a powerful factor influencing the decision to trust, as well as the decision to reciprocate trust. In this way, trust may become a profound stabilising force that affects the social system in a way that guarantees persistence and continuity of trust. Co-dependency of trust and (stability of) normative expectations is exemplified by high levels of social trust that are the results of stable normative expectations and *vice versa*, stable normative expectations yield a high level of trust. While trust operates as a force of stability – in both personal and social systems – and can be utilised as an important resource in social interaction in different areas

of the social system, it is a finite resource prone to vulnerability and a force that can diminish easily once stability understood as "equilibrium" becomes primary system imperative – as exemplified by "stabilitocracy" mentioned above. Western Balkan countries, as social entities undergoing democratic transition and often caught up by the legacies of their past, withal while pertaining co-extensive religious-ethnic-national social groups who opt for strategizing the oppositional dichotomy *Us versus Them*, are not in the best position to generate intra, yet alone interrelation trust. One of the negative effects of "stabilitocracy" is lower trust levels of citizens toward political and judicial institutions. The diminishing of institutional trust can hardly be a positive predictor. The low-level culture of trust in the Western Balkan Region, namely in BiH, is exemplified by a low-level of institutional trust. The country-specific context, characterised by recent violent conflicts and present-day political conflicts, and a wide range of social deviances only partially encapsulated by the notion of "stabilitocracy," is fertile ground for trust diminishing, not a fertile ground for trust generating. Social solidarity, as a feature of social life that is inherently transcendental of stringent social group boundaries, can be hardly maintained, let alone increased in the absence of a culture of trust. Even if the cohesion of distinct social groups and other social units may remain high or even increase, it still accounts for little to nothing when a social system is undermined by a notion of stability that sanctifies the *status quo*.

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