Corporate State Capture in Open Societies: The Emergence of Corporate Brokerage Party Systems.

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Acknowledgements: The author is extremely grateful for the insightful comments of Tanja Börzel, Rachel Epstein, Venelin Ganev, Peter Hall, Lise Hermann, Wade Jacoby, Kristofer Rees and the two anonymous reviewers for EEPS and its editors.

Introduction

Investigations into Central Europe's emerging party-state relationships have focused less on political corruption - the abuse of public office for private gain - and more on patronage and clientelism as political resources. But by Western Europe's standards the majority of Central Europe's FDI-dependent political economies have weakly rooted and organisationally fragmented parties and weakly regulated states on the one hand but strong business players on the other. The exchanges most vulnerable to particularistic behaviour are consequently between the political executive and business corporations rather than between parties and civil society (*e.g.* patronage as electoral resource) or parties and the state (*e.g.* patronage as a party-organisational resource). Privatisation, regulation, public procurement and EU subventions have offered governing and business elites extensive opportunities for corruption, and corporate state capture - the 'highest point' of corruption whereby private interests subvert legitimate channels of political influence and shape the rules of the legislative and institutional game through private payments to public officials[1] - is a defining feature of several new EU member states.

This paper draws on the existing party-state scholarship but brings the business sector back in and proposes an ideal type to characterise the behaviour of political parties that preside over the continuous marketization of the state. A ‘corporate brokerage party’ directs its strategic focus to the private sector and acts primarily as a broker of the state’s power in the marketplace, whether expressed through privatisation, regulation or public procurement. Under corporate brokerage party governments, the party-state relationship is characterised by limited party patronage in terms of scope but this patronage is geared to control, most obviously at the top of the administrative hierarchy but also at the regional/local level, wherever business relationships arise. The prioritisation of those relationships is a normatively congruent position for governing parties in very liberal economies where the strategic, if not popular, consensus says the public interest is best served through a pro-business and a minimised, ‘regulatory’ state. But absent effective regulation the systematic shift from consultative to commercial government, state and corporate contacts enables high rates of rent-seeking. Using the Czech Republic as a ‘crucial’ case for Central Europe, the evidence suggests that politicians able to direct allocation to the private sector with low regulatory constraints act less as honest brokers of the public interest, partisan constituency- or organisation-builders and more as corrupt private agents.

Existing models of party-state development and the missing business dimension

The evolving literatures on post-communist Central European party-state relations focused on the difficulties of shifting post-communist public administrations from political functions to greater policy-making capacities[2], on the scale and character of party patronage and clientelism,[3] and above all on the causes of intra-regional variation in those trends:[4] this last question addressed by a predominantly rationalist-institutionalist debate which pivoted on how different qualities of party competition encouraged some party systems to exploit the state where others encouraged restraint. The main conclusion of this research is that the combination of post-communist state-building and party-formation provided ideal conditions for the renewal of party patronage as a valuable *political* resource, *i.e.* as a resource for primarily organisational purposes, not least party funding.

But from the political patronage perspective, Central European conditions look comparatively unexceptional: based on the surveys by Kopecký *et al* (2012), Kopecký and Biezen[5] conclude that no strong claim can be made for the growth of party patronage in any European state over the past two decades. In their 0-1.00 index of patronage applied to fifteen European democracies, the UK carries least patronage at 0.09, the European mean stands at 0.34, the Czech Republic sits squarely on that European mean at 0.34 and consequently ranks only marginally above Norway at 0.28, with Bulgaria only a little above at 0.42. Kopecký, Mair and Spirova account for the presence of the new democracies either at or slightly above the European mean by “the imperatives of party-building, and the need to counteract the *nomenklatura* legacies” of the previous regime.[6]

There is strong evidence for a far livelier private market for political influence within Central European systems, however. As measured by the World Bank Governance Indicator “control of corruption”, the Czech Republic, Slovakia, Latvia, Bulgaria and Romania have consistently fallen within the mid-50th to mid-60th percentiles globally (1996-2011), placing them not in the same cohort as Western Europe (with Nordic Europe holding consistently in the 90th percentiles) but with South Africa, Brazil and Peru. The Czechs, moreover – the most economically advanced of these lower performing new EU member states - have moved downwards from scores in the high 70th percentiles in the mid-1990s to a plateau of low to mid-60th scores by 2000, from which they have yet to rise. The business executive survey of the World Economic Forum Global Competitiveness Report 2013-2014 ranked the Czech Republic 117th out of 148 states, just above Libya. The Republic was thus rated equal to Ukraine for the "diversion of public funds to companies, individuals, or groups due to corruption," placing it fifth worst out of twenty two post-communist states, behind Ukraine, the Kyrgyz Republic, Moldova and the Slovak Republic.[7]

Evidently political patronage, control of corruption and the corrupt diversion of public funds are not the same thing, the problem being how to make sense of how they may be linked and what this might tell us about the dominant dynamics of party and state development. Kitschelt noted recently how abstracted Central European party scholarship has been from political-economic understandings of power relations and urged new accounts to take more notice of the trajectories of economic and institutional transformation.[8] Arguably it is the loss of this structuring political economic context from the party state debate, particularly after the completion of the initial transition that helps explain why the region's political corruption has remained relatively under-theorised in comparative terms, despite compelling studies of individual cases.[9]

Worsening corruption scores are actually common to all of Europe including the north-western edge, historically the region's leading political and economic frontier. And this confounds the majority of existing theories about the causes of corruption since these are typically founded in analyses of the developing world and developmental factors supposedly long-resolved in capitalist democracies.[10] The rise in European political corruption being a deepening trend, therefore, but more severe in Central Europe, the remainder of this section outlines structural shifts in political economic context and the dialogic, adaptive party response.

