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Economic Actors and the Problem of Externalities: Could Financial Markets Play a Role in Democratic Backsliding?

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Abstract:

Purpose: *Economic actors tend to exert powerful impact on socio-economic and political developments around the globe, including yielding financial and political crises in developed democracies.*
Approach/Methodology/Design: *While a number of studies discuss the impact of finance on political and societal reality, research on the interlink between finance and democratic processes is very limited. Drawing on secondary literature and a case study of two young Central-European democracies, this paper contends a relationship between financial economy and democratic backsliding.*
Findings: *The findings challenge the existing conventional accounts of the reversal to authoritarian politics in Poland and Hungary.*
Practical Implications: *They also identify a mismatch between the constitutional foundations for embedding the market within the society and its institutions on the one hand, and the political-institutional reality in contemporary democracies.*
Originality/Value: *The research provides theoretical assumptions encouraging further study on unwelcome externalities produced by financial markets.*

Keywords: *Financial markets, externalities, democratic backsliding, embeddedness.*

JEL classification: *P16, Z13, Z18.*

Paper Type: *Research study.*

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1. Introduction

Advanced democratic systems constitute themselves typically as *social* market economies, where the potentially adverse effects of the liberalized market should be counterbalanced by regulatory and mitigated by social policy instruments, with the latter aimed at protecting the weaker individual or entity. Since the rise of neoliberalism the commitment of governments to this theoretical model of social policy varies significantly depending on the condition of public finances and/ or political choices invoking more or less objective factors[i]. At the same time a trend of national governments' curtailing social welfare instruments may be observed, further exacerbated in the context of the recent financial and sovereign debt crisis.

However, the impact of the most recent global financial crisis went far beyond the challenges to the European welfare states. As argued by Fukuyama (2018) *"policies crafted by elites produced huge recessions, high unemployment, and falling incomes for millions of ordinary workers. Since the United States and the EU were the leading exemplars of liberal democracy, these crises damaged the reputation of that system as a whole."* In a speech held by the French President Macron to the Diplomatic Corps on 27 August 2018 such facts were fully admitted at highest political level. In his view «*le commerce n'est pas équitable au niveau international* » (trade at the international level is not fair) and « *la mondialisation a construit des inégalités qui ne sont plus soutenables*» (globalization has caused inequalities that are no longer sustainable). If - as claimed by Inglehart (2018) - we are indeed experiencing the most severe democratic setback since the rise of fascism in the 1930s, a vexing question arises as to its causes.

This paper links in with a very limited scholarly output on the hypothesized impact of financial globalisation on democracy. Studies in sociology, economics and political science mainly focus on the manner in which democratic politics impact on economic policy and performance (Gasiorowski, 2000; Converse and Kaptsein, 2006; Hartmann, 2018) offering, however, no explicit assertions as to the possible reverse direction of causality. Some studies have already hinted to a possible link between unequal distribution of resources and declining trust in the quality of governance (Eurofound, 2018), not excluding an eventual decline of democracy (Inglehart, 2018). Mulligan, Gil, and Sala-i-Martin (2004) find no significant relationship between countries' level of democracy and their average social security spending.

Alesia and Dani (1994) provide empirical evidence to the effect that inequality in wealth and income distribution is negatively correlated with subsequent economic growth, thus hinting at the dynamics of the future social choice that rational/ median voters need to internalise when casting their vote. Clarke (1992) also finds negative and robust correlation between inequality and long-term economic growth, irrespective of political regime of a given polity (a democracy or a non democracy). Finally, Roberts and Kwon (2017) point to the correlation between the growth in financial sectors and higher income inequality. In this paper we assume that such financialisation of the economy (Krippner, 2010) not only fuels the accumulation of excessive risk in the system, but also produces unwelcome externalities in terms of reduced inclusiveness of economic policies and erosion of support for liberal values, thus creating a susceptible ground for democratic backsliding.

In the sections below, we first elucidate how the concept of democratic backsliding is applied in the present article. Drawing on the available literature we then provide a brief account of the financial markets' contribution to inequality of income and wealth distribution. Against this backdrop, we look into the causes of democratic setback in Poland and Hungary and presume possible indirect impact of financial economy on the rule of law as a core pillar of democratic order. Subsequently we postulate the necessity to re-embed the market within the society and its institutions, including by way of regulatory and judicial autonomy of public authorities at national and transnational/ international level. We conclude by articulating research opportunities and limitations due to the adopted theoretical approach.

2. Democratic Backsliding: An Institutional and Societal Phenomenon

Civilized nations[ii] - to use a concept applied by the International Court of Justice - recognize certain general principles of law, including those relating to core democratic norms and practices. Equality (also understood as equal opportunities for all), rule of law, minority rights, separation of powers and checks and balances on executive power are considered as core pillars of democracy. They are regularly enshrined in written or unwritten constitutions, while their implementation in political practice may vary from country to country and from one era to another. In this sense they may also constitute a telling benchmark to assess the state of democracy in any modern society.

Nancy Bermeo (2016, p. 5-6) defines democratic backsliding as *"the state-led debilitation or elimination of any of the political institutions that sustain an existing democracy"*. According to the author, democratic backsliding may consequently lead to a serious weakening of existing democratic institutions or, in more extreme cases, an outright democratic breakdown where rapid and radical changes across a broad range of institutions yield an authoritarian regime. At least in theory, weakening or disassembling of democratic institutions may be performed with an intention of deepening rather than dismantling democracy. This may be the case when, e.g. the impetus for institutional change is given by marginalized groups which demand a more inclusive and responsive democratic model (op.cit., p. 16). Thus a deeply dysfunctional political system may legitimize anti system behavior (Howe 2017, p. 22). As argued by Hartmann (2018) *"if democratic systems do not offer a robust framework for ensuring rule of law and opportunities for political participation, and if market-based economies do not guarantee fair and reliable rules of competition and social inclusion, then not only will they lose their appeal, they will devolve into illiberal, patronage-driven structures."*

Amongst contemporary forms of democratic backsliding named by Bermeo executive aggrandizement and strategic electoral manipulation may be observed even in states which are (or at least were) considered as stable democracies. While the latter of the said forms of democratic backsliding may be somewhat self-explanatory (notably in the light of the alleged manipulation of the US presidential elections of November 2016 or the Brexit vote of June 2016), the former requires a brief explanation. *Executive aggrandizement* manifests itself in that the elected executives weaken checks on executive power by means of a series of institutional changes that hamper the power of the opposition or of the judiciary to challenge executive preferences. As pointed out by Bermeo (2016, p. 10f) *"disassembling of institutions that might challenge the executive is done through legal channels, often using newly elected constitutional assemblies or referenda. Existing courts or legislatures may also be used, in cases where supporters of the executive gain majority control of such bodies."*

