For the moment, the major issue agitating Europeans is the outcome of the parliamentary elections held in Great Britain on December 12, 2019. The Tories' triumph makes it appear more likely than ever that Britain will leave the European Union. For Europe, this is a dismaying prospect, even though there is some chance that a constructive treaty will be signed defining future relations between the EU and a presumably independent Great Britain. The tragic drama of the past two years is not over yet, least of all for the British people themselves. They have fanned the flames of separatism with great enthusiasm, and now the conflagration may spread within their own borders, to Scotland and Northern Ireland, and perhaps even to Wales.

Two grand themes are featured in this issue. First, the expert advisor on the internet and artificial intelligence to the EU Commission, Paul Nemitz, outlines the legal and political foundations, scope, and objectives of the regulations that should cover applications in those high-tech sectors. Assuming the importance of the framework of democracy and the validity of fundamental rights, he demonstrates how urgently necessary it is to subject both fields to democratic control and the rule of law. The principles governing legal and political approaches to regulation should be, first, to preserve the fabric of our shared lives as human beings and citizens, and, second, to ensure that markets continue to function as they did in the analog world. It is an irresponsible illusion hatched during the early days of social media and nurtured by its anarchist aspirations that the cyber-world could be a zone mostly free of laws and regulations. That idyll imagined that the users of technology among themselves and vis-à-vis the operators would meet up spontaneously online and would be nothing more than partners in communication who would need neither standards nor ground rules to interact on the basis of equality and freedom. But by this time, it has become devastatingly obvious that the truth is quite the opposite. Nevertheless, those who monopolize power over the internet have been unwilling to abandon their early-capitalist-style libertarian ideology or to change their policies. Their stubborn resistance to regulation jeopardizes not only the individual liberty and self-determination of the users in matters of information technology; it also puts democracy itself at risk, as has been shown by a series of elections held recently in the Western world.

Our second grand theme concerns Africa, Europe's neighbor, which is awakening. Civil societies are getting organized in many of the continent's nations, demanding responsible governance and political participation. Not only is Africa growing quantitatively, in terms of the number of its inhabitants, but also qualitatively, in respect to its social and political life and economic performance. But its countries are following increasingly divergent paths of development

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with different degrees of success. The articles assembled here address some of the most important issues facing the new Africa and demonstrate that the continent is a force to be reckoned with.

Genia Kostka

Closing Regulatory Loopholes or Imposing Total Control?

A look at China's system of social credit

Algorithm-based scoring systems are becoming ever more widespread. An algorithm determines how well or poorly a person is evaluated, and, accordingly, what advantages that individual ought to enjoy or what punishments he or she deserves. Ratings are based on how people behave in traffic, their internet shopping, and their friends list on social media.

This scenario soon will be part of the everyday experiences of the Chinese people. Five years ago, China's State Council decided to prepare for the introduction of a centralized social credit system. In the next few years that system is supposed to be put in place across the entire country, although the government has not yet committed itself to doing so. For several years now, China's government and big tech firms have been testing a variety of scoring systems designed to analyze not only the conduct of citizens, but also of business enterprises, organizations, and government offices. Officially, the social point system is intended to contribute to the development of a more honest, trustworthy Chinese society. But, more than anything else, the utilization of big data and access to the citizens' personal data from practically every sphere of life marks an important step toward social control of the population.

For example, over 40 Chinese cities already are carrying out pilot projects for the government that rely on a point system to evaluate citizens and companies. These experimental systems are mandatory for local citizens and firms. That should be a familiar picture to some. Already there are public red and black lists on which »honest« citizens or firms are lauded while »dishonest« ones are pilloried. In addition, giant tech firms like Alibaba and Tencent operate their own voluntary commercial social credit systems, which, for instance, can be used as cellphone apps. As the name itself makes clear, the various credit systems include not only economic but even social factors in their calculations. Someone who buys a lot of online games is judged to be less trustworthy than someone else who, say, buys baby diapers. By the same token, someone who is linked to »dishonest« people via the internet would end up with a lower score for that reason alone. Who donates for charitable purposes gets a higher social rating

Although thus far no system has been put into effect across the entire country, even the test phase offers hints about how any such a scheme might affect society. With the intention of finding out how Chinese citizens react to the already existing social credit systems, I conducted an online survey of more than 2,200 Chinese along with separate interviews in 2018. The results generated some rather surprising insights. In Germany, the idea of an artificial-intelligence-based point system to evaluate people is considered tantamount to surveillance and a violation of basic democratic values. Consequently, most people find it worrisome and would reject it. By contrast, in China negative voices are in the minority. Based on my study,

which is supposed to represent statistically all of China's internet users, 80 % of the populace judged social credit systems to be »very good« or »fairly good.« At around 50 %, the share of those who approved of the system, calling it »very good,« was far and away the largest. A mere 1 % of respondents took a negative view, expressing opinions ranging from slight to strong disapproval, while the remaining 19 % were neutral. However, that last figure could indicate that, despite the extraordinarily high rate of positive feedback, at least one out of every five Chinese respondents is not convinced that the social credit point system is a good idea, or perhaps even takes a skeptical view of it.

»Gamification« with a bitter aftertaste

Considering how popular the social credit system is, it makes sense that a large number of survey participants indicated that they already had volunteered to take part in a scheme of that kind. Over 80 % use commercial programs, of which »Sesame Credit« is most people's favorite, followed by »Tencent Credit.« Sesame Credit and other commercial point systems work like games. As in a computer game, one's high score appears on the app, as do those of one's friends. Also, signs of progress can be observed in the different evaluation categories. This sort of »gamification« – bringing game-like elements into a context that is not a game at all – subconsciously motivates users to try for higher scores and compete with friends to see who can be the top »performer.« This partly explains why so many people voluntarily subject themselves to the evaluation system. Nobody wants to pass up the new »game.« If your girlfriend has it, then you want it too.

7 % of the Chinese in my survey indicated that they were part of a government pilot project. But in fact 43 % of them lived in one of the places in which a pilot project was ongoing. From that circumstance we may conclude that large portions of the Chinese population are not well informed about the topic. Likewise, it sheds light on the fact that the project is still in its initial phases and evidently has not attracted very much – if any – attention from the affected population. Pilot projects such as the one in Rongcheng in Shandong province are an exception. There, a point system has been used to evaluate each of the city's citizens since 2014. That pilot project has become known internationally as the poster child of the new system.

Another surprising finding of my survey was that urbanites, especially, as well as population groups with the highest income and educational levels displayed the most enthusiastic approval of the social credit system. Here, one of the key elements of the point system comes into play: rewards in the form of premiums and advantages for »good behavior.« These can include discounts for rented bicycles, speeded-up check-ins when flying or at a hotel and advantages when paying by mobile phone. The range of such potential benefits is greatest in urban areas. Thus, more socially privileged people, who often inhabit metropolitan areas, can benefit the most from the social credit system and thus are best situated to appreciate its positive aspects.

Nevertheless, a bitter aftertaste lingers. Why is there no outcry about the loss of the private sphere and misuse of data, as one would expect here at home? That is another question that my survey was designed to answer. China's banking sec-

tor long has suffered from structural problems. It was very difficult if not impossible to get credit. Companies such as Ant Financial, a subsidiary of the electronic trading platform Alibaba and developer of »Sesame Credit,« are helping to fill these institutional gaps in the Chinese system. Furthermore, the country repeatedly has been shaken by major food scandals, and the citizens suffer from environmental damage caused by industry. Because the social credit system also awards scores to business enterprises, many citizens expect that this system will lead to greater transparency and compliance with rules and regulations. In China, the downgrading of a firm's point rating could ruin it. Three-quarters of the respondents to my survey stated that, in their opinion, Chinese society had a trust problem and that social credit systems would be a good way to tackle it. They were hardly concerned at all that their data might be misused by the government for surveillance purposes. Most were convinced that such data could be freely accessed by the Chinese intelligence apparatus anyway.

Although misuse of personal data has not been a major public concern in China so far, the majority of the Chinese population still places a high value on their own private spheres. More than half of the survey participants indicated that they had changed their attitudes toward privacy when using a commercial social credit system. Perhaps the general attitude toward data protection in China will change when ever more people begin to suffer the potentially painful consequences of negative scores meted out by the massive sifting of data. Those could include everything from setbacks in everyday life to actual punishments. Moreover, the ties between technology companies and the government as well as data transfers from the former to the latter someday may provoke a backlash among the populace. But so far the prospects of the benefits to be gained by good behavior and the fair evaluation of all citizens and firms continue to set the tone of pubic opinion.

Here, it is interesting to observe that positive incentives evidently have a stronger effect on human behavior than the fear of negative consequences. This is likewise something that my 2018 study showed: The number of people who stated that they had modified their behavior to get a better rating exceeded the number who did so from fear of punishment or constraints. Yet, one conclusion is beyond dispute: Knowing that their own actions will be evaluated on a point system causes people to change their behavior. Nearly all Chinese who knew that they were taking part in a government-sponsored pilot project acted differently in at least one respect than they would have otherwise. The response to commercial credit systems is somewhat weaker, but even here a majority of users deviated from their normal conduct. People participating in a government-sponsored point system volunteer or donate money more often. Those who use Sesame Credit or a similar app change their shopping and paying behavior. But in addition, it is not an uncommon reaction to the point algorithms behind social credit systems for people to »unfriend« others (i.e., to cut off online relations with them on social media). 17 % state that they have already done so. And unsurprisingly, the dissemination of one's own opinions or other content on the internet does not remain unaffected by social credit schemes. Almost one out of every five Chinese has posted other things on the internet than

he or she would have in the absence of such a system of evaluation in order to avoid a negative impact on his/her own social credit score. Thus, some tendencies are already evident today. This is a system that evaluates each person according to uniform criteria: those who don't follow the rules are penalized, while those who live »good and proper« lives get rewarded. But it is also apparent that the system does not tolerate »other« opinions or »bad« friends. And it is a system that represents a country in which people bend over backwards to conform to the moral guidelines of the ruling party.