The political economy of party systems change: the rise of corporate brokerage parties

Through the 1960s and 70s in Western Europe, as modernisation, technological change and the successes of the welfare state transformed the social, occupational and religious basis of mass parties, increasingly 'catch-all' parties sought to widen their formerly 'encapsulating' ideological appeal. But the combination of oil shocks, inflation and de-industrialisation through the 1970s and 80s brought declining growth rates and a shift to neo-liberal orthodoxies in which governments increasingly traded unsustainable public debt for an acceptance of accumulating private debt. Whether next characterised as cartel parties,[11] 'electoral professional' parties[12] or 'modern cadre' parties,[13] Western European parties subsequently shifted to the privileging of the party in public office over the other dimensions of party organisation and identity as party governments sought to manage their increasingly constrained steerage over national political economies. In the face of declining membership and the growing instability of electoral support, parties sought agreements to guarantee state funding and privileged access to state media, and to moderate programmatic differences so as to stabilise competition between organisations now 'socialised' by long periods in government.[14] By the 1980s and 90s a rising cohort of politicians no longer saw politics as a vocation but as a job in which they were less the representative agents of civil society than professional 'agents of the state'.[15] As voters retreated to their increasingly particularized spheres of interest political leaders withdrew into the closed world of the governing institutions: both were "cutting loose", with negative consequences for democracy's popular and constitutional components (Figure 1).[16]

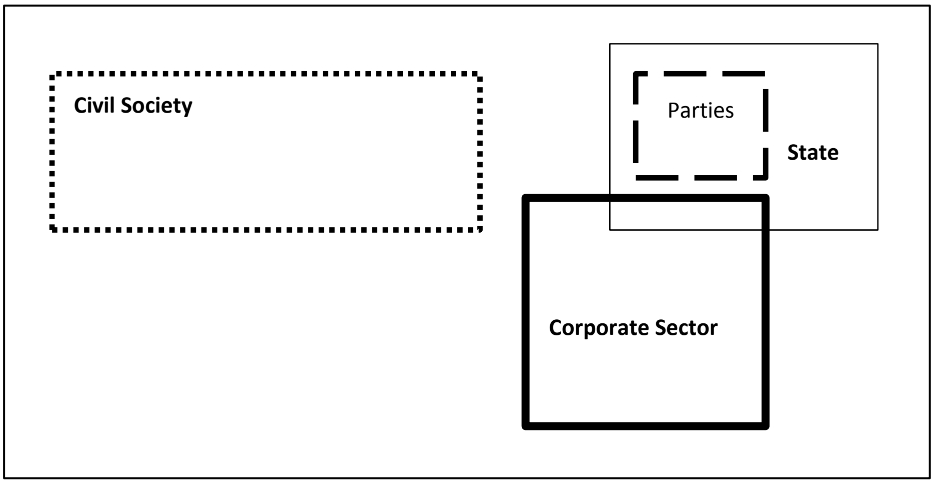

Figure 1. Cartel/cadre/electoral professional parties in dis-embedded markets

It was into this political economic context that Central Europe's post-communist political parties surfaced. But these new political actors presided over capital-poor emerging markets and yet had everything to prove electorally. Where Katz and Mair sought to emphasise the rising dependency of Europe's already ideationally diluted 'catch-all' parties on the state, therefore, Central European parties necessarily emerged as 'instant' catch all parties but with, if anything, intensified state dependencies. As Innes argued,[17] for their first decade of development the challenges of dismantling the planned economy, reviving economic growth and preparing for EU entry meant the dominance of valence issues around which Central Europe's political parties had to compete more in terms of their immediately credible *modus operandi* (populist, technocratic or nationalist) than programmatically.

But there were important variations within this pattern of party evolution: Kitschelt *et al* [18] characterised Communist regimes as having taken three forms: patrimonial (Romania, Bulgaria), national-accommodative (Hungary and Poland) and bureaucratic-authoritarian (Czechoslovakia). However, Innes showed that the legacies of patrimonial and bureaucratic-authoritarian communism were similarly dysfunctional to the subsequent deepening of programmatic competition since the political elites emerging from both regime types were scarcely embedded in anything resembling identifiable social constituencies or ideological commitments, which left the resulting elites the most unconstrained by organisational or ideational forms of accountability. The significantly higher rates of anti-communist dissent under nationally accommodative communism proved more conducive to party-developing elites who both sought and were relatively constrained to add programmatic substance where possible. The latter more quickly resembled their professionalised contemporaries in Western Europe, but they faced even greater political-economic challenges.

