

สหภาพยุโรปในฐานะชุมชนเหนือชาติบูรุษเทศ:

กรณีศึกษากฎหมายตลาดร่วมสหภาพยุโรป



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**THE EUROPEAN UNION AS A MASCULINE SUPRANATIONAL  
COMMUNITY: A TEST CASE OF ITS COMMON MARKET LAW**

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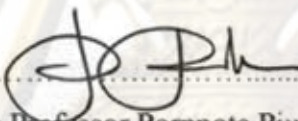
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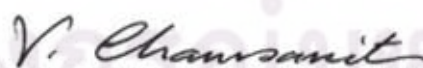
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ด้วยแรงกดดันจากลัทธิโลกนิยม และนโยบายเสรีนิยมใหม่ บรรทัดฐานในการนิยามเพศสภาพของรัฐได้  
เปลี่ยนแปลงไปจากการประเมินที่อยู่บนพื้นฐานของความเข้มแข็งของกองทัพแห่งชาติและอำนาจแห่งจักรวรรดินิยม  
เป็นการประเมินที่อยู่บนพื้นฐานของอำนาจแห่งอาณาจักรธุรกิจข้ามชาติ วิทยานิพนธ์ชิ้นนี้มุ่งศึกษา ความพยายามของ  
สหภาพยุโรปในการรับมือกับความเปลี่ยนแปลงในการประเมินดังกล่าวในบริบทความสัมพันธ์ระหว่างประเทศว่าได้  
ใช้กลไกใดบ้างในการรับมือ และความพยายามดังกล่าวมีนัยอย่างไรบ้างในบริบทของเพศสภาพและเพศวิถีศึกษา

ผลการศึกษาแสดงให้เห็นว่า สหภาพยุโรปได้สร้างและพัฒนาตลาดร่วมแห่งสหภาพยุโรปขึ้นเพื่อรับมือกับ  
ความเปลี่ยนแปลงในการประเมินเพศสภาพของรัฐดังกล่าว อย่างไรก็ตามก็คิดไกลทางกฎหมายและนโยบายเสรีนิยมแนว  
ใหม่ซึ่งเป็นกลไกตรวจสอบและขับเคลื่อนการทำงานของตลาดร่วมดังกล่าว ได้สร้างผลกระทบเชิงลบอย่างต่อเนื่องกับ  
ผู้หญิง ผู้ซึ่งแรงงานในครัวเรือนนอกจากจะไม่ได้รับการให้คุณค่าเชิงเศรษฐกิจแล้วยังเป็นปัจจัยที่ทำให้ความสามารถ  
ในการแข่งขันในตลาดแรงงานลดลง ผลกระทบดังกล่าวนำไปสู่ข้อสรุปที่ว่าที่สหภาพยุโรปจะได้รับการประเมิน  
ว่าเป็นชุมชนเหนือชาติบูรณาการนั้น ความ 'สมชาย' ดังกล่าวมีนัยของความเป็นปิตาธิปไตยสูง

นอกจากนี้ กฎหมายตลาดร่วมแห่งสหภาพยุโรปดังกล่าวยังมีนัยการปฏิบัติอย่างไม่เป็นธรรมต่อกลุ่มคนรัก  
เพศเดียวกันอีกด้วย โดยศาลยุติธรรมแห่งสหภาพยุโรปยืนยันที่จะไม่รวมเอาความสัมพันธ์แบบรักเพศเดียวกันเข้าไป  
อยู่ในความคุ้มครองของกฎหมายสหภาพฯ ที่ห้ามไม่ให้มีการเลือกปฏิบัติด้วยเหตุผลทางเพศ จุดยืนดังกล่าวส่งผลให้  
สภาพบุรุษเพศของสหภาพฯ มีมิติของการสร้างความสัมพันธ์แบบรักต่างเพศเป็นบรรทัดฐานด้วย ซึ่งนัยดังกล่าว  
นำไปสู่ข้อสรุปที่ว่า การสร้างอัตลักษณ์ทางเพศของปัจเจกหนึ่งๆ มักอยู่บนพื้นฐานของการสร้างและทำลายความเป็น  
อื่นควบคู่กันไปด้วยในเวลาเดียวกัน เป็นนัยซึ่งแสดงออกถึงความกังวลกับความสมชายของคน ซึ่งการศึกษาชี้ให้เห็น  
ว่าในที่สุดแล้วเป็นคัวบ่อนเซาะอัตลักษณ์ทางเพศที่สหภาพฯ เองพยายามสร้างขึ้น

สาขาวิชา ยุโรปศึกษา.....ลายมือชื่อนิติศ ..... *Rakhe*  
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RATHSARAN SIREEKAN: THE EUROPEAN UNION AS A MASCULINE  
SUPRANATIONAL COMMUNITY: A TEST CASE OF ITS COMMON  
MARKET LAW. THESIS ADVISOR: ASST. PROF. SORAVIS JAYANAMA,  
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With the paradigm shift in the gradation of the state's compulsory masculinity from military and colonial power to the capacity to foster transnational business, as informed by the work of Connell's and Hooper's, the study argues—in favour of the rather condescending nomination of the EU as an 'economic giant, but a political dwarf'—that the EU's creation and maintenance of its single market—under the surveillance of the European Court of Justice (ECJ) to enforce the common market law—is actually a construction site of the hegemonic masculinity of the current globalised international society, a reading made possible by conflating Foucault's theory of governmentality and Butler's performativity, given both are deconstructive in nature.

Not only does the study engage the EU's transnational business masculinity on the discursive level. It extends the investigation to the material plane, arguing that the 'masculinity' in question is heavily tinged with patriarchy, affecting real women. The European single market gives the EU its desirable masculine gender identity not only because the neoliberal governmentality underlying it embodies aggressive and competitive characteristics usually assigned by society as 'masculine', but also because the market rationality materially privileges men over women whose 'informal' output in the domestic realm not only receives no economic valorisation, but also affects their competitiveness in the labour market.

Given the rationale behind the legal framework for gender equality in the EU being the prevention of distortion of the transnational labour market, the fact that the ECJ excludes *sexual orientation*, homosexuals in their relationship in particular, from the prohibition against discrimination on grounds of *sex*—which renders the EU's masculinity not only patriarchal, but also heteronormative—backfires the Union by undermining the goal of its economic integration, especially, the free competition in the labour market. The study, thus, concludes: in every attempt to construct one's identity, particularly, one's gender identity, one not only draws a clear boundary and stigmatises the Other in the perpetual (re)creation of oneself, but also, as the case of the EU reveals, confronts with the self-inflicted instability—engendered in this case by its own insecurity of not being 'manly enough'—subverting such a desirable gender identity effect.

Field of study: European Studies  
Academic year: 2008

Student's signature.....*Rathsaran Sireekan*  
Advisor's signature.....*Soravis Jayanama*

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ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย



# CHAPTER I

## INTRODUCTION

### 1.1 Background of Study: The EU and Identity Problem

Jacque Delors dubbed it an ‘unidentified political object’. Jan Zielonka picked the term up, magnified it and declared the European Union (EU) as far from being a neatly cut ‘Westphalian federation with a central government in charge of a given territory’<sup>1</sup>. As for him the EU

has no effective monopoly over the legitimate means of coercion. It has no clearly defined centre of authority. Its territory is not fixed...enlargement has resulted in more layers of authority, more cultural, legal, and political pluralism, more diversified and crosscutting institutional arrangements<sup>2</sup>.

Indeed, it is never easy to define what kind of polity the European Union is. As ‘an unidentified political object’, the supra national community has been constantly challenged with the problem of identity.

With this existential anxiety frequently addressing to it, it should, by no means, be surprising to learn that the EU has been given a status of a spendthrift when it comes to promoting its own identity—an observation made by Open Europe, the euro-sceptic think tank which has reported the EU spends €2.4 billion each year for public relations ranging from advertising, lobbying, news making to other types of ‘propaganda’ including

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<sup>1</sup> Zielonka, Jan. **Europe as Empire: The Nature of the Enlarged European Union**. New York: Oxford University Press, 2006, p. 1.

<sup>2</sup> Ibid., pp. 2-3.

scholarships<sup>3</sup>. This entire PR budget is dubbed by the UK's Telegraph to be 'bigger than Coca-Cola's total worldwide advertising account'. The latest of such marketing is the EU Tube funded out of a €207 million communication budget from Brussels. The channel, however, has so far attracted merely 7,391 subscribers, given the community's population being 500 million—the same symptom of low visibility which corresponds to earlier failure of the French, Dutch and Irish referenda on the European constitutional treaty. As Zielonka observes 'public opinion polls indicates that over the last fifteen years popular support for the EU has fallen by nearly 20 per cent'<sup>4</sup>.

The story of the EU's vulnerable ego and how it works extensively to promote and protect itself, if read in the context of identity theory, is nothing beyond ordinariness; it is even educational. The EU's 'unidentifiability' is, in fact, a good example of how post-structuralists and post-positivists perceive a state, or, in this case, a supranational community, as having no naturally given essence, but a construct.

According to Michel Foucault's theory of governmentality, 'the state is at once that which exists, but which does not yet exist enough.'<sup>5</sup> That is, the state has this double nature of being both given and an objective to be constructed. On the one hand, one only governs a state that already exists. On the other, the state will cease to exist if there are no longer the governmental rationale and the subsequent enactments of such an ideology. In other words, the state is far from being continuously and permanently there; on the contrary, it, essentially, owes its stateness to the rationalization of governmental *practices* in the exercise of its political sovereignty. With its provisional ontology fueled by these

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<sup>3</sup> Waterfield, Bruno. EU spends £2bn each year on vain PR exercises. In **Telegraph** (12 January 2009).

<sup>4</sup> Zielonka, 2006, p. v.

<sup>5</sup> Michel Foucault. **The Birth of Biopolitics: Lectures at the Collège de France 1978-1979**. Translated by Graham Burchell. Palgrave Macmillan, 2008, p. 2.

*practices*—‘doing’ rather than ‘being’—the precariousness of the EU’s identity and how it intensely keeps reconfirming itself with such an enormous budget, too, in fact, helps unpack the mechanism of how a state, or a supranational community, in this case, derives its existence.

## 1.2 Statement of Problem: The EU and Gender Identity Problem

The EU is not only sensitive about its identity, but particularly, gender identity, as the literature review on media perceptions of the supranational community in the next chapter reveals. As a political entity in the international community, the EU is required to uphold certain set of responsibilities and practices. This code of conduct in international relations, as will also be explicated in the literature review, has an unmistakable gender implication.

Not only provisional and in need of constant reconfirmation of its stateness, the state, as for Foucault, is also specific and discontinuous in nature: ‘The state exists only for itself and in relation to itself....The state only exists as states in the plural.’<sup>6</sup> With this singularity among plurality as the nature of the state, perpetual self-revalidation in form of *competition* among themselves is one of the most important elements enabling each state to maintain and be recognised of its stateness in the context of international relations.

A branch of gender studies called ‘masculinities studies’, informed by the works of R.W. Connell<sup>7</sup> and Charlotte Hooper<sup>8</sup>, argues that, among others, ‘international competition’—as an existential condition of the state’s stateness, to apply Foucault’s thought—presents with the characteristic of the masculine gender. And, as

<sup>6</sup> Ibid., p. 5.

<sup>7</sup> Connell, R.W. 2<sup>nd</sup> ed. **Masculinities**. Cambridge: Polity Press, (1995) 2005.

<sup>8</sup> Hooper, Charlotte. **Manly States, International Relations and Gender Politics**. New York: Columbia University Press, 2001.

‘competitiveness’ in the global political-economic arena since the 1970s—the timing agreed by both R. W. Connell and David Harvey<sup>9</sup>—particularly means that of neoliberalism and ‘transnational business’, together with how the government facilitates it by ‘not governing too much’, neoliberalism and ‘transnational business’ is read by Connell and Hooper to be the ‘hegemonic masculinity’ of the current global community.

The EU’s creation of the Single Market—in its ‘Growing recognition of a competitive gap *vis-à-vis* the United States and Japan, on the one hand, and the newly industrializing countries, on the other, [which] led to strenuous efforts to maintain overall levels of market activity and provide conditions for viable markets’<sup>10</sup>—too, should welcome the same gender reading as Connell and Hooper do with ‘transnational business’. In deed, if the Single Market is the spirit of the EU, so does transnational business; this is due to the historical fact that it is actually the transnational ‘business interests...promoted through the establishment of a European Roundtable of Industrialists to provide momentum and pressure for a single market’ that ‘put forward numerous proposals to improve European competitiveness...through a campaign of proactive lobbying...’<sup>11</sup> The relevant question to be asked here, in convergence of the theories mentioned above, is, thus, what mechanisms the EU has been adopting to acquire its competitiveness among other states in the contemporary global community, and inevitably, under the theoretical framework of ‘transnational business masculinity’, what gender implications the adoption of these mechanisms have—how these mechanisms

<sup>9</sup> Harvey, David. **A Brief History of Neoliberalism**. Oxford, 2005.

<sup>10</sup> Pelkmans, Jacques and Winters, L. Alan. **Europe's Domestic Market**. Council on Foreign Relations, 1988 in Egan, Michelle. *The Single Market*. In Cini, Michelle, eds. *European Union Politics*. New York: Oxford UP, 2003, p. 35.

<sup>11</sup> **Financial Times** (20 March 2001). In Egan, Michelle. *The Single Market*. In Cini, Michelle, ed. **European Union Politics**. New York: Oxford UP, 2003, p. 35.

render the EU as a masculine supranational community—the answer of which will be answered in chapter III.

According to Foucault's theory of governmentality, to be able to compete and be respected in the international community, the state must regulate its subjects to ensure it is capable of maintaining its competitiveness in relation to others. The government thus has to regulate the life of its subjects, how they handle their economic activity, their production, the level at which they price themselves, in terms of labour, and their goods and the price at which they buy them, and so on<sup>12</sup>.

When it comes to regulation and control, there is no better means than doing it in the name of law, especially public law. But as Foucault points out in his series of lectures at the College of France given between 1978 and 1979, public law falls into the rubric of external limitation, while the 18<sup>th</sup>-century political innovation of 'not governing too much' is considered intrinsic to the art of government itself. And, the kind of government in which we find the reconciliation of these two planes of limitation simultaneously at work is the neoliberal governments and the EU is one of them.

Given its role in maintaining the competitiveness of the EU's Single Market, the EU's common market law speaks well for this paradoxical balance; the law is adopted to regulate both member states and businesses to ensure the movement of factors of production, including goods, labour, services and capital, within the Union is not restrained. In other words, it is a kind of regulation to deregulate—a control to liberalise. Or, to use Foucault's language, it is the employment of the external limitation so as to achieve the effect of the internal one: to govern so as not to govern too much.

To read gender into this aspect of Foucault's concept of governmentality, Judith Butler's theory of 'gender performativity' is brought into play in this study so that the

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<sup>12</sup> Foucault, p. 7.

EU's regulation to deregulate, and maintain the neoliberal/market-economy ideal, through its iconic common market law can be read as a kind of 'recitation' of the masculine gender code, given Connell's interpretation of 'transnational business'.

Proposing that there is no gender behind the subject—as the subject itself is not naturally given, but a derivative—unless there is a recitation of a particular gender code to produce a gender identity effect—the act of which is dubbed 'performativity'—Butler sees the so-called 'anomaly' and 'artificiality' of the 'precarious' gender identity of drags as the epitome of how one acquires his/her gender. Foucault's 'stateness', too, echoes Butler's provisional ontological effect—the desired end product of which is acquired by the repeated citation of the reason of governing. As both Foucault and Butler share the same deconstructive investigation into beings, be it on the state or individual level, equating the vulnerability of the EU's identity with that of a transvestite and marrying Foucault's 'governmentality' with Butler's 'performativity' and rendering it a new neologism of 'govern-formativity' (the term coined by my thesis advisor) promises a new conceptual springboard for this study to pose, given that masculinity is the preferred gender of the state, its central question of what the EU has done to constitute itself as a neoliberal, and, consequently, masculine supranational community.

It is not unpredictable that one would question the necessity of making a link between the EU's identity effect as a neoliberal supranational community and its masculine gender. Even obligatory to point out is the fact that such a question—overlooking the importance of gender implications in things—has a gender implication in itself, and that gender is, unmistakably, masculine. As Connell and other masculinities scholars (details to be elaborated in the next chapter) agree, thinking of oneself as genderless is thinking masculine because one is already in an unproblematic position; this invisibility of masculine superiority speaks well for its very privilege.

Therefore, the study believes it would not do enough justice to just identify the gender of the EU without discussing the implications such identification may have brought forth. Being masculine is, indeed, not without consequences. This is especially true when the EU's common market law perceived as masculine is responsible for the emergence of other non-normative identities. As Nico J. Beger observes, 'The legal arena cannot operate without the logic of identity, yet subjects of the law do not exist prior to their negotiation in the legal process'<sup>13</sup>. As chapter IV will reveal, the implication of the EU's acquiring its transnational business masculinity through the perpetual adoption of its common market law not only demonstrates that it is a patriarchal supranational community, but also a heteronormative one, discriminating not only women and but homosexuals, too. Indeed, being masculine is not only an opposite of being feminine, but also that of homosexual. (Some may protest the term 'homosexual' here is not politically correct given the current engagement being a post-positivist approach to identity. However, as Connell points out, statist analogy of identity has proved to launch a better impact when it comes to right politics.)

### 1.3 Research Questions

1.3.1 Under the paradigm shift in the gradation of the state's compulsory masculinity from military and colonial power to the state's capacity to compete in the global economy by not only facilitating, but fostering transnational business under the neoliberal governmentality, how do the single market and its common market law contribute to such an identity (re)construction?

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<sup>13</sup> Beger, Nico J. *Queer Readings of Europe: Gender Identity, Sexual Orientation and the (Im)potency of Rights Politics at the European Court of Justice*. In **Social & Legal Studies**. Vol. 9 (2). London: Sage Publications, 2000, p. 264.

1.3.2 What are the implications, especially in terms of gender, of the EU being a masculine supranational community?

#### **1.4 Objectives of the Study**

1.4.1 To enrich the field of masculinities studies in international relations with the EU as a case study

1.4.2 To launch a new conceptual framework in which the state acquires its gender by means of perpetual ‘performing’ or ‘acting out’ its governing reason—the project made possible by combining Michel Foucault’s theory of governmentality and Judith Butler’s theory of performativity, which, in turn, gives birth to a new neologism of ‘govern-formativity’.

1.4.3 To find out how the EU’s neoliberal governmentality affects non-bearers of transnational business masculinity—the majority of whom is women—in other words, to find out why gender mainstreaming is not working in the EU.

#### **1.5 Hypothesis**

1.5.1 The EU is a masculine supranational community which keeps building on itself, due to its provisional ontology, on the perpetual adoption of its common market law, the guardian of the neoliberal governmentality which is masculine in nature, so as to develop and sustain its competitiveness among other states, and, thus, maintain its stoneness, the ontological effect of which has a masculine gender.



1.5.2 With the politics of inclusion and exclusion as part of its identity construction, the EU—through the enforcement of its common market law via the ECJ—is patriarchal and heteronormative—privileging men over women and discriminating homosexuals *in* their relationships.

## 1.6 Analytical Framework

1.6.1 R.W. Connell's theory of transnational business masculinity and Charlotte Hooper's theory of masculinities in international relations

1.6.2 Michel Foucault's theory of governmentality and advanced liberalism

1.6.3 Judith Butler's theory of performativity

## 1.7 Methodology

1.7.1 Deduction: Neoliberalism is masculine; the EU is constructing itself as a neoliberal supranational community; the EU is masculine.

1.7.2 Induction: The collection of a number of legal cases pertaining to the EU's law on 'Free Movement of Persons' leads to a generalization that the EU is a neoliberal and therefore masculine supranational community.

ศูนย์วิทยทรัพยากร

จุฬาลงกรณ์มหาวิทยาลัย

## CHAPTER II

### LITERATURE REVIEW

#### 1. **International relations and the production of masculinities** **(Charlotte Hooper)**

It was, first, the feminist protest over the invisibility and marginalization of women's role in international relations and the discipline of IR which has gendered the whole field—a resistance derived from the complaint that

the world of international relations appears to be truly a man's world, both through the predominance of men in practice and through the “masculinist underpinnings” of the discipline, whereby success is measured in terms of the “masculine” virtues of power, autonomy, and self-reliance<sup>1</sup> .

With this observation, Hooper questions ‘What place do international relations (both theory and practice) have in the shaping, defining, and legitimating of masculinity or masculinities? ... Might international relations discipline men as much as men shape international relations?’<sup>2</sup>

Hooper's focus here is thus the relationship between international relations and the construction and maintenance of hegemonic Anglo-American masculinities. She explains that

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<sup>1</sup> Hooper, Charlotte. **Manly States, International Relations and Gender Politics.**

New York: Columbia University Press, 2001, p. 1.

<sup>2</sup> Ibid., p. 4.

these masculinities have strong historic links with the notion of the international—links that have been forged through “foreign adventure” and colonialism.<sup>3</sup>

Masculinities are not constructed in domestic culture; they are the products of men’s participation in international relations.

### 1.1 History of masculinities is history of militarism

Military combat in the pursuit of war (an inter-state affair) is a clear example of how international relations helps to shape and discipline men and their bodies—psychologically and physically. Ehrenreich interestingly argues that ‘it is not only men that make wars, it is wars that make men’<sup>4</sup>. ‘Military service has [symbolically] served as a rite of passage for boys to be made men throughout much of the modern era, while at the level of embodiment, military training explicitly involves the physical and social shaping of the male body.’ In other words, ‘Soldering disciplined the male body, helping to shape its style of masculinity as well as its physical contours.’<sup>5</sup>

Historically, for instance, British manhood at the beginning of World War I was far from being the kind of masculinity it would later be defined in the context of militarism. They were ‘malnourished, disease-ridden, of stunted growth, and poorly educated’<sup>6</sup>. But once they were recruited to join the army, they were ‘converted’ into soldiers, both physically and mentally.

That war and militarism as an international affair between states has shaped masculinity is observed by Bourke to have been passed down to national/local

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<sup>3</sup> Hooper, p.5.

<sup>4</sup> Quoted in *ibid.*, p. 82.

<sup>5</sup> *Ibid.*

<sup>6</sup> Quoted in *ibid.*

institutions—one prominent example of which is schools where the process of socialization is allowed to affect identity formation.

‘The increased surveillance and regulation of male bodies that this entailed was sustained through the interwar years, when regular exercise through military-type drills was widely adopted in schools and other institutions. Military drill therefore constituted an institutional practice that had been established through war and that had a widespread effect on men’s bodies. Drill was also deemed to make men economically efficient, to promote emotional self-control, and even to enhance brain development [thus differentiating men from women],’<sup>7</sup>

Back to the context of how war and militarism shaped masculinity, men who fell outside it—by refusing to fight, to carry a high risk of death or physical disablement—were deemed not “real” men because they failed to enact these expectations demanded on them by the militarist discourse. Thus, those soldiers who came home maimed were, not surprisingly, regarded as ‘not less but more of a man’<sup>8</sup> —an ‘active’ rather than ‘passive’ sufferers. Indeed, for a while, manliness was made equal to physical dismemberment.

Nevertheless, as these disabled former servicemen were not able to fulfil a role as breadwinners, they became eventually marginalized and feminized. (Suffering from ‘shellshock’, Septimus in Virginia Woolf’s *Mrs. Dollaway* is marginalized as ‘emasculated’ and privately engaging in ‘homoeroticism’) As it shows here, economic capacity as an indicator of masculinity is already recognizably succinct even in the context where militarism predominates.

Putting this in context of schools, which Hooper skips, militarist legacy of masculinity enacted through military drills has found another embodiment in competitive sports, which Connell observes as a hegemonic form of masculinity,

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<sup>7</sup> Quoted in *ibid.*; emphases and addition mine.

<sup>8</sup> Quoted in *ibid.*, p. 83.

which threatens those male students who do not participate; they thus have to negotiate their way out and establish some other claim to respect, or they face the labeling of not being ‘manly’ enough.

Hooper develops this idea in an international context and argues that ‘international sporting competitions, particularly in gender segregated team games such as football, rugby and cricket, also mobilize and fuse national feeling, masculine identification, and male bonding among players and spectators alike’<sup>9</sup>.