Given that institutional change is typically legitimated by some kind of vote or "legally decreed" by a freely elected official, it can be framed as having resulted from a democratic mandate. It may perhaps be somewhat traceable that countries such as Ecuador, Sri Lanka, Turkey or Ukraine have in most recent history become a site for executive aggrandizement. However, the fact that democratic decomposition of this kind may currently be observed also amidst Central European countries (notably Hungary, Poland and for a certain period in Romania) is somewhat disconcerting. While an attempt to elaborate on the origins of executive aggrandizement in Poland and Hungary will be undertaken later in this paper, suffice it to say here that widespread discontent with the operation of the democratic system and mistrust towards political institutions, justified as they may be, are not enough to explain the ever increasing erosion in support for democratic principles. Moreover, it seems that many Western democracies nourished an illusion to be immune to the problem of democratic decline. On the contrary, support for foundational principles of the democratic system seems to be waning even in some well-established democracies.[iii]

In his article *Eroding norms and democratic deconsolidation* Paul Howe (2017) blames the rise of antidemocratic sentiment more on the corrosive changes in the social and cultural landscape rather than the dysfunction in the political arena. He sees hostile and aggressive attitudes as a salient component of an antisocial mindset. As the author says, *"[i]t is reasonable to think that the disdain …[some] individuals show for democratic principles may flow less from an assessment of institutional dysfunction (the current democratic system is so flawed that democracy's rules must be bent) than from an underlying intemperate and unprincipled mindset"* (Howe 2017, p. 24). One possible explanation for such antisocial attitudes presented by some individuals is their socioeconomic status. Limited education and poor life prospects result in the feeling of alienation and distrust. An empirical study on sentiments in the US population about core democratic norms and principles seems to confirm this hypothesis. Drawing on the data from the World Values Survey

(WVS), it is younger citizens who are most likely to express a weaker sense of attachment to democracy and a wide range of socially accepted norms, while showing tolerance for various illegal and antisocial behaviours. Noteworthy in this regard is an observable strong positive correlation between education and support for democratic norms and values, with ignorant or disdainful disposition being substantially more common among less-educated sections of US society. As observed by Howe (2017, p. 27) *"[i]f survey respondents, especially those who are younger and who have fewer socioeconomic advantages, sometimes dismiss democracy because they do not care much about important social norms, they may also, in many instances, simply not know enough to care. Their indifference to democracy may partly reflect a relatively facile and ill-informed understanding of the political world".* Such attitudes, however, are likely to be exacerbated in constitutional orders the democratic institutions of which are debilitated or defunct.

3. Financial Markets' Contribution to Inegalitarian Societies

Well functioning democracies are expected to fairly balance conflicting interests in a society, thereby protecting minority rights from any tyranny by majorities. Under the auspices of neo-liberal capitalism, towards which Western democracies have evolved, ironically, the rules of the game allow for a diktat of financial elites which do not hesitate to put at stake the stability of the financial system in pursuit of profit. The manner in which financial markets are organised only fuels the production of so much risk. As aptly observed by Goldstein and Fligstein (2017, p. 507), *"[b]y problematizing how banks make money and seeking to understand the underlying conception of control, it is possible to see how organizational structures play a pivotal role in both the opportunities and crises produced by capitalism."* The structuring of the US mortgage securitization market allowed banks to generate record profits from 2001 to 2007. However, the downturn in the mortgage-backed securities of mid-2007 resulted in the most spectacular financial collapse since the Great Depression (ibid.), destabilising financial sector worldwide. Ever increasing foreign indebtedness under the premises of "globalisation" has granted World Bank and IMF economists power over sovereign nations (Pettifor, 2017). More than a decade afterwards, the social cost of public capital injection in failing financial institutions has not yet been internalised.

Interestingly, crisis inducing forces seem to have just as much to do with excessive risk-taking as with stagnation. Thomas Piketty perceives a plausible causality between the structural increase of inequality and the financial crisis. He points to the United States where the share of the upper decile in US national income peaked twice in the past century, namely in 1928 and 2007, each time on the eve of the crash of 1929 and 2008, respectively. He stresses that the reason behind the increase of inequality in US (and elsewhere) and the nation's financial instability is the stagnation of purchasing power of the lower and middle class. This inevitably inclines modest households to take on debt, *"especially since unscrupulous banks and financial intermediaries, freed from regulation and eager to earn good yields on* *the enormous savings injected into the system by well-to-do, offered credit on increasingly generous terms"* (Piketty, 2014) In the light of figures demonstrating the significant increase of the inequality in the distribution of wealth in the US between 1977 and 2007[iv], Piketty argues that an economy and society with such extreme divergence between social groups may not continue to function indefinitely (2014, Section: *Did the Increase of Inequality Cause the Financial Crisis*). Moreover a core question arises as to the legitimacy of such disproportionate wealth distribution in modern societies. In terms of political choices, the allure of future well-being continues to seduce majorities of the population to vote in favor of neo-liberal political forces, despite their promises remaining by and large unfulfilled. Even if robust correlation between high levels of inequality and economic stagnation do not necessarily mean causality, the conventional narrative that inequality is a necessary precondition for growth has been convincingly overhauled (Clarke 1992).

From the geopolitical perspective, the concept of equal opportunities for all could constitute a just and relevant counterbalance to unrestricted market forces. The *Declaration on the Establishment of a New International Economic Order* (NIEO)[v] adopted on 1 May 1974 by the United Nation's General Assembly 3201 (S-VI) partly endorsed the emerging market players' call for a regulatory framework protecting weaker economies. (Aggarwal and Weber, 2012). The general strategy of the rich countries was to broadly reject the NIEO. Instead of implementing its noble postulates they pursued their own economic interests.