In electoral terms, both Central and Western Europe have shared an increasingly constrained arena for party competition within prevailing fiscal orthodoxies, and even more so following the 2008-financial crisis. Central Europe's emerging markets, however, have experienced a radically concentrated version of Western European de-industrialisation, the same Single European Market constraints but also an intense region-wide tax competition to attract FDI,[19] among the lowest employment rates in Europe and a welfare burden arising from economic transition and aging populations in which human capital investments are relatively crowded out by pension and unemployment expenditures.[20] Over the last ten years the electoral space for competition over economic issues in Central Europe has consequently narrowed to the point where the region's most economically neo-liberal leftists – the Polish and Hungarian social democrats – have lost ground to parties of the populist right.

Hence in matters of party organisation we can see multiple ways in which parties in the EU's old and new member states have converged on increasingly 'professionalised' features, albeit arising from different developmental paths. Katz and Mair had already argued in the 1990s that West European party membership was becoming largely symbolic: valued by political elites for its contribution to the legitimizing myth of a party over any informational or representational roles.[21] More recently Van Biezen, Mair and Poguntke have shown that not only are party memberships falling everywhere across Europe they are falling steepest in Central Europe, suggesting the region shares in the structural trends of rising voter de-alignment over and above the expected collapse of Communist Party memberships. They regard those remaining more as “the outer ring of an extended political class” than as civil societal ‘delegations’: rendering them a negligible organisational resource.[22] Across Europe, therefore, party work and campaigning are now necessarily capital intensive and contracted-out to think tanks, professional PR agencies and media experts. As Kopecký, Mair and Spirova conclude, the relations between ordinary members and party elites are characterised by fragmentation: the relative independence of organisational layers (‘stratarchy’) and mutual autonomy.[23] In sum: European parties across the board have become both more fiscally and programmatically constrained and more organisationally independent from voters than at any point since the creation of mass political parties.

The characteristics of the corporate brokerage party

But Europe’s political economies have taken another turn since the 1990s. Insofar as the business sector was present in the above-mentioned party types it was discrete: subsumed into the structural political economic context. Consequently these models need updating to capture the dramatic increase in direct interactions between governing political parties, the state and the corporate sector in the most deeply marketising of Europe’s political economies. Following Kitschelt’s insistence that party systemic adaptations are contingent on the changing political economy, the most significant shift across Europe over recent decades is in the drive to the ‘consolidation’ (liberalisation and privatisation) of fiscally pressured states and the corresponding rise in directly commercial, rather than consultative, party-corporate relations and in the political power of business relative to other societal interests.

Rational governments in modern market societies have long sought to incentivise business performance on the basis that corporate executives control investment and economic activity and hence the virtuous circles of growth, prosperity and rising living standards for which governments hope to be rewarded.[24] But the neo-liberal turn has both intensified and altered the character of this structural dependency in several key respects. Driven by a long-term decline in economic growth in the OECD world[25] Europe's political elites since the 1980s have embarked on the state's financial consolidation via the privatisation of enterprises but also increasingly, of welfare services and the 'contracting out' of administrative and 'public' service tasks. The result is intensifying interactions between socially dis-embedded political parties and corporations intent on capturing the relatively secure business of public goods provision.

In an era of intensified global competition for investment, regulatory capitalism and fiscal consolidation, European political parties in the most radically liberalizing - that is corporatizing - states may be usefully understood as having entered a further stage of adaptive development towards a corporate brokerage mode whose overriding purpose is to serve the interests of business. What dictates the extent of this shift and whether it occurs in the public or the private interest logically depends on two basic dimensions: on the degree to which governments adopt strategies of state marketisation (the frequency of party-corporate interactions) and the extent to which that process is regulated (the quality of party-corporate interactions). Those regulatory dimensions, particularly given weakened inner-party systems of hierarchy and ideological constraint Europe-wide, necessarily include self-regulation, in the form of political elite values and their ethical standards, as well as institutional regulation.

It is well established that Central Europe experienced significant variation in the value-commitments of its new political elites and in those governing cadres who proved resilient over time.[26] However, the significance of this vocational/ideational – and hence for our story self-regulatory and regulatory - factor for subsequent party-state development has tended to fall away from the rationalist-institutionalist-dominated discussion. But elite values are critically important to this story: Firstly, because political corruption is a personal decision. Secondly, because neither the distribution of economic assets nor the regulatory environment in Central Europe were inherited from an era of embedded liberalism but had to be built by the very political elites who found themselves in a collaborative relationship with the nascent business elite from the outset. The possibility of a vicious circle of low vocational commitment to the public interest, 'insider' privatisation, weak regulation of the developing corporate-political relationship and the systematic corruption of politics over time was thus peculiarly high. Variation in the quality of these factors necessarily influences the core characteristics of the political system: the integrity of political discourse, the quality of public policy making and the distribution of resources.

By abandoning Communism Central European states initiated intense liberalisation. But the region's transformation of property relations didn't stop at the transitional essentials of market-making, as the fading corporate dimension in the party systems literatures implies. Along with Western Europe's most liberal economies this region has seen a continuous reallocation of the state's economic, administrative and welfare functions to the private sector but under conditions of significantly institutionally weaker parties, states and regulatory provision. Through privatisation, access to government-backed banking credit, government contracts, tax and trade concessions, opportunities for arbitrage and more recently, public-private partnerships and private finance initiatives, Central Europe's governing parties have presided over increasingly porous business/state boundaries, providing politicians with a growing range of opportunities for direct relationships.