These international competitive team games, which share the same training techniques and languages as those in the war and military context—hence international sports as a metaphor for war—is another legacy of the (Victorian) colonial era, which have become more than an inter-state affair and, symbolically, affected ‘the everyday lives of boys and men in schools, clubs, and leisure time, throughout the world’<sup>10</sup>.

1.2 ‘Within the military itself, institutional practices also help to shape different masculinities and masculine identities’<sup>11</sup>.

Militarism (the belief that a country should have great military strength in order to be powerful) is made possible by militarization—an institutional process which also takes shape of masculinity. Hooper cites Cynthia Enloe’s discussion of how the construction of British imperial armies was ‘no mean feat’ (not difficult at all) as militaristic discourse was exploited in persuading colonized groups of men that ‘soldiering was in any way a manly pursuit’<sup>12</sup>.

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<sup>9</sup> Ibid., p. 86.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid., p. 84.

<sup>12</sup> Ibid.

‘Recruitment policies [as institutional practices] have also helped to define hegemonic and subordinate masculinities. In many countries, ethnically or religiously subordinate groups of men along with homosexuals, have historically been barred from active military service or have been given restricted roles. Such restrictions justified by nationalist security ideologies, have helped to construct the subordinate status of these groups more generally, through the implicit and explicit links between military service and citizenship. Full citizenship rights are often denied to men who do not participate in defending the state, in much the same way as they have been for women.’<sup>13</sup> [A contemporary example is of Arab citizens of Israel and of Palestinians in many other Arab countries<sup>14</sup>]

Interestingly enough, with this model of explanation, the paradigm shift from militarism to transnational business as the construction site of contemporary hegemonic masculinity will also see the same measure of exclusion or restriction from the rights of EU citizenship to those who do not participate in the transnational economic activities as a factor of production. These rights, given the thesis’s scope, are seen to be granted by the ECJ to guard the Treaty whose nature pertains to neoliberalism.

Economic participation is vital to both individual participants and the EU itself in terms of construction of masculinity. On the one hand, an individual’s ability to participate and perform as a factor of production gives him (or her) a masculine identity effect, hence being included and given rights of citizenship (It is to be observed that non-nationals who perform as factors of production are given better access to the rights of EU citizenship than those nationals who cannot demonstrate such ability and participation). On the other hand, economic participation, or, in the context of Butler’s ‘performative’ theory, ‘repetition’, by individuals also constitutes the EU’s ‘ontological effect’ as a Single-market state. (Butler believes there is no such thing as a coherent identity/self behind the repetitions of action which seeks to

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid., 242.

confirm and establish that identity effect.) The participation/repetition of economic activities constitutive of one's identity effect is a form of security an individual provides to the state as a means of perpetuation of the state's, in this case, the EU's, identity.

### 1.3 History of masculinities is history of colonialism

'The institutional practices of European colonialism [as an extension of militarism] have also helped to consolidate hegemonic and subordinate masculinities on a global scale'—recalling Connell's coinage of 'world gender order'.

#### 1.3.1 Theory of craniology

The first came with the ranking of masculinities and intelligence according to race. Through the pseudoscientific theory of 'craniology'—especially by Samuel George Morton in 1849 who used skull measurements to rank Caucasians at the top of the scale, and blacks at the bottom—hegemonic masculinity was understood in relation to level of intelligence and the nature of the consequential job assignment.

Black Africans, for instance, were seen as 'super-muscle-machines suited to heavy labor'<sup>15</sup>. 'In local differentiations, paler races tended to be ranked above darker ones, and taller above shorter ones—as in the case of tall Punjabis versus short Bengalis'<sup>16</sup>.

'The Caucasian group was further subdivided, with Anglo-Saxons and Germans at the top, Jews and Arabs intermediate, and Hindus lowest'<sup>17</sup>.

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<sup>15</sup> Ibid., p. 85.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

### 1.3.2 Colonial administration (job assignment according to ranking of masculinities and intelligence according to race)

Such physical ranking and its consequential job assignment were institutionalized in colonial administration. The administration in the British India was different from the one in Africa. The Empire in India saw Parsees of Persian stock—ranked the second among the Caucasians themselves—being allowed to take quite high positions and becoming more thoroughly immersed in British culture while Hindus—ranked the lowest in the Caucasian paradigm—were given jobs in the middle ranking of the administration. On the other hand, due to the Africans' lowest place in the ranking, even junior officials were imported from Britain when it comes to the administration in Africa.

### 1.3.3 Gender implication of 'scientific racism' on the ranking of mandated territories by the League of Nations in the aftermath of World War I

'Mandated territories [those placed under the rule of others] were ranked in to A, B, and C categories according to their degree of "civilization" and readiness for self-rule.' Category A: Iraq, Palestine and Syria—Arabs and Jews, deemed nearly ready for independence. Category B: tribal African countries—Rawanda, Togo and Tanganyika, which would require decades of stewardship. Category C: "stone age" Pacific Islanders and the Hottentots of Southwest Africa, who were deemed to need centuries of external rule.

### 1.3.4 International elitism

International elitism and its players are built on the concept of respectability which European/American educational background as a legacy of the colonial power order provides. This, again, plays a role in producing hegemonic masculinities in international society.



‘Those postcolonial political leaders most vociferously against the hegemony of Western values in international society rarely escaped the influence of those values’,<sup>18</sup>

### 1.3.5 ‘Specific foreign policies also lead to the institutionalization of particular kinds of masculinities.’

The United States’ foreign policy to construct and maintain a US identity in the time of the cold war as a ‘society of security’ came together with a vigorous loyalty/security campaign and a rigorous exclusion of the Communist Other. ‘Campbell notes the gendered nature of such exclusionary practices, so that, for example, Communists and other “undesirables” were linked through feminization, as indicated by the abusive term pinko.’<sup>19</sup>

### 1.3.6 Masculinities in media

#### 1.3.6.1 Nonfictional media

With its distinctively masculine mode of production, narrative structure and presentation [as opposed to the female poetic and imaginative genre], ‘hard news’—which presents statesmen, presidents and international players who are icons of glamorous wealth and power—has found its cultural equivalent in soap operas. These political players are ‘popularized [as] larger-than-life images of exemplary masculinity, [and] judged constantly in terms of their manliness or lack of it’<sup>20</sup>.

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<sup>18</sup> Ibid., 86.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid., p. 88.

### 1.3.6.2 Popular media

Popular media associate foreign adventure with virile masculinity. As a legacy of war and colonialism, ‘Diplomacy, spying, and the reported activities of presidents and statesmen have helped to define hegemonic masculinities in the popular imagination.’ The character of James Bond links espionage with hegemonic masculinity as his character conflates a gentlemanly and aristocratic ideal of manhood with suave skills in international affairs against the backdrop of cold war politics.<sup>21</sup>

1.4 Constitutive binary oppositions pertaining to the nature of international relations and how it allows masculinities (in relation to femininities) to take shape and be shaped

As the above examples have shown, ‘The very word international [as opposed to domestic] implies privileged access to a higher plane above and beyond the borders of the state behind which most of us are confined.’ However, Hooper points out this international politics/ domestic politics division ‘will not in itself lead to a clearer understanding of the involvement of international relations in the politics of identity construction or the production of masculinities’<sup>22</sup>.

To understand how international relations provides context for masculinities to construct itself and be constructed, we have to look, Hooper urges, at other divisions under the umbrella of this domestic politics/international politics. These secondary binaries include: public sphere of politics and economics v. private sphere of families, domestic labour and reproduction.

Under this umbrella of public/private or domestic/nondomestic binary lies relevant other divisions: 1) Political/social or state/civil division of liberalism  
2) Social/personal of romantic division—in which state and civil society fall into public realm.

<sup>21</sup> Ibid., 87.

<sup>22</sup> Ibid., p. 91.

Feminists point out negative implications of these overlapping divisions, especially the public/private one, embedded in the main binary of domestic politics/international politics, where ‘a formidable barrier to women’s equality, in general, and inclusion in civil and public life, in particular’<sup>23</sup>, is forged.

‘Domestic and family life has tended to fall outside both the state and civic society in liberal schemes, and the position of women and children in families was neglected in classic liberal discussions of justice and freedom’<sup>24</sup>. ‘As for the newer distinction between the public realm and personal life, the right to privacy has merely tended to reinforce the idea that family relations should be exempt from questions of public and social justice’<sup>25</sup>.

The EU International Market Law on ‘Free Movement of Persons’ seems also to be built on these divisions and implications<sup>26</sup>.

These overlapping ‘Gender divisions and inequalities depend to a great extent on the segregation of social life into separate spheres for men and women, so that gender differences can be constructed and the lines of difference made invisible.’<sup>27</sup>

Hooper, putting ‘private/public’ and ‘domestic/international’ boundaries together, declares a new modern divide of private/public/international boundaries so that ‘domestic and private’ include familial and personal; ‘public’ include state and

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

\*See Wilkinson, “Towards European Citizenship? Nationality, Discrimination and Free Movement of Workers in the European Union” **European Public Law**, 1995 quoted in Ackers, Louise, “Citizenship, Gender and Dependency in the European Union: Women and Migration” in Harvey and O’Keeffe (ed.), **Sex Equality Law in the European Union**, 1996, Chic Internal hester: Wiley, p. 225.

<sup>27</sup> Ibid.,

civil society; and that ‘international’ is understood in opposition to national confinement and the ability to go beyond it<sup>28</sup>.

The implication of this tripartite division is that IR as a discipline is constructed and informed to be utterly blind to gender politics<sup>29</sup>—that

Women and their traditional supporting roles—for example, as army and diplomatic wives, as nurses and prostitutes servicing armies, or even as production workers in defence industries—are outside the traditional remit of international relations, their activities by and large occupying lowing positions in the public sphere or being wholly confined to the private or domestic realms<sup>30</sup>.

The tripartite division is gender oppressive and exclusionary by nature—the plane on which masculinities are constructed. ‘The private/public/international divisions inscribe an all-male sphere that serves as an arena for the production of masculinities. However, this productive power is hidden, as these very same divisions help obscure the processes of identity production. The production of masculinities is rendered invisible because an examination of the interconnections between the international and the private world of personhood is discouraged—ruled out of court as outside the remit of the discipline. Questions of gender identity are generally assumed to be private aspects of adult personality (invoking the right to privacy from public scrutiny) and are rooted in the domestic realm of childhood and family life (invoking the familial/nonfamilial or domestic/nondomestic divide), if not determined at birth—far from the reach of IR’s focus of analysis’<sup>31</sup>.

<sup>28</sup> Ibid., p. 92.

<sup>29</sup> Ibid., p. 93.

<sup>30</sup> Ibid., p. 92.

<sup>31</sup> Ibid., p. 92-3.

The role of ‘court’ in hiding, obscuring and protecting the working of this tripartite relationship which constructs and informs IR as a discipline can be used to examine the ECJ’s role—via ‘Internal Market Law’—in its rigorous protection—together with the Commission—of the EU’s identity (as perceived by other states in international community) as a Single Market

## 2. Models of masculinities: reflections on state behaviours (Charlotte Hooper)

The following models of masculinities which imply different relationships to women and feminism are cited here because they echo the state’s governing rationale and code of conducts in international relations.

2.1 ‘The heroic warrior-citizen model tends toward overt misogyny since it involves a notion of manliness which is tied to the conquest of women. In Machiavelli’s own words, ‘Fortunate is a woman and it is necessary if you wish to master her, to conquer her by force’<sup>32</sup>

2.2 The patriarchal model ignores women. Rebecca Grant protests women are invisible in the ‘state of nature’. There is no room for the question of how gender relations affect the transition out of the brutish state of nature and into society. Presumably, the ‘invisible’ women were in a state of ‘nurture’ or producing the next generation. Women fared little better in the alternative, romantic, republican tradition, as in Rousseau’s state of nature, reason and understanding could be attained only by men.

2.3 The bourgeois-rationalist model of masculinity—idealizing ‘competitive individualism, reason, and self-control or self-denial, combining respectability as breadwinner and head of household with calculative rationality in public life’—values intellect and personal integrity over physical strength or bravery.

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<sup>32</sup> Ibid., 98.

This makes ‘the relationship between this model of masculinity, women, and feminism...more subtle and complicated than in the case of the warrior-citizen or patriarch’.<sup>33</sup> The bourgeois-rationalist new man is linked with the Enlightenment, the modern state and the development of capitalism. ‘In its purest and most abstracted form, the rational-actor model is also the most ubiquitous characterization of human action in contemporary IR...’<sup>34</sup>

### 2.3.1 Masculine reason / feminine passion

Rationalism attached to this strain of masculinity is conceived, similar to all other binaries, in opposition to the feminine emotions: male/female and reason/emotion. The former is privileged over the latter.

Victor Seidler ‘explores the rational/emotional, mind/body, and reason/madness of dichotomies of Western thought and their association with the post-Enlightenment implication of masculine/feminine. He argues that the rationalist tradition sees emotions and desires as threatening. Both Kantian thought and Protestant culture posit an inner freedom from emotionally driven inclinations as the ideal. Feelings and emotions are seen as both imperiling masculine superiority and questioning the sources of masculine identity. The body, its desires and frailties, similarly poses a threat to masculinity and pure reason’.<sup>35</sup>

On the contrary, ‘Acting only from reason and duty serves to strengthen the autonomy of men.’ ‘Otherwise they are in a position of servitude, when reason becomes a slave to the passions. Therefore self-control over one’s emotions and body has come to be hallmarks of masculinity. Emotional and dependency needs as well as

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid., p. 99.

sexual desires are transformed into issues of performance and control or displaced onto “feminine” Others such as women, gays, Jews, and blacks’<sup>36</sup>.

### 2.3.2 Goal-oriented and instrumentalist

With its ‘identity defined in opposition to ‘feminine’ dependency, emotionality, and bodily enslavement, bourgeois-rationalist masculinity is heavily instrumentalist in thought and goal-oriented in action’<sup>37</sup>

### 2.3.3 IR as personal autonomy, instrumental rationality and goal orientation

As opposed to feminine dependency and emotionality, IR rational actors (though rationalism is not exclusive to IR) have personal autonomy, instrumental rationality and goal orientation.

- 1) They can rank in order of importance.
- 2) They will seek to optimize these aims
- 3) They will weigh up the expected costs and benefits of alternative courses of action in seeking to achieve their goals.

‘Physically disembodied and socially disembodied, it assumes personal autonomy, instrumental rationality, and goal orientation’<sup>38</sup>.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

### 3 Transnational business masculinity (R.W. Connell; Charlotte Hooper; Christine Beasley)

It is R.W. Connell who first brought to attention not only that gender relations involve all aspects of social life and organisation, but significantly how masculinity takes the form of dominance in all level of sociality and forms power relations.

Masculinity studies writers point out the importance of brining this latency into the level of manifestation as its invisibility speaks for its privilege. McKay, Mikosza and Hutchins decode men's secret recipe for their power and privilege as coming

to think of themselves as genderless, in part because they can afford the luxury of ignoring the centrality of gender....And the invisibility of gender to those privileged by it reproduces the inequalities that are circumscribed by gender<sup>39</sup>

Neoliberalism, which at times becomes inseparable with trend to globalise, is the world's dominant political economic discourse which, according to David Harvey, began to take shape in different parts of the world in the late 1970s.

In 1978, Deng Xiaoping twisted open the communist-tightened economic valve, which has allowed China and its population to enjoy such unprecedented and sustainable growths made possible by capitalist dynamism. In 1979, Paul Volcker of the US Federal Reserve introduced a dramatic change in monetary policy, fighting against inflation despite the ruthless cost of unemployment. Also in 1979, Margaret Thatcher won the general election and became the UK Prime Minister with the mandate not only to reduce state intervention, introduce free markets and entrepreneurialism but also to curb trade union power as an antidote of the decade-long chronic stagflation. Ronald Reagan, too, upon being elected President of the United States, stunted the power of labour, apart from deregulating industry, agriculture, resource extraction and endorsing Volcker's moves at the Fed

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<sup>39</sup> Quoted in Christine Beasley. Rethinking Hegemonic Masculinity in a Globalizing World. In **Men and Masculinities**, 2008. 11; 86. p. 87.



deregulating finance, both nationally and internationally<sup>40</sup>. As can be seen from this historical sketch, the move towards neoliberalism presents a strong resonance, either for better or worse, on labour issue.

The rationale behind the inception of neoliberalism as a political economic theory, according to Harvey, is that

human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices. The state has to guarantee, for example, the quality and integrity of money. It must also set up those military, defence, police, and legal structures and functions required to secure private property rights and to guarantee, by force if need be, the proper functioning of markets<sup>41</sup>.

As a hegemonic mode of discourse, the neoliberal mindset to deregulate, privatise, and withdraw the state intervention and control 'has become incorporated into the common-sense way many of us interpret, live in, and understand the world'<sup>42</sup>.

It takes R.W. Connell<sup>43</sup> to point out that this hegemonic discourse is neither gender-free nor a common sense as it may seem. It is true that, rhetorically speaking, neo-liberalism is gender-neutral; the individual here has no gender assignment; the market benefits the smartest entrepreneur, regardless of that individual's sex.

However, that neo-liberalism is post-patriarchal does not mean social justice in relation to gender can be expected from it; neo-liberalism has no interest in justice at

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<sup>40</sup> David Harvey. **A Brief History of Neoliberalism**. New York: Oxford University Press, 2005. p. 1.

<sup>41</sup> Harvey, p. 2.

<sup>42</sup> Harvey, p. 3.

<sup>43</sup> R.W. Connell. **Masculinities**. Cambridge: Polity Press, (1995) 2005.

all. In fact, the neo-liberal regimes are even seen as aggravating women's positions in society.

Take, for example, Eastern Europe where the restoration of capitalism and the arrival of neo-liberal politics have accompanied a sharp deterioration in the position of women. In rich Western countries, neo-liberalism has attacked the welfare state, on which far more women than men depend; supported deregulation of labour markets, resulting in increased casualization of women workers; shrunk public sector employment—the sector of economy where women predominate; lowered rates of personal taxation, the main basis of tax transfer to women; and squeeze public education, the key pathway to labour market advancement for women<sup>44</sup>.

Therefore, despite celebrating the entry of women into the officially de-gendered space of professional success, these women are only the minority, not majority whose position is actually degraded and endangered.

According to Connell, 'many men are relatively advantaged by the shift of social resources from the state to the market, and by the de-regulation of markets.' Indeed, the whole neo-liberal policy package has 'entrepreneur' as the intended beneficiaries—the majority of which are significantly male.

Rhetorically, these 'individuals' may be gender-neutral, but 'the desired attributes of managers and capitalists as entrepreneurs—thrusting competitiveness, ruthlessness, focus on the bottom line, "life-denying labour of entrepreneurial management"<sup>45</sup> and so on—are coded masculine in gender ideology, and in cold fact the people who fulfil these functions overwhelmingly are men<sup>46</sup>.

Connell's fixed characterisation of the transnational business masculinity—which is later on criticised by Christine Beasley as unfairly monopolising the possibility of a more nuanced manifestations of this hegemonic form—is taken on

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<sup>44</sup> Connell, p. 255.

<sup>45</sup> Connell, p. 257.

<sup>46</sup> Connell, p. 255.

differently by Charlotte Hooper who believes that recent globalisation trends have softened hegemonic masculinity:

On the one hand, there appears to be a softening of hegemonic masculinity associated with consumerism and a feminization of management styles; on the other hand, there is a cult of even more rationalized technocratic efficiency. This combination of moves allows for previously feminine characteristics to be repositioned as masculine, and for outdated paternalistic rules and hierarchies to be positioned as feminine<sup>47</sup>.

These softening trends include:

- a worldwide move towards demilitarization—total number of soldiers has fallen since the Cold War
- North American/Japanese corporate culture
- men are now positioned as consumers
- contemporary management gives more emphasis to traditionally 'feminine' qualities such as interpersonal skills and teamwork.

More importantly, the rationalist and warrior image of early businessmen—as Hooper develops her argument through the historicisation of masculinities in business—has been transformed, by the devastating effect of the two World Wars, from the Darwinian jungle in which business meant a modern substitute for war with all of the male virtues, to 'a rat race instead, with commercial survival and self-justification as family provider'<sup>48</sup>.

Indeed, contemporary business masculinity, in the paradigm of the survival of the fittest, no longer comes in form of force, strength or size, but rather an eclectic range of traits for adaptability—the mode of being which is 'never stable but always changing to whatever the market requires at any given moment. At the heart of the

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<sup>47</sup> Hooper, p. 193.

<sup>48</sup> Hooper, p. 150-1.

survival, therefore, is intelligence and strategy—bourgeois-rational traits rather than overtly military ones’ as it used to be<sup>49</sup>.

And if the 1970s is for Hooper the time when ‘technocratic rationality’ emerged, it was for David Harvey the time when a global phenomenon neoliberalism began to take shape and spread worldwide.

Hooper’s elaboration on the development of masculinities in business, which she dubs ‘technocratic rationality’, compared to Connell’s coinage of ‘transnational business masculinity’, is a softened version of masculinity.

Connell, disagreeing with Hooper, argues in his second edition of *Masculinities* that what Hooper is describing as a feminizing or de-masculinising trend of the globalizing business is actually a more subtle form of male subjugation over female with the help of neoliberalism.

Connell provides that—in response to numerous reactions against the inequalities in the world gender order which he calls ‘instabilities’—a more subtle form of responses to these instabilities which he dubs ‘practical recuperation’ supported by neoliberalism and its market agenda is more successful and widespread than an overtly masculine fundamentalism epitomized, for instance, in the gun lobby in which ‘weapons are celebrated and women are explicitly excluded from authority’<sup>50</sup>. Through the market agenda, the patriarchal dividend to men is defended or restored, without an explicit masculinity politics in the form to mobilize men as in the case of the fundamentalists.

(These instabilities, for instance, include 1. contestation of all-male networks and sexist organizational culture as women move into political office, the bureaucracy and higher education 2. the disruption of sexual identities that produced ‘queer’ politics and other challenges to gay identities in metropolitan countries 3. the shifts in

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<sup>49</sup> Ibid.

<sup>50</sup> Connell, p. 262.

the urban intelligentsia that produced pro-feminist politics among heterosexual men 4. media images of ‘the new sensitive man’, the shoulder-padded businesswoman, and other icons of gender change.)

Not only does Connell prove Hooper’s understanding of transnational business masculinity wrong, he also returns to Hooper’s interpretation of the effect of wars to enhance his argument:

In global arenas, transnational business masculinity has had only one major contender for hegemony in recent decades, the rigid, control-oriented masculinity of the military, and its variant in the military-style bureaucratic dictatorships of Stalinism. With collapse of Stalinism and the end of the Cold War, the more flexible, calculative, egocentric masculinity of the new capitalist entrepreneur power holds the world stage. The political leadership of the major powers, through such figures as Clinton, Schroder and Blair, for a while confirmed to this model of masculinity, working out a non-threatening accommodation with feminism<sup>51</sup>.

Furthermore, in line with what Harvey provides about the military aspect the state has to provide to protect a market economy into consideration, Connell argues against Hooper’s claim that there has been a world-wide trend to de-militarise. He cites 1) ‘the election of George W. Bush to the presidency 2) the political aftermath of the attack on the World Trade Centre in New York and 3) the remobilization of nationalism and military force in the United States culminating in the attack on Iraq in 2003<sup>52</sup>’, to indicate that harder masculinities through hard-line political leadership are still there and far from disappearing.

As the literature of masculinities studies above illustrates, militarism is not totally replaced by transnational business as the 21<sup>st</sup> century’s hegemonic masculinity. As Connell points out, it is perceived as the chief contender of transnational business

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<sup>51</sup> Connell, p. 263.

<sup>52</sup> Connell, p. 264.

masculinity. However, this study agrees with Harvey's idea that militarism since 1970s has been subsumed in the state's rationale as a mechanism to protect and expand its market economy—we see many excuses in the rhetoric of 'exporting democracy and stability' into the vulnerable regions—the by-product of which is the access to new markets. In other words, the use of military force is not exercised for its own end, but for the preservation and proliferation of the neoliberalism—the ideology on which the market economy flourishes.