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Sergio Grassi
Identity Politics and Social Progress in Indonesia

These were the most complicated elections anywhere in the world. That is an accolade that Indonesia's most recent parliamentary and presidential elections could claim for themselves. 150 million voters turned out to cast ballots on a single day – April 17, 2019 – at 800,000 different polling places located around the country's 6,000 populated islands. Of the 193 million eligible voters, about 82 % actually participated – a relatively high rate of turnout.

The governing Indonesian Democratic Party of Struggle (PDI-P), led by former president Megawati Sukarnoputri and of which the incumbent president, Joko Widodo (called Jokowi), is also a member, won 19.3 % of the vote, which translated into 128 out of the total 575 seats in parliament. The opposition party Gerindra, headed by Jokowi's main presidential rival, Prabowo Subiantos (Prabowo), captured only 12.6 %, followed by Suharto's former party, Golkar, which tallied 12.3 %. Nasdem, another governing party that classifies itself as progressive, garnered around 9.1 % of the vote, which makes it the fifth-strongest force in the newly elected parliament. Finally, the Partai Solidaritas Indonesia (PSI), whose supporters and voters come mainly from the educated urban middle class, failed to surmount the country's 4 % hurdle to make it into parliament. Nevertheless, the party was able to win a few seats at the local level, including in Jakarta.

According to the final tally issued by the Electoral Commission on May 21, the incumbent Jokowi won the presidential election with 55.5 % of the vote, compared to just 44.5 % for his challenger, Prabowo. Consequently, Jokowi was sworn in on October 20 for his second and last term in office. He will be Indonesia's president for another five years. However, Prabowo, who is a son-in-law of Indonesia's former dictator Suharto and an ex-general who has been accused of serious human rights violations, contested the outcome and more than once declared himself the

real winner. Right after the official election results were announced, violent clashes broke out in the capital city of Jakarta that lasted for several days. Many of Prabowo's supporters were involved in the unrest, which eventually caused nine deaths, 700 injuries, and up to 300 arrests. In the runup to the civil strife, 68 alleged terrorists were arrested, but after May 22 some ex-military personnel also were taken into custody, charged with having planned to assassinate high-ranking politicians in Jokowi's circle in the aftermath of the violent clashes.

President Jokowi will have a new and powerful vice-president at his side in the person of 76-year-old conservative Muslim cleric Ma'ruf Amin, the chair of the Muslim mass movement known as Nahdlatul Ulama (NU), with its nearly 40 million members. In the past, Jokowi's opponents routinely had accused him of not being a devout Muslim. Thus, the nomination of Amin was an attempt to take the wind out of his critics' sails and a move toward reconciliation with the conservative Muslim milieu.

Furthermore, many observers trace the selection of Amin back to the demise of Jokowi's former protégé, Basuki Tjahaja Purnama (known as Ahok), who is an ethnic Chinese and former Christian governor of Jakarta. Back in 2016, Ahok had cited the Koran in a campaign speech, which sparked an uproar in the conservative Muslim community. Islamic and islamist groups as well as Ahok's political rivals accused him of blasphemy, and Ma'ruf Amin, in his capacity as chair of the Islamic Scholars' Council (MUI), even issued a fatwa against him. Mass demonstrations took place in Jakarta and all across the country. In the wake of ever-worsening tensions, Ahok was formally charged and eventually sentenced to two years in prison in May, 2017. This incident altered the entire political landscape in Indonesia. The mild-mannered Jokowi, shaken by the mobilization against Ahok and indirectly against himself, subsequently began to reinvent himself both politically and personally.

After the fall of Ahok, Jokowi tried to cultivate a new image: that of a strongman. Toward that end, he recruited military and conservative religious forces for his team to gain an electoral advantage, a tactically shrewd but morally questionable move. At the same time, he made more serious efforts to burnish his identity as a devout Muslim by strengthening ties to Muslim organizations and prominent individuals. In fact, thanks to his alliance with the NU, he was able to improve significantly his electoral performance vis-à-vis 2014, in the bastions of Central and Eastern Java, the country's second and third most populous provinces. In both of those important provinces, local NU bosses called on their followers to vote for the Jokowi-Amin ticket. Across the entire country, the majority Islamic population cast half of its votes for Jokowi and half for Prabowo, whereas religious and ethnic minorities voted almost exclusively for Jokowi.

The quest for recognition, dignity, and identity

By contrast, the Prabowo camp allied itself not only with Islamist parties in parliament like the PKS, but even with radical Islamist milieus and movements, including the Islamic Defenders Front (FPI). While visiting the Front's leader, Muhammad Habieb Rizieq, who lives in exile in Saudi Arabia, Prabowo sealed an Ummah

(Islamic) alliance. In the wake of the elections, the groups representing political Islam issued demands in the name of their adherents for greater political influence and reform of the state and society in favor of strictly conservative Islamic values and laws.

In this context the FPI leadership, in particular, could point to the fact that they had turned out to be highly effective »political entrepreneurs« in past years, able to mobilize their members on very short notice and in great numbers whenever Islam and the dignity, morality, and orthodoxy of the faithful allegedly had been insulted.

In a way similar to what right-wing populist and identitarian groups in Europe have been doing, radical Islamic agitators reinterpret class conflicts (poor versus rich) exclusively in terms of conflicts over identity (true Islam versus everything else) and put themselves forward as defenders of the Ummah (the community of Muslims). In this fashion socially marginalized people are drawn into the wake of Islamist ideologues, who portrays the Muslim community as the victim of neo-liberal globalized capitalism and the infidels. It is not uncommon for anti-Semitic, anti-American, and especially anti-Chinese resentments to be woven into the fabric of this narrative of inequality. Rather than supplying social goods, political entrepreneurs cater to the desire for recognition, dignity, and (group) identity.

In addition to his campaign of religious defamation, Prabowo took a stab at end-times populism, warning that Indonesia would no longer exist by 2030 if he were not elected. As the self-appointed spokesman for the »little people,« he explained that the country's resources would be plundered by the elites and transferred abroad. During the second presidential debate, Jokowi brilliantly countered this accusation by revealing that Prabowo owns land worth several 100 million dollars – 220,000 hectares in eastern Kalimantan and 120,000 in Aceh. In the final analysis, Prabowo's strategy of casting doubt on the Islamic piety, identity, and credibility of the incumbent while presenting himself as a pious Muslim and man of the people has failed, at least for the time being.

Fake news and defamation

To a great extent, the electoral campaign also was marred by fake news, which will affect the social climate over the long run. Hate and deliberately false reports circulated on social media, especially. For example, three months before the election a bogus story went viral alleging that seven Chinese containers full of election ballots already filled out in favor of the Jokowi camp had been found. And Jokowi himself came under constant public attack from the Prabowo camp for supposedly handing over Indonesia to the Chinese by virtue of his economic and trade policies, while allowing the country to be flooded with millions of Chinese laborers. The president himself was defamed on a personal level, as opponents claimed that he was really an ethnic Chinese who came from a family of communists. That charge further implied that, by the definition commonly used in Indonesia, he must be an atheist, too.

In response, Jokowi's strategy was to point out the absurdity of these charges while emphasizing his Muslim qualities, identity, and contacts. But in addition, just after the campaign had ended but prior to national elections in the world's most

populous Muslim country, he and his wife traveled to Mecca in Saudi Arabia.

Undoubtedly, one of the greatest challenges faced by Indonesian society is to find a solution to the problem of structural social inequality, which is accompanied by maldistribution of opportunity and success and thus by social exclusion. The Wahid Institute, which monitors religious freedom in Indonesia, depicts social and economic inequality as a crucial factor in the increasing spread of radical doctrines in the country. Just after taking office in October of 2014, Jokowi said in an interview with the political journal *Foreign Affairs*, »to get rid of radicalism and extremism, economic inequality in the country must be reduced.« Yet a good many experts, activists, labor union officials, and workers who put their hopes in the progressive president have not concealed their disappointment. They have characterized his policies as primarily pro-business, pro-infrastructure, and pro-investor. And in fact, since Jokowi took office, neither the poverty rate, nor the GINI index, nor the level of unemployment has fallen significantly.

During the campaign, economic and social policy played a comparatively major role, yet the debate was dominated by conceptual innovations designed to transfer these areas of policymaking into a cultural-identitarian context. The Jokowi camp came up with the following: *Ekonomi Berkeadilan* (economy of justice), *Ekonomi Pancasila* (economy of the Indonesian state ideology, which combines religious and social inclusion), *Ekonomi Gotong Royong* (economy based on an Indonesian concept of mutual support), and *Ekonomi Umat* (Islamic communal economy).