In those – the majority – of Central European states that lacked vocational democratic elites to begin with, exceptional levels of elite discretion thus met with a succession of internationally encouraged political economic imperatives: to dismantle the state economic monopoly, privatise, encourage foreign investment, foster a domestic business sector and, under the rubric of the new public services management, to commercialise remaining state functions wherever possible. The result is an environment in which the continuous strategic prioritisation of business opportunity combines with no very obvious political elite incentives to regulate that process, even as it opens up unprecedented opportunities for rent-seeking, thus promoting both state and market failures. The irony of the prescription that states should improve their rational capacity by becoming more like firms, *i.e.* market actors,[27] is that it encouraged an increase in directly exploitable relationships just at the point where the revenues from privatisation were running dry.

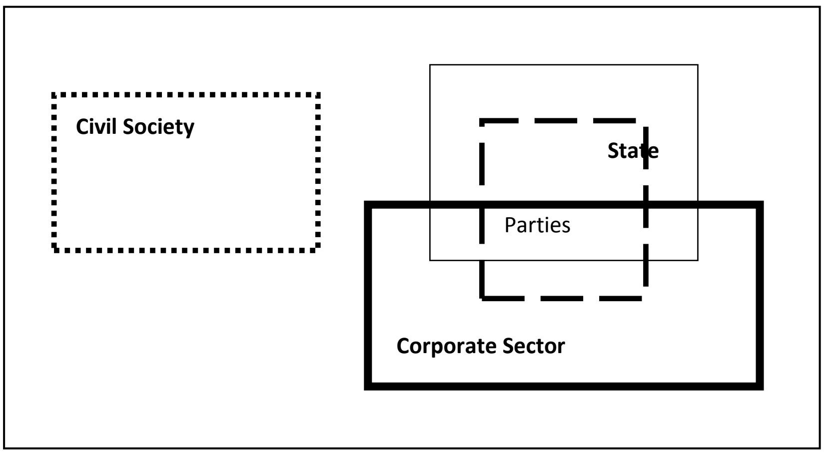

Figure 2. Corporate brokerage parties in neo-liberal regimes

According to Kopecký and Biezen, the uses of party patronage are stable if not declining across Europe rather than increasing as, for example, the cartel party model would have anticipated.[28] But the contention here is that the classic political science focus on changing party, state and civil society relations encourages an interpretation of stabilised rates that elides the political economic context: but in marketising states, control over corporate brokerage opportunities matters more than pervasion. There is not so much a gap in the literature as an unrealised invitation established by these scholars' findings: their conclusions strongly suggest the possibility of either publicly corporatizing or privately entrepreneurial purposes for patronage, but this is left largely unexplored as beyond their focus. The thesis here is that European party elites in highly marketised states have become cartelised and network actors that now face outwards towards a relatively powerful business sector, as the outsourcing of patronage confirms. Given their comparatively low regulatory standards and still less socially embedded political party systems, the functions of 'political' patronage in Central Europe are more likely to be unmoored from the electoral and party-organisational purposes we conventionally associate with it.

The 'corporate brokerage party' is an ideal type: an attempt to characterise a newly dominant *modus operandi*; it is not intended as an exact description of individual parties. The proposition is that in the era of regulatory capitalism parties in the most open liberal economies track beyond the ostensibly self-contained primacy of the party in public office to a form in which corporate brokerage is functionally dominant. In less institutionally robust environments the higher degrees of freedom around party-corporate relationships produce systematically higher rates of corruption. In such conditions the professionalization of political careers characteristic across Europe is likely to travel furthest towards monetised political entrepreneurship for private gain. By exploring the crucial case study of the Czech

Republic and placing the party-corporate relationship at the centre of the analysis, the aim is to test the empirical validity of the weakly regulated version of the corporate brokerage model.

The Czech Republic: corporate state capture in an open society.

The Czech Republic has been chosen as a confirmatory (least likely) crucial case. Gerring, following Popper, argues that "confirmations should count only if they are the result of risky predictions; that is to say if, unenlightened by the theory in question, we should have expected an event that was incompatible with the theory – an event which would have refuted the theory".[29] The general view of the transitions literature was that systemic corporate state capture was an issue for the former Soviet Union rather than for the prospective EU member states. Subsequently O'Dwyer's *Runaway State Building (RSB)* registered the Czech state as among the most Weberian in the region and argued that this resulted from the Republic's high party system institutionalisation, understood as low levels of fractionalisation and electoral volatility, limited party turnover, a relatively high degree of "closure" to new entrants and in most cases, bi-polar competition. Institutionalisation was what made a party system "responsible."[30] But this reading neglects the collusive realities of Czech party politics, the political elites' collective refusal to professionalise the state administration or to curb corruption. Kopecký also shows that the level of vertical accountability within Czech parties is negligible, rendering their 'institutionalisation' formal.[31]