#### 4. Contending paradigms: the EU's gender problem in the media

Given militarism and neoliberalism the two leading paradigms in which the state acquires its stateness and masculinity, the study shows, in this section, how the media, in their portrayals and perceptions of the EU, rely on the two paradigms to make sense of the supranational community's identity and its gender.

In *Newsweek*, for instance, the pro-European heavyweight Andrew Moravcsik, in his contribution titled 'The Quiet Superpower', relies on the paradigm of militarism in the construction of a hegemonic masculinity and unwittingly declares that the EU is not qualified in this context as a collection of states which believes that great military strength reflects the extent of its power in the international community.

Although the original purpose of his article is to help the EU improve its respectability and legitimacy in the world politics—by offering a superior plane to the EU's multilateralism, diplomacy and foreign aid policy and dubbing it a 'soft leadership' and 'quiet power' in opposition to the US's 'hyperpower' due to its military might and unilateral policy<sup>53</sup>—the fact that Moravcsik bases his argument on the binary of presence/absence when it comes to militarism—the US has it while the EU not—causes his argument to lose momentum in achieving such liberation. Why?

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<sup>53</sup> Moravcsik, Andrew. The Quiet Superpower. In *Newsweek* (17 June 2002).

Under the context of gender and masculinities studies in which militarism is assigned with masculinity, Moravcsik's failure here reflects the problem faced by feminists who try to seek liberation of women, but, unfortunately, still relying on the inescapable binary opposite of male/female.

Assigning the EU as a quiet and soft power and the US as an aggressive military might, Moravcsik is inevitably building his argument on the rhetoric of gender and its automatic assignment. 'Quiet' and 'soft'—that of the EU—is conceived as 'feminine' in opposition to the US military aggression as 'masculine'.

Male	Female
Militarism	Non-militarism: Diplomacy/Foreign aid
Hard/hyperpower	Soft/quiet power
Unilateralism	Multilateralism

Figure 1

Gendering the EU as 'feminine' and the US 'masculine' is not the only implication Moravcsik's undertaking means to us. On the one hand, underlying Moravcsik's attempt to empower 'femininity' and equate it with 'masculinity' reflects the acuteness of the situation in which 'femininity' does not receive as much valorization as 'masculinity' does. On the other, such an insecurity attached to 'femininity' is even further stressed and validated when Moravcsik inadvertently tries to 'de-feminize' the EU in his refutation against the idea that the EU is an 'economic giant but a political dwarf' by maintaining that 'Europeans already wield effective power over peace and war as great as that of the United States, but they do so quietly, through "civilian power"'<sup>54</sup>.

<sup>54</sup> Ibid., italics mine.

Indeed, such a move to de-feminize Europe—through ‘wielding’ as a sexual metaphor for male aggression—is not only cancelled out when the act of ‘wielding’ is done so quietly nobody hears or gets hurt—a stunted strive towards masculinity—but also reveals the very anxiety the EU experiences, in the first place, for not being ‘manly’ enough as a collection of states.

As imitation is the sincerest flattery, Moravcsik’s revalidation of the EU in ways to keep up with the US domineering masculinity would only mean reducing it into a mere duplicate and second-rater—a total opposite of what it tries to depart from. Regardless of how much information Moravcsik would cater to prove how effective the EU has been as a ‘soft’ power—in ‘bolster[ing] domestic and international peace settlements’<sup>55</sup> and restoring stability via foreign aid and exporting democracy and market economy, instead of ‘hard’ military force—the female gender assignment he implicitly gives to the EU will never get him as far as he wants. Judith Butler’s argument is a case in point here: as long as feminists do not find their ways to work outside the oppressive paradigm of male/female, they will never achieve the equality they strive for. In this light, the defence Moravcsik is holding up for the EU as ‘the Quiet Superpower’ is thus self-defeated as, given the oppressiveness of the paradigm which renders the non-military EU as nothing but feminine—the gender which the state cannot afford to be, given that the required code of conducts imposed upon it by the international community has a masculine nature—he is arguing in circle, where female is always underrated and male, in every circumstance, privileged. Figure 2 below shows a subversive representation of the EU as a non-masculine supranational community:

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<sup>55</sup> Ibid.





Figure 2

By contemporary German artist  
Tanja Ostojic

Despite numerous successful missions under the improved version of the European Security and Defense Policy (ESDP) in recent years, the EU's multilateralism, on the one hand, the fact that military defence is still an intergovernmental, not supranational, issue, hence still fragmented and slow in decision and action, on the other, plus, the smaller scale of its military missions compared to the US, have prevented it from achieving such a leverage the US has enjoyed. Given 1) this fact, combined with 2) Harvey's explanation that militarism, in market-oriented states, serves as a mechanism—not an end in itself as in the case of military heroism—to protect neoliberalism as the governing reason and 3) the oppression of the militarism paradigm which Moravcsik's case illustrates, the study chooses not to base the EU's acquired masculinity on militarism, but, on the contrary, neoliberalism and transnational business.

Unlike Moravcsik, *The Economist* chooses to define the EU's stateness and hegemonic masculinity with the extent to which the supranational community embraces neoliberalism.

The article illustrates the EU as an anxious aging woman struggling to cope with her mid-life crisis (figure 3) because it has not fulfilled two main tasks. One is to push itself to be even more market-oriented than it already is:

'to make labour markets more flexible, to trim overly generous welfare states and to inject new competition into product markets, especially for services....It also

makes it vital for national governments to support, not undermine, Europe's single-market rules and competition policies.'

In line with this, the EU, according to the neoliberal international magazine, must also 'persuade their voters that they have benefited from the enlargement of the club' with Britain, Ireland and Sweden as good examples of reaping the greatest gain by fully opening their labour markets to migrant workers from the new member states.



Figure 3

The other condition *The Economist* proposes the EU to fulfil so that its potential legitimate masculine gender is possible is for it to care less about politics—Angela Merkel whose Germany occupied the then rotating Presidency should have focused more on economic problems especially the rising unemployment rate than 'bickering over the constitution'—and more about economics as in the end, the magazine argues, 'what Europe's citizens want most of all from the EU is real benefits, especially economic ones....Economic reform should thus make institutional reform easier to bring about.'

In the context of masculinities studies in international relations, *The Economist's* illustration of the EU as 'feminine' goes together with its inadequacy as a successful and respectable supranational community. Thus, if the tables are to be turned and these neoliberal ideals realised, the EU gender assignment would have then been automatically changed into something more respectable: a 'manly' representation of a 'manly' supranational community.

Male	Female
Neoliberal	Non-neoliberal
Economic-oriented	Political-oriented
Successful and respectable	Neither successful nor respectable

Figure 4

As figure 1 and 4 demonstrate, the signifiers ‘masculinity’ and ‘femininity’, as differently implied in Andrew Moravcsik’s work and *The Economist*, have different signifieds. While ‘masculinity’, as for the Harvard professor, means ‘military hard power and unilateralism’ and ‘femininity’ ‘soft and quiet power of foreign aid and diplomacy’, ‘masculinity’, as assigned by *The Economist*, is measured by the extent to which a state, or in this case, a supranational polity, can become as much neoliberal and market-oriented as possible; ‘femininity’, on the contrary, is assigned to anything that holds this ideal back. However, despite these semantic differences, the two figures identically show how ‘masculinity’, with all superior attributes attached to, is privileged over ‘femininity’ which is burdened with inferior qualities. (Of course, ‘superiority’ and ‘inferiority’ here are also relational).

The implications which can be drawn from the close reading of the two articles above, therefore, are that 1) ‘masculinity’, in the context of the world politics, is superior to ‘femininity’ 2) a state, or in this case, a supranational community, will not be deemed successful and respectable if it is not perceived as a ‘manly’ one; as figure 2, above, demonstrates. 3) ‘masculine’ and ‘feminine’ are free-floating signifiers whose meaning depends on the context in which they are embedded. 4) Despite being context-dependent, the ontology of the terms in question is relational; that is, one particular strain of ‘masculinity’ exists always in relation to its ‘feminine’ opposite.

**5. Post-positivism and gender: when sex is gender and gender performative, artificial, yet restrictive**

As my reading of Andrew Moravcsik's and *The Economist's* evaluation of the EU's stateness above demonstrates, the content of 'gender' is no longer fixed nor is it rigidly defined against one's sex, given that, first, the benchmark used to determine 'masculinity' among the two critics of the EU is arbitrary—while Moravcsik relies on military power, *The Economist* measures a state's masculinity with the extent to which it can uphold neoliberalism—and, second, that there is no 'sex' as such (in the physical sense) in this context to determine the state's gender: the state is merely an 'imagined community', to use Benedict Anderson's term. Such a disconnection between sex and gender marks a significant break not only from the essentialist—in that gender is no longer fixed nor naturally given, but a social and cultural construct—but also the constructivist—in that sex no longer has the authenticity to determine the choice of gender as sex itself is a social construct—understanding of the relationship between sex and gender.

In this context, gendering a state is also sexing it, hence sex is actually gender, and not determining or pre-conditioning it as both essentialists and constructivists might have understood—although the former sees gender differently as something intrinsic and naturally given while the latter argues that gender, despite being determined by sex, is socially and culturally constructed, hence varies according to time and society it is embedded in. Sex and gender, as made evident in this case, prove to be equally fictitious in their ontology—but, of course, fictitious though it is, the possibility of this fiction is limited by the hegemonic discourse as the elaboration of Judith Butler's theory of gender will elucidate; gender, as for Butler, is performative, artificial, yet restrictive.

Although the study's attempt to denaturalize the content of 'masculinity' as no longer necessarily referring to 'military power' might sound like a constructivist project, it is essential to differentiate that the materiality of the state's 'body'—its military and economic capacity as well as the efficacy and penetrability of the state

apparatuses at disposal—is not either naturally given, but, on the contrary, takes shape in accordance with the hegemonic discourse pertaining to a particular body as well as period of government. The state's gender—the way it regulates itself, its people, its military, its economic apparatus and policy, the directions of its relationship with neighbours and prospective immigration—is equally a derivative and construct as it is with its physical 'body'.

Such denaturalisation of the state clearly signals a departure from constructivism. It is a journey down the same road Butler's deconstruction of the binary sex/gender has convincingly paved. With the state's 'body' denaturalised and, hence not prioritized as in the case of constructivism, what genders the sex/body, or the materiality of a state, as well as how it behaves (gender), is hegemonic discourses.

Given this contextual reality of gendering/sexing a state whose limit lies on hegemonic discourses, Judith Butler's deconstructive theorization of sex as gender and gender as performative, artificial, and yet restrictive thus proves highly relevant and favourable to the pattern of investigation the thesis engages itself in.

Pointing out that the constructivist understanding of sex as to nature and gender as to culture is equally oppressive—given its attempt to depart and be liberated from essentialism—as it does not eradicate the false material superiority sex has over gender to determine it, which makes heteronormativity still unnecessarily compulsory, Butler in *Gender Trouble* has collapsed the binaristic opposition of sex and gender as well as nature and culture so that sex no longer has the 'originality' to gender a body, how it moves and who and what it sleeps with—the denaturalisation of the tripartite relationship between sex, gender and sexuality.

In *Bodies that Matter*—'matter' in both senses of the word, i.e., important as well as having/being seen as a physical substance; here 'nature' and 'culture' begin and end at the same point—Butler argues that there is no such thing as a 'natural or physical body' which comes before its cultural inscription; all bodies are gendered upon entering the social matrix, to which they owe their social existence and there is

no existence that is not social. The body is not already given in advance. It has to first meet the test of normativity before it can be recognised as ontologically real and before it becomes culturally intelligible. The case of intersexual babies proves illuminating. To be a culturally intelligible man or woman, one needs the correct sex. (That is in terms of size, shape, length, and so on. As for a male baby, the length of his penis should not be less than 2.5 cm; for a female baby, her clitoris should not be longer than 0.9 cm; intersexual babies are ones whose sexual organs are in the twilight zone of 1-2.4 cm, and hence in need of correction or sexual reassignment.)

Judith Butler argues—although it is hard for us to deny the materiality of our bodies as we see them ‘live, and die; eat and sleep; feel pain, pleasure; endure illness and violence’—‘bodies only appear, only endure, only live [and make sense] within the productive constraints of certain highly gendered regulatory schemas.’<sup>56</sup>

The medical approaches to intersexual bodies provide a literal example. Bodies in the ‘normal’ range are culturally intelligible as males or females, but the rules for living as male or female are strict: no oversized clitoris or undersized penises are allowed. No masculine women or effeminate men need apply. Currently, such bodies are, as Butler writes, ‘unthinkable, abject, unlivable.’<sup>57</sup> By their very existence, these ‘aberrations’ call into question our system of gender. Surgeons, psychologists, and endocrinologists, through their surgical skills, try to make good facsimiles of culturally intelligible bodies. If we choose to eliminate mixed-genital births through prenatal treatments, we are also choosing to go with our current system of cultural intelligibility. On the contrary, if we choose, over a period of time, to let mixed-gender bodies and altered patterns of gender-related behavior become visible, we will have, whether you want it or not, chosen to change the rules of cultural intelligibility.” (What are the equivalent of these apparatuses in the state level performing the task of surgeons and endocrinologists to produce acceptable copies of ‘culturally intelligible bodies’?)

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<sup>56</sup> Butler, Judith. **Bodies that Matter: On the Discursive Limits of “Sex”**. New York: Routledge, 1993. p. xi.

<sup>57</sup> *Ibid.*

Moreover, that one is male is not enough, one must also behave manly according to the conventions of hegemonic masculinity. And, it's not enough that one behaves manly, one must also desire the opposite sex, hence gender as 'heterogender' or the compulsory 'heteronormativity'—the mandatory interdependence between one's sex, gender and sexuality. The case shows the power of norms which can produce and de-produce the subject. Thus, to qualify as a subject, a human being, a real body, one needs to pass the test of heteronormativity. (And, so does a state, hence, the question what the test of heteronormativity is in the context international relations,)

Butler's denaturalisation of sex and the body, hence the dismantlement of the binary distinction between sex and gender, takes her beyond constructivism to post-positivism. As for her, sex neither has such 'materiality' nor 'originality' to dictate the choice of gender as they both are equally pressured from the hegemonic discourse of heteronormativity—the pressure rendering them as merely social constructs, with neither 'doer' nor any coherent agent behind (see the parallel on 'non-agency' between Butler's theory of gender as performativity and that of Raymon Williams' and Michel Foucault's on hegemony):

Gender is the repeated stylization of the body, a set of repeated acts within a highly rigid regulatory frame that congeal over time to produce the appearance of substance, of a natural sort of being. A political genealogy of gender ontologies, if it is successful, will deconstruct the substantive appearance of gender into its constitutive acts and locate and account for those acts within the compulsory frames set by the various forces that police the social appearance of gender.<sup>58</sup>

Thus, gender is a 'doing' ('repeated stylization of the body') rather than a 'being', 'performative' rather than 'constative'—to use J.L. Austin's theory of speech

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<sup>58</sup> Butler, 1990, p. 33.

act, developed in *How To Do Things with Words*, on which Butler bases her theorization of gender as ‘performativity’.

Sara Salih<sup>59</sup> clarifies the linguistic dimension of Butler’s performative theory of gender as ‘an act that brings into being what it names: in this context, a “masculine” man or a “feminine” woman. Gender identities are constructed and constituted by language, which means that there is no gender identity that precedes language. If you like, it is not that an identity “does” discourse or language, but the other way round—language and discourse “do” gender. There is no “I” outside language since identity is a signifying practice, and culturally intelligible subjects are the effects rather than the causes of discourses that conceal their workings’<sup>60</sup>.

Apart from Austin’s, Butler’s theory of gender also draws on significant other theories formulated by Friedrich Nietzsche, Sigmund Freud and Jacques Derrida<sup>61</sup>. For instance, Butler takes after Nietzsche’s claim in *On the Genealogy of Morals* that ‘there is no “being” behind doing, acting, becoming; “the doer” is merely a fiction imposed on the doing—the doing itself is everything’ to stress the idea that there is no ‘I’ behind gender as a speech act. Conflating Austin’s idea with Nietzsche’s, Butler formulates her own language explaining gender as performativity:

There is no gender identity behind the expressions of gender; that identity is performatively constituted by the very ‘expressions’ that are said to be its results<sup>62</sup>.

To clarify this notion of non-agency in her theory of gender performativity, Butler makes an important distinction between ‘performativity’ and ‘performance’ in an interview given in 1993 that whereas ‘performance’ presupposes a pre-existing subject, ‘performativity’ contests the very notion of the subject.

<sup>59</sup> Salih, Sara. **Judith Butler**. London: Routledge, 2002.

<sup>60</sup> Butler, 1990, p. 145; paraphrased in Salih, p. 64.

<sup>61</sup> Salih, p. 63.

<sup>62</sup> Butler, 1990, p. 25.



Denaturalising not only sex and the body, but also the ‘subject’ behind the recitation of gender, Butler aptly draws on the metaphor of ‘drag’ and dub it ‘gender parody’ to illustrate that lack of originality is the quintessence of gender. ‘The performance of drag emphasises the discontinuity between anatomy (of the performer) and gender (that is being performed); it also exposes the illusion of gender identity as a fixed inner substance. “In imitating gender, drag implicitly reveals the imitative structure of gender itself - as well as its contingency” Further, this notion of gender parody does not assume it imitates an original, rather the parody is of the very notion of the natural and the original: “gay is to straight not as copy is to original, but, rather, as copy is to copy”<sup>63</sup>

Despite this open-ended structure, gender, as for Butler, is far from being absolutely free of choice. Enacting one’s gender without any coherent subject behind is, however, not without restraint. Butler stresses that although gender is a process and a ‘free-floating artifice’—(‘when the constructed status of gender is theorized as radically independent of sex, gender itself becomes “a free-floating artifice”, with the consequence that man and masculine might just as easily signify a female body as a male one, and woman and feminine a male body as easily as a female one.’)<sup>64</sup>—it cannot be any process, but a particular process ‘a set of repeated acts within a highly rigid regulatory frame’. Salih appropriately uses the wardrobe analogy to clarify this rigidity: ‘Butler is not suggesting that the subject is free to choose which gender she or he is going to enact. “The script”, if you like, is always already determined within this regulatory frame, and the subject has a limited number of “costumes” from which to make a constrained choice of gender style.’<sup>65</sup> In brief, through Butler’s term ‘gender parody’, gender identity as epitomised by transvestism is, by nature, unavoidably artificial and restrictive<sup>66</sup>.

<sup>63</sup> Butler, 1999, p. 175. Quoted in Mistry, Reena. *Madonna and Gender Trouble*, 2000. Available from <http://www.theory.org.uk/madonna.htm>.

<sup>64</sup> Butler, 1999, p. 6.

<sup>65</sup> Salih, p. 63.

<sup>66</sup> Wolfreys, p. 75.

Given both a 'state' and 'gender' empty signifiers whose ontology is 'fictitious'—which, artificial though it is, is restricted by the hegemonic discourse—the EU as an 'imagined community' must be in a perpetual manner of reciting and repeating the 'gender code' required on it by the hegemonic discourse in international relations—the process of identity construction which implies an acute precariousness and vulnerability, and, at times, involves the stigmatization and discrimination of the Other.

Following this line of argument, the study proposes to use the EU's common market law as a test case of the EU's 'masculinity' whose content is defined according to the current hegemonic discourse in the world gender order, i.e., neoliberalism and market economy. The hypothesis is that the law affirms the EU's masculinity identity and helps normalize the EU into the world gender order. The process of regulating the movement of people is something that has to be performed consistently 24/7 and strictly (which means that there are always loopholes or anxiety on not performing well enough, not constantly enough). This process resembles the same sort of anxiety one has when one enacts one's gender identity, checking on oneself constantly if one is manly or feminine enough. It is the process in which one enacts or recites the hegemonic gender code in order to create one's gender identity effect. The anxiety of not 'doing' well enough, as gender is after all a doing rather than being, reflects the precariousness of the identity effect which lies on the perpetual recitation—the fact that there is no coherent subject behind the act of this gender recitation.

## 6. Hegemony

Under the post-positivist definition of gender as artificial yet restricted by certain hegemonic discourses, it is necessary that the thesis defines how it understands 'hegemony'.

‘Hegemony’ derives from the Greek *hegemon*, meaning leader, prominent power or dominant state or person. In critical theory, the term is widely adopted to mean ‘political dominance’ or ‘social control’ however achieved without coercive means but by, for instance, ‘the dissemination of forms of knowledge which constitutes and constructs socially normative subject positions, through institutionally authorized means and discourses such as those of education, the law, journalism and the media, religion...’<sup>67</sup>

Antonio Gramsci—whose *Prison Notebooks* elaborates a sophisticated concept of ‘hegemony’—offers an alternative explanation to the classic Marxist theory of ideology of how power takes shape and works in a society. According to Gramsci, political dominance and social control is no longer ‘a relationship of determination between an economic base (the forces and relations of production) and superstructure made up of the state, and legal, political and ideological forms’<sup>68</sup>. On the contrary, Gramsci’s political dominance is achieved through the collaboration between ‘political society’ (the state and its agencies) and ‘civil society’.

‘Whereas the state establishes and reproduces the dominance of a ruling group or class through direct forms of domination ranging from legislation to coercion, civil society reproduces its hegemony by ensuring that the mass of the population “spontaneously” consents to the general direction imposed upon social life by the ruling group’<sup>69</sup>.

‘Within civil society, dominance is manifested by the intellectual and moral leadership conferred upon a ruling group by its dominance in the realm of economic production’<sup>70</sup>

<sup>67</sup> Woolfreys, Julian. *Critical Keywords in Literary and Cultural Theory*. New York: Palgrave, 2004, p. 81.

<sup>68</sup> *Ibid.*, p. 31.

<sup>69</sup> *Ibid.*, 176.

<sup>70</sup> *Ibid.*

...for though hegemony is ethico-political, it must also be economic, must necessarily be based in the decisive function exercised by the leading group in the decisive nucleus of economic activity.<sup>71</sup>

The establishment of hegemony in society is the task of an agency—which Gramsci calls the ‘organic intellectuals’ of the ruling class. At the highest level, this group of people ‘create philosophy, the sciences and the arts; at a lower level, they administer an existing body of knowledge and ideology through their work in the educational system, cultural institutions and the media’.<sup>72</sup>

In other words, Gramsci divides the agency responsible for the instillation of hegemony in society into two types: one is the ‘organic’, the other ‘traditional’.

‘Traditional intellectuals, such as priests, teachers and administrators, can be likened to subaltern officers in an army; they articulate the relationship between their superiors and the rank and file, but have no innovative or creative role and repeat their tasks over and over again. Organic intellectuals, in contrast, are directly related to the rising classes or groups which use them to innovate and to establish a new hegemony.’ For example, the capitalist entrepreneur—organic intellectuals—creates the industrial technician, the specialist in political economy and the designer of the new legal system—the ‘rising class’. The pair must work together and form a hegemonic bloc.<sup>73</sup>

The importance of agency in the production of hegemony is also noted by Charlotte Hooper, who, unlike Gramsci’s typology of agency, directs our attention to the mode of hegemony production and divides it into two types.

<sup>71</sup> Antonio Gramsci, 1988, pp. 211-12. Quoted in Wolfreys, p. 82.

<sup>72</sup> Ibid.

<sup>73</sup> Macey, David. **The Penguin Dictionary of Critical Theory**. London: Penguin Books, 2000. p. 282.

Whereas Gramsci's 'hegemony' is promoted by particular elite groups of men to serve their interests—achieved through ideological ascendancy over a cultural mix, moral persuasion and consent rather than brute force (although such ascendancy may be backed up by force), Michel Foucault's is wholly sustained by the largely unconscious identification and collaboration of the majority. (Hooper 2001, 57)

Hooper notes that 'while elites and knowledge producers are heavily implicated in the production of hegemonic masculinity, masculinism [a form of hegemony whose essence rests on phallogentrism and heteronormativity] is not a conspiracy of elites. Rather, it is endemic at all levels of society as different groups and interests jockey for position in micronetworks of power relations.'

As Raymond Williams argues, elites are implicated in the dissemination of cultural hegemony through their participation in a lived system of meaningful practices that reproduce and confirm their own identities, rather than through a conscious or deliberate strategy of domination<sup>74</sup>.