It would be illusive to believe that transition or emerging economies themselves have drawn lessons from demerits of Western capitalism. The economic transition in the post communist countries has ignited an outstandingly rapid redistribution of income. As observed by Hellman (1998, pp. 224-225), *"[s]ince the beginning of the transition, the level of income inequality has risen in every post communist country with the exception of the Slovak Republic. The average Gini coefficient - one of the standard measures of inequality - for the entire region jumped by one-third, from 24 in 1987-88 to 32 in 1993-94, a pace virtually unprecedented in the postwar era. In a time span of five to seven years the transition economies have moved from inequality levels below those of most OECD countries to, in several cases, levels on a par with or higher than the most unequal OECD countries."*

In the same vein, inequalities in poor or emerging economies are not necessarily lower than in rich economies. On the contrary, Piketty provides data demonstrating that the top centile's share of national income in poor and emerging economies is more or less the same as in the rich economies (2014, p. 233, Figure 9.9)[vi]. In the case of China from the nearly Scandinavian level of less than 5 per cent in the mid-1980s, the upper centile's share of national income increased rapidly over the last decades reaching 10-11 per cent for the period of 2000-2010, being still below the levels reached in India or Indonesia (12-14 per cent, approximately the level for Britain and Canada) or in Argentina and South Africa (16-18 per cent, approximately the level for the United States). According to Piketty the initial egalitarian distribution of national income may easily be attributed to the country's Communist system with its characteristic compressed wage schedule and absence of private capital. In turn the liberalization of the economy in the 1980s and the accelerated growth between 1990-2000 translate into ever increasing inequality in China. This development may clearly be vexing in many respects. Confronting the very high official growth figures for developing countries (notably India and China) with the available data on income taxes, Piketty complains about *"the lack of information and democratic transparency".and blames a possible deterioration of sources on "a certain disaffection with the progressive income tax (...) on the part of certain governments and international organizations".* He suspects that in those countries inequality has reached a more staggering degree than shown by the data because the best remunerated individuals whose incomes are not always included in the available tax data, are taking a disproportionate share in the growth of output (2014, p. 234).[vii]

Piketty concludes with the following apposite statement: *"a market economy based on private property, if left to itself, contains powerful forces of convergence, associated in particular with the diffusion of knowledge and skills; but it also contains powerful forces of divergence, which are potentially threatening to democratic societies and the values of social justice on which they are based"* (2014, p. 398.). In other words, ever growing inequalities in contemporary societies and their subordination to economic interests of the few tend to boost extremisms (Jesse and Thieme, 2011, p. 479) and eventually democratic backsliding. The worrying effects may already be seen in some young democracies which at first appeared promising in terms of political stability.

A glance at publicly available data seems to confirm the hypothesis of a significant role and impact of the financial sector in the processes of transformation leading to a liberal market economy. In Poland e.g. domestic credit provided by the financial sector nearly doubled twice in two subsequent periods of ten years. Expressed in % of the GDP it rose from 18,4% in 1990 to 34,3% in 2000 and 63,2% in 2010, subsequently increasing only slowly up to 73,5% in 2018. The data available for Greece show an increase from 92,7% in 2004 to 137,8% in 2014 and a setback to 91,9% in 2018. For Hungary they show an increase from 54,4% in 2000 to 60,3% in 2014 and a setback to 54,7% in 2018 whereas for the Czech Republic an increase from 45,4% in 2000 to 62,7% in 2010 with a peak of 72,5% in 2014 and a setback to 63,1% in 2018 was recorded. In the Slovak Republic the share rose from 65,3% in 2009 to 79,4% in 2018. In comparison the same data were rather stable in highly developed economies like in Germany (evolving from 134,2% in 2004 to 125,9% in 2018 with a peak of 164,8% in 2010) or in the Netherlands (evolving from 157,5% in 2004 to 176,8% in 2018 with a peak of 231,4% in 2012.

Looking to other indicators, the stock market turnover ratio[viii] evolved in Poland from an initial peak with 69,5% in the year 2000 to stability at lower level with 32,4% in 2004 and 30,5% in 2008, a second peak with 51% in 2009, subsequently continuously falling reaching a low of 30,8% in 2014 and since then modestly increasing again up to 39,4% in 2018. In the same period the bank return on assets after taxes[ix] amounted to 1,3% in 2000 and then varied between 2,4% in the peak year 2004 and a low of 0,7% in 2009, subsequently stabilizing around 1% until 2018.

For Greece, the stock market turnover ratio showed a similar development with peaks in 2000 (66,3%) and 2009 (60,2%), then continuously falling – notwithstanding an intermediate recovery in 2014 – to 31,2% in 2016 and 34,5% in 2017. The bank return on assets after taxes was negative (worst in 2011 with -8,5%) except for the years 2004-2009 (between 1,1 and 0%) and 2016 (+1,1%). In the Czech Republic the stock market turnover ratio increased from 68,6% in 2000 to 81,4 in 2004 and subsequently fell to a low of 28,1% in 2012, the further development not being reported. The bank return on assets after taxes was positive throughout the whole period, increasing from 0,4% in 2000 to 1,5% in 2004 and subsequently varying between 1,3% and 1,8%.

In Hungary the stock market turnover ratio fell from 92,9% in 2000 to 59,9% in 2004, but again increased to reach a peak of 118,4% in 2009 with a subsequent continuous decline to 42,1% in 2014 and 37,9% in 2017. After positive results in the years 2000 (1%), 2004 (2,2%) the bank return on assets after taxes diminished to 0,2% in 2010 and showed negative rates varying between –0,5% and -0,9% in the years from 2011 to 2014, subsequently recovering again to reach 1,9% in 2016. In the Slovak Republic the stock market turnover ratio in the year 2000 amounted to 125,3%. In the year 2004 it had fallen to 38,4%. Since then it remained below 10% with a low of 0,3% in 2008 and a maximum of 9,2% in 2011. The bank return on assets after taxes showed little variation. After a maximum of 1,3% in 2004 and a minimum of 0,5% in 2009 it tended to stabilize around 0,9%. In comparison the same indicators show quite different a picture for advanced economies. In Germany the stock market turnover ratio was falling from 145,9% in 2000 to 99,3% in 2004 and reached a peak of 247,8% in 2008, subsequently continuously fell to a low of 69,1% in 2014 from which it recovered to 78,1% in 2017. The bank return on assets after taxes showed only small variations with a peak of 0,3% in 2000 and a low of -0,3% in 2008, since 2012 it stabilized at a rate of 0,1%.

In the Netherlands the stock market turnover ratio increased from 104,3% in 2000 to 135,3% in 2008, then fell continuously to reach 59% in 2014 (latest available data). The bank return on assets after taxes fell from 1,3% in 2000 to 0,9% in 2004, was negative (-1,5%/-0,2%) in 2008/2009 and recovered slowly but steadily from 2011 (0,2%) to reach 0,6% in 2016 [x].