The emphasis on verbal solutions, as opposed to dealing with matters of real substance, reflects the dilemmas of a political balancing act: how to square a genuinely socialist state ideology, historically rooted anti-leftist reflexes, and the growing influence of conservative Islam with the quest to reduce social inequality.

Whereas previously Jokowi had a successful businessman to represent him, his new vice-president is hardly known for his grasp of or even his interest in economics. Nevertheless, just two weeks after the election the country's ministry of planning announced a far-reaching five-year plan for a sharia economy. To be sure, the re-elected president also said that he would focus on improving human resources by bolstering the training and qualifications of Indonesia's working population. Furthermore, he declared that he would like to turn his country into a regional center of the digital economy by 2025.

As in other countries around the globe, one can discern in Indonesia an increase in the significance of identity politics throughout the political process. During the Indonesian presidential election, both political camps sent carefully targeted messages to the majority Muslim population. Signals from the Jokowi side were directed at liberal and conservative milieus, while those of Prabowo's camp were aimed at conservative and Islamic milieus. In this context the Prabowo forces reverted to a pattern noticeable all over the world: identifying scapegoats, including, in Indonesia, both the alleged elites and the Chinese. Meanwhile, hopes persist that President Jokowi, during his second term in office and after communicating his due deference to Islam, once again will concentrate on practical politics. That is the only way that progress in the fourth most populous country on earth can be managed in a socially

just manner. In that case, the Indonesian social principle of »unity in diversity« – also manifested in the Indonesian state ideology of Pancasila as the idea of inclusion – implicitly would be realized.

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Paul Nemitz
Democracy in the Age of Artificial Intelligence

Given the foreseeable pervasiveness of artificial intelligence (AI) in modern socie- ties, it is legitimate and necessary to ask how this new technology must be shaped in order to maintain and strengthen the rule of law, democracy, and human rights.

Undoubtedly, one must distinguish between the Internet as a technical struc- ture for connecting people and information, and what is done on the Internet, just as one must differentiate between the theoretical potential of AI for good and the context and purposes for which it is actually developed. Hence, a nuanced analysis is called for. It should inquire about factors beyond the freedom and benefits that a free Internet can provide or a simplistic claim about the theoretical public benefits to be gained from AI. Such an analysis must include the real impacts of new digital technologies and the business activities based on them.

The pervasiveness of the corporations that dominate AI and the Internet is thus a reality not only in technical terms, but also with regard to social issues. The criti- cal inquiry into the relationship between the new technologies like AI and human rights, democracy, and the rule of law therefore must start from a holistic look at the reality of technology and business models as they exist today, including the accumu- lation of technological, economic, and political power in the hands of the »frightful five« (Amazon, Apple, Facebook, Alphabet, Microsoft), the corporations at the heart of the development and system-integration of AI into commercially viable services.

Not only do the digital mega-players have the resources to invest heavily in political and social influence; they also can afford to buy up new ideas and start- ups in the AI field or indeed any other area of interest to their business model. And they are doing just that. The ambition of major AI companies to accumulate power and control has worked to the detriment of the Fourth Estate, i.e., the practitioners of journalism in the traditional sense which have been so important to democracy. Their business model, which relies on targeted advertising, has drained revenue away from traditional journalism outlets. The diversion of ad revenue to the Inter- net has been a major cause (albeit not the only one) of the shutting of newspapers and the hollowing-out of journalism as a profession in Europe and in the USA.

While their basic AI research may be publicly accessible to some extent, the

much more resource-intensive work on system-integration and AI applications for commercial use is taking place in a black box. Indeed, the level of spending on the latter now surpasses public investments in similar research in many countries. This accumulation of power in the hands of a few – the power of money, the power over infrastructures underlying democracy and discourse, the power over individuals based on profiling and dominance in AI innovation – has to be viewed as a whole package.

The Internet giants are the first set of corporations in history that have been able to keep their output largely unregulated, dominate markets, become top performers on the world's stock exchanges, and wield significant influence over public opinion and politics, while at the same time remaining fairly popular with the general public.

Silicon Valley and its current culture follow the *Californian Ideology*. Its roots reach back to the youth movement of the 1960s. To some degree, the point of that movement was to escape from a brand of politics dominated by Washington and a computer technology then controlled by the IBM mainframe. Normatively, one pervasive theme of the movement was its strong impetus toward personal freedom and individual empowerment through decentralization. The development of the personal computer and the emblematic first advertisement of the Apple Macintosh in 1984 both were expressions of this quest for individual freedom and self-fulfillment and liberation from societal restraints and dependence on the state and its institutions.

Famously, in his »Declaration of the Independence of Cyberspace,« John Perry Barlow rejected the premise that any law whatsoever might be suitable for the Internet, claiming that traditional forms of government – i.e., those which we would argue can only be based on the rule of law – »have no sovereignty where we (the actors of cyberspace) gather.« It is no coincidence that this declaration was presented in 1996 at the World Economic Forum.

Fight against laws

This libertarian world view also found expression in legal discourse. David R. Johnson and David G. Post posited that if users of a particular space on the Internet wanted to establish a set of rules that would not violate the vital interests of nonusers, »the law of sovereigns in the physical world should defer to this new form of self-government.« But it was not only the California ideology that encouraged disrespect for the law. The doctrine of disruptive innovation, widely disseminated in business schools, eventually legitimized even the disruption of the law.

Indeed, the reasoning adopted by tech corporations and activists to oppose new legislation repeatedly has demonstrated that they continue to value technology above democracy. For example, Google essentially claimed that, because the answers to the search questions asked in Europe came from servers located in California, only California law was applicable to those searches. Additionally, it disputed that its search engine operations could be regarded as »data processing.« If that were the case, Google would have been relieved of any responsibility for the search results it provided. Basically, it claimed that the selection process used by its search engine

is beyond its control due to automation in the form of an algorithm. Thus, in this case Google revealed how its world view influences its understanding of the rule of law. First, automation in the form of an algorithm providing a service to individuals should shield the intermediary that controls this technology from any legal responsibility. If that were to happen, then John Perry Barlow's dream would come true: Technology would triumph over the rule of law in the digital age. Second, if there were to be any form of regulatory responsibility, it would have to consist of a single global regime, presumably dominated by American law adjudicated by American judges. Such an arrangement would be ideal for Google by reducing its business compliance costs when it was operating in different jurisdictions. That, in turn, would be consistent with its goal of maintaining a unique global Internet structure, one not fragmented by national regulations. But then, of course, it would be harder for non-US citizens to pursue justice.

Against this backdrop, it is all the more satisfying to note how the Court of Justice of the European Union (CJEU), in what has been called the »return of the law,« reacted to these arguments: It responded to Google's claims within the boundaries of legitimate statutory interpretation, but with a clear »sensitivity« for the significance these arguments might have in a wider context. Effectively, it rejected the arguments advanced by Google, thereby granting European citizens effective protection of their fundamental rights. Its reasoning was based on fundamental legal principles and on a longstanding European legal tradition of protecting privacy and personal data.

One may speculate about whether Google, by denying legal responsibility for the results of its search algorithm, intended to create a broad precedent that eventually would shield it from responsibility for what autonomous AI algorithms eventually might do. In any case, the verdict delivered by the CJEU was clear and reassuring: Google and its kindred firms cannot escape responsibility. The CEO of Google is currently speaking out against a broad-gauged regulation of artificial intelligence. That, he claimed, would stand in the way of innovation. He was willing to accept, at most, a sector-specific regulation of AI, consistently overlooking the fact that similar reasoning was used (unsuccessfully) against regulations broadly designed to protect EU data. A purely sectoral regulation regime would leave too many application cases of the generally usable AI unregulated and would be too complex for legislatures and citizens. What we need first are universal, horizontal principles; later we can add special rules for each sector.

Ethical principles

If we put all of these elements in context, the common denominator is indeed an effort to evade responsibility, both on the level of lawmaking and that of legal applications. And we should not forget that this evasion of responsibility is sought by a group of companies that have concentrated unprecedented power in their hands. The legal and scholarly debate on AI ethics already has identified the numerous challenges to fundamental rights and the rule of law posed by AI. This valuable body of work clearly shows that, unless effective rules are in place, AI cannot and

will not serve the public good. Considering what AI might be able to do in the future, it would be foolish to repeat the risks that led to the lawlessness that prevailed in the early days of the Internet age. AI's emergent capabilities could cause major and irreversible social harm. Yet today, with AI being developed by giant corporations that have invested billions, the infancy argument has returned with a vengeance, even though it was abused in the initial phases of the Internet and caused untold harm.

The manifold conflicts of interest between the corporations and the general public over the development and deployment of AI clearly cannot be settled by unenforceable ethics codes or self-regulation. This is neither to deny that AI corporations will have a role to play in the ethical and legal debates concerning its practices, nor that many people working in this sector have the best intentions and might be important participants in this debate. Still, if we bear in mind the deep pockets of giant AI corporations, we should make sure that the interlocutors give unvarnished accounts of their employment status, and reveal any money or benefits they have received or expect to receive from the interested parties. One can also discern differences in attitudes toward legislation among the various tech firms, depending on their chosen business model. A company like Microsoft, which earns a lot of its money from services rendered to government and administration, takes more constructive positions toward the rule of law and democracy than some of its rivals.