Grzymała-Busse's *Rebuilding Leviathan*[32] was more critical of Czech party-state developments because it still considered robust competition the key to state-building but defined it differently. *Leviathan* argued that clear, critical and monitoring party competition and plausible governing alternatives motivated rational actors to take the state out of the political game, since the credible threat of their imminent replacement made this prudent. The founding flaw of the Czech, Slovak, Latvian and Bulgarian systems was that they had embarked on transition semi-formed in terms of political competition. The resulting dominance of single parties meant less state reform and explained their higher levels of state exploitation. The difficulty with *Leviathan* is that its focus on party competition and funding cannot capture the ongoing political economic transformation of the state and the widening opportunities for individual – predatory - gain. *Leviathan* demonstrates that the unwillingness of less competitive party systems to build Weberian states allowed parties to opportunistically exploit the state to secure their own survival. But I argue, in addition, that the refusal of regulation under the guise of neo-liberalism (Czech Republic) or more clandestine forms of de-institutionalisation (Bulgaria, Romania, Latvia and more erratically, in Slovakia) combines with the increasing corporatisation of states to enable the *systematic* commercialisation of politics for individual gain.

It is also worth pausing to appreciate the discrete normative optimism in the existing rationalist-institutionalist literature, specifically, how many of its methodological assumptions are rooted in the post-war 'Golden-Age' of growth, an era long gone. These studies typically depend on assumptions about how, once a plurality of parties begins competition the mechanics of competitive polyarchy – variously defined - sustain the necessary incentives to take the state out of the political game. But even in 1956 Dahl insisted no set of representative institutions was sufficient to guarantee effective polyarchy: the social composition of a political system, the nature of the conflicts which divided citizens and the development of values and political cultures supportive of democratic practices were all equally vital determinants in practice.[33] And even that rejoinder is now insufficient: Dahl's diagnosis assumes a level of effective institutional connection between civil society and political parties that proved contingent on Europe's post-war economic performance and the production regimes that propelled it.

The theoretically pluralist background to the rationalist-institutionalist literature suggests that Central Europe's more corrupt cluster of states – Slovakia, Bulgaria, Romania, Latvia, should have improved their state-building over time, the Czech Republic most of all. As an open society that experienced clear state-ness (after 1993), relatively functional administrative and fiscal legacies, low inequality, relatively high and uniformly distributed FDI[34], the rise of a credible electoral opposition and international integration in NATO and the European Union, Czechs should have seen an increasingly robust party competition and hence an improving party-state relationship. As such the Czech case is the least likely, and hence the apt confirmatory case for this paper's argument, which is that the chronically high political corruption rates in half of the EU's new member states are caused by the low regulation form of corporate brokerage party systems development. This party form originates in low vocational commitment to the public interest among founding elites or the later crowding-out of more vocational party elites. What develops are parties in which individual ministers operate as notably independent actors, producing an unstable core of elites who cooperate insofar as cooperation sustains the development and maintenance of political-corporate network relationships. These networks are developed and maintained through successively: 'insider' privatisation, weak regulation of the developing corporate-political relationship and marketization of the state's administrative and welfare functions. An examination of the least likely case - within the inescapable constraints of studying the covert practices of corruption - should illuminate the larger class of cases.

Vocational versus non vocational elites and emerging elite discourses of the state

To begin with the question of elite values and self-regulation: the partition of Czechoslovakia in 1992 had given Václav Klaus and Vladimir Mečiar, the charismatic leaders of the republics' then strongly dominant parties, opportunity to shape the institutions of their two new states according to their respective priorities. The narrative of Klaus's ODS - the dominant faction to emerge out of the revolutionary Czech Civic Forum and also heir to many of its resources - was neo-liberal and vehemently anti-regulatory. A parliamentary party with many technocrats of both Communist and non-Communist Party backgrounds, the electoral strategy of the ODS was to depend on Klaus's highly charismatic style, specifically, his vision of a liberal, free market-embracing Czech society. Klaus's decidedly vanguardist rhetoric appropriated the "scientific" culture of socialism and the "leading role of the party" claims of the past and remarketed them in liberal capitalist terms.

The political implication of this rhetoric was that the economy and not institution-building was the engine from which all social transformation, including democratisation, would follow. In practice ODS-led governments opposed regulation across the board while deploying administrative discretion to enable an 'insider' privatisation process that systematically excluded foreigners.[35] Five years into the process the most powerful beneficiaries of voucher and standard privatisation were barely regulated Investment Privatisation Funds (IPFs) and the state itself. The former frequently exercised venal control over enterprises while the state as of 1995 still retained 32.6 per cent of total assets as 'residual state holdings': the National Property Fund assuming a dual role as administrator and privateer of state assets that was riven with conflicts of interest.[36] These conflicts were replicated in banking. The emerging government policy of recapitalising and relieving banks of bad loan debt at tax-payers expense perpetuated the ability of banks to extend expensive loans to already indebted companies, a situation the Economist described as a "deadly combination of mismanagement, orgiastic lending (often to the bank's own shareholders) and more often than not, fraud".[37] The result, anatomised by Drahokoupil, was the emergence of a political-business power block built around the three activities of privatisation, provision of soft-credit and ownership concentration.[38]

The Czech Republic's first right-wing coalition had not only opposed new regulation but done much to destroy the regulatory frameworks established by the more dissident-influenced federal government, inadequate though they had been. The coalition had blocked legislation that would have provided for shareholder rights, investment fund regulation, laws on conflict of interest and disclosure requirements. In December 1993 it abolished the state prosecutor's function of general supervision over the state administration and the possibilities of external audit were also minimised. In July 1993 a National Audit Office was established whose president and vice-president were both ODS appointments. The new NAO was stripped of its previous powers to audit where it chose, and now depended on initiatives from parliament, government or the president.[39] The conventions were set, in other words, for non-regulation in the name of the market, and for the politicisation (or more prosaically, ministerial control) of the regulation that there was.