Alike any other economic data those recorded here cannot demonstrate any possible impact of the financial business on the course of democratic governance. Any assumption of such impact can only be based on a critical evaluation of multi-faceted observations. What the data exposed above may, however, demonstrate is the structurally different impact of the financial industry on an economy that is subject to a process of transformation or a deep crisis, compared to an economy that is fully developed and prosperous. Such structural differences justify looking more closely at the role of the financial sector in emerging democracies.

3.1 Financial Markets and Privatization in Emerging Democracies

Research by Rodríguez and Santiso (2011) suggests that international banks favour lending to new emerging democracies and that their lending activity correlates positively with the level of democratisation as measured by different indicators. The authors refer to other studies which insinuate that government ownership of banks around the world is associated with weak protection of property rights, lower productivity, weak bank performance and low levels of financial development. The authors' observation that state-controlled financial systems tend to promote political rather than profit-maximizing objectives (Rodríguez and Santiso, 2011, p. 14) acknowledges what is desirable from the point of view of public interest.

Other empirical research referred to in the study points to a relationship between democratization process and fiscal policy. It assumes that democratically elected politicians are inclined to minimize taxation and maximize spending on social security, education, etc., thus increasing budget deficits. According to the authors *"emerging democracies' financial needs tend to increase in the very first years of their existence, leading them to boost their borrowing activity and to become potentially good clients of international banks".* However, as observed by Converse and Kaptsein (2006) initial increases in public spending of young democracies are followed later by a long-term decline. Traces of political budget cycles seem to appear typically in the first four elections following democratization (Brender and Drazen, 2004). The concluding assumption by Rodríguez and Santiso (2011) is that bankers' preferences of emerging democracies, apart from solid economic grounds, may additionally lie in ethical considerations, such as *"a pledge of support for democracy, freedom and responsible public order".*

Motivation by allegedly Karl Popper inspired "professional ethic" is not quite convincing when one takes into account the social cost of excessive indebtedness of young democracies to which financial institutions directly contribute. On top of that, *"[t]he gaps in the legal architecture (...) have led to the emergence and growth of so-called vulture funds, [i.e.] hedge funds whose business model is based on exploiting the deficiencies in the rule of law that they helped shape"* (Guzman and Stieglitz, 2016, p. 3). Vulture funds purchase bonds of defaulting countries (by 2010, 26 governments are said to have been affected, among others Argentina, Ecuador and Greece) at prices significantly lower than their nominal value, typically issued under US or British law. They subsequently sue the issuer for repayment of their debts at face value plus interest, including punitive interest and litigation costs, amounting to rates of return of between 200 percent and 3.000 per cent (Bohoslavsky and Goldmann, 2016, p. 27). The rise in holdout litigation poses a direct threat to the promotion of sovereign debt sustainability under international law. It also creates moral hazard of other creditors being inclined to follow the same example instead of engaging in debt restructuring negotiations. In October 2014 the UN Human Rights Council condemned the activity of vulture funds for paralysing the international debt restructuring efforts and its negative impact on the capacity of indebted developing countries to create the necessary conditions for the advancement of human rights, including the right to development.

To sum up the considerations of this section, international banks are not only increasingly lending to newly emerging democracies, but they also clearly prefer those emerging democracies where *policies* are stable, while remaining indifferent to instability of democracy. Rodríguez and Santiso admit that banks may rush towards emerging democracies not because they are democracies but because windows of opportunity like privatizations have suddenly opened: *"Privatization operations are highly attractive for banks, implying high fees for those involved as advisers and lucrative lending operations to finance takeovers by private operators."* This explains their high interest for new democracies in regions like Latin America and Eastern Europe, where privatization was particularly intensive, notably in the first stages of economic liberalization (Rodríguez and Santiso, 2011, pp. 38, 18, 25, respectively).

3.2 Explaining the Illiberal Turn in Central Europe

The capacity of young democracies to maintain popular support may partly rely on the ability of governments to deliver economic policies that meet with widespread approval (Converse and Kaptsein, 2006). A short glance at where some young European democracies are only three decades after the overthrow of the Communist regime may overshadow the cheers of the economic development. Even when idiosyncratic, the narratives of democratic backsliding in Poland and Hungary repeat certain identifiable schemata: judicial autonomy and media freedom have become prime sites for governmental interference, accompanied by the consolidation of executive power and undermining institutions of accountability - all with the justification of a strong popular mandate to rule.

Poland and Hungary constitute the most striking cases where the currently observable illiberal and nationalist political turn, at least in some respects, may be explained by pathologies of liberal governance in Central and Eastern Europe (see notably Plattner. 2019; Karolewski and Benedikter 2017). In the context of their transformation processes, both countries perfectly demonstrate *"the complex interdependencies between democratization and economic liberalization – including the possibility of blockades and failure"* (Hartmann, 2018).

Neoliberal capitalism introduced in both countries in 1989-1990 was the main driving force of their transition from Communism to market economies. Poland and Hungary count amongst the few transition economies which were capable of developing the necessary institutional framework to enforce the protection of property rights and create investment-friendly business environment (see Beck and Laeven, 2005, p. 2 and the literature cited therein). Economic growth and an increase of average living standards count amongst undeniable positive effects of the undergone transformation. However, the privatization processes' lack of transparency and lagging institutional reforms manifested specific governance pathologies in Central and Eastern European states. Karolewski and Benedikter (2017) point out that *"despite positive macroeconomic development, both young people and senior citizens in CEE [Central and Eastern Europe] have endured existential pressures for many years with governments unable, and partly unwilling, to strengthen the welfare systems and balance growing social inequality. (...) In both Poland and Hungary, the sentiment was broadly shared in society that numerous governments after 1989 used state agencies and enterprises for cronyism and politico-economic clientelism, draining financial resources from the state budget that otherwise could have been invested in higher education, research, health, and pension systems".* The problem of clientelism is also emphasized by Keeper (2005). He provides evidence to the effect that in young democracies political competitors are unable to make credible promises to most voters. Consequently, upon taking office, they "underprovide public goods, over- spend on transfers to narrow groups, and engage in significant rent-seeking" (ibid).