In view of the enormous budgets of these giant corporations, which give them a place at the table in science, civil society, and the public sphere, it is important for all parties involved in debates about the regulation of the Internet and new technologies to provide clear information about their industrial relations, financing, and other transfers of services and to disclose potential conflicts of interest.

The extent to which proponents of AI law have been forced onto the defensive today is alarming, especially since technology has long been regulated by law. For example, anyone studying to become an architect has to learn the building code and work according to its legal rules, since the latter enact the public interest in not allowing buildings to collapse. Likewise, in most countries cars must undergo safety inspections to protect the public and the owner from harm. The legal duty to wear seatbelts, once fiercely resisted by industry and automobile clubs, eventually reduced the number of traffic deaths by half. Repeatedly, society has learned that, when it comes to technology, law serves the interests of the general public better than a free-for-all.

More recently, studies on AI ethics already have identified a number of critical challenges that AI poses for the rule of law, democracy, and individual rights. Furthermore, such inquiries have made it possible to catalog ethics rules for AI and autonomous systems. Alan Winfield counted ten codes of ethics for AI. The latest additions to this list include a declaration concerning »Trustworthy AI« adopted by a high-level expert group of the European Commission on April 18, 2019, and a report issued by the German Data Ethics Commission on October 23, 2019.

Thus, there is no shortage of proposals to codify ethical principles for AI.

Another important element to consider in fashioning an ethical scheme for AI will be whether, after the experience with the lawless Internet, our democracies can afford to repeat the risk of leaving unregulated a new, all-pervasive, cutting-edge technology likely to generate negative impacts, just as the Internet did in its early stages. Also, in contrast to the Internet, AI no longer should be thought of as an infant invention launched mainly by academics and idealists. Rather, it has been developed and deployed primarily under the control of the most powerful Internet technology corporations on the planet. In fact, some representatives of these corporations already may have reached this conclusion themselves, as they have been calling for legislation on AI. Even Germany's Federal Chancellor, attending a G7 meeting recently in Japan, demanded legal regulation of AI as well as the adoption of basic principles to govern data protection. Moreover, the new President of the EU Commission, Ursula von der Leyen, revealed her plans on this subject, promising that the EU Commission would submit proposals to regulate AI within 100 days after she takes office on November 1, 2019.

All of the arguments that recently have been marshalled against AI regulatory laws also were trotted out in the years prior to 1995 against the passage of laws on data protection, around the time when the EU issued its first Directive on the Protection of Personal Data. From 2012 to 2016, we heard those same arguments being made once more during the protracted negotiations over the General Data Protection Regulation (GDPR). None of these arguments convinced legislators – and rightly so. The claim that the law will lag behind technology and business models has been disproved by the continuing application of good, technology-neutral laws in the US and Europe. The GDPR is a modern example of technology-neutral legislation, the meaning and relevance of which change with the progress of technology, including AI.

Misconception and claim

The claim that the law is not precise enough to regulate complex technology and that any law which falls short of the detail, precision, and user-friendliness of a good code is deficient and thus should not be adopted by lawmakers, is another fallacy of the engineering view of the world. By definition, any law adopted through democratic procedures will require compromise. The GDPR was negotiated between the co-legislators with nearly 4,000 individual requests for amendments on the table.

Laws are written to be applied by reasonable human beings and interpreted by reasonable judges in disputed cases. It is the open-endedness of the law, its susceptibility to subsequent reinterpretation by wise judges (aided by scholars), that makes it flexible enough to adapt to changing times without having to be rewritten constantly. In this respect, law differs from code, which needs to be revised constantly from version 1.0 onwards.

To be clear: Requiring that law be either as precise as code or rewritten as quickly as code is updated would be anti-democratic, since such a demand would ignore the need for deliberation and compromise in democracy as well as the time required for due process under the rule of law to take place.

It is noteworthy that lobbyists did not hesitate to criticize successive drafts of the GDPR for not providing sufficient legal certainty while simultaneously attacking it as too prescriptive and rigid to provide flexibility for the future. These contradictory criticisms demonstrated that the lobbyists had only one aim: namely, to block the law by discrediting it no matter what arguments had to be used against it. The claim that the law was too inflexible to take account of technological development is basically a more elegant way of saying what corporations and neo-liberals have always said: we want no obligations under the law, because then we could be held accountable and the law could be enforced against us.

Ethical codes appeal to the business community because they lack democratic legitimacy and cannot be enforced. And that is the primary reason why law must complement ethics and self-regulation, especially given the concentration of power in the hands of big corporations. The law has democratic legitimacy and can be enforced even against wealthy and powerful companies. Thus, assuming that credible threats, deterrent sanctions, and effective enforcement are available, the law creates a level playing field beneficial to all. Moreover, it gives guidance to innovators by providing incentives directing innovation towards the public interest.

Thus far, all technologies have been shaped by the law and been no worse for it, and it is high time that Silicon Valley and the digital Internet industry also accept this necessity of democracy. In an era when the Internet and AI are becoming all-pervasive, refusal to regulate these ubiquitous and often crucial technologies would be tantamount to sealing the doom of democracy.Studies on the ethical rules appropriate to technology can be precursors of the relevant laws and offer previews of the possible content of legal rules. But they cannot replace the law, since they lack both democratic legitimacy and the mandatory character that enables government and the judiciary to enforce them.

Facebook founder Mark Zuckerberg and Brad Smith, the president of Microsoft, recently have written articles calling for legislation. But when it comes down to it, companies are once again lobbying against effective legislation to protect data and privacy, both in California and in the state of Washington, where Microsoft is based.

There will also always be space for ethics in areas that go beyond what the law requires. Intra-company ethics for engineers and leaders of major businesses are a good thing if they include the principle of full compliance with the law of the land, and even go beyond that, for example by defining the public interests that the company might serve.

Many of the good things that Silicon Valley evangelists claim technology companies are doing are welcome, yet not required by the law. Nevertheless, no system of ethics can absolve corporations from the obligation to comply with legal stipulations and to respect and support democratic procedures and all other rules of constitutional democracy. Similarly, it is clear that the GDPR always will apply to AI when it processes personal data. The GDPR contains important rights for users whose personal data is collected; moreover, it imposes obligations on data processing. Those, in turn, will shape the ways in which AI will be developed and applied. By design and default, the principles of privacy and data protection set forth in the

GDPR surely will become very important for AI as will the limitations upon automated processing and the related rights to meaningful information on the logic involved. All of those factors will affect the significance and the envisaged consequences when AI processes personal data. The assessment of the consequences for users of the processing of personal data by AI, which is necessary under certain circumstances, also acquires enhanced importance. No new law is necessary in this respect. However, the principles of the EU's General Data Protection Regulation in respect to AI must apply even if AI processes data that are not personal.

Furthermore, in democratic discourse it is important to know whether one's discussion partner is a human being or a machine. If machines could participate in political discourse without being identified as such, or even impersonate humans without sanction, this would amount to an important distortion of discourse, which is unacceptable in a democracy. No law ensures that we will be notified if and when machines enter into »dialogue« with us in political contexts.

Because transparent political discourse among humans is indispensable to democracy, the principle of essentiality prescribes that the law should make it clear whether a machine or a human is speaking. Non-transparent machine speech and *a fortiori* impersonation should be subject to sanctions, and those who maintain major infrastructures of political discourse should be held responsible for ensuring that full transparency prevails regarding machine speech on their infrastructures. Implementing those guarantees will require new legislation.

On the other hand, we can be optimistic about the future applicability to AI of the extensive EU legal acquis on non-discrimination and consumer protection. Nevertheless, we need to give some thought to the general principles behind our approaches to AI law.

In Europe, assessments of technology's impact by parliaments has evolved into standard practice based on Hans Jonas's *Principle of Responsibility*. Jonas considers investments in such impact assessment as a key element of the precautionary principle. By contrast, in the United States the Congressional Office of Technology Impact Assessment was closed during the Bill Clinton era, perhaps an early casualty of the anti-science movement. During her election campaign, Hillary Clinton actually promised to reinstate that office or a similar procedure, but obviously never had the chance to do so.

Impact assessment on three levels

In Europe, however, the principles and methodologies used to assess the impacts of technology in the short and long term, with a view to informing policy developers and legislators, have survived intact. The European Association for Parliamentary Technology Assessment assembles the methodologies and individual impact assessments for parliaments in Europe into a common database. The latter already includes a number of preliminary studies relating to the capabilities and impacts of AI. In order to revive trust in technology in the age of Artificial Intelligence, in which high technology increasingly colonizes every aspect of life, we need obligatory impact assessments for new technologies. Such efforts must proceed on three levels.

First, as noted above, we ought to encourage parliamentary technology impact assessments designed to aid policymaking and legislation. These evaluations will enable us both to ascertain whether the technology in question might affect essential interests and, if so, to craft legislation to guarantee that the public interest will prevail in that context. Ideally, this impact assessment should be completed before high-risk technologies are deployed. Decisions about the consequences to be drawn from the risk assessments carried out by experts will remain in the hands of governments and legislators. On the EU level, that means they will be in the hands of the Commission and the Council and Parliament as co-legislators.

Second, laws and policies must be adopted to regulate the developers and users of such technologies. For AI, it certainly would be warranted to insist on the developers' legal obligation to furnish an impact assessment. That duty already exists in several cases: when AI is processing personal data in the context of automated decision-making; whenever aspects of democracy, the rule of law, and fundamental rights are at stake; when AI has the potential to be used in the context of the exercise of public power; when democracy and the political process are affected; and when public goods and services are provided, independently of whether personal data are processed or not.