Dissemination of certain strategic knowledge by these elites is not enough for the hegemony to be constituted; the elites themselves must take part in the social and political networks in which this very strategic knowledge is circulated and at work. Without this participation and perpetual 'maintenance', the 'hegemony' effect is threatened to be dissolved.

Moreover, the elites are not the sole author—the spider in the middle spinning the web. It is true they may produce and promote hegemony (masculinism is one of them), but there are other sites and places too that take part in the process.

That is, in inventing social policy to regulate the population, it is the population that must learn to regulate themselves and ends up being their own

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<sup>74</sup> In Hooper, pp. 57-8.

governor—the process which reflects the Foucauldian definition of ‘subject’ as being both senses of the term: the active being an actor or an agent while the passive being someone who is always subjugated to power. In the end, elites devise social policies. They enforce them, but we also enforce them on ourselves.

The concept that hegemony is disseminated through the participation of the elites in networks of power relations links the production of hegemony with the constructivist notion of ontology as always in the process of construction, hence the eternal recitation to sustain the identity effect. It should be noted ‘hegemony’ here is a free-floating signifier whose content is determined by this very participation. This makes the production of hegemony a dynamic process:

Extending Gramsci’s elaboration of the concept of hegemony, [Ernesto] Laclau sees hegemony not as the imposition of a pre-given set of ideas but as ‘something that emerges from the political interaction of groups’; it is not simply the domination by an elite, but instead a process of ongoing struggle that constitutes the social. Hegemonic struggle requires the identification of what Laclau calls ‘floating signifiers’, those signifiers that are open to continual contestation and articulation to radically different political projects. ‘Democracy’, in his view, is a key example of a floating signifier—its meaning essentially ambiguous as a consequence of its history and widespread circulation. To hegemonies, a content for ‘democracy’ would require a fixing (always provisional) of its meaning. Indeed, the open nature of the social and the very possibility of hegemonic struggle stem from the impossibility of total fixity...<sup>75</sup>

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<sup>75</sup> Lynn Worsham and Gary A. Olson, 1999, p. 130. Quoted in Wolfreys, p. 85.

## 7. Michel Foucault's theory of governmentality

In the series of his lectures on 'The Birth of Bio-Politics', given at the Collège de France in 1979, Michel Foucault elaborated on the concept of *raison d'Etat* or 'governmentality'—a neologism comprising of government and rationality/mentality—'the reasoned way of governing best and, at the same time, reflection on the best possible way of governing...the rationalization of governmental practice in the exercise of political sovereignty'<sup>76</sup>. It is this governmentality that underpins state practices. And, it is these state practices that define the state or gives the state its stateness: 'a type of rationality that would enable the way of governing to be modeled on something called the state'<sup>77</sup>.

In saying that governmentality gives the state its stateness, Foucault sees the state as having a double nature of both a given and an objective to be constructed. The reason for the former being 'one only governs a state that is already there, one only governs within the framework of a state'<sup>78</sup> while the latter:

The state is at once that which exists, but which does not yet exist enough. *Raison d'Etat* is precisely a practice, or rather the rationalization of a practice, which places itself between a state presented as given and a state presented as having to be constructed and built<sup>79</sup>.

Apart from this essential/constructivist paradox as the nature of the state, Foucault also stresses on its specificity and, consequently, plurality: 'The state is a specific and discontinuous reality. The state exists only for itself and in relation to itself...The state only exists as states in the plural.'<sup>80</sup> The specific plurality of the state, according to Foucault, owes to at least three obligations which *raison d'Etat*

<sup>76</sup> Michel Foucault. **The Birth of Biopolitics: Lectures at the Collège de France. 1978-1979.** Translated by Graham Burchell. Palgrave Macmillan, 2008, p. 2.

<sup>77</sup> *Ibid.*, pp. 3-4.

<sup>78</sup> *Ibid.*, p. 4.

<sup>78</sup> *Ibid.*, p. 4.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*, p. 5.

requires it to fulfil, internally and externally, in order to function and be recognised as a state; these obligations are:

- 5.1 Upholding mercantilism, not as an economic doctrine, but as a particular organisation of production and commercial circuits to ensure that
  - 5.1.1 The state must enrich itself through monetary accumulation
  - 5.1.2 The state must strengthen itself by increasing population
  - 5.1.3 The state must exist and maintain itself in a state of permanent competition with foreign powers.
- 5.2 Regulating itself with internal management as a police state with unlimited objectives of regulation (unlike the external which is limited in objective)
- 5.3 Maintaining and developing a permanent army along with a permanent diplomacy: the organisation of a permanent military-diplomacy apparatus with the objective of keeping the plurality of states free from imperial absorption

In other words, Foucault's theory of the mentality to govern which pivots on the specificity and the consequential plurality of the state is based on the individualist assumption that

Every state has its interests and consequently has to defend these interests, and to defend them absolutely [to refrain from merging with any other states]....Each state must limit its objectives, ensure its independence, and ensure that its forces are such that it will never be in an inferior position with respect to the set of other countries, or to its neighbours, or to the strongest of all the other countries<sup>81</sup>

Noteworthy of Foucault's governmentality—the rationality which governs state practices which, in turn, render the state its identity effect as stateness—is its

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<sup>81</sup> Ibid., p. 6.



gender implication—a reading made possible by Judith Butler’s performativity theory and Charlotte Hooper’s studies of the history of masculinities in IR.

It is also important to note that Foucault distinguishes this external self-limitation from the internal one. That is, when an independent power faces other powers, government, according to *raison d’Etat*, has limited objectives. However, ‘there is no limit to the objectives of government when it is a question of managing a public power that has to regulate the behavior of subjects’<sup>82</sup>.

However, despite this difference, the two realms of external and internal self-limitation are far from working separately. ‘Competition between states is precisely the hinge connecting these limited and unlimited objectives.’<sup>83</sup> That is, in order for a state to be able to enter into competition with others,

government [has to regulate the life of] its subjects, to regulate their economic activity, their production, the price [at which] they sell goods and the price at which they buy them, and so on [...]’<sup>84</sup>.

The state’s limited external self-limitation and the one done internally, which is unlimited, work together as a correlation because in the end it is the limitation of the international objective of government that determines the absence of a limit in the exercise of government in the police state; in other words, the limited pushes for the unlimited. This external/internal self-limitation as the distinctive feature of *raison d’Etat* demonstrates a significant correlation between the state’s desire to be respected in the international community and the role of law in regulating its subjects.

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<sup>82</sup> *Ibid.*, p. 7.

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.* (addition in parentheses editor’s)

## 8. Michel Foucault's 'advanced' liberal democracy<sup>85</sup>

Showing how 'advanced' liberalism came to supplant liberalism and its social government, Nikolas Rose—first engaging the extensively campaigned feminist slogan 'the personal is the political', which, he points out, 'drew attention to fundamental flaws in modern political reason.'<sup>86</sup>—provides that Foucault's works on political reasons allow these flaws to be further problematised.

In the light of Foucault, modern strategies of regulation which constitutes our modern experience of 'power' are disguised in what is usually rendered 'non-political'. As Barbara Cruikshank<sup>87</sup> argues, 'there is nothing personal about self-esteem'. She construes 'self-esteem' as subsumed under a social relationship and a political obligation: 'the question of governance becomes a question of self-governance in the discourse of self-esteem'<sup>88</sup>. As for Cruikshank, subjectivity and subjugation is indistinguishable:

The self (like inequality, poverty and racism) [is] not personal, but the product of power relations, the outcome of strategies and technologies developed to create everything from autonomy to participatory democratic citizenship. External powers act upon the terrain of the self, but we also act upon ourselves, particularly according to models of self-help...<sup>89</sup>

<sup>85</sup> Rose, Nikolas. Governing "advanced" liberal democracies. In Barry, Andrew et al. (eds). **Foucault and Political Reason: Liberalism, neo-liberalism and rationalities of government**. The University of Chicago Press, 1996, pp. 37-64.

<sup>86</sup> Ibid., p. 37.

<sup>87</sup> Cruikshank, Barbara. Revolutions within: self-government and self-esteem. In Barry, Andrew et al. (eds). **Foucault and Political Reason: Liberalism, neo-liberalism and rationalities of government**. The University of Chicago Press, 1996, p. 231-2

<sup>88</sup> Ibid., p. 232.

<sup>89</sup> Ibid., p. 248.

As also in the case of the feminist axiom ‘the personal is the political’, politics has been rendered confused to rest upon the question of who should be in possession of the power to represent—the party and the policy—rather than pivot on ‘the dynamics of power relations within the encounters that make up the everyday experience of individuals’<sup>90</sup>.

The failure to identify the political in the seemingly non-political is a form of de-politicisation, effacing resistance. (‘Gender mainstreaming’ in international institutions like the UN, World Bank and the EU, among others, is adopted not to allow real changes in gender inequality to materialise, but merely a façade to efface resistance—depoliticising gender inequality.)

Nikolas Rose’s reading of Foucault’s work on political reasons shows that while liberalism—rendered operable on the opposition of public/private, politics/market, state/civil society, domination/emancipation—governs the subjects *from without through social devices* such as welfare, schooling, the domesticated family, the lunatic asylum, the reformatory prison, advanced liberalism *effaces these divides* and the subsequent resistance and *rule from within*. That is, whereas liberal governments are challenged with problems about ‘governability’ of individuals, families, markets and populations, neoliberal governments, governing ‘at a distance’, develops new techniques of subjugation which detaches the central political institutions from other social actors, rendering the subjects to think of themselves as self-responsible, autonomous and, most importantly, ‘free’ to choose. Indeed, changing from governing through society to governing through the self, the advanced liberal governments ‘seek to act upon them [the subjects] through shaping and utilizing their freedom’<sup>91</sup>.

Liberalism and the social/welfare state began to give way to advanced liberalism and the neoliberal government, which governs without governing society,

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<sup>90</sup> Rose, p. 37.

<sup>91</sup> *Ibid.*, p. 54.

but ‘through regulated and accountable choices of autonomous agents’<sup>92</sup>, when growing economic concerns over the benefits of the technologies of welfare were continuously voiced:

the increased levels of taxation and public expenditure required to sustain social, health and welfare services, education and the like were damaging to the health of capitalism as they required penal rates of tax on private profit [as it created no wealth].<sup>93</sup>

Rose maps out three transformations in the pattern of power relations which characterise this departure from liberalism to advanced liberalism. First is the disruption of the well confined realm of authority in which specialisms—such as that of ‘experts of child, the elderly, the disabled, the alcoholic, the drug abuser, the single mother, psychiatric nurses, community workers’<sup>94</sup>—monopolises the regulation of the subjects—the enclosure of which is penetrated and superseded by ‘monetarisation’ including budget disciplines, accountancy and audit. ‘Marketisation’, too, fits into this category of new power relations. As ‘an apparent devolution of regulatory powers from “above”—planning and compulsion—to “below”—the decisions of consumers’, ‘the relations between citizens and experts are not organized and regulated through compulsion but through acts of choice’<sup>95</sup> in a free market. While the social device of welfare positions the subjects to be in need, hence subservient, the new power relations under advanced liberalism are those between ‘purchaser and provider’<sup>96</sup> prompting a role reversal.

The second change in governmental technique pertaining to advanced liberalism is visible in such modern strategies as pluralisation and automation, or otherwise put, a kind of ‘de-governmentalisation of the State’ and a ‘de-statization of government’ in which the centre of various regulatory technologies is seen

<sup>92</sup> Ibid., p. 61.

<sup>93</sup> Rose, p. 51.

<sup>94</sup> Ibid., p. 52.

<sup>95</sup> Ibid., p. 54.

<sup>96</sup> Ibid.

dismantling into autonomous entities, be it enterprises, organizations, communities, professionals, individuals. Privatisation of previously public utilities such as water, gas, electricity or even prisons and police is also a common trend in this structural change in which advanced liberalism takes hold. In parallel with the new power relations of ‘purchaser and provider’, privatisation also witnesses norm change from service and dedication as attached to centralised institutional culture to competition, quality and customer demand which are the characteristics of the new governmental paradigm.

Third is the new technology of the self in which self-responsible ‘individuals are to fulfil their national obligations not through their relations of dependency and obligation to one another, but through seeking to *fulfil themselves* within a variety of micro-moral domains or “communities”—families, workplaces, schools, leisure associations, neighbourhoods.’<sup>97</sup> The government no longer governs the subjects, but *through* the subjects who self-responsibly govern themselves through their individual choices. Under advanced liberalism, individuals not only “‘enterprise themselves” to maximize their quality of life through acts of choice’, for instance, as ‘consumer of health services, of education, of training, of transport...’. Such a consumerist rationale—‘the outcome of choices made or choices to be made’—also significantly defines to what extent their life is meaningful.

#### 9. Christine Beasley’s ‘Rethinking Hegemonic Masculinity in a Globalizing World’<sup>98</sup>

Apart from Beasley’s advocacy to narrow down the meaning of the term ‘hegemonic masculinity’ as 1) a political ideal and mechanism mobilizing and legitimating political activities 2) to differentiate this meaning of the term from a

<sup>97</sup> Ibid., 57; italics original.

<sup>98</sup> Beasley, Christine. Rethinking Hegemonic Masculinity in a Globalizing World. In **Men and Masculinities**, 2008; 11; 86.

usage referring to an actual group of dominant men who has more social power than women, her work poses an important question of to what extent the term ‘hegemonic masculinity’ should apply. Should it only apply to the discursive political strategy in dominance, the ideal, as Beasley dubs it, or should it apply as far as to cover the actual group of men (or even women?) embodying this ideal and their characteristics? (Indeed, including women here is possible given Judith Butler’s denaturalization of sex and the body as not coming before gender, but as an equal construct.)

To this—whether or not the term in question should include not only the ideal, but also the material level of the signified—Beasley criticizes Connell’s privilege of the material over the ideal as unfairly economic-oriented and inadvertently class-based, which according to her, is self-defeated. Beasley maintains that—despite Connell’s reason being political activism or that ‘discursive approaches have significant limits [as] [t]hey give no grip on issues about economic inequality and the state’,<sup>99</sup>—‘Connell’s presumption that discursive approaches are at odds with “material” concerns’ tends to result in a further slippage of the term ‘hegemonic masculinity’ away from ‘the political legitimating meaning of hegemonic masculinity toward equating hegemonic with “dominant” masculinity, since this masculinity is associated with “material” authority and institutional social power’,<sup>100</sup>.

As Beasley argues, the drawback of this slide is the fact that the term unfairly assumes there is only *one* hegemonic form of, in the global context, transnational business masculinity, which Beasley argues would limit analyses of specific cultures and states and ‘produce inadequate assessments of gendered globalisation in terms of its multiple contexts.’<sup>101</sup> In other words, Beasley’s rethinking of how we use the term hegemonic masculinity and urge to resist the slippage would enable ‘a more rigorous and culturally specific evaluation of globalisation as an uneven process entailing complex forms of accommodation and resistance’...which ‘might also open

<sup>99</sup> Connell, [1995] 2005, p. xix. Quoted in Beasley, pp. 95-6.

<sup>100</sup> Beasley, p. 96.

<sup>101</sup> *Ibid.*, p. 99.

the door to an account of globalisation that entails more detailed reference to women and femininities',<sup>102</sup>.

However, given the subject matter of this study being the European Union's law on Free Movement of Persons whose singularity, coherence and legal enforcement distances itself from the need of Beasley's call to allow multiple contexts for a more nuanced analysis, this study chooses to stick to Connell's inclusive usage of the term which slides from the discursive to the material one.

And, despite Beasley's criticism on Connell's over-emphasis on the economic, and hence, class dimension of the transnational business masculinity, the thesis still chooses to take on on these two element given their domineering importance in the analysis of the EU law on free movement of persons.

However, what of Beasley's criticism on Connell that is worth our attention is for the latter to rethink the *unnecessary* antagonism between the discursive and the material level of the term hegemonic masculinity which is worth paying attention to. As Beasley cites the literature of international political economy, 'discourses are viewed as having both ideational and practical material effects'. And, as Juanita Elias has noted, the turn within international political economy is towards approaches that stress the discursive production of globalisation *in the everyday practice* of international politics. Block, too, sees the notion of globalisation as a self-evidently economic imperative and the multinational firm as globalisation's primary agent, *not as unproblematic facts, but as framed in relation to neoliberal discourses*<sup>103</sup>.

As Beasley puts it 'Reconsidering hegemonic masculinity as a discursive political ideal involves taking up conceptions of the discursive that are not estranged from the material world, nor discrete from it....This kind of rethinking of the term usefully opens up a dialogue between masculinity studies and critical globalisation

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<sup>102</sup> Ibid.

<sup>103</sup> Ibid., p. 96; my italics.

scholars, in that the influence of transnational business masculinity may be viewed as operating at a discursive level—as a powerful ideal that has played an important role in shaping material processes associated with globalisation’,<sup>104</sup>.

**10. Brandes Holger’s ‘Hegemonic Masculinities in East and West Germany (German Democratic Republic and Federal Republic of Germany)’**

Holger’s essay examines the development of different hegemonic patterns of masculinity during the time of separation between East and West Germany. While the hegemonic masculinity in West Germany can be described as associated with lifestyle and aesthetic standard of modern middle classes and transnational entrepreneurship, the hegemonic masculinity of the former GDR is shaped through a proletarian-petty bourgeois lifestyle and taste.

Following the unification, the existing hegemonic concept of masculinity coming from the GDR has become to be increasingly marginalized. Not only that a Western-shaped taste, manners and standards have been accepted in the former GDR on all levels of daily life, the leadership positions in politics, the economy, culture, and science are and continue to be occupied by men who either come from the West or at least conform to the Western pattern of masculinity.

The study shows that there were differing hegemonic masculinities in the two German countries, which after unification, have entered into a competitive struggle—the outcome of which being the transnational business masculinity generalized for the industrialised metropolises has become the unified Germany’s hegemonic masculinity.

Holger’s application of Connell’s concept of hegemonic masculinities is useful and can contribute to this study. Like the GDP hegemonic masculinity which has been increasingly marginalized, the concept of hegemonic masculinity attached to

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<sup>104</sup> Ibid., p. 97.



the old Europe as welfare states, too, is giving way to the transnational business masculinity.



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## CHAPTER III

### THE EUROPEAN UNION AS A MASCULINE SUPRANATIONAL COMMUNITY: A TEST CASE OF ITS COMMON MARKET LAW

#### 1. Introduction: why gendering the European Union?

It has been established among feminists that the study of power is ‘politically naïve’<sup>1</sup> without an examination of gender as there is no such thing as ‘generic people’. Behind the façade of gender-free issues, gender inequality, in reality, still prevails. Indeed, as feminists have it, every identity is relentlessly a gendered one<sup>2</sup>.

Under the rubric of critical feminism, masculinities writers, among whom Connell is hailed the pioneer, believe that masculinity takes the form of dominance in all level of sociality and forms power relations. Thinking of oneself as ‘genderless’ is because one ‘can afford the luxury of ignoring the centrality of gender’<sup>3</sup>; indeed, the invisibility of gender speaks for the very privilege the gender-blind position is enjoying.

In the case of the European Union, too, despite a decade-long implementation of the mechanism of gender mainstreaming, gender inequality still remains ubiquitous. While the first part of chapter IV demonstrates the evidence of the material ubiquity of such inequality, this chapter discusses how the EU is conceived as a masculine supranational community on the discursive level.

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<sup>1</sup> Whitworth, Sandra. Feminism. In Reus-Smit, Christian & Snidal, Duncan (eds). **The Oxford Handbook of International Relations**. Oxford University Press, 2008, p. 398.

<sup>2</sup> Ibid., p. 399.

<sup>3</sup> Kimmel, 1993, 2003 in Connell, [1995] 2005.

## 2. The EU's gender identity in the context of masculinities studies in international relations

According to Foucault's governmentality theory, '[t]he state exists only for itself and in relation to itself....The state only exists as states in the plural'. Given this singularity among plurality as the nature of the state, to be respectable and intelligible in the context of international relations, the state must work on itself to remain goal-oriented and competitive so as to maintain its autonomy. As Foucault provided in his governmentality lectures in 1978 to 1979, the state is required to fulfil at least the three following tasks in order to achieve such a status:

- 2.1 Upholding mercantilism, not as an economic doctrine, but as a particular organisation of production and commercial circuits to ensure that
  - 2.1.1 The state must enrich itself through monetary accumulation
  - 2.1.2 The state must strengthen itself by increasing population
  - 2.1.3 The state must exist and maintain itself in a state of permanent competition with foreign powers.
- 2.2 Regulating itself with internal management as a police state with unlimited objectives of regulation (unlike the external—in its interactions with other states—which is limited in objective)
- 2.3 Maintaining and developing a permanent army along with a permanent diplomacy: the organisation of a permanent military-diplomacy apparatus with the objective of keeping the plurality of states free from imperial absorption

These fundamental tasks which define the desirable competitiveness and autonomy of the state, if read in combination with Connell's and Hooper's theory of hegemonic masculinity in international relations as explicated in the literature review, could render a constitution of a gender binary between these hegemonic traits and their inferior contraries:

Male	Female
Respectable state	Failed state
Competitive	Not competitive
Autonomous	Not autonomous

Figure 5 Illustration of gender assignment under Foucault's governmentality

In light of this gendered divide between the respectable and failed state, the paradigm shift in the gradation of the state's compulsory masculinity—(no state can afford to be uncompetitive and non-autonomous, hence the compulsory masculinity)—from military and colonial power to the state's capacity to foster transnational business under neoliberalism—that is, from the possession of force, strength and size to economic rationality and adaptability—as informed by Connell's and Hooper's researches—presses states to mould themselves as no less competitive and manly in the current hegemonic discourse of transnational business and neoliberal governmentality. The EU, too, has been pressured by this hegemonic discourse and, consequently, forced to shape itself in this light.

### 3. **Neoliberal governmentality and its entrepreneurial masculine subjectivities**

This part of the chapter explores the meaning of the neoliberal governmentality—the governing rationale to which the state owes its masculine stateness—and how, in the context of the EU, it is responsible for producing entrepreneurial masculine subjects, be it the EU itself, the EU member states or the model EU citizen and citizenship.

As Wendy Brown<sup>4</sup> points out, although Michel Foucault is not generally proclaimed as a theorist of neoliberalism or of political economy, his 1978 and 1979 College de France lectures have proved to be surprisingly influential in the field. This study, in defining the term ‘neoliberal governmentality’ draws on Brown’s extended analysis of the German sociologist Thomas Lemke’s critical summary and interpretation of Foucault’s lectures on neoliberalism.

In defining ‘neoliberalism’, Brown, marks out the conventional difference between political and economic ‘liberalism’. In economic thought:

liberalism contrasts with mercantilism on one side and Keynesianism or socialism on the other; its classical version refers to a maximization of free trade and competition achieved by minimum interference from political institutions.<sup>5</sup>

In political thought, on the contrary, the term liberalism, of course with individual liberty remaining as a benchmark, denotes ‘an order in which the state exists to secure the freedom of individuals on a formally egalitarian basis.’ Indeed, a liberal political order may nurture either liberal or Keynesian economic policies; it may mean towards maximising liberty and be politically ‘conservative’ or towards maximising equality and be politically ‘liberal’. Brown significantly points out that

the liberalism in what has come to be called *neoliberalism refers to liberalism’s economic variant*, recuperating selected pre-Keynesian assumptions about the generation of wealth and its distribution, rather than to liberalism as a political doctrine...<sup>6</sup>

<sup>4</sup> Brown, Wendy. **Edgework: Critical Essays on Knowledge & Politics**. Princeton & Oxford: Princeton UP, 2005.

<sup>5</sup> Ibid., p. 39.

<sup>6</sup> Ibid; italics original.

Brown also tackles the prefix ‘neo’ and differentiates that, given the artificiality of the nature of the term in question as discussed in trait number 2 below, the principles of ‘neoliberalism’ set out here are different from the analytical ground proposed by the classical economic liberalist Adam Smith.

With these distinctions laid down, Brown defines neoliberal political rationality as follows:

First, under neoliberalism, political decision making is entirely subsumed under an economic rationality, ‘submitting every action and policy to considerations of profitability’<sup>7</sup>.