Not all authors share the socioeconomic narrative of the political turn in Poland. Kamiński (2018) ascribes it more to the rejection of the liberal mainstream. Similar stance is taken by Rupnik (2018) who claims that the loss of the elections by Poland's Civic Platform liberals may not be attributed to the economy which was performing well. This view fits well in the conventional narrative where deteriorating or stagnant economic performance is seen as a warning signal that the country is at risk of democratic backsliding (see e.g. Converse and Kaptsein, 2006). Regarding Poland the said view is insofar mistaken as it does not account for the fact that the low-income Polish citizenry did not have any share in good macro-economic indicators and performance. Praszkier *et al,* (2014, pp. 13-14) identifies various pressing problems affecting Polish citizenry:

- inertia and a social apathy, also due to lack of perspectives for the future;
- unemployment affecting all social groups, notably young adults and workers over 50;
- social exclusion of various groups, among them disabled, mentally ill, homeless and addicted;
- drastically increasing number of debtors,
- insufficient offer of housing for rent, resulting in significant increase of heavy debt burdens for housing.

In addition, *"[b]anks have played a minor role in the development of social economy. They are reluctant to offer loans neither for the start-ups nor for the development of social enterprises."* (op.cit, p. 26). Thus the words of Franklin D.

Roosevelt perfectly resonate also in 21st century Europe: *true individual freedom cannot exist without economic security and independence. "Necessitous men are not free men." People who are hungry and out of a job are the stuff of which dictatorships are made*.[xi]

Overall, economic reforms in post communist states have generated high social cost, while the gains they have produced have benefited only a narrow privileged group. This argument is advanced by Hellman (1998) who unveils that, in contrast to the conventional wisdom on the politics of economic reform, the net winners of the process may do far more damage to its progress than its traditional net losers (i.e. striking workers, impoverished pensioners, unemployed, etc.).

According to the author, obstacles to the progress of economic reform in post-communist states have come "from enterprise insiders who have become new owners only to strip the firms' assets; from commercial bankers who have opposed macroeconomic stabilization to preserve their enormously profitable arbitrage opportunities in distorted financial markets, from local officials who have prevented market entry into their regions to protect their share of local monopoly rents; and from so-called mafiosi who have undermined the creation of a stable legal foundation for the market economy. These actors (…) have often sought to stall the economy in a partial reform equilibrium that generates concentrated rents for themselves, while imposing high costs on the rest of society" (Hellman, 1998, pp. 204-205). Hence, instead of insulating the state from the pressure of the losers in an electoral backlash, Hellman calls for their political inclusion as means to constrain the established power of the winners of economic reform (op.cit., p. 234).

Finally, the large majority of citizens of Central European states have been burdened not only with the effects of economic transformation from planned economy to market economy, but also two other transformations, namely that linked to the necessity to fulfil the EU accession criteria and that concerning the structural adjustments following the global financial crisis. Those citizens are still awaiting their share in the prosperity associated with becoming EU members (Hartmann, 2018).

Not surprisingly, Alesia and Dani (1994, pp. 484-485) postulate *"a strong demand for redistribution in societies where a large section of the population does not have access to the productive resources of the economy".* They claim such conflict over distribution will have negative impact on growth. The current experience of the initially most reform-oriented post communist states may demonstrate that the conflict of distribution may endanger not only the stability of economic reform (Hellman, 1998), but also that of a political order. The efforts of putting democracy back on track must, therefore, rely on the emergence of new political coalitions that are prepared to reverse the trend toward inequality and ensure that the benefits of automation are widely shared (see e.g. Inglehart, 2018).

4. Uncontrolled Externalities

Externalities are widely recognized and discussed phenomena in economic theory. Despite the voluminous literature, the concept of externality remains somewhat imprecise given the variety of meanings and instances that authors commonly ascribe to it. It has been integrated in many fields of economics and beyond (development, ecological economics, finance, law and economics, economic ethics, etc.) For the purpose of the present study, externality is to be construed as an incidental effect of an action or transaction on parties not involved in it (White 2015), hence also commonly termed as third-party effect or spill-over effect.

Externalities arise whenever the value of what Lin (1976, p. 1-2) calls an "objective" function, e.g. the profits of a firm or the happiness of an individual is affected by unintended or incidental by-products of some activity of others. Chemical industry may serve as a good example to explicate the phenomena of externalities, since the influence of the production process typically goes beyond the directly involved parties such as suppliers and employees of the producer, as well as the end customers. Emissions generated during the production process are discharged into the air, soil and water, which may significantly affect other production sectors such as agriculture and fisheries, diminish attractiveness of the area thus resulting inevitably in reduced value of property and tourist revenue, not to mention the adverse effects for the well being of the local population. Incidentally, unwelcome side effects such as marine pollution by plastic materials are also caused by the end users of industrial products. Such external diseconomies may not remain unaccounted for when evaluating economic welfare, as benefits and costs seen by private individuals differ from the overall social cost consequences of their actions[xii]. In effect, in the presence of externalities, decentralized decision making may fail to produce an optimal allocation of resources for the society (ibid.).[xiii]

Some authors conceive of externalities in terms of absence of markets or their failure to operate properly. According to Heller and Starrett (1976, p. 10), externality occurs when "private economy lacks sufficient incentives to create a potential market in some good and the nonexistence of this market results in losses in Pareto efficiency". Consequently, setting up markets for externality rights is proposed as an adequate remedy (op.cit., p. 20). This may hardly, however, be considered as a way of correcting of existing externalities, nor even compensating for them, as such an attempt leads to salvaging negative externalities by conceiving of them in terms of external economies which may in some way or other be internalized. While not denying the existence of positive externalities nor some need to manage inevitable negative external effects of a given action or transaction, the occurrence of certain externalities should be prevented at all costs. Diez (2018) provides a perfect example to this effect. He rightly observes that if a flight from Berlin to Cologne with a low-cost airline costs about 15 euros, whereas a train journey 120 euros, then something goes basically wrong. Cheap flights are not human rights, but ecological disaster. *"The market fails as an instance to do the right thing - the state must intervene to* *establish a reasonable order. Flying exposes better than anything else the pathologies of contemporary capitalism"* (ibid).

5. From Uncontrolled Externalities to the Undermined Rule of Law

Given their potent impact, externalities have also become a matter relevant for normative economics and economic ethics. According to Medema and Ferey (2014) *"[i]t is thus a matter of economic ethics to discuss the types of values that a society should support and the types of externalities it should discourage as an alternative to the implementation of market solutions when transaction costs are too high or when they can be reduced through the development of collective values or social conventions. More broadly, the concept of externality conveys, at least implicitly, claims about the scope and* ***boundaries*** *of the market"* (emphasis added). Once an undesirable externality occurs, though, the discussion about its consequences must inevitably embark on issues such as intentionality, responsibility, and causation attached to a person or other subject of law which is the source of such an externality. That is where externalities are of crucial importance not exclusively from the perspective of mainstream economics, but also law and policy-making.