Such impact assessments at the developer and user levels would be especially important, because they would underpin public knowledge and understanding of AI. At present, AI suffers from a lack of transparency regarding its capabilities and therefore of its possible impacts. The assessments also would help the corporations, their leaders, and the engineers developing new technologies and their applications to own up to the power they exercise. They thus would help to instill a new culture emphasizing technology's responsibility for sustaining democracy, the rule of law, and fundamental rights.

Before any new AI program could be made public or marketed to clients, the standards for AI impact assessment would have to be anchored in the law – but in an abstract form, as was the case in the GDPR's stipulations on data protection impact assessments. And, as in the GDPR, compliance with the standards for the impact assessment would have to be controlled by public authorities. Non-compliance should be subject to sufficiently deterrent sanctions. In cases in which AI was to be used in the exercise of public power or put to wide public use, the impact assessment would have to be made available to the public. In high-risk situations, the public authority making use of AI would have to carry out its own supplementary assessment and present a risk-reduction and -mitigation plan. Regardless of whether we are talking about private or public sectors, the Resolution of the European Parliament of February 16, 2017 contains the most elaborate plan so far articulated for setting up an EU Agency charged with ex ante certification and registration as well as establishing a legal framework for substantive rules governing the research, development, and use of AI and robotics.

Third, individuals worried about the use of AI should have a legal right to an explanation of how the AI works, what logic it follows, and how its use affects the interests of the individual concerned. In other words, this principle would govern

the individual, personal impacts of the use of AI, even if the AI does not process personal data, in which case a right to such information already exists under the GDPR.

In this context, the claim of tech giants that it is impossible to furnish explanations of how AI functions and how it has arrived at decisions must be rejected. There is already vivid research on the interpretability of AI. Furthermore, given that the obligation to supply reasons is part of the rule of law, at least where public authorities act in the name of public power, the simple reality is that AI programs that do not give reasons and the decisions of which cannot be explained by humans will be barred from being used in the exercise of public power. This is so because, if it did use such programs, the public authority could not fulfil its obligation to state reasons for its decisions and actions.

We need to insist resolutely upon the three-level impact assessment of technology. It is a necessary aspect of an intensified dialogue between technology and democracy, one that will be vital now that we are entering a world in which technologies like AI become all-pervasive. Indeed, for the most part they are actually incorporating and executing the rules according to which we live. If the debate about the AI/democracy relationship induces the developers of the former to cultivate a new sense of responsibility for democracy, fundamental rights, and the rule of law, then artificial intelligence will have won considerable trust and acceptance in society.

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Nele Noesselt
Beijing's African Dilemma
Conflicting roles and geostrategic great power competition

Now governed by its fifth generation of leaders, the People's Republic of China (PRC) has insisted upon a greater say in – and its right to shape – global affairs. Yet its clearly articulated claim to great power status stands in glaring contrast to the official, »parallel« identity as a global actor that it still wishes to project: that of a developing country. Especially in its negotiations with African countries, the Beijing government stresses that it belongs to the »Global South« and reminds them of their shared historical experiences as the victims of Western colonialism. However, these invocations of »win-win cooperation in the Global South« and of a »partnership on a level playing field« increasingly are meeting with skepticism and rejection. Rebellions of African workers against »Chinese« labor norms are on the rise in some African countries (e.g., in Zambia's copper mines), while the number of assaults and

anti-Chinese protests in Africa has been growing. Moreover, Chinese firms and their employees operating in Africa have become ever more frequent targets of transnational terrorism and religious fanaticism. Furthermore, rebel groups and opposition forces are starting to see Chinese infrastructure projects and loans as crucial factors enabling the ruling elite to stabilize and consolidate its power. Consequently, in many places complaints about a »sellout to China« have become popular election campaign themes. That explains why Beijing's strategic planning takes into account not only the likelihood of war in Africa, but also a variety of non-traditional security problems.

China long since has expanded its interest in Africa beyond the narrow preoccupation with access to raw materials and resources. In recent years, Beijing has intensified its cooperative relationships even with African states like Mali that are not known for having extensive deposits of raw materials. One possible explanation for this shift might be the geostrategic thinking that has gone hand in hand with the development of the »new silk road,« a network of trade routes and hub cities with their control center in China. As the networking of the African continent proceeds apace and new transcontinental transportation routes are opened, all the countries that lie along the silk road corridor will be upgraded to crucial hubs. Port cities, especially, will have a crucial function in the development of the (maritime) »new silk road«. In 2017 the PRC opened a logistics base in Djibouti. And, inspired by China's special economic zone in Shenzhen, the fishing village of Bagamoyo in Tanzania is slated to be refurbished as an economic hub and container port.

»Smart« Africa

In addition to the expansion of the local transportation infrastructure, China's mega-projects in Africa include the upgrading of the electricity and telecommunications networks. The official goal of China's scheme for national growth and development is to transform the country into a global leadership center for technological innovation by 2030. Chinese firms are supposed to become global champions that will set new global standards by virtue of their innovative solutions. In the wake of the state-subsidized construction of the new silk road, China also has begun to export telecommunications technology und smart-city package-solutions, in addition to the »green« energy technology it already offers. Africa's »safe city« models operate with Chinese (surveillance) technology. Thus, Africa is not just an outlet for low-priced Chinese consumer goods; it is also a potentially important base for the internationalization of Chinese IT-solutions and technical or technological standards.

Under the new silk road label, Beijing exports overcapacity and gets factory orders for Chinese (state) enterprises. These projects are financed via low-interest credits and loans provided by Chinese banks. Because credits are granted with no strings attached and the creditworthiness of the recipient countries is seldom scrutinized, African states already in acute economic trouble run the risk of falling into a debt trap with unforeseeable long-term consequences. For that reason, the international community of states has criticized China repeatedly for its generous

credit terms. Still – and in contrast to the widely-disseminated horror stories that Beijing is deliberately overloading African countries with debt so it can take them over – there are signs that the Chinese side is paying far more attention to the risks that could result from economic and financial crisis in African countries. In some instances, reports about hidden debt traps have led African contractual partners to cancel infrastructure projects that already had reached the planning stage. China must reckon not only with economic losses from such incidents, but also irreparable damage to its reputation. To counteract these negatives, Beijing is betting on smart power and image policy. It is financing the construction of prestige projects such as the headquarters of the African Union, government buildings, stadiums, schools, and hospitals. Moreover, Beijing has responded to the now partially visible negative image of China in some areas of Africa by producing TV programs (CGTN Africa) custom-tailored to that continent and by publishing local editions of Chinese newspapers (in English) intended to convey the Chinese view of south-south cooperation.

The People's Republic of China takes an active part in United Nations peacekeeping missions. For the first time, Chinese combat troops were assigned to missions in Mali and South Sudan, a decision that allows us to infer that there has been a modification of China's foreign and security strategy. But as a general rule Beijing counts on conflict prevention as well as conflict resolution by local African actors. The takeaway from both of the official Chinese papers on their African strategy, published in 2006 and 2015, is clear: In this context regional organizations such as the African Union will be accorded a key role. Adopting the approach of »peace through development opportunities,« the People's Republic also is presenting (under the rubric of the new silk road) its offers of financing and investment to African countries as contributions to achieving the goals of African development as well as long-term stabilization and peacekeeping.

Officially, China continues to adhere to the principle of non-interference in the internal affairs of other (sovereign) states. Nevertheless, informally both the fragile statehood of some strategic African cooperation partners and the local dominance of warlords and guerilla armies have led to pragmatic adjustments in some fundamental foreign policy ideas. Ultimately, national interests tend to prevail. For instance, while Beijing maintains active relations with Khartoum (Sudan), it has nonetheless accepted the secession and independence of the South, even though that decision flies in the face of Beijing's principle of zero tolerance toward movements advocating separation and autonomy.

Moreover, the United States has been forced to revise its African strategy in response to China's new status as Africa's most important trading partner. In December, 2018, the president's national security advisor stated that America's effort to enhance trade and development cooperation with Africa had two purposes: keeping terrorism in check and rolling back the growing influence of China and Russia in Africa. Paralleling Beijing's moves, other Asian countries have expanded further their own programs in Africa. In November, 2016, the prime ministers of India and Japan issued a joint communique laying the foundation of the »Asia Africa Growth

Corridor.« Both countries are planning to coordinate their development cooperation with Africa and carry out projects together in the framework of this program. In addition, as early as 1993 Japan already had instituted the »Tokyo International Conference on African Development« (TICAD). This conference, scheduled to take place every three years, is supposed to provide a consultation mechanism for development cooperation with Africa.

In 2000 China established the Forum on China-Africa Cooperation (FOCAC), thereby creating an institutional structure within which to realize its plans for cooperation and dialogue. A summit meeting between China and Africa at alternating venues is slated to take place every three years at which long-term programs and goals in the area of development cooperation will be identified. During the 2018 summit held in Beijing, China's head of state and party chief Xi Jinping emphasized that China's African policy was built on a foundation of the »five no's,« among which two stand out: a credit policy with no strings attached and non-interference. Furthermore, he announced loans and investments in the amount of 60 billion US dollars. On the fringes of the G20 summit held in Osaka, Japan in June of 2019, Xi also met with a group of selected African leaders. The UN Secretary-General also was invited to attend. Xi stressed the points of cooperation that had already been agreed upon in 2018, embedding those in a global model of growth and development.