The new Republic was a strongly secular state that lacked the depth of debate on values emanating from, say, Poland's Catholic, labour union and wide-spectrum dissident heritage, and in partitioning[40] the federation in 1992 Klaus had detached the Czech Republic from its remaining national question and from the value-contestation that that had entailed. What emerged as the central platform of Czech politics against which all other parties had to compete was consequently a secular nation-building philosophy framed in "combat-task" ant-state, anti-regulatory, terms. This path, according to Klaus, was a return to the entrepreneurial culture of the First Republic momentarily side-tracked by Communism, a path that the ODS would go on to defend against an exaggerated external threat, one incarnated at first as Slovak nationalism but latterly as the encroachments of a conspiratorial, bureaucratic European Union. Klaus's neo-liberal narrative was consistently presented as the only valid democratic idea. Moreover, by the time the centre-left Czech Social Democratic Party had emerge as a credible opposition party – a reformation of the historical party that was increasingly attractive to the complex factions of disillusioned members of the Communist Party – their emphasis was on the material aspects of social cohesion and state provision.

The systemic costs of non-regulation were first felt through 1996-7 when failures of economic restructuring and regulation induced a second recession and a series of large bank collapses – by 1997 non-performing loans accounted for over 25 per cent of Czech GDP, compared to less than 5 per cent in either Hungary of Poland[41] – and this coincided with major party finance scandals. The heyday of the Klausian project was coming to an end: as Drahokoupil shows, by 1997 the material basis for predatory games of ownership concentration was largely exhausted. Shortly after Klaus was forced to stand down following the resignation of his own ministers, President Havel delivered a "State of the Union" address (9 December 1997) in which he lamented the corruption of Czech democracy and the self-serving character of the Klaus administration's anti-regulatory approach to development. By February 1998 the Civic Democratic Party, its coalition partner the Civic Democratic Alliance and the Social Democrats were all subject to police investigations for corruption in party finances and an interim technical administration under Josef Tošovský governed until early elections were organised for June 1998. But Klaus's fortunes revived following an ODS electoral campaign predicting the demise of Czech democracy if that party were not to receive a majority. As in 1992 and 1996, Klaus presented this election as *the* crossroads to democracy and represented the rising Social Democrats as intrinsically illegitimate players.[42]

In this context the clearest electoral strategy for the Czech Social Democratic Party was one of "cleaning up the state" and their "Clean Hands" campaign of the 1998 election proved the tipping point in their popularity. However, lacking a parliamentary majority, the ČSSD was forced into an Opposition Agreement with the ODS under which the ČSSD were allowed to govern conditional on the ODS gaining the Speakership of Parliament, the Chairs of key committees and controlling positions in the public administration. According to the former Senate Vice Chairman, Edvard Outrata (Independent), the Agreement "divided all the most important jobs between parties while the ČSSD pretended to govern." As such it "reintroduced the worst aspects of the Petka": the group of five leaders of the main coalition parties in the 1930s who had colluded in entrenching their control of the state.[43] The internal ČSSD story was that under Miloš Zeman's leadership strategy of recruiting players from rival leftist groups the party had become prone to a factionalism in which the party's more vocational figures were increasingly crowded out. The left-wing paper *Pravo* reported that ČSSD supporters were disillusioned by 'unfulfilled promises', 'lack of direction' and 'nepotism' after only three months in government.[44] Within a year the 'Clean Hands' campaign had been cancelled after members of both parties were found to have instrumentalised investigations for their own purposes.[45] Those privatisers who wished to continue the predatory games of the Klausian period had shifted their attention to the Consolidation Agency and, as Zeman later admitted, found new backers within the Social Democratic government.[46]

Their rhetoric notwithstanding, the ČSSD's subsequently poor regulatory record, repeated scandals and obstruction of anti-corruption offices over successive governments shows that both sides of the political aisle established personal networks with business and enabled corruption. Indeed, Stanislav Gross's (2004-2005) government ended after just nine months after the Prime Minister himself appeared unable to account for his acquisition of a luxury apartment.[47] Richard Falbr, former leader of the Confederation of Czech and Moravian Trades Unions (ČMKOS), ČSSD Senator turned MEP describes the Czech political system as having shifted from one of "basic artificiality" (given its weak social roots) in the early 1990s to one in which "corruption is the rule". Interviewed in 2011 he concluded: "The number of actual Social Democrats in my party at this point is an absolute minimum".[48]

The changing political economy of the state and the non-partyness of political control

Although fluctuating, Czech privatisation revenues continued to be sizeable up to 2005, when they still constituted over 3% of GDP, but their eventual decline was inevitable. In the face of continuing fiscal pressures, however, government interest could legitimately turn to the potential of public/private partnerships (PPP) in all their variety: the latest solution in advanced capitalist states to the deepening dilemmas of tightening government finances. The Czech Republic duly adopted a PPP policy through regulation 7/2004, with further acts regulating PPP issues: the Concession Act (139/2006) and the Public Procurement Act (137/2006), which updated the first public procurement act of 1995 and its sequel in 2004.