In contemporary judicial review-centered constitutionalism (Lustig and Weiler, 2018) characterized by the existence within states of judicial mechanisms safeguarding constitutional review of state action, including democratically approved legislation, any political assault upon judicial autonomy undermines the rule of law. In other words, the main functions of the judiciary in maintaining liberal democracy, namely: the exercise of checks on the executive power and protection of individual human rights, may not be properly fulfilled if the judiciary does not enjoy sufficient independence from the legislative and executive powers. This said, let us focus on an aspect of the rule of law which is perhaps less evident, albeit more pertinent in view of the subject matter of the present study, namely: equality under the law.

As aptly stated by Fukuyama (2018) *"in liberal democracies, equality under the law does not result in economic or social equality. Discrimination continues to exist against a wide variety of groups, and market economies produce large inequalities of outcome. (...) Significant parts of their populations have suffered from stagnant incomes, and certain segments of society have experienced downward social mobility."* Not surprisingly, a certain feeling seems to have awakened in a considerable subsection of the population that the democratic system with its distinctive affection for liberal bargain has discredited itself as a political and socio-economic order.

As surprising, but even more significant the author perceives the success of populist nationalism in ballots held in 2016 by two of the world's most ancient and durable liberal democracies, i.e. the United Kingdom with its Brexit vote and the United States with Donald Trump's electoral upset in the race for presidency. Fukuyama

(2018) embraces the above described phenomena under an umbrella term of identity politics. In his view politics today is defined less by economic or ideological concerns than by questions of identity: *"in many democracies, the left focuses less on creating broad economic equality and more on promoting the interests of a wide variety of marginalized groups, such as ethnic minorities, immigrants and refugees, women, and LGBT people. The right, meanwhile, has redefined its core mission as the patriotic protection of traditional national identity, which is often explicitly connected to race, ethnicity, or religion".* Such identity turn is by no means surprising given that the loss of economic status is perceived in terms of the loss of identity (ibid.).

It seems plausible that the said identity orientation is a kind of reactionist response to the failure of the economic system which promotes concentration of wealth in ever fewer hands at the cost of the rest of the population. When the rate of return on capital exceeds the rate of growth of output and income, capitalism automatically generates arbitrary and unsustainable inequalities, which in end-effect radically undermine the meritocratic values on which democratic societies are founded (Piketty, 2014). Especially young democracies of Central and Eastern Europe lack resilience in the face of such phenomena. Under such conditions the fact that they are dangerously sliding back towards authoritarianism[xiv] may not be surprising.

The undermining of the rule of law, however, is not limited to discrimination in socio-economic terms. An even more important aspect of this principle pertains to individual and social responsibility. In his work devoted to risk communities, Beck (2009) states that *"[e]ven in the smallest conceivable microcosm, risk defines a social relation, a relation between at least two people: the decision-maker who takes the risk and who thereby triggers consequences for others who cannot, or can only with difficulty, defend themselves. Accordingly, two concepts of responsibility can be distinguished: an* ***individual responsibility*** *that the decision maker accepts for the consequences of his or her decision, which must be distinguished from responsibility for others,* ***social responsibility****. Risks pose in principle the question (which combines defence and devaluation) of what "side effects"* a risk has for others and who these others are and to what extent they are involved in the decision or not" (emphasis added). What Beck means under such ***side-effects*** are nothing else than the externalities discussed in this paper. Moreover, as rightly stressed by the author, globalization implies a global space of responsibility where global risks open up *"a complex moral and political space of responsibility in which the others are present and absent, near and far, and in which actions are neither good nor evil, only more or less risky. The meanings of proximity, reciprocity, dignity, justice and trust are transformed within this horizon of expectation of global risks"* (ibid).

An undeniable achievement of occidental legal culture is the prohibition of causing damage to other people, their private property or public property they use (most notably the environment, but not exclusively). This prohibition will not be effective if individuals causing damage to others will not be held liable for their acts. If they are not forced to face all consequences of the damage they caused, they will not have motivation to refrain from such acts in the future. The liability of economic actors organized in form of corporations is in principle limited to the corporate capital. The "Supermanagers" (notably CEOs of multinational corporations) are bearing full responsibility for their action only in exceptional cases when found guilty of having committed a delict[xv]. Thus they are capable to control or abuse the rules of the economic game to their advantage. Limited or completely lacking liability on the part of economic agents that induce harm to the general public is undermining the basic principles of the rule of law (Stiglitz, 2015), decaying one of the core pillars of any democratic order. Lacking appropriate legal instruments establishing such liability "developed" societies are de facto privileging growth of the GDP over the values they explicitly uphold.

A question arises whether European and other established democracies are doomed to democratic deconsolidation or whether democratic processes may still bring about a reversal of the 30-year trend toward greater socioeconomic inequality present in most liberal democracies Fukuyama (2018). Arguably, modern democracies dispose of sufficient institutional instruments to initiate a gradual transformation of themselves into more egalitarian polities. For the time being, however, neither is there a serious will to do so on the part of financial and political elites nor is such a transformation requested with unwavering insistence by a majority of the electorate.

6. Re-embedding the Market within the Society and its Institutions

There may nevertheless be good reasons for the financial and political elites to envisage in their own long-term interest a transformation of present day neo-liberal capitalism. The starting point of such a transformation could be the consensus e.g. existing within the European Union (cf. Article 3(3) of the Treaty on the Functioning of the European Union) on the principle of a *social* market economy, the putting into practice of which would require to embed the market within the society.

The concept of embeddedness of the market in the social as introduced by Karl Polanyi (1944)[xvi] is by no means a novelty in the economic theory. Alas, it remains of central interest for the discipline of economic sociology and the few devoted to challenging economic imperialism with its main underlying assumption of the self-regulating market economy (Ashiagbor, 2013). Indeed the central message of Polanyi's work is that the forces of the market are all but self-adjusting, and when left uncontrolled, they will annihilate the human and natural substance of society. Since unrestrained market liberalism leads inevitably to commodification of labor and environment, individuals need to be protected by means of anchoring markets within institutional regulation (ibid). Since the matrix of institutional structures may differ from state to state or within transnational market communities (such as e.g. the EU), the neo-Polanyian theory assumes that the market is never fully disembedded; on the contrary, we should rather speak of political economies regulated to a greater or lesser extent. In the same vein, liberalized markets at EU level are embedded in varieties of institutional structures in Union member states, with the latter maintaining the competence to decide on forms and depth of state intervention to secure domestic stability. When under the drive of the forces of laissez-faire economic liberalism the principles of social protection are less and less implemented, were it at national or even less so at transnational level, the values upheld for many years seem to be rapidly decomposing.