In August, 2019 the seventh TICAD forum took place in Yokohama. There, Japan's prime minister, Shinzo Abe, promised to make investments in Africa worth 30 billion US dollars. He underlined the fact that, where such development projects are concerned, Japan was primarily interested in quality and sustainability. His speech might be regarded as an effort to differentiate Japan's approach indirectly from that of China, especially the new silk road, which lately has met with skepticism in international circles.

Until recently, the factors of diplomatic recognition and symbolic politics seemed to have lost some of their significance for China's African policy. Except for Eswatini (formerly known as Swaziland), all African states have severed political and diplomatic ties with Taiwan. However, as Chinese analysts see it, Tokyo's offers of cooperation with African states can be interpreted as a roundabout courtship of those countries' votes in support of Japan's application for a permanent seat on the United Nations Security Council, a request that the Chinese side rejects out of hand. In short, Beijing would have every reason to oppose Japanese efforts to gain greater influence in Africa.

Chinese think-tanks and university-affiliated institutions have done background analyses of these issues that make it clear that Beijing, in shaping and re-orienting its African policy, does not assume that the current configurations of power and positions of external actors (especially the USA, Europe, Russia, India, Japan, and China) are set in stone. Rather than operating with a rigid, dogmatic, one-size-fits-all strategy, Beijing relies on pragmatic and flexible structures of cooperation. When it comes to shaping its relations with individual African states, Beijing takes into account not only trends in their domestic affairs (wars, crises, and changes of government in the form of elections) but also the positions and offers of other exter-

nal actors with which the PRC competes for both economic and symbolic spheres of influence. Especially when one evaluates the expansion of the new silk road, it becomes apparent that Beijing's foreign and security policy is pursuing primarily long-term geostrategic goals. No longer is it committed to a policy of blind economic profit maximization.

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Marcel Rauer

Two Kettles of Fish

How development and migration intersect

Although migration and flight have been everyday occurrences in Africa for many years, the European discussion of those phenomena really did not begin until 2015 when a large contingent of migrants arrived in Europe. Ever since then, the topics of migration and immigration have been omnipresent in the media. And yet the share of African-born persons within the total population of the EU amounts to less than 1 %. Moreover, most of them live in countries with a distinctive colonial past, including France, the United Kingdom, Belgium, and Portugal, as the Berlin Institute for Population and Development has documented. The small number of people with African origins in the EU therefore fails to justify the discourse on this subject, much of which is emotionally highly charged. On the contrary, that discourse gets in the way of a more nuanced debate that would interpret migration as a multidimensional challenge and the (partial) solution to certain problems.

Even though the number of migrants to Europe has fallen dramatically since 2015, migration remains a hot political topic everywhere on the continent. Europe has moved away from »a crisis response« toward a policy of repatriating migrants lacking a right of residence to their countries of origin or to transit countries. At this time, Europe's approach to refugee policy vis-à-vis Africa – motivated mostly by short-term domestic policy concerns – amounts to a strategy of sealing off the European continent.

There is a tendency for better-educated people to decide to emigrate, and they are usually the ones with the resources to organize such a journey. The higher the level of education, the greater is the likelihood that a person will succeed in starting a new life somewhere else. Education indeed can have the effect of discouraging emigration, but only indirectly and over the long term. In particular, education is the most important factor leading to a decline in birth rates. The same relationship prevails in regard to economic factors. People migrate along a prosperity gap. The

probability of migration across national borders starts to increase at an annual per capita GDP of $ 2,000 US (purchasing-power-adjusted). The world's poorest countries do not come close to that figure. Indeed, for people to cover the long distances necessary to reach Europe, they would have to come from a country with a GDP of between $ 3,000 and $ 10,000. Consequently, the politically motivated effort to damp down migration by combatting the »causes of flight« through short-term development aid is unlikely to work. Development and better opportunities to earn income initially only put more people in a position to organize and finance their migration. Of course, that does not prove the reverse conclusion that Europe should reduce development cooperation. It merely shows that development cooperation and the management of migration are two quite different kettles of fish.

Misleading demography

80 % of African migrants remain on that continent, while only a relatively small proportion of them make it to Europe, the Gulf States, or Asia and America. What does contribute mightily to social, cultural, and economic development in the counties of origin and even transit and recipient countries is regular (internal) migration. We should not underestimate the economic development potential for Africa inherent in migration of this kind; in fact, it has barely been tapped at all. Judging by the efforts of European partners to discourage intra-African migration (especially in West Africa's ECOWAS zone), they still do not seem to have recognized that potential. Therefore, one conclusion to be drawn – apparently counter-intuitive – is that the encouragement of regular migration actually can lead to less migration in the long run.

Rapid population growth usually is accompanied by growing competition for food and potable water, living space, schools, and health services. When those goods are not well provided, social conflicts may arise that reinforce people's wish to migrate. By 2030 and well beyond, global population growth will be concentrated increasingly in the countries of sub-Saharan Africa, as well as some parts of North Africa and the Middle East. For example, according to some forecasts Nigeria – already Africa's most populous country – will have equaled the population of today's European Union by 2070–2075.

It is estimated that Africa's population will grow to 1.5 billion by 2025 and, foreseeably, to 2.5 billion by the year 2050. Those estimates are based on the fact that population growth there was at 2.5 % between 1980 and 2015, and, even during the next decade, will remain at around 1.5 %. Currently, the birth rate on the African continent stands at 4.7 children per woman, although there is considerable variation among countries. Nevertheless, we should take demographic statistics of this kind with a grain of salt, since they easily can be misused for political agendas. This is especially true of the number of people who indicate in questionnaires that, looking ahead, they might want to leave their homelands. Out of any group of 200 people who have expressed the general desire to migrate, only one actually does so within a year. There is no direct correlation between population growth, on the one hand, and migration toward Europe on the other.

The EU invests a great deal of money in African border security, and the funds for equipment and training frequently go to unjust regimes. European states have joined forces with some unsavory partners who are expected to give assurances that they will control migration to Europe. Thus, for example, the Italian government has made deals with the Libyan Coast Guard, and indirectly with smugglers themselves, to block the departure of boats headed for Italy. The EU has provided the Sudanese leadership, which has been accused of genocide and crimes against humanity, with security funding. In March of 2019, EU-financed projects intended to combat illegal migration in Sudan were suspended due to justified concerns that the EU-supported security forces might have used violence to suppress peaceful protests.

In addition, this past June the EU scrapped plans to finance a »Regional Operation Center« in the capital, Khartoum, that would have gathered information on human trafficking and smuggling. A wave of protests had swept across the country previously in December, 2018, and the demonstrators were demanding the ouster of the autocratic president, Omar al-Bashir. After Bashir was deposed in April, a transitional military council, which included the commander of the notorious Rapid Support Forces militia (RSF), attempted to restore order. This is the same organization that has been accused by Amnesty International of committing war crimes in the Darfur region of Sudan. In addition to several incidents of repression, the militia was charged with having massacred 128 demonstrators on June 3. The EU maintains that it has not provided either funding or equipment to the RSF, but there is no doubt that the Sudanese police, also accused of having brutally suppressed the protests, received training under the aegis of those programs. European approaches to Niger have yielded similarly lethal outcomes. The world's poorest country receives development funds premised on its willingness and ability to keep migration flows in check. Europe needs to be aware that this will have devastating consequences in the long run. By contrast, encouraging intra-African migration rather than trying to prevent it may contribute to long-term stability.

Not only do the practices referred to above jeopardize human rights and undermine democracy, but they also pose the risk of increasing political instability. Political frustration is an important motivating factor in those who choose migration. In the long run, propping up authorities with questionable records may increase the population's frustration, thus exacerbating the real causes of migration. Irregular migration is also a safety valve for a young and growing population that often must put up with high unemployment and political frustration. If Europe really wishes to address the true causes of migration in Africa, it should first take a look at causes of flight that are »made in Europe.«

Prior to 2015, European migration plans for Africa were supposed to offer migrants more legal ways of obtaining visas. By multiplying these legal channels, Europe can demonstrably reduce illegal migration and – combined with strong enforcement measures – it will have available an effective way to manage migration. Approaches such as this, which rely on legal, controlled migration, should be given a second look.

The free movement of people – a European privilege?

In the debate over the free movement of people and migration, there are overt differences of opinion between the African Union (AU) and the EU. Whereas the EU at this point is evidently making vigorous efforts to discourage migration, the AU criticizes the European approach as too one-sided. At the same time, the AU is trying to establish an African migration management scheme in hopes of enhancing mobility and the free movement of people on the continent.

One of the AU's major projects is to establish a continental free trade zone that would guarantee the free movement of commodities, services, investments, and people. The goal of this free trade zone is to create an African domestic market. That should help to promote trade within Africa, accelerate Africa's regional and continental integration, and develop more fully the industrial processing sector of the African economy.

After it is expanded, the African continental market will include over one billion people as well as a GDP of between 2.2 and 3 trillion US dollars. This African free trade agreement would include more countries than any other one in the world.