Second, unlike, classical economic liberalism, neoliberal governmentality is not naturally given and does not wait for someone like Adam Smith to discover and theorise its ontological givenness as done, for instance, in his principle of ‘invisible hand’. On the contrary, neoliberal governmentality is artificially conceived. Therefore, market and competition, under neoliberal governmentality, are constituted and perpetuated *only by political interventions—the adherence to which ‘must consistently guaranteed by legal measures’*<sup>8</sup>. (This explains why the study focuses on the role of the European Court of Justice in ensuring that the neoliberal principles, which underlie the operation of the single market, are well observed—as shall be more pronounced in the second part of this chapter.)

However, despite the artificial ontology and the need for the government and law to intervene, it must be emphasised that the market, under neoliberal governmentality, is *not controlled by the state, but precisely the contrary*. ‘The state openly responds to needs of the market, whether through monetary and fiscal policy, immigration policy, the treatment of criminals, or the structure of public education.’<sup>9</sup> The state measures its success by means of self-indexing its ability to nurture the cultivation of the market and *defines its legitimacy as attached to such market-*

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<sup>7</sup> Ibid., p. 40.

<sup>8</sup> Ibid., p. 41.

<sup>9</sup> Ibid.

*oriented success*; or, put otherwise, the state now ‘legitimate[s] itself with reference to economic growth’<sup>10</sup>. This new type of ‘legitimation’ which gives the state its stateness, therefore, differs from the ‘legitimation’ laid down by the Hegelian and French revolutionary principle as characteristic of ‘the constitutional state as the emergent universal representative of the people’<sup>11</sup>. (The concept of ‘rights’ in the EU law on free movement of persons, for instance, as will be discussed in detail below, operates not on the representation of the people as ‘rights’ are usually defined in national constitutions. On the contrary, as the study wants to argue, they are constituted to serve the market rationale, which sustains the operation of the EU’s single market—the key to the supranational community’s competitiveness.)

In other words, all sphere of ‘political discourse is framed in entrepreneurial terms; the state must not simply concern itself with the market but *think and behave like a market actor* across all of its functions, *including law*.<sup>12</sup>

Third, neoliberal governmentality has pushed for the economic rationality to encompass formerly noneconomic domains including the individual conduct of the citizen-subjects; in other words, the term in question is not restricted to economic analysis, but also the social one.

Unlike classical liberalism which stresses the tension between individual morality and economic actions—that the latter is not in itself the end, but only the means of the former (consider, for example, the marked differences in tone and subject matter between Adam Smith’s *Wealth of Nations* and his *Theory of Moral Sentiments*, according to Brown)—neoliberalism merges the two ontological spheres into one; now economic rationale has become an individual’s personal moral autonomy. Indeed, neoliberalism normatively produces and interpellates citizen-subjects as entrepreneurial actors who, in every aspect of their life—(This essentialisation of the market individuals—given this affects every sphere of their

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<sup>10</sup> Ibid., p. 42.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

lives—echoes Foucault’s thought on how the nineteenth century essentialised ‘homosexuals’ as a species—the relevance of which is discussed in the third part of chapter IV)—are rational, calculating and ‘whose moral autonomy is measured by their capacity for “self-care”—the ability to provide for their own needs and service their own ambitions’<sup>13</sup>. Put otherwise,

neoliberalism equates moral responsibility with rational action; it *erases the discrepancy between economic and moral behavior by configuring morality entirely as a matter of rational deliberation about costs, benefits, and consequences*.

Noteworthy here is that the kind of ‘freedom’ which this ‘self-care’ subjectivity connotes is, however, with its citizenship reduced. As Lemke significantly argues, the self-care is negatively correlated with the state’s responsibility for its citizens: *‘the state leads and controls subjects without being responsible for them’*<sup>14</sup>. *‘Neoliberal subjects are controlled through their freedom’*<sup>15</sup>. And, under this control, one sees more and more contraction, withdrawal and privatisation of state welfares. Not to govern too much, the signature neoliberal governmentality shifts the regulatory power of the state onto ‘responsible’, ‘rational’ individuals and encourages them to mould their existence in an entrepreneurial form—whose end is to contribute to the economic competitiveness of the state.

Given that the state controls citizen-subjects in ways that it does not govern too much—that is, to govern through ‘freedom’ on which the subjects strive for success in entrepreneurship—it must be pointed out that neoliberalism *unfairly assumes all citizens are equally in possession of the skills and resources* needed to cultivate the hegemonic entrepreneurship. Indeed, it is not an exaggeration to say that neoliberalism is a discourse of the equipped and for the equipped:

<sup>13</sup> Ibid., p. 42.

<sup>14</sup> Quoted in Ibid., p. 43.

<sup>15</sup> Ibid., p. 44.



the rationally calculating individual bears full responsibility for the consequences of his or her action *no matter how severe the constraints on this action*—for example, lack of skills, education, and child care in a period of high unemployment and limited welfare benefits.<sup>16</sup>

Thus, it is worth questioning if it is deemed permissible to consider such issues—as high unemployment rate of 12 per cent in Germany<sup>17</sup>, significant gender pay gap overall the EU<sup>18</sup> as part one of Chapter IV will unfold and the chronic gender-based sectoral concentration of employment—a personal responsibility, and not a structural problem as it should have been taken responsibility for. When ‘freedom’ in the context of neoliberal governmentality means the *depoliticisation of the state*, it is the state which allows the *widening gap between the already rich and the already poor, between men and women* to gyrate further apart.

Given gender inequality a repercussion of the neoliberal-nuanced ‘freedom’ and ‘self care’, Connell’s argument—elaborated earlier in the literature review that transnational entrepreneurial subjectivity bears qualities usually assigned to masculinity—is seen further reinstated here. That is, *not only that the neoliberal subjectivity is of masculine gender, the market rationality* itself is thriving on the system which *privileges men over women*—the full explication of which is given in Chapter IV of this study.

The possibility of *resistance* against a hegemonic discourse which is usually the case elsewhere, however, proves *inactive* here as poverty and inequality is re-interpreted as

<sup>16</sup> Ibid., p. 42.

<sup>17</sup> Woehl, Stefanie. Global Governance as Neo-liberal Governmentality: Gender Mainstreaming in the European Employment Strategy. In Rai, Shirin & Waylen, Georgina. **Global Governance: Feminist Perspectives**. Palgrave Macmillan, 2008, p. 73.

<sup>18</sup> Eurostat. **The Life of Women and Men in the EU**, 2006.

a 'misleading life', the neoliberal appellation for failure to navigate impediments to prosperity [which] becomes a new mode of depoliticizing social and economic powers and at the same time reduces political citizenship to an *unprecedented degree of passivity and political complacency*.<sup>19</sup>

As Brown points out, the model neoliberal citizenry is anything but the public-minded who are ready for political mobilisation; on the contrary, the fully realised form of such citizenry ceases to exist as the body politic, but merely a group of individual entrepreneurs and consumers whose moral autonomy lies solely on the principle of the market and calculation of profitability.<sup>20</sup>

The masculine gendering of the neoliberal subjectivity does not work only on the level of citizen-subjects, but also of the state itself as Tore Fougner's work argues. Demonstrating the applicability of Foucault's 'governmentality' beyond the state level, Fougner<sup>21</sup> argues that the international community and its players, the states, have also been 'governed', in the neoliberal fashion—that is, not to govern too much—by institutions of global governance. However, it is the kind of government without rendering states as the objects, but subjects of governance. This is done through competitive indexing and country benchmarking by the competitiveness reports initiated and published by the World Economic Forum (WEF) and the International Institute for Management Development (IMD), two of the most influential contemporary economic publications. Rather than seeing the inter-state competition as a product of negative or disciplinary power, Fougner argues that the WEF and the IMD productively 'enlist states in a competitive market game'<sup>22</sup>, blurring the distinction between subjects and objects of the global governance, rendering them as no longer objects of governance, but as 'subjects' or 'private actors'.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid., p. 43.

<sup>21</sup> Fougner, Tore. Neoliberal Governance of States: The Role of Competitiveness Indexing and Country Benchmarking. In *Millennium—Journal of International Studies*. Vol.37 No.2, 2008, pp. 303–326.

<sup>22</sup> Ibid, p. 306.

Stefanie Woehl agrees with this and provides a good European example. That is, in the context of the European Union, political benchmarking creates what Woehl calls 'peer-pressure' which has played an important role in the EU's success in raising the percentage of the work force or in partially privatizing the EU states' pension systems. As Woehl points out, 'this "peer-pressure" is supposed to stimulate other member states to adjust [or more precisely, to reduce or withdraw] their welfare systems. This form of benchmarking is used as a political decision making process based on economic results in international comparison.'<sup>23</sup>—the scenario which resembles the neo-functionalists' explanation of the EU economic integration process as a 'spill-over' effect. (As Chapter IV will argue this global-restructuring-induced 'peer-pressure' on the EU is responsible for the erosion of state welfares and the failure of gender mainstreaming—two inevitable consequences of maintaining its economic competitiveness.)

Historically speaking, the entrepreneurial and competitive behaviour of the state has developed out of the 'private' problem of how to enhance 'the capacity of a firm to compete, grow, and be profitable in the marketplace'<sup>24</sup> into the problem of national competitiveness—which became more prominent during the late 1970s and early 1980s—the same temporal threshold marked by both R.W. Connell and David Harvey as to when neoliberalism came to arise—where concerns no longer lies on how to manage a firm, but how to govern the state in ways that national firms and entrepreneurs can engage in competition with their foreign competitors. However, under the current discourse on 'economic globalisaiton', the concept of 'national competitiveness' has become problematic and obsolete as the world economy, now, requires an unprecedented degree of high mobility of production factors—the new market reality to which national boundary would only be a restriction and whereby state authorities, driven by their self interest<sup>25</sup>, believe their 'countries can benefit

<sup>23</sup> Woehl, p. 72; insertion mine.

<sup>24</sup> Eric S. Reinert, *Competitiveness and its Predecessors – a 500-year Crossnational Perspective*. In *Structural Change and Economic Dynamics*. No, 6. 1 (1995): 25 in *Ibid*.

<sup>25</sup> Peter Lewisch, 'Constitutional Economics and Choice of Law', in **James M. Buchanan Festschrift**, 1999. <http://www.gmu.edu/jbc/fest/files/lewisch>.

economically from luring factors into their jurisdiction', and that *'individuals may "vote on their feet" and move either themselves or capital to the most preferred jurisdiction'*<sup>26</sup> (Politically, this means less national loyalty and a diminishing interest in national politics: a de-politicization where resistance is no longer accommodatable). Competition in the age of globalisation is, thus, changed from 'national' to 'locational competition'.

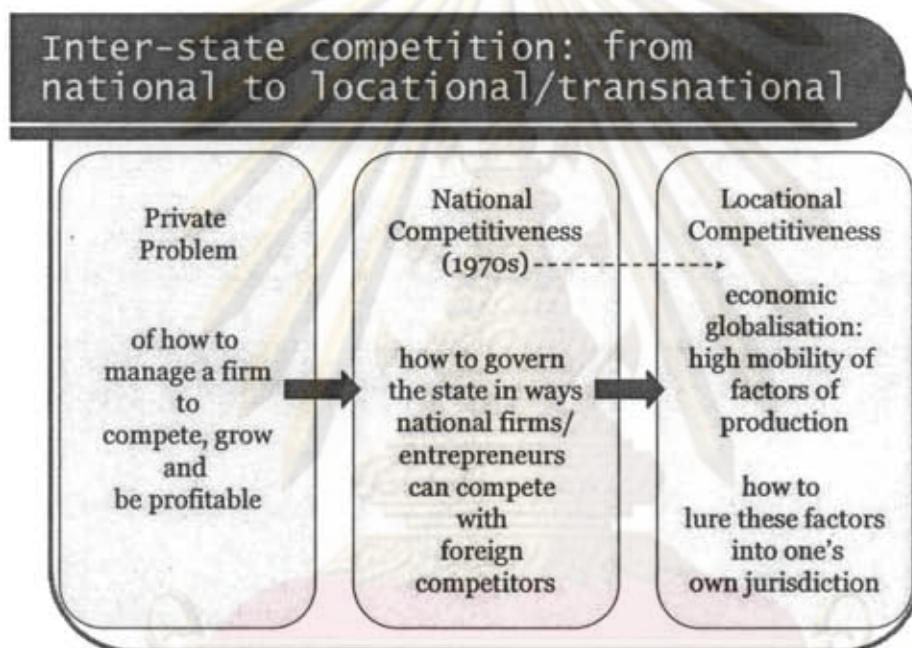


Figure 6 Illustration of locational competitiveness and its development

Under this context of neoliberal governance study, the EU's single market and its common market law—as law proves to be an indispensable instrument in realising the neoliberal governmentality—can be seen as operating on this 'locational competition'. The following traits are what Fouquier thinks the state upholding neoliberal governmentality must do to flourish. These neoliberal codes of conduct

htm.

<sup>26</sup> Ibid.

correspond to the major characteristics of the EU's single market and its common market law. First, given the emphasis on the 'entry' and 'exit' mechanism which alters the cost-benefit calculus, governments, Fougner suggests, must enable production factors, products and services to enter and leave locations freely. Second, in order to encourage (re)locational opportunities, the governments must provide relevant and comparable information about different locations. Third, the governments must refrain from establishing 'regulatory cartels among themselves, impose negative non-market externalities on each other or behave strategically to the detriment of others'<sup>27</sup>. The next part of this chapter discusses how the single market and the common market law characterise the EU's masculine neoliberal market subjectivity.



Figure 7 Illustration of neoliberal governmentality: institutions, instruments and the masculine subjectivities

\* In Foucault's governmentality, to ensure the state is capable of maintaining its competitiveness in relation to others, the government must regulate the life

<sup>27</sup> Fougner, pp. 310-311.

of its subjects, how they handle their economic activity, their production, the level at which they price themselves and their goods, and the price at which they buy them.

#### 4. The EU's common market law and masculine neoliberal subjectivity

Under the theory of 'govern-formativity'—a conflation of Foucault's theory of governmentality and Butler's gender performativity—the *effect* of the stateness and its compulsory masculine gender owes not only to the existence of the governing rationale and its subsequent *recitations* of this governmental rationality which allow the desired effect of the masculine stateness to be perpetuated. In light of Foucault's governmentality, in particular, this governing rationale, as it is also required, must come out *best* so that the state is capable of acquiring its *competitiveness*:

the reasoned way of governing best and, at the same time, reflection on the best possible way of governing...the rationalization of governmental practice in the exercise of political sovereignty<sup>28</sup>

(As the review of Judith Butler's works, in chapter II, shows, although gender is artificial and performative, its possibility is restricted to the hegemonic discourse the subject is embedded within. Such a restriction of the possibility of gender identity enables the subject to be culturally intelligible. Moreover, according to Hooper, the way international community requires the states to interact with one another not only demonstrates the masculine gender code. The field itself is also the construction site of different types of masculinities.)

The calculative nature of state behaviour to maintain its best ability to compete reflects Hooper's assignment of the masculine gender to such traits as personal autonomy, instrumental rationality and goal orientation—the quintessence of international relations.

<sup>28</sup> Michel Foucault. *The Birth of Biopolitics: Lectures at the Collège de France 1978-1979*. Translated by Graham Burchell. Palgrave Macmillan, 2008. p. 2.

The EU's creation of the Single Market, too, falls under these characterizations of masculine state behaviour. The *goal-oriented* EC, as it was then called, conceived the idea of a European single market under the pressure to increase European *competitiveness*—the realization that ‘the tools of domestic policy no longer seemed able to solve the problems of international competitiveness of the EC’s member states...[the solutions of which include] improving market access, reducing restrictions, and attracting investments, and engaged in extensive lobbying for single market’<sup>29</sup>.

However, as the media representations of the EU in the literature review reveal, the status of remaining competitive at its best is by no means unproblematic, nor static, nor permanent. On the contrary, such an identity status is precarious and constantly on the verge of relapsing into the realm of feminine inefficiency as the subversion of the EU’s desired masculinity below flaunts:



By Tanja Ostojic—  
a contemporary German artist

Indeed, as *The Economist* indicates, unless the EU strives for a more market-oriented operation of the single market and a less politically-pensive decision making body, efficiency, competitiveness, respectability, and, as the gender theories employed in this research enable it, the desired masculinity, seems still far out of reach:

<sup>29</sup> Egan, Michelle. ‘The single market’ in Cini, Michelle. **European Union Politics**, 2003, p. 36.

[The EU still needs] to make labour markets more flexible, to trim overly generous welfare states and to inject new competition into product markets, especially for services....It also makes it vital for national governments to support, not undermine, Europe's single-market rules and competition policies.<sup>30</sup>

*The Economist* proposes the EU care less about politics—Angela Merkel whose Germany occupied the then rotating Presidency, as it argues, should have focused more on economic problems especially the rising unemployment rate than ‘bickering over the constitution’: ‘what Europe’s citizens want most of all from the EU is real benefits, especially economic ones....Economic reform should thus make institutional reform easier to bring about’<sup>31</sup>. For these inadequacies, especially with regard to the extent the Union embraces neoliberalism, *The Economist* projects the EU, not as a mature man flexing its muscles, but as an anxious aging woman struggling to cope with her mid-life crisis, unfulfilled with her potentials and needs:



The precariousness of the EU’s desired identity status as a masculine supranational community with economic competitiveness at its best is manifest in the way the European Court of Justice—the institution which ‘has uniformly and consistently been the *most* effective integration institution in the Community’<sup>32</sup>—works.

<sup>30</sup> Europe’s mid-life crisis. In *The Economist* (March 15<sup>th</sup>, 2007).

<sup>31</sup> Ibid.

<sup>32</sup> Ward, Ian. *A Critical Introduction to European Law*, Butterworths, 2003. In Turner, Chris. *EU LAW*. 2<sup>nd</sup> ed. Hodder Arnold, 2006, pp. 6-7; italics mine.



As Michelle Egan describes it, the European Court of Justice, ‘*anxious to safeguard the Community-wide market... , has continued to determine on a case-by-case basis whether specific [national] laws are valid under the Treaty*’<sup>33</sup>. Indeed, the ECJ’s continuous enactments engendered from this ‘anxiety’ and insecurity, ‘in a bold and creative way, to *fill in the gaps of the legal frameworks*’<sup>34</sup> laid down in the Treaty establishing the European Community—seen through its numerous case laws establishing new standards and directions for the operation of the single market—can be read in the context of Butler’s theory of identity construction as the perpetual process of *recitation* which *produces the effect* of a masculine supranational community.

To secure the path towards the desired competitiveness and the subsequent masculine identity, the ECJ must ensure that member states observe the EC law, especially the common market law, which proves to be the prime regulator of the single market, the focus of this study. The Court has been given the responsibility to ‘reconcile the demands of market integration with the pursuit of legitimate regulatory objectives and policy goals advanced by member states’<sup>35</sup>. In other words, the ECJ holds the task of determining whether restrictions on free movement of goods, labour, services and capital imposed by member states are legitimate under the treaty or not. (While ‘free movement of goods’ means the removal of trade barriers for goods including that of tariffs, quantitative restrictions and non-tariff barriers, ‘free movement of labour’ means the removal of restrictions on labour mobility, allowing workers to get jobs anywhere in the EC. And, while ‘free movement of services’ means the freedom of establishment for industrial and commercial activity: the right to set up business anywhere in the Community, ‘free movement of capital’ means the freedom of investment to enable capital to go where it would be most productive<sup>36</sup>.)

<sup>33</sup> Egan, Michelle. The Single Market. In Cini, 2003, p. 34; italics mine.

<sup>34</sup> Arnall, Anthony. The Community Courts. In Cini, p. 180; italics mine.

<sup>35</sup> Egan, p. 33.

<sup>36</sup> Ibid., p. 30.

To be able to exercise its supranational juridical power which goes beyond national borders, the ECJ and the Community law are given the ‘supremacy’ over the national courts and laws. The Court’s role was established in Article 164 of the Treaty Establishing the European Community and Article 220 in the Consolidated Version of the Treaty Establishing the European Community:

The Court of Justice and the Court of First Instance, each within its jurisdiction, shall ensure that in the interpretation and application of this Treaty the law is observed.

‘From its very inception in the Treaty, the ECJ set about establishing its hierarchical authority as the ultimate court of constitutional review. In this area two areas in particular are important. First there is the role of the ECJ in controlling member state courts, and, second, there is the role of the Court in managing the incessant inter-institutional struggles.’<sup>37</sup>

Empowered and protected by the Treaty Establishing the European Community though it is, as far as Butler’s identity theory is concerned, the effect of identity produced through the process of recitation—the repetitive and meticulous exercise of the Court’s supranational judicial power—is far from remaining stable and undisturbed. Indeed, the supremacy of the ECJ and the Community law have constantly been challenged by member states and players of national levels. One of the earliest and most frequently cited exemplary cases in which the relationship between Community and national law was established is Case 6/64 *Costa v ENEL*.

In this landmark case, Mr Costa brought an action against the nationalised National Electricity Board (ENEL) over a bill of 1,950 lire or less than £1<sup>38</sup>. The Italian citizen claimed he was not obliged to pay the bill because the nationalization legislation of the enterprise had violated the Community law. The Italian court then

<sup>37</sup> Ward, pp. 6-7.

<sup>38</sup> Cuthbert, Mike. *European Union Law*. 5<sup>th</sup> ed. London: Sweet Maxwell, 2006, p. 31.

asked for a preliminary ruling from the ECJ, but the Italian government rebutted such a reference was ‘absolutely inadmissible’ due to its conviction that it had the sovereignty to apply national law. The ECJ, then, overrode the Italian citation of the right to sovereignty with the idea of supranationalism and how the Community law always prevails. This landmark refutation, which have repeatedly been reproduced in relevant occasions by the ECJ can be read as a continual process of recitation in Butler’s performativity sense, or to borrow a relevant perspective from literary theory, can be seen as a rite of obsessive compulsive disorder and a continual reproduction of logos—the construction of the male ego through language:

By contrast with ordinary international treaties, the EEC Treaty has created *its own legal system* which...became an integral part of the legal systems of the Member States and which their courts are bound to apply. By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity...and real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and thus created a body of law which binds both their nationals and themselves...It follows...that the law stemming from the Treaty, and independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.<sup>39</sup>

(If this supranationalism is the idea nationals of the EU are given to understand themselves and their states in relation to the supranational community, the ECJ’s repetition of this identity affirmation through its *language* can be understood in relation to the concept of logocentrism [God created the world with language: ‘In the beginning was the Word, and the Word was with God, and the Word was God’—John ii.I] and Lacan’s Law of the Father, which is undoubtedly held as masculine by critics,

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<sup>39</sup> Quoted in Cuthbert, 2006, p. 31.

and constantly criticized by feminists and queer theorists as, respectively, misogynistic and heteronormative in nature.)

Nevertheless, despite this obsessive compulsive disorder of the endless self-legitimization through logocentric/linguistic recitation of its supremacy, the much desired identity status as a masculine supranational community acquired through the intense securitisation of the single market has met countless other disruptive defiance in form of national ‘rebellions’.

The role of the ECJ in ensuring the smooth operation of the single market—as European studies and European law scholars cited in this study seem to agree—dubbing the ECJ ‘judicial activism’, Michelle Egan<sup>40</sup> agrees with Chris Turner<sup>41</sup> who sees that the ECJ’s task is not only to ‘administer’, but also to ‘define’ the EC law itself. Ian Ward<sup>42</sup> also writes ‘The ECJ has uniformly and consistently been the most effective integration institution in the Community.’—is more active<sup>43</sup> than any other judicial institutions we may have known. The Court’s role is not only to administer and monitor, but also to very actively define and fill in the loopholes in the merely structural provisions pertaining to the law on how the common market should operate, which is provided in the Treaty Establishing the European Community.

These defining case laws informing and completing the *porous* boundary—which succinctly speaks how vulnerable it is—of the law on free movement of goods, a branch of the four movements in the common market law, for instance, include the *Dassonville* formula and *Cassis de Dijon*.

In 1974, the ECJ provided its own definition of ‘measures having equivalent effect’ to quantitative restrictions in *Dassonville*—the Scotch whisky case. The measure in question was a requirement by the Belgian law stipulating all imported

<sup>40</sup> In Cini, 2003, p. 33.