One of the fundamental elements of social embededness of the market is social embeddedness of property rights. Private property rights and guarantees for their respect are a cornerstone of liberal legal and economic systems. They have been established as fundamental rights enshrined under constitutional and international law. At the same time, in contemporary constitutional dogmatics and case-law, property rights are not construed as 'absolute' rights, i.e. they belong to the category of subjective rights which may, under the conditions specified by law, be circumscribed or modified especially when externalities and/ or overriding social objectives are involved (for the German legal tradition, cf. e.g. Niebler 1982 and the case law cited therein).[xvii] For example, in the industrialized economies, the use of land is governed by zoning regulations and the permit process which may significantly limit the owner's right to use the property in whatever way s/he pleases.

It is typically at the discretion of local authorities to regulate and/ or restrict occupancy of lands for agriculture, residence, recreation, and other purposes. Other examples of commonly accepted legal limitations on an owner's real property rights involve: i) the interference with third party rights[xviii], i.e. with another property owner's use or enjoyment of their own property (a private nuisance/ tort); ii) environmental laws and regulations addressing issues such as water quality, air quality, soil quality, and solid waste and iii) expropriation for a public purpose (on the condition that the owner is fairly compensated).[xix]

Furthermore, it is by no means unusual to construe ownership not only in terms of rights but also duties. Such approach to property rights seems justified given that the entitled individual receives a stream of benefits from those rights, which has a direct impact on the distribution of wealth and income. By way of example, under Art. 14(2) of the German Basic Law (*Grundgesetz, GG*) property entails obligation and its use shall also serve the public good.[xx] In other words, following Juan Elegido (1995), do I have a moral right to do with my property whatever I please irrespective of the pattern of wealth distribution in my society and the needs of others? As rightly pointed out by the author, depending on the conception of property rights that we assume (a strong presumption in favour of property-holders vs. justification of a degree of state intervention aimed at satisfying the demands of the common good and the needs of the less privileged members of the society), we will arrive at different views on how economic activities should be carried out. Hence the libertarian defence of the absolute conception of property rights as the only possible model will not stand. The duties of a property holder may be multifarious depending whether they relate to care for the environment, public welfare programs, redistributive taxation, modalities of remunerating employees, charitable activity of companies, etc. (Elegido 1995, p. 412).

Last but not least, many modern constitutional democracies recognize the concept of *social justice* as a defining fundament of social order. By way of example, under Article 2 of the Polish Constitution, *"[t]he Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice."* The social justice principle, as conceived in any socio-economic and political system, may only be reconstructed on the basis of complementary law provisions and the relevant case law and doctrine. To provide at least two such complementary constitutional provisions under the law of Poland, Article 1 of the Polish Constitution stipulates that *"[t]he Republic of Poland shall be the* ***common good*** *of all its citizens"* (emphasis added). In turn, Article 20 of the Constitution reads: "A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland." The cited provisions clearly demonstrate that the Polish people constituted a legal basis to embed the market in the non-economic institutions. However, a closer study of the constitutional provisions relating to social welfare unveils the embedded liberal bargain in so far as the said provisions are all formulated merely in terms of a mandatory state policy,[xxi] without any direct claim on the part of a citizen corresponding to it. Thus, the social element in the principle of *social justice* or *social* market economy remains a kind of antinomy to other constitutional principles, such as e.g. the freedom of economic activity, that are vested with subjective rights of the individual. It is thus granted a *de facto* weaker status amongst the conflicting constitutional norms.

What is noteworthy, this approach to social welfare rights is by no means a Polish phenomenon. On the contrary, Western constitutional democracies consciously lay down social welfare rights by means of state policy obligations. This *de facto* frees national governments and courts from taking those principles more seriously in the case where they conflict with e.g. the economic freedoms. Such imbalance is considered here as unsatisfactory, especially where the markets are established on a larger than the national scale (e.g. the EU) or multilaterally by means of international agreements. In such cases the States concerned acting jointly would *de jure* posses the broadest (including judicial) faculties to counterbalance any adverse effects the enlarged market may produce but *de facto* seem to insufficiently make use of them.

At the same time, nation states are no longer the only units for solving societal problems, as unilateral action not infrequently proves ineffective. *"Interdependence is not a scourge of humanity but the precondition for its survival. (...) Effectiveness and legitimacy are products of cooperation among states"* (Beck, 2009, p. 18). A good example to this effect is tax policy and countering the erosion of tax basis, both at national and transnational level. Ulrich Beck embraces the idea of post-national and global cooperation in terms of a cosmopolitan vision. The author states that "[c]osmopolitanism … is a vital theme of European civilization and European consciousness and beyond that of global experience" (…) "in the cosmopolitan outlook (…) resides the latent potential to break out the self-centred narcissism of the national outlook and the dull incomprehension with which it infects thought and action, and thereby enlighten human beings concerning their real, internal cosmopolitanisation of their lifeworlds and institutions" (Beck, 2006, p. 2). As the example of the United Nations Organization shows, there is no direct path to cosmopolitanism and global governance. The establishment of a multilateral order by means of multilateral agreements amongst enlarged polities of continental or quasi-continental scale may, however, be a way forward.

7. Concluding Remarks

The main contention of this paper is that the expansion of financial economy in liberal market economies (LMEs as conceived by Roberts and Kwon, 2017) not only fuels the accumulation of excessive risk in the system, but also produces unwelcome externalities in terms of reduced inclusiveness of economic policies and unsustainable inequalities. Notably the infamous privatizing the profits of banks, while socializing losses they yield undermines popular support for liberal values, also affecting the acceptance of social models of a democracy based on the rule of law and a market economy.

Therefore we argue that backsliding democracies - for their recovery – are in need of a radical ring-fencing of markets by democratically accountable non-economic institutions and not, as proposed by Posner and Weyl (2018), *radical markets*. These authors not only revive the doubtful self-regulatory markets utopia, but also propose a pretended "democratic" system based on buying votes. They totally ignore the fact that part of the population whose main concerns are focused on "bread and butter" would be effectively deprived of the possibility to vote. The explanation offered by the authors for the radical disproportion in the weight of influence by a single individual in a ballot under such system, namely that also under the current system the financial elites are benefitting of a similar effect (ibid.), ironically confirms the diktat of financial elites as assumed above.