The problem for analysts, however, is that while these partnerships are comparable in importance to privatisation they are less visible and harder to monitor. The partnership possibilities involved are complex and range across all types of long-term arrangements between public authorities and private institutions, including but not limited to concessions, build-operate-and transfer (BOT) schemes and varied forms such as Public Finance Initiatives (PFI) and Public Private Partnerships (PPP). These techniques exist in addition to the simpler practices of outsourcing government work to private business, such as legal and accountancy firms. The extent to which these methods were likely to increase the efficiency of public services provision or to enable political corruption was contingent on the motivations and skill-sets of the politicians and public officials involved and the regulatory framework in which they operated. But the financial resources involved were quickly huge.

Between 2004 and 2008 Czech spending on public procurement rose from 22. 65 billion Euros to 37.25 billion Euros: an exceptionally sharp increase by the standard of other EU member states. The number of purchasing authorities publishing tenders nearly tripled, from 260 to 744 in just three years; the number of actual published tenders rising from 471 in 2004 to 2,449 by 2007.[49] By 2008 Czech general government procurement and state owned utilities procurement, as a percentage of GDP, was the second highest in the OECD (the Netherlands was first) at just over 25%, with just over 50% of that expenditure administered at the sub-central government level.[50] In 2007 and 2011 Czech general government procurement alone constituted a third of all government expenditure and ranked fourth highest in the OECD at 15% of GDP (behind the Netherlands, Finland and Sweden).[51] Thus, the extent to which Czech political elites became institutionally outward facing to the corporate sector and the financial resources involved increased significantly following privatisation. Privatisation, moreover, had been relatively centralised via the Czech National Property Fund, dissolved at the end of 2005, with the remaining agenda transferred to the Ministry of Finance. But that business arm of the state also remained significant. At the end of April 2008, the Ministry continued to exercise ownership rights and to administer stakes in 74 firms: the total value of these stakes amounting to more than 78.6 billion CZK. Out of this portfolio, four firms were strategic companies where the Ministry held controlling stakes (the percentage indicated in parentheses): the monopoly electricity producer (CEZ; 65.34%), the monopoly domestic and international oil pipeline systems (Cepro and MERO; 100% each), and the national air carrier Czech Airlines (56.92 %). These firms all continue to carry substantial importance for the Czech economy.[52]

The question that follows, therefore, is whether these developments simply constituted the legitimate new strategic partnerships of a fiscally pressured capitalist state or whether something less public spirited was afoot. And to answer this we need to examine how prudently designed, operated and regulated this new architecture of public spending has been. Having established the dominant neo-liberal, anti-regulatory discourse of the initial transition it is necessary to fill out the institutional picture that followed on, now sustained by all political sides.

As Kopecký points out, while Czech political parties have been relatively weakly socially rooted, as indicated by modest party memberships, low levels of party attachment, low voter turnout *etc*., they have nevertheless managed to reinforce their institutional strength through numerous interventions over time including modifications to constitutional, electoral, parliamentary and other legal norms, all designed to shore up the privileges of the early established parties against latecomers: a decidedly less positive reading of party institutionalisation than O'Dwyer's. What Kopecký's expert and insider survey further concluded, however, is that "the dominant motivation for parties to engage in patronage practices is not their need to satisfy partisans and party supporters with jobs…but rather to control institutions that are seen as important in terms of policy creation, control, and implementation." Thus "heads of important sections of ministries, such as those who make decisions concerning investments or strategic financial decisions" are likely to be replaced by politically sympathetic appointees; patronage is possible via the relevant minister in all nondepartmental agencies and commissions (NDACs) "but in practice it happens only in strategically important agencies, such as the Czech Consolidation Agency, or the Medicines Commission".

According to Kopecký this top level patronage is technocratic and mainly used to "translate parties' programmatic commitments to real policy outcomes …with parties as organisations playing no meaningful role in the coordination of appointments or in their recruitment for those appointments."[53] However, such technocratic functionalism would imply important corollaries: a concern to optimise the knowledge base and deepen the technocratic capacity of the state administration, for example, but as we shall see such reforms have been strenuously avoided. The focus of ostensibly political control is nevertheless consistent with a preoccupation with control over public procurement.

What happened to Czech state reform?

From the early 1990s onwards the ODS had justified the failure to professionalize the civil service as an anti-bureaucratic principle and had also undermined the limited reform efforts of the Social Democrats. Thus, until 2014, the administration remained based on the (un-enforced) Labour Code of 1965: personnel management was decentralised and without central coordination; each ministry and other central state bodies, like the Czech National Bank, acted as *de facto* independent employers with the power to recruit, promote and dismiss their employees based on often discretionary internal working rules issued independently by each political/administrative authority.[54] Without a new civil service law the status, conditions of service, educational requirements, obligations and rights of civil servants were neither comprehensively regulated nor guaranteed. This failure to professionalise the civil service was of critical importance in enabling non-transparent network relationships given the increasing porosity of the state to private business interests, first through privatisation but latterly through outsourcing, public procurement and other partnership arrangements.