<sup>41</sup> Turner, 2006, p. 6.

<sup>42</sup> Ward, 2003, p. 7.

<sup>43</sup> Michelle Egan’s ‘The free trade umpire: The European Court of Justice and judicial activism’ in Cini, 2003, p. 33.

goods be presented with a certificate of origin issued by the State in which the imports were produced. Dassonville imported a consignment of Scotch whisky from France, however, unable to produce such certificate. He, thus, attached a homemade certificate of origin to the goods before being brought to the Belgian court on a forgery charge. In his defense, he called into question the Belgian regulation, claiming it breached the EC law. The ECJ, on a reference from the Belgian court under Article 234 (former 177 EC), ruled the measure was capable of breaching Article 28 (former 20 EC)<sup>44</sup> and provided that:

All trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having effect equivalent to quantitative restrictions.<sup>45</sup>

Adding on to the definition of 'measures', in *Cassis de Dijon* case, the ECJ, in 1979, made a painstaking distinction between 'distinctly' and 'indistinctly' applicable measures. On whether a German ban on the sale of a French blackcurrant liqueur because it did not conform to the German minimum alcohol level requirement, the Court dismissed German arguments that Cassis, with higher level of alcohol, posed health risks, but suggested that labelling alcoholic content could be done to protect the consumer. The ECJ applied the *Dassonville* formula above, however, added:

Obstacles to movement within the Community resulting from disparities between the national laws relating to the marketing of the products in question must be accepted in so far as those provisions may be recognised as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer.<sup>46</sup>

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<sup>44</sup> From Cuthbert, p. 69.

<sup>45</sup> Quoted in *ibid.*

<sup>46</sup> Quoted in Cuthbert, p. 70.

The point in case here, however, is not how many legal formulas or principles the ECJ has managed to define, but the extent to which the Court is willing to go to protect the free market ideal. The ‘applicable measures’ defined here under the ECJ’s rulings, indeed, include *fibres*—tightly woven and stretchable—of possibilities when it comes to defining trade hindrance; that is, not only either ‘directly or indirectly’, ‘actually or potentially’, but most meticulously and painstakingly, either ‘distinctly or indistinctly’. Indeed, attention should also be paid on the courage of the Court in risking itself with public health issue and how rigorous it has proved to be in finding ways—suggesting, instead, the labelling of the alcoholic content as a means to protect the consumer—to maintain the deregulation of the market.

At the core of the ECJ’s exercise of its supranational supremacy via the Community law is, thus, the paradox of the obsessive impulse to regulate so as to deregulate; the deregulation comes not without the ECJ’s unbounded enthusiasm to commit itself in regulating.

This paradox fundamental to the EU’s acquisition of its masculine competitiveness through the well-kept single market, and, in return, through the ECJ, in fact, echoes Foucault’s explanation of how the state relies on its unlimited domestic (internal) objectives to achieve the limited international (external) ones:

*Competition* between states is precisely the *hinge* connecting these limited and unlimited objectives...to be able to enter into competition with other states...government [has to regulate the life of] its subjects, to regulate their economic activity, their production, the price [at which] they sell goods and the price at which they buy them....The correlative of this limitation of the international objective of government according to *raison d’Etat*, of this limitation in international relations, is the absence of a limit in the exercise of government in the police state.<sup>47</sup>

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<sup>47</sup> Ibid., p. 7; italics mine

As applicable to the EU's case, the ECJ, relying on this 'hinge of competition', pursues its internal objective by exercising its conscientious supranational judicial power (given its heavily inclusive definition of 'applicable measures' of trade barriers)—to regulate member states and national players to render certain that economic deregulation is securely put in place—and, simultaneously, keeps its international objective of remaining competitive among other states intact by achieving such an internal objective.

This paradoxical balance on the hinge of competitiveness also echoes Foucault's important reference to a new type of limitation called 'political economy'. Unlike 'limitation' in form of law, especially public law, in the sense of the seventeenth century, which exists outside the *raison d'Etat* or the governmental reason, 'political economy' as an intrinsic limitation 'made it possible to ensure the *self-limitation of governmental reason*'<sup>48</sup>. 'The whole question of critical government reason will turn on *how not to govern too much*. The objection is no longer to the abuse of sovereignty but to excessive government.'<sup>49</sup> As in the case of the EU, deregulation through supranational regulation by the ECJ reflects this modern governmental rationale of 'not governing too much' in this regard.

As my earlier emphasis on the extent to which the ECJ is willing to go to protect the efficient operation of the single market, The EU's/ECJ's unbounded enthusiasm *to control so as not to control too much* is a site of manifestation of an acute obsessive neurosis in reaction to the inadequacy and insecurity of its masculinity—the identity status indispensable for the supranational community to be visible and intelligible in and by the international community.

Against the backdrop of the EU law on free movement of workers, therefore, lies an important implication of neoliberalism as *not* simply a move towards individualized and privatized economic structures which is allowed to *naturally*

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<sup>48</sup> Foucault, p. 13.

<sup>49</sup> *Ibid*; italics mine.

fertilise in cooperation with a *supportive* political programme to protect and extend the reproduction/recitation of the superiority of market rules.

The European Court of Justice, indeed, has demonstrated it plays a vital role in actively intervening and mobilising with the deployment of state power and public authority in pursuit of market-oriented goals—a proactive, not reactive as usually understood, politically-economically motivated activity, which underlines the reality that ‘markets are not naturally occurring phenomena or spontaneous actualising systems. More often than not they have to be made, steered and policed’<sup>50</sup>. Similar to Tickell, O’Neill (1997) observed ‘Neo-liberalism is a self-contradicting theory of the state. The geographies of product, finance and labour markets that it seeks to construct require *qualitatively* different, not less, state action. Neo-liberalism is a political discourse which impels rather than reduces state action’<sup>51</sup>.

Supranationalism, as the fulcrum anchoring the well-being of the single market and the EU’s masculine identity, when applied on member states, inevitably produces power and, thus, gender relations. Along with the dominance of transnational business masculinity and the operation of neoliberalism in the single market is the masculine supranational supremacy and the feminine national docility. The supremacy of community law over national laws, in the end, results in a new binary of supranational/national, which, under the govern-formativity theory and Hooper’s theory of international relations as a construction site of masculinities, could be read as an enriched nuance to the existing international-male/national-female division which has been discussed in the literature review.

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<sup>50</sup> Tickell, A. and Peck J. Making Global Rules: Globalisation or Neoliberalisation?. In Peck, J. and Yeung H. (eds), **Remaking the Global Economy: Economic-Geographical Perspectives** London: Sage, 2003, pp. 163-181.

<sup>51</sup> O’Neill, P. M. Bringing the qualitative state into economic geography. In R. Lee & J. Wills (eds.) **Geographies of economies** London: Arnold, 1997, pp. 291-2.



## CHAPTER IV

### The Gendered Consequences of the Mechanisms Sustaining the Single Market and Neo-liberal Politics of Deregulation

As the last chapter demonstrates, the restoration of capitalism and the neoliberal politics of deregulation in the EU have a masculine gender implication, which, as this chapter will argue, lend a negative impact on the majority of women in the EU. According to Connell,

[i]n rich Western countries, neo-liberalism has attacked the welfare state, on which far more women than men depend; supported deregulation of labour markets, resulting in increased casualization of women workers; shrunk public sector employment—the sector of economy where women predominate; lowered rates of personal taxation, the main basis of tax transfer to women; and squeeze public education, the key pathway to labour market advancement for women.<sup>1</sup>

Connell significantly points out that although neoliberalism seems to de-gender the space of professional success the cult of successful professional women represents only the *minority*—*not the majority* of the whole women population in the society—in which their position is actually degraded and endangered.<sup>2</sup> As Connell has it, ‘many men are relatively advantaged by the shift of social resources from the state to the market, and by the deregulation of markets’<sup>3</sup>. Indeed, as relevant statistics from

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<sup>1</sup> Connell, p. 255.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

Eurostat below elucidates, *the whole neo-liberal policy package has 'entrepreneur' as the intended beneficiaries—the majority of which are significantly male*<sup>4</sup>.

The group of women who have been found most affected by the neoliberal governmentality and the promotion of self-care through active entrepreneurship are those not well equipped with skills and resources required to compete as entrepreneurs—the number of this group of women is greater than those who can, as the statistics and discussions below reveals. Moreover, if entitlements to unrestrained mobility are given only to the spouse or dependent of the worker who are legally married, women's rights, especially widows' and divorcees', to such entitlements are precarious as they are not allowed to access them directly, but only through their husbands—the scenario of which reinstates the patriarchal order and the myth of breadwinner in the relationship between men and women. Moreover, the ECJ's narrow interpretation of the term 'spouse' and 'dependent' as strictly adhering to the meaning provided in family law has proved discriminatory to homosexuals whose relationship does not receive equal treatment under Article 141 and the Equal Treatment Directive as the heterosexuals'.

### 1. **Transnational business and gender inequality: relevant statistics**

The 2008 edition of a Eurostat comparative report on the life of women and men in the EU—where restrictions of movement of labour, services, capital and goods are abolished, which means these women and men can move freely within the Union as workers—titled *The Life of Women and Men in Europe: a Statistical Portrait* unhesitatingly reveals that of the gap in employment between men and women aged between 15-64 [figure 1] (In the EU-25 as a whole, some 72 % of men aged 15–64 were in paid employment in 2006 as compared with just over 57 % of women in the same age group)

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<sup>4</sup> Ibid.

*[t]he gap between men and women is widest for directors and chief executives of companies — the highest level managerial positions. [figure 2]*

The proportion of men occupying these positions was, on average, more than twice that of women in 2005 (around 0.8 % of men in employment as opposed to under 0.3 % of women). Only in Latvia, Lithuania, Hungary, Poland and Romania, was the proportion of men in employment working as ‘directors and chief executives’ less than twice the proportion of women, while in the Czech Republic, Denmark, Portugal, Sweden and the UK as well as Iceland and Norway, it was over five times higher. The variation across countries was less marked for ‘managers of small enterprises’, though in all cases, proportionately more men than women occupied such positions<sup>5</sup>.

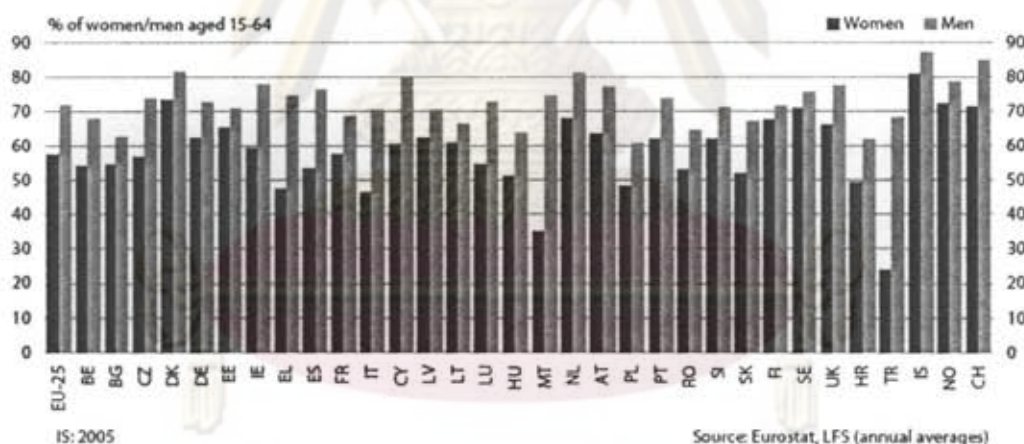


Figure 1 Illustration of employment rate of women and men aged 15-64, 2006<sup>6</sup>

<sup>5</sup> Eurostat. *The Life of Women and Men in the EU*, 2006, p. 66; insertion mine.

<sup>6</sup> *Ibid.*, p. 53.

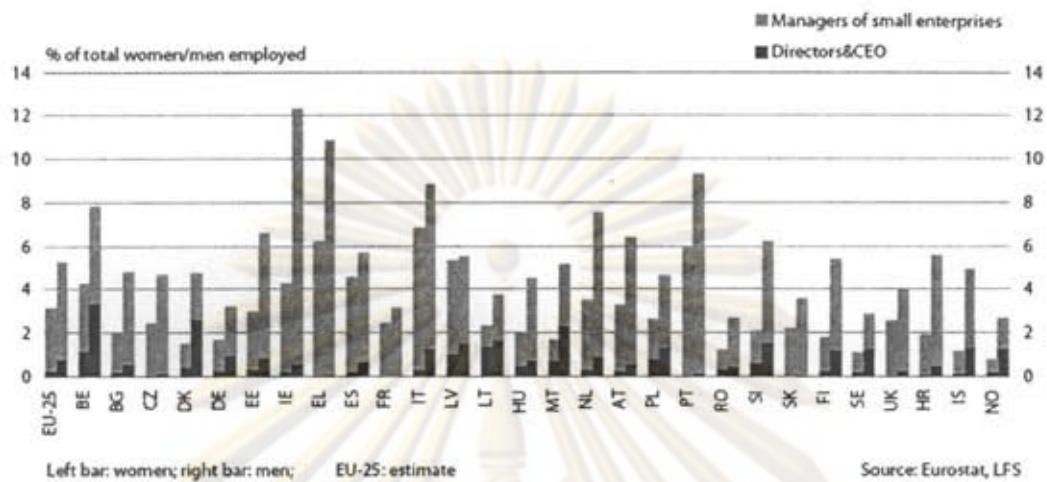


Figure 2 Illustration of women and men managing companies, 2005<sup>7</sup>

In terms of decision-making positions in larger enterprises, women are even less represented than men. The report says

There are only two EU member states — Bulgaria and Slovenia — in which women were presidents, or chairpersons, of more than 10 % of the largest 50 enterprises and none in which the figure is over 20 % (Figure 3). Moreover, there are only two other countries, Latvia and Poland, in which women were the heads of over 5 % of the largest 50 enterprises, and in 13 of the remaining 23 EU Member States, all the heads of the 50 enterprises concerned were men.

Women are only slightly more in evidence on the management boards of the largest 50 enterprises. There are no EU countries in which women made up over 25 % of the members of these boards and only two, Bulgaria and Sweden, where they made up over 20 % (Figure 4). In 13 of the remaining 25 countries,

<sup>7</sup> Ibid., p. 66.

as well as in Turkey, the proportion of women on the boards concerned was under 10 % and in four countries — Italy, Spain, Luxembourg and Malta — it was under 5 %.<sup>8</sup>

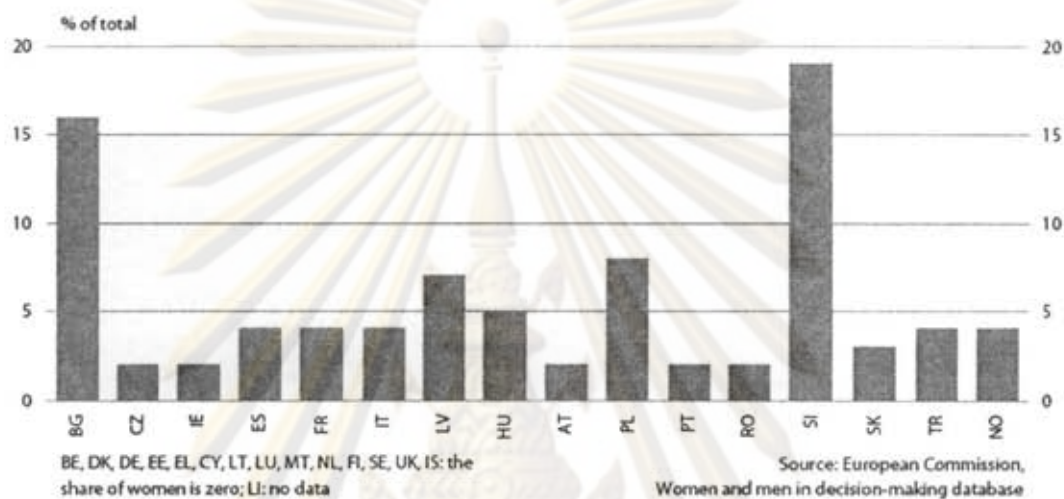


Figure 3 Illustration of women as a share of presidents or chairpersons of the largest 50 national enterprises, 2006



<sup>8</sup> Ibid., p. 71.

Figure 4 Illustration of women as a share of management board members of the largest 50 national enterprises, 2006

In terms of wage gap, the gender inequality is no less evident:

Across the EU as a whole, average gross hourly earnings of women (those between 16 and 64 years old and working 15 hours or more a week) were, on average, 15 % below those of men in 2005. Women earn less than men in all Member States and in 2005 there were only eight countries out of the 27 and only three — Belgium, Malta and Slovenia — where it was smaller than 9 % (Figure 5). In six countries — Germany, Estonia, Cyprus, Slovakia, Finland and the UK — the gap was 20 % or more.

The structure of earnings survey (SES) provides a more detailed insight into the wage gap. This relates solely to the position in 2002 and in many countries covers only the business enterprise sector — so excluding public administration, education and health as well as agriculture (16) — and is confined to enterprises with 10 or more persons employed. Accordingly, it gives different figures to those presented above which are estimates for the whole economy. In particular, the gap shown by the SES is wider for all countries than that shown by the latter estimates.

Despite these limitations, the SES enables the wage gap between women and men to be examined by age, education level, occupation and length of service. These are all aspects which affect earnings and which accordingly might provide some explanation for the difference between women and men in this regard. For example, part of the explanation might lie in women being employed in different occupations to men or having been in jobs for a shorter period. However, as indicated below, a significant difference in earnings is apparent even if allowance is made for these factors. Women have on average

lower earnings than men in all age groups, at all education levels, in all — or virtually all — occupations and irrespective of the length of service.<sup>9</sup>

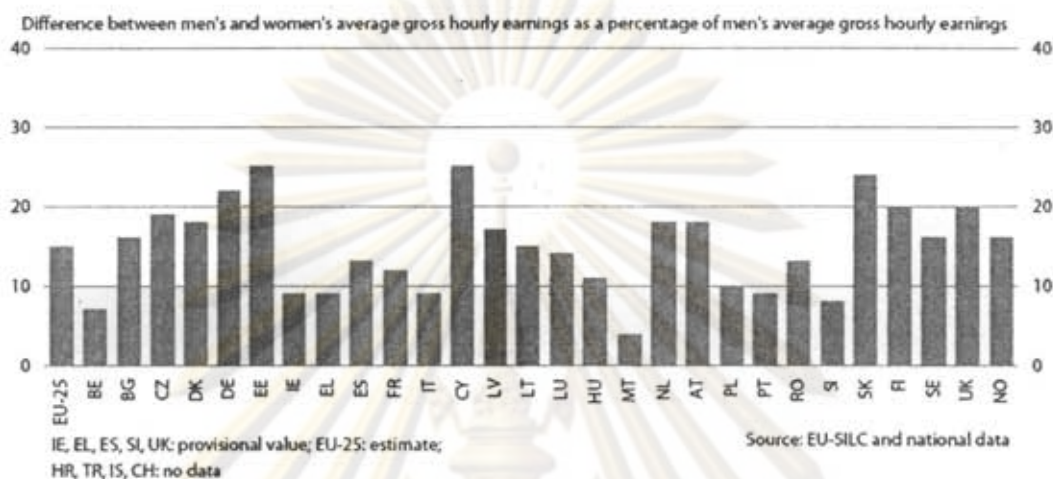


Figure 5 Illustration of pay gap between men and women, 2005

(The analysis below is confined to earnings in the economy excluding these sectors, except in the case of occupations where it covers these sectors in countries in which the data are available.)

Moreover, if looking more specifically into the wage gap between women and men by occupation, as the report provides,

The jobs that women and men do, in terms of the division of the two between occupations, differ markedly. As noted above, many more men than women are employed in managerial positions as well as in skilled manual jobs, while many more women than men work as clerks or in sales and service jobs. *This difference itself contributes to the overall wage gap between women and men in so far as a larger proportion of men than women work in higher level—and so higher paid—jobs, particularly as managers but also as professionals* (especially in the activities covered by the SES in many countries).

<sup>9</sup> Ibid., p. 93.

Nevertheless, as in the case of length of service, the wage gap remains considerable within each occupational group. Moreover, the gap appears to be wider in general in the higher level occupations than the lower level ones (Figure 6).

The hourly earnings of women employed as managers (ISCO category 1) were only 71 % of those of men on average in the EU in 2002 (Figure 7). In Slovenia alone of all Member States, women managers' earnings averaged only slightly below those of men. In all other countries, they were less than 90 % of men's earnings and apart from Cyprus, Malta and Romania, less than 85 %. In Italy, women's earnings in this occupational group were only around 65 % of men's and in the Czech Republic and Slovakia, only around 60 %.

The wage gap for women and men employed as professionals and technicians was only slightly narrower, women's earnings being around 73 % of those of men on average in the EU in both occupational groups. On the other hand, the wage gap was significantly narrower for both clerks and sales and service workers, but it was still the case that women's earnings in each group were only around 84 % of men across the EU as a whole.

In the case of clerks, women earned on average more than men in Bulgaria (though only around 3 % of men were employed in such jobs in the activities covered by the SES as opposed to 12 % of women) and only slightly less than men in Poland, Romania and Sweden.

The wage gap was wider in skilled manual jobs, in which relatively few women were employed, as well as in elementary manual jobs, in which the numbers of women and men are more even. In the latter case, however, women's average earnings were almost 10 % more than for men in Portugal and only around 5 % less in Bulgaria, Romania and the Netherlands. On the



other hand, in all other countries apart from Hungary and Sweden, they were over 10 % less than men's earnings, in most cases, over 15 % less.<sup>10</sup>

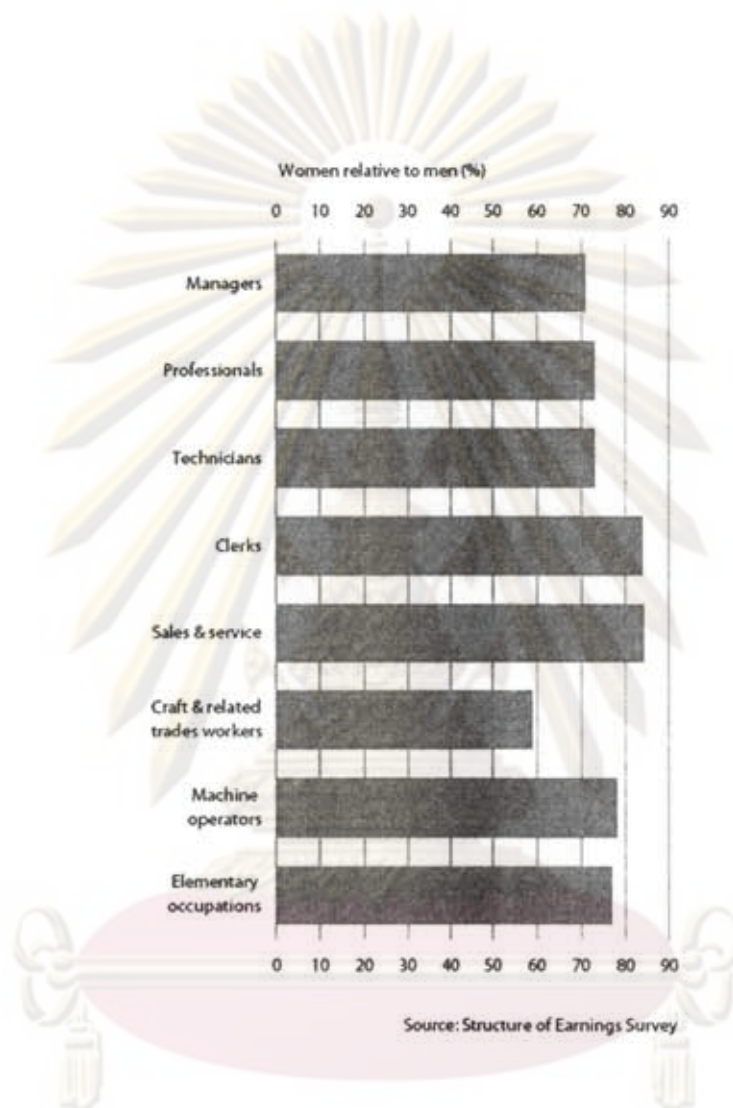


Figure 6 Illustration of average hourly earnings of women relative to men's by occupation in the EU-25, 2002<sup>11</sup>

<sup>10</sup> Ibid., p. 96.