While European decision-makers know how to appreciate and emphasize the advantages of the free movement of people and of free trade within Europe, when it comes to the African continent, they assume that improved migration management will require, among other measures, limitations on the free movement of people. This assumption undervalues the numerous positive aspects of migration within Africa. Besides seasonal labor migration, remittances represent a crucial stabilizing factor. In 2018 remittances to the countries of sub-Saharan Africa amounted to 46 billion US dollars. 78 % of all irregular African migrants working in Europe send money back to their home countries. And here we must bear in mind that, to earn comparable sums in their respective homelands, they would have to work 40 years, on average.

The point is that we need to recognize and encourage the salutary effects of (intra-)African migration. We should not put obstacles in the way of our African partners' efforts to promote the free movement of people on that continent. And we should think carefully about easing visa requirements.

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Henrik Maihack
Stability through Elections in Kenya

Ever since Kenya's presidential elections of 2007, which triggered unrest that cost the lives of over 1,000 people, the international community casts worried glances at the country whenever another election is scheduled to occur. Elections are considered to be a moment of potential instability in East Africa. The outcomes of elections are regularly contested. In 2013 the results were accepted only after a decision by the court. In 2017 violence flared again both before and after the voting. Meanwhile, Kenya has shifted into campaign mode once again for the 2022 elections. This apparently premature election makes two things clear: Electoral outcomes are not predetermined and elections are a crucial mechanism for attaining political legitimacy in this country. In this respect Kenya is an exception in East Africa. In no other neighboring country during the last 30 years have multi-party elections brought about a change of government. In nearly all East African countries there is no basic agreement about the proper mechanism for establishing a new government. At the very least, changes of government are associated with the risk of diminishing political maneuvering room, sometimes even the prospect of violent conflicts that potentially could engulf the entire region. In Kenya, that risk is considerably smaller. So far, that country never has endured a civil war or successful coup. For that reason, it is also the only country in the East African region in which average incomes occupy the lower middle range.

According to the polling institute Afrobarometer, broad majorities in Kenya support democratic elections and speak out against autocratic decision-making practices. Since the first change of government due to elections, which occurred in 2002, leeway has opened up for discussions about legitimate access to state resources. The country's heterogeneity is reflected in these discussions. They laid bare some of the its cleavages, making the latter more amenable to negotiation than they were during the era of the one-party state. Thus, among other things elections can function as safety valves, which, in a heterogeneous country like Kenya, can have a stabilizing effect over the medium and long term. Also, these political openings have contributed significantly to Kenya's image as an engine of innovation in East Africa. At the same time, some social conflicts persist, such as over the issue of land distribution, that cannot be resolved fully in public negotiations. Furthermore, there are evidently some red lines that apply to criticism of individual members of the government, particularly when it is aimed at the intersection of economic and political interests. Nevertheless, space for political maneuver in Kenya is still quite extensive when compared to that in other countries on the continent, and is defended by an active civil society. Evidently, a positive habituation effect has taken place on this score. In Kenya, attempts to restrict the freedoms already attained meet with considerable resistance. In addition, it is also the case that the more often people vote and engage in democratic debates, the harder it becomes to reimpose limits on political liberties.

In the long run, only social democracy has a stabilizing effect

But in the long run political stability can be achieved and further election crises avoided only if the social and economic balance sheet of Kenya's multi-party system improves. The introduction of multi-party elections in the 90s was the outcome of a long-term commitment on the part of an alliance of civil society with reform-minded politicians, complemented by international pressure at the end of the Cold War. This was a necessary but by no means sufficient step toward the structural broadening of the available political and social leeway. However, multi-party elections were introduced as part of a package that included pro-free-market reforms that limited the access many people had to public goods such as health care. Since then, inequality in Kenya has been among the highest in global comparisons. Jobs are created mainly in the unregulated and therefore precarious informal sector. In this way, the political opening that had been achieved was undercut by deficient provision of the social and economic goods that would have made freedom a real, tangible value for many Kenyans. Economic growth benefited primarily a tiny elite that had been politically influential all along. In other words, Kenya has never been a social democracy.

In the aftermath of the violent 2007 elections, a step in the direction of greater distributive justice was taken when an alliance of civil society and certain politicians, similar to the one that formed in the early 90s, lobbied for a new constitution, which was eventually adopted in 2010. It contains an exhaustive list not only of political liberties, but also of social and economic rights, as well as a decentralization of political decision-making. Yet the contested elections of 2017 revealed once again that traditional, informal political behavior patterns continue to be influential and to block implementation of the constitution's promises.

Post-election crises are the symptoms, rather than the causes, of still-unresolved historical conflicts over distribution that are traceable to the colonial era and make themselves felt in the real and perceived marginalization of different regions and demographic groups. Oftentimes what is at stake in these conflicts is the right and access to ownership of land. When elections approach, political elites deliberately resort to ethnic mobilization to exacerbate such conflicts. So far, that strategy has allowed them to personalize political and economic conflicts over distribution, turning them into conflicts between specific population groups. The goal here is to gain access to state resources. In part, the deeper cause of this pattern goes back to the colonial era when the population was arbitrarily assigned to ethnic groups by the British, a move that, among other things, determined access to educational institutions. Furthermore, toward the end of the colonial period, political parties were allowed to be created – but only at the district level and not nationally. In contrast to what happened in Europe, for example, multi-party elections in broad swathes of Africa were introduced before industrialization really had gotten off the ground or even in its complete absence. Thus, political parties mobilized voters on the basis of regional or ethnic identity rather than through the kinds of jobs they held or their position in the political economy of the country.

Because electoral campaigns are all about ethnic mobilization, it is unusual for substantive discussions to take place. If the leading candidates are hoping to convince

every member of a population group to vote for them in the upcoming election, it would probably harm the candidates' chances to differentiate, say, between the interests of employers and employees in the campaign. The result is that candidates combine vague election promises with pledges to help their own group gain access to the resources of the state. Because no single ethnic group makes up more than 25 % of the population, elites forge alliances both before and after the elections. These alliances distribute state resources along regional and ethnic lines, a practice that, in turn, proves to be a major cause of corruption. The amounts of state resources thus promised are often so enormous as to be unattainable through formal channels.

No formal or informal backstops for political authority

Contested election results and the escalating political crises they set in motion (cf. 2007 and 2017) were overcome in every case by informal elite settlements designed to bolster the legitimacy of the respective governments and to backstop political authority in general. Elite pacts of this sort, concluded before and after elections, show that, while elections are indeed necessary, so far they have not been sufficient to establish legitimate political authority in Kenya. Informal political negotiation processes continue to be crucial mechanisms for supporting political authority. It is debatable whether they are seen as legitimate by the populace.

Following the elections of 2007, and with the help of UN mediation, a unity government that included the losers of the election was formed. From the experiences of 2007 the new constitution emerged. The latter provides for decentralization that is intended to reduce the potential for post-election violence, at least in the long run; strengthen the judiciary; and introduce a new set of fundamental rights. In 2013 the first elections under the new constitution were held. Instead of taking to the streets, the opposition went to court this time and ultimately accepted the verdict that sustained the contested election results. That peaceful outcome may have had something to do with the fact that opposition forces managed to win 29 of the 47 newly created governorships, which would give them access to state resources as well. The second elections held under the new constitution took place in 2017. This time around, the »peace dividend« promised by the new constitution did not pay off. Although the results of simultaneous local elections were widely accepted, the outcome of the presidential election was not. Once again, the opposition turned to the courts. Surprisingly, Kenya's Constitutional Court annulled the result and called for new elections. Because the court's decision was not followed by any trust-building political process, the opposition presidential candidate, Raila Odinga, opted for a boycott. Not unexpectedly, the incumbent, Uhuru Kenyatta, won a decisive victory due partly to low turnout. A worsening political crisis followed that ultimately was declared over when, for the sake of symbolism, President Kenyatta shook hands with Odinga in March of 2018. Both declared that, from now on, they would commit themselves to reconciling the two camps and building a more just Kenya. In short, the handshake meant that a dangerous political crisis again had been defused by an informal elite agreement. Another reason for the reconciliation was that the economic interests of political elites increasingly had been jeopardized by the crisis.

Thus, economic interests evidently can explain, at least in part, why crises in Kenya escalate only to a certain point and no further.

It becomes clear that informal elite negotiations will continue to overshadow formal institutions and/or mechanisms. The handshake sent a public signal that, from now on, both camps would have access rights to the nation's resources. Furthermore, because other important opposition politicians took part in the handshake, there is no longer any politically influential opposition in Kenya. An informal »all-party system« has emerged in which political conflicts now play out either inside the ruling party or in the country's regions. Civil society takes a dim view of this trend.

Still, the question arises of whether such elite pacts will play this sort of stabilizing role in the future, and whether the populace will continue to accept them in the medium- and long-term. There are reasons to doubt the likelihood of either outcome. In a Kenya that is becoming increasingly urban, pluralistic, and unequal, it will be harder and harder for the established elites to control elections.

Growing inequality in Kenya's burgeoning cities provides an ever more vibrant sounding board for new social struggles to create a more just society. Over the next 20 years, the majority of Kenyans will have moved to cities, most with poor job prospects. The outcome of elections then – and not just on the local level – no longer will depend on the mobilization of ethnic alliances, but rather on the representation of the interests of precariously employed urbanites. That trend is already visible in elections held in the country's major metropolises. There, election results are no longer being determined by ethnic allegiances alone, but by the candidates' ability to provide services for the majority of dissatisfied slum-dwellers. Politicians of a new type, whom we might call »service populists,« are exploiting this situation adroitly. They often provide services in the slums that they themselves have financed, thus taking public positions in opposition to the established political elite. They win seats with new-style campaigns appealing explicitly to the majority of informally and precariously employed urbanites. Campaigns of this sort no longer fit into the accustomed categories of either mobilization or analysis in Kenyan politics. Instead, they offer new sources of friction that transcend the conflicts between parties of the established political elites.