Given that waning support for democracy reflects social malaise rather than nostalgia for authoritarian rule, the only promising remedy for it would therefore be, as suggested by Howe, drawing people again into a new kind of *social contract*, restoring in them a sense of belonging to a society where principles constituting the foundation of their living together are to be respected and observed. To that end it is necessary for the public authority, at national, transnational and global level, to ensure first that all have a reasonable opportunity to succeed in life irrespective of their socioeconomic background. This would mean countering the excessive individualist ethos so characteristic of contemporary capitalist societies based on private property. This would mean developing a conception of macro- and micro-economics that includes parameters evaluating and rewarding the respect of the common good and social balance. Robust civic education is a separate challenge valuable in and of itself. Those never trained in solidarity and respect of the other, moreover “bereft of factual information may also lack the broader awareness that goes into appreciating the value of democracy and grasping the potential consequences should it fail” (Howe 2017, p. 26).

The question of the financial markets’ contribution to democratic backsliding would merit a more comprehensive and systematic research that would need to go beyond the initial theoretical arguments sketched out in this paper. It was neither aspired nor attempted to discuss all instances where the current model of financialisation of economy may yield side effects of democratic backsliding. While we reject dogmatic approaches that take such impact for granted, we believe that the evidence put together in the present paper suffices to undermine presuppositions widespread in the economic discipline as to an alleged need of independence of the markets from the political and social spheres.

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Notes:

[i] For the United Kingdom a period of stagnation of real wages similar to Victorian ages is reported, average real wages in 2019 being lower than in 2008 and no higher than in 2005. In the United States median annual earnings in the Bretton Woods period steadily rose until just after 1970. Since then American male real wages stagnated throughout the age of globalisation and financial deregulation (see Pettifor, A. (2017).

[ii] See Article 38 of the Statute of the International Court of Justice.

[iii] By way of example, in December 2016 Italian Prime Minister M. Renzi put to public vote a constitutional reform which intended to curtail Senate's power in the legislative process by transforming it from bicameral to by and large unicameral procedure. From the perspective of most bi-cameral constitutional systems in Europe where the upper chamber of parliament has long ceased to perform its corrective role in legislative process it may seem irrelevant for the political checks and balances outcome. However, the modalities of the Italian electoral system if not safeguard, than at least favor different power division in both chambers (the Chamber of Deputies and the Senate), which in turn makes it more difficult for the government to impose its preferences which do not accept for a inter-party political

consensus. While such plans for constitutional reform, already approved by both Houses of Parliament were rejected by means of a referendum, the action undertaken by the Government set up in June 2018 with regard to migrants rescued at sea and the pursuit of EU policies seems to be in breach with the humanitarian and integrationist principles followed by all Italian governments since the overcoming of the fascist rule. In Germany the partisan behavior of police forces observed in August 2018 in certain Eastern parts of the country is pointing into the same direction, as it shows passivity when confronted with events of extremist uproar while over-zealous activism in restricting the freedom of journalists wishing to report on right-wing activities.

[iv] The richest 10 per cent appropriated three-quarters of the total growth of the US economy. The richest 1 per cent absorbed almost 60 per cent of the total national income growth

[v] February 2019, http://www.un-documents.net/s6r3201.htm.

[vi] After the period between 1910-1950 which was marked by the most inegalitarian distribution of wealth in countries such as Argentina, India, Indonesia and South Africa (with the upper centile's share in national income amounting to around 20 percent), the top centile's share fell significantly between 1950-1980 (to 5-6 percent in India, 8-9 percent in Indonesia and Argentina and 11-12 percent in South Africa) to newly rebound after 1980s to about 15 percent of national income.

[vii] India is said to have ceased publishing detailed tax data in the early 2000s, albeit such data had been available without interruption since 1922.

[viii] The Total value of shares traded during the period divided by the average market capitalization for the period.

[ix] Commercial banks' after-tax net income to yearly averaged total assets

[x] All data retrieved from the World Development Indicators, accessed on January 8, 2020 under https://databank.worldbank.org/source/world-development-indicators#.

[xi] Franklin D. Roosevelt, *State of the Union Message to Congress*, 11 January 1944, http://www.fdrlibrary.marist.edu/archives/address_text.html.

[xii] On the contrary significant ecological damages requiring massive intervention may under current accounting methods even result in a tangible growth of the GDP.

[xiii] On the concept of welfare economics, see e.g. Just *et al.* (2004).

[xiv] In the context of the consolidation of power by the Law and Justice Party in Poland, Małgorzata Gersdorf, First President of the Supreme Court of the Republic of Poland, in her speech before the Federal Court of Germany stated that "Poland continues to be a young democracy. As one of the weakest links in the European chain of nations, she is a litmus test for the condition of the entire European Union." (Speech to Mark the Occasion of the Conference Organised by the Federal Court of Germany (*Bundesgerichtshof*): *Polish Rule of Law: Missed Opportunities?,* Karlsruhe 19-20 July 2018).

[xv] As shown by the escape of former Renault-Nissan CEO Carlos Ghosn from Japanese arrest in the final days of 2019 such personalities still dispose of means not available to the general public for evading the judiciary. For a description of one of the most frequent abuses see: J. Useem (2017): *The Stock-Buyback Swindle*: American corporations are spending trillions of dollars to repurchase their own stock. The practice is enriching CEOs - at the expense of everyone else.

[xvi] Polanyi's major work, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press, 2001 [1944]), as cited by Ashiagbor (2013, p. 304).

[xvii] From the case law of the German Federal Constitutional Court cited therein, notably BVerfGE 24, 367 [389], Urteil vom 18 Dezember 1968 zum Hamburgischen Deichordnungsgesetz.

[xviii] Cf. e.g. German *Bürgerliches Gesetzbuch (BGB)* [German Cicil Code] § 903.

[xix] By way of example, under Article 21 of the Polish Constitution, the Republic of Poland shall protect ownership and the right of succession. Expropriation may be allowed solely for public purposes and for just compensation.

[xx] https://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/grundgesetz/gg_01/245122 (June 19, 2019).

[xxi] For instance, Art. 70(4) of the Polish Constitution stipulates that: "Public authorities shall ensure universal and equal access to education for citizens", or Art. 74(1): "Public authorities shall pursue policies ensuring the ecological security of current and future generations."