<sup>11</sup> Ibid.

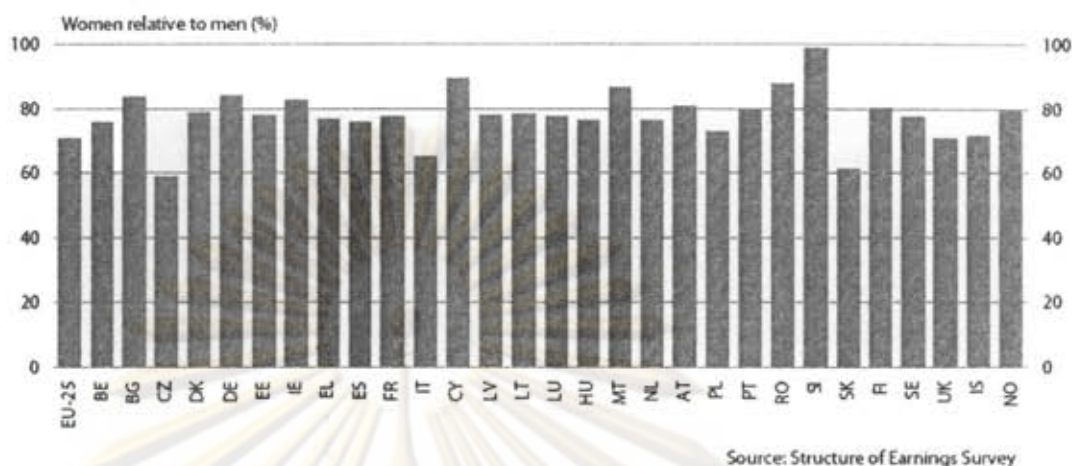


Figure 7 Illustration of average hourly earnings of women employed as managers relative to that of their male counterparts, 2002<sup>12</sup>

## 2. The EU single market and its law: the male-dominated social contract

As the relevant statistics above show, women in the EU are not generally in an equal position to men when it comes to competing with them in the labour market, especially as decision makers and entrepreneurs.

The empirical data above, particularly on the gender pay gap, as one can see, is *strikingly at odds* with the EU's continuing effort to address the issue of gender inequality seen, for instance, through Article 141 of the EC Treaty which provides that:

Each Member State shall during the first (transitional) stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.

The ECJ's role in defining case laws, which attempt to eradicate employment-related discrimination on ground of sex<sup>13</sup>, too, is incompatible with the statistics on gender

<sup>12</sup> Ibid.

pay gap. Relevant here is, thus, the question what has happened in the EU to prevent these legal frameworks from rendering a real impact. (Landmark cases regarding employment-related discrimination on ground of sex include *Case 43/75 Defrenne v. Sabena* which lays down the direct effect—both horizontally and vertically—of Art 141, i.e., the Court has identified a right for individual employees to enforce the provision before the courts of the member states; *Case 129/79 Macarthys Ltd v Wendy Smith* in which the Court equal payment does not mean the sex affected has to be employed at the same time with the other being better remunerated doing the same job; *Case 127/92 Enderby v Frenchay HA* in which the Court held that the burden of proof might shift to fall on the employer to avoid depriving workers, appearing to be a victim of discrimination, of any means of ensuring the principle of equal pay is observed.)

Noteworthy regarding the emphasis on the employment aspect of the gender inequality issue, rather than other aspects of sex discrimination, is the fact that *market rationale is given the primacy in this Community*; as Chris Turner observes, Art 141 was one of the first substantive provisions created to ensure that ‘*an economic objective—the elimination of unfair advantages which would distort free competition*’ is achieved. B. Wilkinson, too, reminds us that the original purpose of the free movement provisions, ‘was not to establish free movement and residence rights for *all* citizens of the Community, rather it was to establish free movement of *workers* as one of the factors of production...who would contribute economically through their labour in the economic of the host Member State’<sup>14</sup>.

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<sup>13</sup> (Cuthbert, p. 101-102)

<sup>14</sup> B. Wilkinson. ‘Towards European Citizenship? Nationality, Discrimination and Free Movement of Workers in the European Union. In *European Public Law*, 1995. Quoted in Louise Ackers. *Citizenship, Gender and Dependency in the European Union: Women and Internal Migration*. In Harvey and O’Keeffe 1996. (eds.) *Sex Equality Law in the European Union*. Chichester: Wiley, p. 225; italics mine.

The trend towards a more gender-sensitive EU is especially visible since the last decade, according to Paul Graig and Grainne de Burca<sup>15</sup>, which has seen ‘a more serious institutional commitment to “mainstream gender equality”<sup>16</sup> across all EU policies and activities.’—the commitment enshrined by the Amsterdam Treaty in Article 3 of the EC Treaty declaring ‘the Community shall aim to eliminate inequalities, and to promote equality, between men and women.’<sup>17</sup> The below Illustration (figure 8) of a sizeable billboard erected by the EU Commission below, as well as a few others on its website<sup>18</sup>, posing questions to raise the EU citizens’ awareness in gender pay gap, especially boost the EU’s identity as a supranational community of a particular sensitivity in gender equality.



<sup>15</sup> Graig, Paul and de Burca, Grainne. **EU Law: Text, cases and materials.** (4<sup>th</sup> ed.) Oxford, 2008, p. 874.

<sup>16</sup> See, for instance, Lombardo, Emanuela and Meier, Petra. Gender Mainstreaming in the EU. In **European Journal of Women’s Studies.** SAGE publications, Vol. 13(2): 151-166.

<sup>17</sup> Quoted in Ibid., p. 874.

<sup>18</sup> <http://ec.europa.eu/social/main.jsp?langId=en&catId=681>



Figure 8 Illustration of a gender equality campaign billboard by the European Commission

(The photograph was taken on the writer's way to the European Commission office building during the yearly educational trip to Brussels arranged by Interdisciplinary Department of MAEUS, Chulalongkorn University, in March, 2009.)

Behind this self-representation of the EU as a gender perceptive supranational community is, however, a stark incongruity between reality and appearance which the statistics pertaining to a substantial gender pay gap in the EU above renders unmistakable. Indeed, criticisms have it that gender mainstreaming does not and has not solved the *sexist or patriarchal nature of the EU male-dominated institutions, neoliberal ideology and market-oriented law. The EU may look gender susceptible, but looks are often deceptive.*

Stefanie Woehl's subversion of the EU's gender mainstreaming<sup>19</sup> contributes to this line of argument. Woehl argues that neoliberal governmentality—where the

<sup>19</sup> Woehl, Stefanie. 'Global Governance as Neo-liberal Governmentality: Gender Mainstreaming in the European Employment Strategy' in Rai, Shirin and Waylen, Georgina (eds.) **Global Governance: Feminist Perspective**. Palgrave Macmillan, 2008, pp. 64 - 83.

state's intention not to interfere means a greater personal responsibility for the loss of paid work and the contraction of social welfare—actually produces ‘gendered, rational, entrepreneurial actors who are functional for the state’<sup>20</sup>. The creation of the belief in the active responsibility for one's own well-being is the creation of a new form of gendered subjectivity. This is due to the fact that, first, there are a number of women who work in *informal* sectors of low-wage employment; their ‘demands are not able to be fully articulated in *hegemonic* public discourse and are discursively included in the *hegemonic* project of neoliberal governmentality’<sup>21</sup>. Second, although social identities are wrought in the new light of neoliberal governmentality as ‘free’ individuals, seemingly without care and household work (as opposed to the model of social solidarity), conservative discourses on the family responsibility which are still at work impose ‘burdens’ on those, most of them women, who are supposed to take these responsibilities:

This form of governance calls on the responsible citizen to take over unpaid community work or activates the unemployed to work in homes for elderly people at 1 Euro per hour as in Germany at the moment.<sup>22</sup>

Woehl points out that, although the so-called ‘Hartz-Commission’ restructure plan of the whole employment sector in Germany may produce material effects for women, most of the new jobs created for women are in the low-paid service sector usually dubbed ‘mini-jobs’ whose remuneration is usually only at 400 Euro per month. Moreover, corresponding to Connell's observation and the statistics given above, women who have most benefited from these reforms are entrepreneurs, and, in terms of percentage, there are not many of them compared to the population of men in the same job position.<sup>23</sup> As for other non-entrepreneur women, ‘the dependency of their husbands is increased because if these women become dependent on social welfare,

<sup>20</sup> Ibid., p. 69.

<sup>21</sup> Ibid., p. 70; emphases mine.

<sup>22</sup> Ibid., p. 73.

<sup>23</sup> Ibid., p. 79.

the income of the partner is deducted from the social benefits.<sup>24</sup> She concludes her discussion of the German employment reforms that

even though gender mainstreaming has had a discursive effect in some state institutions in Germany by devoting attention to the needs of women, its implementation in the employment sector is minimal and in most sectors not a direct consequence of gender mainstreaming.<sup>25</sup>

Woehl further argues that there are two main reasons why gender mainstreaming, especially as installed in the employment guidelines of the Amsterdam Treaty, is not working in the EU. On the one hand, 'the advisory character of gender mainstreaming makes it a weak instrument in the employment sector. It cannot intervene directly on specific policies...'<sup>26</sup>—despite 'several binding legal directives installed during 1980s and 1990s to foster gender equality in employment and to secure working conditions for women'<sup>27</sup>—but work only as a soft law on the willingness of the member states.

On the other, as Article 105, in Chapter 2 of the Amsterdam Treaty makes apparent, price stability is still given the highest and most restrictive priority in the political goals of the integration process. This has resulted in, on one side, the fact that *most countries focus more on employability in restructuring the employment sector rather than on gender mainstreaming goals to improve gender equality, which, practically, has been neglected.* Neoliberal governmentality affects the employment sector in a way that it forces entrepreneurs to concentrate on employability, which has proved the difference, rather than equality, between men and women to be more perceptible. The spirit of entrepreneurship that the Union promotes looks forward

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid., p. 79.

more to cost-cutting than nurturing employment with, for instance, paid maternity leave.

On the other, in terms of the allocation of national budgets pertaining to employment policy, given the restrictive macroeconomic goals, national budgets are not considered in a way that would enhance gender-sensitive employment, but reflect more the already existing employment policies of the member states rather than adhering to the recommendations of the European Commission<sup>28</sup>.

As Woehl concludes this part of her discussion, ‘gender mainstreaming is generated from the same governmental techniques that it actually seeks to transform. This [the installation of gender mainstreaming] may be seen as a process of empowerment, but at the same time it has lost its former emancipative meaning’<sup>29</sup>. It is a matter of turning away from the Commission’s recommendations so as to avoid weakening their employment sector. Indeed, inasmuch as the term ‘business ethics’ is an oxymoron, the contradiction between the EU’s primacy of economic goal and its attempt to put gender mainstreaming at work reflects an ill-paired partnership of competitiveness and fairness—the odd couple of which has proved difficult to go hand in hand.

Not only in the area of the problematic gender mainstreaming, the EU’s judicial institution—despite its landmark case laws on gender pay gap recounted earlier in footnote 16 of this chapter—too, has constantly been attacked for embodying and precipitating gender inequality.

Given the ECJ’s role as a prime mover of the European single market in its rigorous protection of the neoliberal principles ensuring deregulation of factors of production—the mechanism to which the EU owes its transnational business masculinity—Leo Flynn’s criticism of the EC law as sexist is worth mentioning here.

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<sup>28</sup> *Ibid.*, 78.

<sup>29</sup> *Ibid.*, p. 80.



Flynn calls for attention to the remaining fact, given his research was carried out in 1996, that the judicial institutions themselves—which, as my discussion above reveals, are generally perceived to be progressive forces in pushing forward the principle of gender equality, along side with the protection of absolute competitive atmosphere in the single market—present with ‘an overwhelming male dominance’<sup>30</sup>. Flynn writes ‘the Court of Justice of the European Community has had no female judges since its formation over 40 years ago’.

Despite some improvement over the years, the 2008 edition of the Eurostat report on women and men among the judiciary provides that, in the European Court of Justice, women with the judiciary power ‘made up only 12 % of members, just one in seven’ and ‘[a]lthough women were a little more numerous among the members of the European Court of Auditors, men still accounted for 83 % of members’<sup>31</sup>. Similar to the ECJ, other important EU institutions like the European Parliament and the European Commission present with the same deficit of gender balance in the organizational composition: ‘Women are also in a small minority in the European Parliament. In 2006 women made up only 30 % of members, less than one in three.’<sup>32</sup>; ‘The balance between women and men among the members of the European Commission is much the same as the balance among European Parliament members. Only 29 % of Commissioners in 2006 were women.’<sup>33</sup>

Not only embodied in male-dominated institutions, the EU is also criticised for the patriarchal nature of its Community law. As Flynn notes, there is a substantial collection of feminist literature dealing with ‘the style of reasoning and the specific conceptions of values utilized in EC law [as capable of being] characterized as male

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<sup>30</sup> Flynn, Leo. *The Body Politic(s) of EC Law*. In Harvey and O’Keeffe (eds.). *Sex Equality Law in the European Union*, 1996. New York: Wiley, p. 305.

<sup>31</sup> Eurostat. *The Life of Women and Men in the EU*, 2006, p. 70.

<sup>32</sup> *Ibid.*, p. 67.

<sup>33</sup> *Ibid.*, p. 69.

because they are identified as masculine in our society'<sup>34</sup>. Indeed, similar to Connell's proposition of the masculine nature of transnational business and economic deregulation, Flynn reaches the same conclusion, pointing to the fact that Community law gives priority to the market and that 'the culture of the market and principles of market efficiency and competition are central to the creation of the internal market, and to the legitimacy of the EC legal order'<sup>35</sup>—all of which has a strong masculine orientation.

The study's earlier discussion on the ECJ's 'unbounded enthusiasm' to perpetually purge itself from any 'impurity' of trade barriers and measures having equivalent effect can be read as corresponding to Flynn's observation that the Community law's and the ECJ's limits in generating change, given earlier feminist research on female orientation<sup>36</sup>, can be read as a cultural suppression of 'a "different voice" in matters of moral reasoning and problem solving', which is associated with women. This different voice, Flynn interestingly maintains, 'stands opposed to a masculine market logic that sees relationships with other humans and natural world as a set of isolated calculations to be made in an *ad hoc* fashion about the balance of pre-allocated rights in situations of conflict'<sup>37</sup>.

Jo Shaw<sup>38</sup>, too, answers the question in what respect the law of the internal market might be argued to reveal a problematic relationship with gender. Shaw's main argument is that the 'canonical status' of market law within the EU 'restates a fundamental tenet of modern welfare capitalism, namely the consistent undervaluing of the unpaid work done primarily within the home and the family by women'<sup>39</sup>. Akin

<sup>34</sup> Flynn in O'Keeffe, p. 307.

<sup>35</sup> *Ibid.*, p. 308.

<sup>36</sup> Gilligan. **In a different voice: Psychology theory and women's development**, 1982, for instance, is mentioned, in Lynn, in this regard. (*Ibid.*)

<sup>37</sup> *Ibid.*

<sup>38</sup> Shaw, Jo. 'Law, Gender and the Internal Market' in O'Keeffe, 1996, p. 283-299.

<sup>39</sup> *Ibid.*, p. 294.

to Shaw, Lynn, referring to Marshall's architecture of citizenship in welfare capitalism in the twentieth century<sup>40</sup>, provides that the EC law, and the rationale behind the operation of the single market—to which the EU owes its competitiveness and stateness—to reinstate the relevance of Foucault's theory of governmentality—are constructed within 'the framework of welfare provision around the figure of the male bread winner and dependent wife'<sup>41</sup>—the model of social contract in which women are not the 'subject', but merely the 'participant'.

Literally speaking, the pronoun the ECJ customarily uses to refer to workers—whose right of free movement, to live and work in other EU countries, can be extended to his spouse and dependents—is that of the masculine subject 'he'<sup>42</sup>. Such a linguistic norm of the Court implies that it assumes the Marshallian framework of welfare provision around the figure of the male bread winner and dependent wife. For instance, in Case 59/85 *The Netherlands v. Reed*—which involves Ms Reed, a UK national, living since 1981 with Mr W, an unmarried UK national, who worked and resided in the Netherlands, who, although not herself a worker, obtained a residence permit in 1982, but whose application for a renewal was denied by the Dutch authorities because she was neither a worker nor the spouse of a worker—the Court cites, in her favour, the principle of non discrimination in Article 7(2) of Regulation No 1612/68 which provides that

in the host State a worker who is a national of another Member State must "enjoy the same social and tax advantages as national workers"...[T]he possibility for a migrant worker of obtaining permission for *his* unmarried companion to reside with *him*, where that companion is not a national of the

<sup>40</sup> Marshall, 'Citizenship and Social Class' in Marshall. **Class, Citizenship and Social Development**, 1976, p. 65-122. In *ibid.*, p. 295.

<sup>41</sup> *Ibid.*

<sup>42</sup> My observation here corresponds to that of Ackers, H.L. **Shifting Spaces: Women, Citizenship and Migration Within the European Union**. Bristol: Policy Press, 1997.

host Member State, can assist *his* integration in the host State and thus contribute to the achievement of freedom of movement for workers. Consequently, that possibility must also be regarded as falling within the concept of a social advantage for the purposes of Article 7(2) of Regulation No 1612/68<sup>43</sup>.

As the provision demonstrates, despite Ms Reed, a female sex, being the subject of this particular case, when the Court cites this ready-made provision in which the male subject occupies its centrality, the masculine pronoun 'he' is rendered incongruous with the actual subject of the case, which inevitably reflects gender insensitivity and the dominance of the male ego—the design of which automatically assigns the role of the dependent to female and that to depend upon to male.

Shaw's application of the Marshallian model of capitalism with the EU echoes Ackers' s reading of the EU market citizenship as also reinstating the oppressive breadwinner model:

Once a national of an EU Member State leaves his or her country of nationality to reside in another member State, the European Union assumes important social responsibilities shaping their experience of citizenship...the male breadwinner model of 'normal' family relations permeates the [European Court of Justice's] understanding of internal migration, thus reproducing and reinforcing gendered patterns of dependency<sup>44</sup>.

<sup>43</sup> Quoted in Bermann (et al) **Cases and Materials on European Union Law**. (2<sup>nd</sup> ed.) St Paul, Minn: West Group, 2002, p. 621.

<sup>44</sup> Ackers, H.L. Internal Migration: The Gender Dimension. In **International Studies in Gender, State and Society**: 3 (2/3), 1996 in Balding, Val et al. Women's Movement: Citizenship, Migration and Process of European Integration. In <http://www.helsinki.fi/science/xantippa/wee/weetext/wee243.htm>

But, of course, as one must point out, the contemporary social reality shows that women *are* 'market citizens' ('Ackers found that some 48% of all EU migrants are women, but this figure hides considerable variation between states. Five countries export greater numbers of women and five countries import greater numbers of women. Italy, France, Spain and the UK all export more males, but import a greater number of women. Belgium, Denmark, France and Germany, however, export more women and import more men. In Italy, 57% of EU incoming migrants are female. In Ireland and Denmark, women migrants dominate, 52% and 58% respectively.')<sup>45</sup>. Shaw addresses this observation, pointing out that the reality comes, however, not without a price.

Indeed, as observed by Shaw, '*citizenship of the European Union cannot be described as a form of citizenship in the sense in which it is conventionally understood*'<sup>46</sup>; *on the contrary, 'it is functionally grounded in freedom of movement, and not in a human rights pillar*'<sup>47</sup>. Mike Cuthbert, too, sees the Treaties as 'not purport to establish an absolute freedom of migration in a general sense, but confine themselves to this economic activity...to create a "common market in manpower"...to solve the problem of unemployment in overpopulated areas'<sup>48</sup>.

Indeed, *to be an EU citizen, is to be a market citizen*, which means one must actively participate in the construction of this future market society as a factor of production; that is to move freely to the location where one proves to be most profitable, both to the industry and to oneself.

<sup>45</sup> In *ibid.*

<sup>46</sup> Everson. 'The Legacy of the Market Citizen' in Shaw and More, 1995. In *ibid.*, p. 298.

<sup>47</sup> D'Oliveira. *European Citizenship: Its Meaning, Its Potential*. In Dehousse. **Europe After Maastricht. An Ever Closer Union?**, 1994, p. 126-148; Twomey. *The European Union: Three Pillars without a Human Rights Foundation*. In O'Keefe and Twomey, 1994, p. 121-132. In *ibid.*

<sup>48</sup> Cuthbert. **European Union Law**. (5<sup>th</sup> ed.) 2006, p. 85.

Given this image constructed by the quintessence of EC law, if there is a commission for an artist to produce a representation of *the* EU female citizen, that image could never have been a stranded nurturing mother swamped with her babies around, but a lean elegant business-like lady with a read-to-go trolley bag—the active market type of female citizen whose leverage lies on the sheer unconstraint of her mobility to work anywhere she wants in the Union.

Under the market citizenship, social entitlements—such as social security, unemployment benefit, health services, educational grants, public housing and bus passes—goes only to the active market citizens, the worker. So, if you divorce a violent husband, the EU forces you to relinquish these social entitlements automatically. According to Ackers, at every point an EU woman changes her marital status, she changes her citizenship status. As pointed out earlier that the EU transnational citizenship is not the same as that falling under the human rights pillar, the social entitlements in the EU are created to assist the free movement of economically active workers, not persons as individuals in the usual sense of national constitutions<sup>49</sup>.

Given this market model of citizenship, Shaw, citing Sohrab, criticizes the Court of Justice, in its interpretation of the Social Security Directive, as *neglecting 'to consider in an integrated way both the caring roles taken by women within the family and their desire or need for continued participation in the labour market'*<sup>50</sup>—the existential conflict within the female subjectivity Shaw tops up with another telling consequence: '[w]hile...research by Ackers is sweeping away the preconception that

<sup>49</sup> Ackers, H.L. *Shifting Spaces: Women, Citizenship and Migration within the European Union*. Bristol: Policy Press, 1997 in Balding, Val (et al).

<sup>50</sup> Sohrab. An Overview of the Equality Directive on Social Security and its implementation in four social security systems. In *Journal of European Social Policy*, 1994, p. 263-276 in Shaw. In O'Keffee, p. 298.

*quantitatively women make less use of mobility rights, it nonetheless emphasises the qualitative difference, for example, in the impact upon fertility rates*<sup>51</sup>.

Relevant findings were retrieved by Val Balding and his co-writers from interviews with Swiss, German and English women accompanying their husbands to Portugal; it was found that childbirth was the major reason for women to relinquish their professional careers until the children had grown. Significantly, most subjects shared a negative correlation between migration and their careers.

Indeed, as Shaw shall conclude, citizenship of the Community has put women in a problematic position as caretakers of dependents who dwell in the domestic realm. 'The explicit refusal of the Court of Justice to consider the implications of market equality for the sexual division of labour highlights the extent to which the treatment of sex equality in EC law [and especially the recent active campaign in gender mainstreaming] is simply an overlay upon an existing unchanged system of gendered labour markets, not a genuinely reformist project'<sup>52</sup>.

### 3. The EU single market and its law: the heterosexual social contract

The EC law is not only a patriarchal social contract. The fact that the ECJ interprets the definition of 'spouse'—when it comes to the enjoyment of entitlement to unrestricted mobility—as narrowly as the term is perceived in family law, as the Court's ruling of Case 59/85 *The Netherlands v Reed* elucidates, automatically results in a denial of such right among unmarried couples—an inconvenience which can be extended to such a demographic as homosexuals in their relationship:

The Community legislature used the word '*spouse*' in the sense given to that word in family law.... There is no reason, therefore, to give the term 'spouse'

<sup>51</sup> Louise Ackners. 'Citizenship, Gender and Dependency in the European Union:

Women and Internal Migration' in O'Keeffe, 1996, p. 221-237.

<sup>52</sup> Shaw. In O'Keeffe, p. 293; insertion mine.

and interpretation which goes beyond the legal implications of that term, which embrace rights and obligations which do not exist between unmarried companions.<sup>53</sup> ...In the absence of any indication of a general social development which would justify a broad construction,...it must be held that *the term 'spouse' in Article 10 of the Regulation refers to a marital relationship only*<sup>54</sup>.