The future of democracy in Kenya depends on whether social alliance – e.g., ones that unite civil society groups, labor unions, and reform-minded political elites – enjoy greater success in combining defense of existing political liberties with demands for economic democratization and redistribution. Thus, the great challenge for Kenyan democracy continues to be: how to preserve already-attained political freedoms and complement those with more extensive opportunities for self-realization for the majority of Kenyans. Anyone who runs for elective office on that issue eventually will be able to win elections and ward off political crises.

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The Democratic Republic of Congo: Voting out a whole system?

Even unfree elections can unleash a dynamic process that harbors the potential for a broader political opening and provides legitimacy for democratic political change. Elections were held in the Democratic Republic of Congo (DRC) on December 30, 2018. For the first time in the country's history the incumbent president, in this case Joseph Kabila, did not run; what is more, his preferred candidate, Emmanuel Shadary, lost. Thus, de facto the Kabila system was voted out. However, what might seem like a step toward democracy led to harsh international reactions, because the vote was neither democratic nor free and fair. In fact, it is unlikely that the new president and chair of the Union for Democracy and Social Progress (UDPS), Félix Tshisekedi, who was inaugurated in January of 2019, actually won the election. In this case, one has to ask whether elections are ultimately nothing but a façade and merely serve to lend pseudo-legitimacy to political rule, or whether they really can make a difference in promoting democratic political development.

The official result announced by the Election Commission awarded Tshisekedi the victory in the presidential election with 38.6 % of the vote, followed by opposition candidate Martin Fayulu (Alliance Lamuka) with 34.8 %, and Emmanuel Shadary (an independent supported by President Kabila) in third place with 23.8 %. But the Church-supported civil society group CENCO, which acted as an election observer, reached a different conclusion. Furthermore, some anomalous data were leaked by the Election Commission. These figures make it seem very likely that the opposition candidate Martin Fayulu was far ahead, having won roughly 60 % of the vote.

Nevertheless, the Constitutional Court certified the election result. Félix Tshisekedi was recognized as the winner not only by the African Union, but eventually also by other governments. The USA, France, and ultimately even Belgium chose to cooperate with the new head of government. But in this case what matters is not merely the outcome of the election, but also the starting point and framework of the entire political situation. In recent years, the previous governing party, the PPRD, had imposed far-reaching restrictions on freedom of speech and assembly prior to elections. In fact, two promising opposition candidates, Moise Katumbi and Jean-Pierre Bemba, were never even allowed to run for office.

Since 2016, hundreds of people have died due to unrest and repression. Even today, a persistent fear of political violence haunts the balloting. Therefore, even when election results are properly tabulated and announced, it would be a mistake to speak of free and fair elections. There would always be a legitimacy deficit.

What can the quality of elections be, and what is their function in a country like the DRC, beset by continuing political violence and ongoing warfare, a lack of legal protections for the populace, educational shortcomings, and a rent-seeking economy distorted by clientelism? In spite of the fact that the state is so dysfunctional, there is a long tradition of political parties and demands for democratic political

participation. Because economic and social modernization in the country lags so far behind, there is relatively little social stratification of the kind that would give rise to a party system offering a variety of distinct political programs. Instead, voting behavior is determined by regionalism and clientelism, not to mention a high level of political violence. However, there are few prospects for election results that would ensure stability in the country while creating legitimacy in the eyes of the youthful population. The latter feel neglected by the clientelist system of distribution, especially in the urban areas where so many live. Consequently, there is a chance that interest groups might form catering to the youth, who have been disappointed by the traditional parties. These groups might be willing to bestow legitimacy on a president from outside the establishment in some future election.

In the Democratic Republic of Congo, President Kabila and the opposition negotiated for many years about a political transition. The central issue in these talks was that the Congolese constitution provided for elections to be held by the end of 2016, at the latest, because that would mark the end of Kabila's second term in office, and the constitution limits the president to two terms.

In the negotiations concerning a political transition in the DRC, the demand for free elections – equivalent to a demand for a shift in political power and for democratic legitimacy – became a reference point for the political actors. Every call for elections made Kabila's democratic deficit glaringly apparent. Thanks to intensive mediation by the Church, the parties were able to agree on a timetable for elections in the so-called New Year's Eve Accord. If President Kabila had continued his defiance of the constitution by refusing to schedule elections, he would have run the risk of suffering enormous damage to his image and would have faced an increasingly powerful opposition alliance on the domestic front. Furthermore, an outbreak of political violence would have been considered a realistic scenario. Thus, the holding of elections can be interpreted as part of an entire dynamic process of political negotiation. As former President Kabila saw it, the democratic process was a lesser evil than political violence, allowing him to resist political pressure and make his power more secure.

In the final analysis, the actors' expectations about democratic elections had a decisive influence on the strategies they pursued. Nevertheless, those strategies, even when focused on alliances, continued to be part of the vague negotiations. The potential candidates always kept several options open for themselves. However, the rumors that both Kabila and the opposition forces had been (co-)financing the electoral campaigns of several candidates point to a political investment, in which the point is to be on the winning side or at least to gain influence over several camps. But when politics is viewed as an investment, the actors' political strategies become arbitrary. Switches in political alliances occur that would be hard to imagine in a normal party system.

How likely is the current system to be successful, given that it owes its existence to elections? Not only does it depend on cohabitation, in which the state president comes from one political camp and the parliamentary majority from another, a state of affairs that genuinely threatens political paralysis; it also features an ex-president

who continues to play a significant political role. It is clear that Kabila and his camp are still deeply engaged in Congolese affairs. Structurally speaking, Kabila's involvement is confirmed by the fact that his political alliance controls the majority of seats in parliament (42 of 65) and thus the majority of ministerial posts. Furthermore, during the coalition negotiations, he staked a claim to several influential ministries, above all defense and justice. Both of those ministries would be relevant in case criminal charges should be brought against him.

Still, there are signs suggesting that Kabila does not enjoy unlimited discretion to pursue his own interests. The long tug-of-war first over the premiership and then over the composition of the new government, during which candidates were vetoed again and again, makes it clear that neither Kabila nor Tshisekedi has unlimited decision-making power. Moreover, if one considers the personnel of the new government, it does not seem as though Kabila handpicked his cabinet, since 75 % of the ministers are neophytes. On this issue one can feel a soft breeze blowing in fresh air and notice the beginning of a renewal that Tshisekedi evidently was able to push through.

These signs of change also were reflected in the first official actions taken by Tshisekedi. His father, Étienne Tshisekedi, had a saying, »le peuple d'abord,« referring to a people-oriented brand of politics committed to peace and sustainable development. That principle found expression in the 100-day-program that he introduced shortly after taking office. Among other things, that plan put heavy emphasis on the battle against corruption and the expansion of infrastructure in the country. In addition, political prisoners from the old regime were liberated and initial improvements in the areas of press freedom and freedom of opinion were plain to see.

The crucial question is (and will continue to be throughout the legislative term) whether and to what degree Tshisekedi can manage to free himself from the constraints imposed by the ex-president. At any rate, his rise to power will make possible new political alliances in the DRC and enable emancipation from the Kabila system. A relevant factor here is his level of international support. One of the first acts of Tshisekedi's new presidency was to appeal for international cooperation. And the fact that not one of his newly appointed ministers was among the 14 candidates who had been sanctioned by the EU due to human rights violations makes clear Tshisekedi's determination to cultivate strong relations with Europe (among other partners). Here he will reap some benefits from the international community's strong interest in putting an end to the Kabila era.

Several circumstances should inspire hope in the DRC's political future. First, until 2018 there never had been a single peaceful transfer of power. Bloody conflicts were a daily occurrence. But on election day and ever since, no political unrest has flared up. Second, a powerful president was prevented by continuing pressure from the Church and civil society from expanding his power further. Last but not least, the populace in the capital, Kinshasa, if not elsewhere, apparently is beginning to sense that brighter days lie ahead.

The DRC is the poster-child for the increasing relevance of elections for political development on the African continent. Elections are perceived as an opportu-

nity for people to express their political will. As such, they are powerfully shaped by the international system of norms. To be sure, there are real limitations at work here. Legal security is lacking, political violence is always a threat, and, as everyone knows, elections are imbedded in a political system shaped by rent-seeking economic behavior. But despite those boundaries, elections now are firmly established as a point of reference for democratic transitions and accountability.

Thus, international reactions should not deliver a once-and-for-all verdict about the degree of democracy present in the DRC elections. Instead, they should take advantage of their significance for the further evolution of the democratic process in order to promote democratic political change. For example, granting recognition to President Tshisekedi would be the right thing to do. But the decision to do so – or not to do so – depends on the motives of those who must make that choice. Anyone who thinks that elections are important for the development of democracy should make that choice and not prioritize stability and geostrategy over than the potential for democratic political change. Toward that end, one has to take the winner of the election at his word and insist that his government behave in democratic ways.

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