Significant here in the ruling of this case is the fact that the ECJ did allow Ms Reed to receive her requested residence permit, by citing the principle of nondiscrimination on ground of nationality and *not* applying its interpretation of the term 'spouse' it took the trouble to define, which, as the study will argue, is not only a move indicating patriarchy but also a discrimination against homosexuals in their relationship. Bermann provides a similar comment by astutely posing two important questions. The first question, teasing out the implication that the ECJ views female spouses as tied to her husband workers, hence reinstating the breadwinner myth, reads: 'Suppose Reed receives her residence permit, but thereafter she and W quarrel and she ceases to be his companion. May the Netherlands' then deport Reed?. The second confirming the EC law's stance as a heteronormative social contract reads 'Suppose Reed is the companion of a migrant worker who is a woman? Do the answers to both questions turn on the nondiscrimination principle only?'<sup>55</sup> Indeed, as this section of the study will reveal, the ECJ—whose answers to these questions would have rather been 'yes' than 'no'—when it comes to cases pertaining to sex, gender and sexual orientation, bases its rulings on an essentialist understanding of these issues. The different rulings of the two landmark case laws *P v S* and *Cornwall County Council* (Case C-13/94) and *Grant v South West Train* (Case C-249/96) will demonstrate this point.

<sup>53</sup> Bermann, p. 620.

<sup>54</sup> Ibid, p. 621; italics mine.

<sup>55</sup> Ibid.



As provided by Article 141 (ex 119) of the EC Treaty which sets out the basic principle of equal pay between the sexes, equality of men and women in the workplace is one of the fundamental pillars of the EU. However, as Paul Graig and Grainne de Burca<sup>56</sup> points out, there are limits of gender equality in the EC law and those limits are discrimination on grounds of sexual orientation. While *P v. S* represents a bold step of the ECJ to extend the concept of discrimination to include gender reassignment, the Court's ruling on *Grant v SWT* disappointed gay and lesbian activists as it retreated from the judicial expansiveness of *P v S* and determines that prohibition of discrimination on grounds of sex as provided in Article 141 does not include that of sexual orientation.

In *P v. S*, a male-to-female transsexual, P, who worked as a senior manager in a Cornwall education establishment, was informed her contract was to be terminated after she notified her employers she was undergoing gender reassignment and wished to come to work as a woman. During the transition period before she underwent the surgical genital reassignment, she was not allowed to return to work and the contract was terminated in her absence. P brought an action before an industrial tribunal claiming she was discriminated on ground of sex. The tribunal referred the case to the ECJ which decided in her favour, confirming the prohibition of discrimination on grounds of sex was wide enough to encompass practices which discriminated against transsexuals:

The European Court of Human Rights has held that 'the term "transsexual" is usually applied to those who, whilst belonging physically to one sex, feel convinced that they belong to the other; they often seek to achieve *a more integrated, unambiguous identity* by undergoing medical treatment and surgical operations to adapt their physical characteristics to their psychological nature. Transsexuals who have been operated upon thus form *a fairly well-defined and identifiable group*' ...

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<sup>56</sup> Graig, Paul and de Burca, Grainne, 2008, p. 877.

Moreover, as the Court has repeatedly held, the right not to be discriminated against on grounds of sex is one of the fundamental human rights whose observance the Court has a duty to ensure.

Where a person is dismissed on the ground that he or she intends to undergo, or has undergone, gender reassignment, he or she is treated unfavourably by comparison with persons of the sex to which he or she was deemed to belong before undergoing gender reassignment....Dismissal of such a person must therefore be regarded as contrary to Article 5 (1) of the directive [the 1976 Equal Treatment Directive]<sup>57</sup>

Worth discussing in comparison of this case with the ECJ's ruling on *Grant v SWT* is the fact that the Court invokes and values, here, in *P v S*, a provision by the European Court of Human Rights which, very interestingly, defines 'transsexuals' with such adjectives as 'more integrated', 'unambiguous', 'well-defined' and, most importantly, 'identifiable'.

Unlike in *P v S*, the Court in *Grant v SWT* dismissed the relevance of provisions of international conventions, particularly, the International Covenant on Civil and Political Rights of 19 December 1966 by the Human Rights Committee, which Ms Grant—a lesbian employee of a UK state railway who was refused by her employer to provide fringe benefits for her woman partner when such benefits were accorded to spouses and to person of the opposite sex with whom an employee had a stable relationship outside of marriage<sup>58</sup>—invoked to advocate that the term 'sex' in Article 141 and the Equal Treatment Directive should also be taken as to include 'sexual orientation'. The Court, however, dismissed the Human Rights Committee's status as being relevant and qualified:

<sup>57</sup> Quoted in Bermann, p. 1348; insertion mine.

<sup>58</sup> *Ibid.*, p. 1349.

...the Human Rights Committee, *which is not a judicial institution and whose findings have no binding force in law*, confined itself, as it stated itself without giving specific reasons, to ‘noting...that in its view the reference to “sex” in Article 2, paragraph 1, and 26 is to be taken as including sexual orientation’.<sup>59</sup>

Not only this refusal to acknowledge the validity of the international judicial body whose relevancy it earlier appreciated and invited, the ECJ further undermines the possibility of such an inclusive reading of Article 141 and the Equal Treatment Directive with two other refutations. First, it held that the regulations undertaken by the SWT did not ‘constitute discrimination based directly on the sex of the worker’ ‘since the condition imposed by the undertaking’s regulations applies in the same way to female and male workers...’<sup>60</sup> Second, the employer, according to the ECJ, ‘is not required by Community law to treat the situation of a person who has a stable relationship with a partner of the same sex as equivalent to that of a person who is married to or has a stable relationship outside marriage with a partner of the opposite sex’; it reasoned, uncharacteristically acquiescent of the ECJ, that ‘although the European Parliament has declared it deplors all discrimination based on sexual orientation, the European Commission, as well as the Parliament, have not yet adopted rules prohibiting discrimination based on sexual orientation’<sup>61</sup>.

Worth discussing here is what prompted the ECJ to uncharacteristically discriminate how it treat international conventions in these two different cases. That is, on the one hand, it embraces provisions of international conventions to condone transsexuals as ‘identifiable’, ‘well-defined’, and ‘more integrated to society’ while, on the other, it rejects the validity of such a body to dismiss recognition of sexual orientation, particularly, homosexuality—whose opposition to transsexuality

<sup>59</sup> <http://homepage.univie.ac.at/elisabeth.holzleithner/EuGHGrant1998.pdf> (as Bermann does not provide this significant paragraph 46 of the ruling)

<sup>60</sup> Bermann, p. 1350.

<sup>61</sup> Hunt, Heather. ‘Diversity and the European Union: *Grant v. SWT*, the Treaty of Amsterdam, and the Free Movement of Persons’ in **Denver International Law & Polity**, 1998-1999, pp. 633-656.

automatically renders it 'not identifiable', 'not well-defined' and 'less integrated to society'—as inclusive in the EC law prohibiting discrimination on grounds of sex.

Indeed, such a conspicuous inconsistency, or, 'instability'—to invite Connell's relevant terminology of self-subversive elements in the construction of one's gender identity—in the Court's judicial execution stems from the fact that it and the EU understand the relationship between 'sex', 'gender' and 'sexuality' as based on the *essentialism in which genital—the biological determinant—has the originality to dictate the choice of gender and sexuality*. (This goes back to the debate between sex/gender and nature/culture which queer theorists seek to destabilize. See Chapter II Literature Review for a detailed discussion of Judith Butler's works on this issue.) Such an understanding of the relationship between sex, gender and sexuality, as *P v S* proves relevant, *renders transsexuals*—who undergo surgical operations in pursuit of appropriating themselves into this tripartite 'slot', which the Court recognises as the attempt to make themselves intelligible, more integrated and less threatening to the society—*as identifiable, hence manageable and homosexuals*—whose so-called 'aberrant' choice of gender—the way they behave—and sexuality—the way they choose their object of affection—is seen as threatening to undermine this tripartite 'slot'—*as unidentifiable, hence unmanageable*.

What this division between identifiable transsexuals and unidentifiable homosexuals also implies is that, the ECJ separates the issue of gender identity and sexual orientation from one another—making transsexuality and transsexuals ontologically synonymous to heterosexuality and heterosexuals, but antonymous to homosexuality and homosexuals—by using '*intelligibility*' as the principle factor to determine how the ECJ would divide the line between acting consistently/non-discriminatorily or inconsistently/discriminatorily. In other words, such a division is to *produce the identity of homosexuals and exclude them* by re-producing and proliferating the heteronormative discourse in which bodily difference and the subsequent 'coherent' gender identity institute desire as directed only to the opposite sex and gender, normalising heterosexuality to be the only natural sexuality.

The study argues that such an obsession, manifest in the ECJ's exercise of its judicial power, with intelligibility which rests on the stark demarcation between the two distinct biological sexes and the subsequent normalisation of gender roles and heterosexuality have an economic function as their underlying *raison d'être*. The society the ECJ refers to when it says transsexuals are more integrated into is not any society, but the one propelled by capitalism.

*The divide of sex/gender not only discriminates homosexuals—by excluding them from the normalization of heterosexuality—but also disadvantages women who are given an inferior role in such a division in relation to men whose position is privileged.*

Connell expounds on this rigorous hierarchical division between male and female, as well as heterosexual and homosexual, as being conceived within the emergence of capitalism. He holds that inasmuch as the creation of overseas empires entailed a gendered enterprise—in which men were needed as soldiers and sea traders while women participated in the colonies as wives and servants within household controlled by these men—the first industrial revolution and the accumulation of wealth from trade, slaving and colonies, in the seventeenth and eighteenth centuries—which eventually gave birth to centres of commercial capitalism like Antwerp, London and Amsterdam—promoted individualism and the male gendered character of the 'spirit of capitalism' as exemplified by the Protestant ethics and Benjamin Franklin's institutionalization of entrepreneurial culture and workplaces of commercial capitalism as a form of masculinity. It was this emerging commercial capitalism along with new medical ideologies which placed unprecedented demands on bodies to declare a clear-cut gender attribution to serve the phenomenal need to specialise and concentrate on their production as specialists. Gender anomalies were no longer registered as belonging to hermaphroditic (allowing gender blend) bodies, but those of deviance (not allowing the blend, but presupposing a norm)<sup>62</sup>—the same explanation Foucault gave to the nineteenth century's need to fixate and essentialise

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<sup>62</sup> Connell, p. 188.

what used to be a temporary aberration of sodomy into a species called 'homosexual'. ('Homosexuality appeared as one of the forms of sexuality when it was transposed from the practice of sodomy onto a kind of interior androgyny, a hermaphroditism of the soul. The sodomite had been a temporary aberration; homosexual was now a species.'<sup>63</sup>) In short, the specialisation of one's gender and sexuality can be seen as derived from the capitalist society's need to segregate and control with the fact that '[l]abour markets have been transformed by the multiplication of professions with claims to expertise'<sup>64</sup>.

The implication of the EU being not only masculine and patriarchal, but also masculine and heteronormative—given the economic need to categorise and specialise as the motive behind its obsession to control—is that the very rationale to exclude homosexuals and their relationship from the protective scope of the EC law on equal rights and pay is self-defeated.

Heather Hunt<sup>65</sup>, in this regard, astutely observes that given the free movement of persons in the EU being granted only to those who can prove they are an active participant in the economy (the Levin formula)—a fundamental right only to the extent it promotes free trade and movement across national borders to help push the Community objective of a fully integrated free market economy—the ECJ's exclusion of homosexuals from the protection against discrimination in employment paradoxically cancels out the very economic objective of such entitlement to move freely, be employed and remunerated fairly. Hunt impressively argues that 'although the right of free movement is not overtly denied to same-sex couples or homosexual

<sup>63</sup> Foucault, Michel. **The Will to Knowledge: The History of Sexuality: Volume One.** (translated by Robert Hurley) Penguin Books, (1978) 1998, p. 43.

<sup>64</sup> Connell, p. 193.

<sup>65</sup> Hunt, Heather. Diversity and the European Union: *Grant v. SWT*, the Treaty of Amsterdam, and the Free Movement of Persons. In **Denver International Law & Polity**, 1998-1999, pp. 633-656.

citizens, discrimination [as the case of *Grant v SWT* elucidates] infringes on such a right<sup>66</sup>:

[a]s the laws of the Member States currently stand, homosexual employee receive different treatment depending upon the Member State they live in. *This inequality of treatment impedes free movement because employees in countries where they are guaranteed legal protection against discrimination may be loathe to relocate in other EU Member States where no such protection exists because they would thereby be vulnerable to discrimination*<sup>67</sup>.

This lack of harmonisation of legal prohibition against discrimination on grounds of sexual orientation distorts free competition in labour markets, and puts, not only employees, but also employers in the EU countries without protection against discrimination based on sexual orientation at an economic disadvantage—a totally opposite end of spectrum the ECJ's unbounded enthusiasm to control and safeguard the EU single market is meant to achieve.



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<sup>66</sup> Ibid., p. 655.

<sup>67</sup> Ibid., p. 654.

## CHAPTER V

### CONCLUSION

Connell's and Hooper's research have informed a shift in the gradation of the state's compulsory masculinity from the criteria of military capacity and colonial power to economic power of transnational business.

The paper argues in favour of the rather condescending nomination of the EU as an 'economic giant, but a political dwarf' that the EU's creation and maintenance of its single market—considered in the light of Connell, Hooper and the conflation of Foucault's theory of governmentality and Butler's performativity theory—can be viewed as the construction site of the hegemonic and compulsory masculinity of the current globalised international society.

Not only that the stateness (Foucault) of the state-like supranational community EU owes its provisional ontological effect to a series of recitations (Butler) of the masculine gender code in international relations (Hooper), the neoliberal politics of deregulation, underlying the single market, too, is itself a significant production site embodying the current strain of hegemonic masculinity (Connell, Brown and Woehl)—whose discursive significance has extended to the material realm affecting *real* women (here I disagree with Beaseley's criticism of Connell and confirm Connell's position).

As the study reveals, the neoliberal definition of 'self-care' is a kind of 'freedom' which is designed *only* for the equipped (whose meaning in a Freudian reading would have unmistakably been the male sex who are *equipped* by nature with male genitals), most of them men, hence taking for granted the majority of women whose 'informal' output in the domestic realm is not economically valorised, which weakens their competitiveness in the labour market. Some women, too, are short of skills and resources to compete both in local and transnational entrepreneurial context.



These women's unassisted inadequacy has widened the gap, especially the pay gap, between men and women, which, as statistics in Chapter IV reveals, is not mitigating despite the fact that gender mainstreaming has been put in place, in the EU, for at least a decade now. The reality behind the gender-sensitive faced of the EU is that women are still outnumbered by men in the labour market, especially in decision-making positions—whose majority is made up by male entrepreneurs and executives—the top reapers of the neoliberal and transnational market society.

Gender mainstreaming in the EU, thus, has been exposed in this study as having no real impact due to the fact that it has been equated with the Union's economic objective and thus has little to do with real restructuring and improving the underlying sexist nature of the EU neoliberal governmentality—in which, as Woehl observes, the so-called peer-pressured precipitation for the endless and even more rigorous competition through benchmarking among states is strikingly at odds with the state's responsibility, if there is one left at all, to uphold those who cannot compete. Indeed, with price stability as the EU's primacy, gender sensitivity has given way to employability.

The fact the EU operates on the male-dominated social contract is especially true when considering the context of the EU's law on free movement of persons. To recapitulate, if the awarding of entitlements to unrestrained mobility are fundamentally based on the marriage institution and that the meaning of 'spouse' and 'dependent' is to be strictly interpreted according to national family laws, women's rights to such entitlements and the status of their social security change every time their marital status changes. These rights are, indeed, precarious as they are not allowed to access them directly, but only through their husbands—the scenario which reinstates the patriarchal order and the myth of breadwinner in the relationship between men and women; after all marriage institution is constantly criticized by feminists as one of the most representative (re-)creations of patriarchy.

The enumerated gendered consequences of the EU's striving to maintain its masculine neoliberal subjectivity have earned itself not only the identity status of a

masculine, but also patriarchal supranational community—proving that gender mainstreaming is merely a facade of gender-sensitivism which has been installed, according to Connell, as a more subtle form of subjugation maintaining the privileged status of men over women at the time when feminism is seen to be more penetrating and ubiquitous, if not successful, than ever. As feminists have argued, the way international institutions including the EU tackle the issue of gender inequality and make use of gender mainstreaming lacks sincerity in actually getting to the root of the problem; gender mainstreaming in international institutions—equated with economic efficiency and prevention of distortion of the labour market—is used significantly merely as a decoy. Instead of focusing on the *structural* change of the heavily patriarchal neoliberal governmentality, the EU and other international institutions' major concerns, when it comes to gender inequality, have been to merely increase the number of women in their institutions, which, as feminists have pointed out, not only fails to address the heart of the problem, but also surprisingly allow these patriarchal institutions to work even more smoothly without having to worry more about gender issues.

The facade of gender mainstreaming in the EU is not only patriarchal. The fact that the EC law on equal treatment in employment—not applicable in other sectors because the economic orientation/status is the EU's primacy—does not extend to include prohibition against discrimination on grounds of sexual orientation—which means that homosexuals in their relationship are not given the same right heterosexual couples are entitled to enjoy.

On the contrary, as the study's close reading of the law has shown, the EU common market law is a significant construction site of the 'homosexual' subjects and the norm of being heterosexual: 'heteronormativity'. Indeed, not only patriarchy, but also heteronormativity must now be considered another important nuance of the EU's masculine identity which, unfortunately, undermines its own attempt to construct the required masculine subjectivity (In the discourse of neoliberal/global governance, the state, not only its citizen-subjects, actively participates, by the benchmarking mechanism, as a player itself, hence its masculine neoliberal subjectivity).

As Hunt's research elucidates, although the EC law does not directly exclude 'homosexuals'—the ECJ's treatment of this group of people as a 'species' confirms Foucault's influential observation that prior to the exclusion is the essentialisation of what used to be a provisional act of the so-called 'aberration'—discriminations and lack of harmonisation of how each different member states treats homosexual relationships can render an economic downsize. That is, the couples—who are not sure and thus feel too vulnerable to move to other member states where they could be most economically efficient and who eventually decide not to move—can put EU employers in those states—without equal rights law extended to homosexuals—at an economic disadvantage, hence de-realising the goal towards the desirable masculine identity status—given that gender and stateness are not permanently secured but always in the process of construction—an 'effect' acquired via recitations of the desirable gender code.

The current investigation of how the EU (re)constructs its masculine gender by conscientiously drawing a boundary, essentialising, excluding, if not stigmatizing, the sexual orientation Other, reveals not only the obsessive-compulsive neurosis but also the homophobic nature of such recitations. The EU's homophobia, as seen in its legal discourse, explains the *raison d'être* of the obsessive-compulsive recitational rites and its hyper-sensitivity and insecurity about itself not being manly enough. Therefore, if the EU's desired masculinity is constantly acquired through the ECJ's close monitoring of the single market and economic integration, the fact that it excludes homosexuals and their relationship from the protection under the EC law on equal treatment—which has a negative economic impact—reveals a significant 'instability', to use Connell's term, or a kind of subversion of such an attempt to attain the required/desired masculine identity status. (Connell notes that after Freud's 'Wolf Man', no study of masculinity is complete without taking into account these 'tensions within masculine character and its vicissitudes [alternations] through the course of a life'<sup>1</sup>. In a nutshell, as for Freud, masculinity is never in a stable state, but full of tensions and inversions. Self-disruptions of hegemony are also reported. Masculine

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<sup>1</sup> Connell, p. 9.

aggression through American football ‘legal’ violence, for instance, can risk being threatened when such an expression of masculinity causes other players severe injury. In another example, some committed body-builders have to support themselves by ‘hustling’ to gay male clients. ‘But homosexual practice, in a homophobic culture, discredits the masculinity these men literally embody’<sup>2</sup>).

As one important aspect of the study is also to demonstrate that the European Union is always in the perpetual recitation of the international-relation-oriented masculine gender code to fuel its identity construction, it is to be understood that our engagement here is the area of study which is in constant change and development—the latest relevant incident which can inform such volatility is the 2009 G20 and NATO summits.

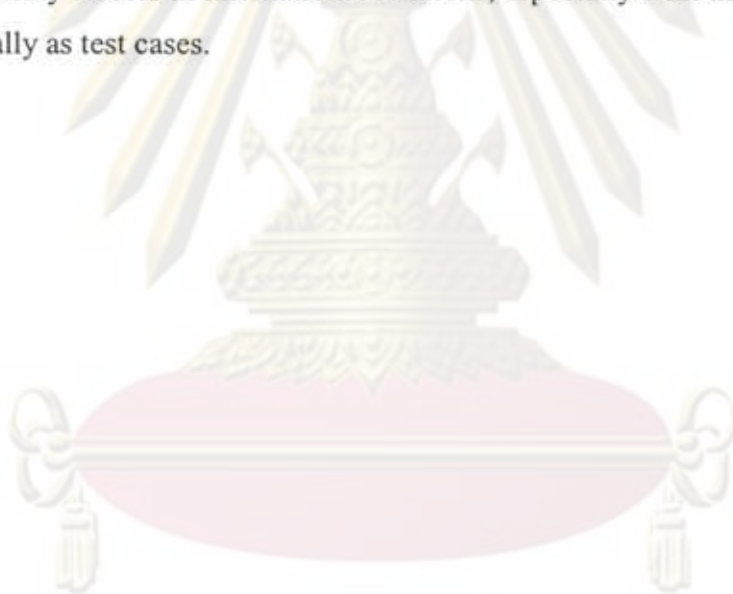
The recent G20 summit in London in which the Anglo-Saxon version of the neoliberal politics and capitalist economy has been re-confirmed—despite the recent global credit crunch as a result of the hyper capitalist and ‘reckless’ neoliberal methods and principles, especially in banking—with the consensus of the participating leaders—including Germany and France whose President Nicolas Sarkozy earlier threatened to walk out—to endorse a huge global stimulus package to shore up the world economy in recession.

This symbolic repatriation of neoliberalism and market ideology is, indeed, very important to the future of the EU’s gender identity status and the maintenance of its transnational business masculinity. The G20 endorsement of the global stimulus package and the subsequent continual attempt to subvert the re-emergence of protectionism in world trade is a reconfirmation that the socio-political impacts, as it has been given in this study, will still continue to be felt, especially in the framework of the efficient operation of the European single market and how the common market law will still continue to regulate the lives of the EU citizen-subjects in ways that privilege men over women, heterosexuals over homosexuals.

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<sup>2</sup> Ibid., p. 37.

As Connell and Harvey seem to agree, militarism and the political economy of neoliberalism usually go hand in hand so that the former protects the latter, the accumulated wealth of a market economy. The NATO summit 2009 in Strasbourg, France, which followed the G20 summit within no time, well confirms this relationship between neoliberal capitalism and militarism as America successfully persuaded France and Germany—whose socialist economy has proved regulation is not always an obstacle to sustainable, if not hyper rocketing, growth—into supplying more troops into Afghanistan to fight against the Taliban militants who have been ‘held responsible’ for horrifying attacks in many of the North-Atlantic cosmopolitan cities—the living symbols of the capitalist way of life. The implications from these developments the study believes will, indeed, play a great part in informing the future of masculinity studies in international relations, especially with the EU and its trans-Atlantic ally as test cases.



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Rathsaran Sireekan was born in Bangkok in 29 November 1978. After finishing his secondary school at Satit Pathumwan (Pathumwan Demonstration School), he did his bachelor's degree in English (2000) and, his master's in English Language and Literature (2004), both at Thammasat University. In 2003, he joined Thai Airways International as a flight attendant for two years. Then, he worked as a news writer for 'Newslines', an English TV news programme for Channel 11 for a year before joining the Assumption University as a lecturer in English for another two years. After that, he wrote and reported for 'Mcot News'—an English news programme for Modernine TV—before joining *The Bangkok Post* as a freelance art columnist for the *Outlook* section—the job which still keeps him enjoyed until today. In 2008, he was awarded a full scholarship to do another master's degree in European Studies at Chulalongkorn University.



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