The Social Democrats' attempts to reform the civil service in the late 1990s and early 2000s serve to illustrate the isolation of its remaining vocational ministers. Already by the late 1990s the only ČSSD minister committed to pushing through a reform bill was Vladimir Špidla, the new Minister for Labour and Social Affairs and a grassroots politician who had joined the party in 1990 but entered parliament in 1998: a popular technocrat on the (anti-communist) left of his party but hopelessly weak in party faction terms. Špidla had presented a draft civil service law in June 2000 only for a cabinet discussion to be delayed until November. By December, intensifying EU criticism of the absence of reform drove Zeman to place Špidla's bill before the Chamber of Deputies. As a minority government, however, the ČSSD needed more support and the ODS opposed it. One and a half years later the KDU-ČSL eventually agreed to support a bill if there was a similar measure at the level of self-governing regions (localism being their key platform), a proposal which postponed the central 'Service Act' while the acts on self-governing regions were prepared, through 2001. Act 218/2002 was eventually pushed through parliament in mid-March 2002 by one vote.[55]

Act 218/2002

"The Service Act" was finally adopted in May 2002. It was meant to be enforced from the beginning of 2004 and fully implemented by the end of 2007. But the bill was flawed and weakened further in the second reading thanks to 101 amendments. Among these was the deletion of the provision offering tenure to civil servants which Klaus opposed on the basis that the ODS was "against creating a specific class of people".[56] According to the EU/OECD assessment of the Act, “Repetition and excessive detail are commonplace throughout the text to the point that at times it is very difficult to understand the real contents of the law…The Act has 254 articles and three annexes, which is quite an unusual length… [it] blurs the issues at stake and [is] an Act of poor quality which will be difficult to implement.”[57]

Though faulty, the new law would have affected eighty thousand state administration employees, improved wages and required higher educational attainment. All-importantly the Service Act would have curtailed political appointments (the World Bank had criticised the exceptionally high rates of turnover within ministries, sometimes approaching 60% following each change of government). If implemented ministers would have appointed only their own deputies and spokesmen[58] with the remainder passing to a professional hierarchy headed by an autonomous Director of the Civil Service. The implementation date of Act 218/2002 was not just repeatedly postponed, however, but eventually dropped. In November 2006 the Social Democrat government adopted a Resolution (Number 1232) returning the basic management of the civil service to the Ministry of Interior. In August 2007 the new ODS-led coalition postponed the Act again, to 2012, and then announced it would replace it, suggesting it would prepare a new law in which personnel decision-making was maintained in the hands of individual ministries.[59] Three years into the last ODS-led coalition and the abandoned law remained without replacement by new proposals. Following a government crisis in June 2013 (over corruption) and early elections in October 2013, a new coalition of the Social Democrats, the new ‘anti-corruption’ centre-populist party ANO and the Christian Democrats proposed to amend the original Act 218/2002. But the bill, eventually approved in October 2014, retains the political leadership of the civil service in the form of a Deputy Minister for the Civil Service with powers of appointment. The EU warned that without further reform of appointments procedures and salary transparency EU funding for the Czech operational programming would be suspended. President Zeman filed a complaint regarding the act to the Constitutional Court.[60]

In the light of significantly increased interactions with the private sector and the technical difficulty of managing such contracts (a complexity that has led to their repeated failure in the UK and the condemnation of PPP and PFI as a poor value-for-money strategy by the UK's Parliamentary Public Accounts Committee[61]), the refusal to de-politicise the civil service demonstrates a fundamental lack of interest in technical efficiency and fiscal integrity. This failure includes the non-regulation of revolving doors of public servants to the private sector and of conflicts of interest among general civil servants. It also leaves weakly framed and barely enforced financial disclosure rules for high level elected and appointed officials.[62] The sustained outcome suggests an enabling administrative environment for the evolving corporate-political relationship that lacks basic regulatory constraints.

A footnote on Špidla's attempt is telling. According to the original Act 218/2002 certain clauses (article 254) were supposed to be implemented immediately, with Articles 11-14 creating a General Directorate and General Director of the Civil Service. Instead of the independent General Directorate of the Civil Service, however, only a 'Section' was ever established, under Špidla, in June 2002, with sixty personnel in the Office of the Government.[63] The Section's role was to prepare documentation for the anticipated General Director but one was never appointed and despite three more years of Social Democratic government this non-appointment meant preparatory work "written straight for the shelf".[64] The Section was changed in May 2005 to the Department of Human Resources Management and downsized to fourteen people. In 2002 Špidla had launched a public finance reform promising a 2% cut of the civil service every year; under the auspices of ČSSD Prime

Minister Paroubek, however, the Section of the Directorate General of the Civil Service was chosen as the Government Office's '2%'. Špidla was nominated Czech European Commissioner in 2004. By the early 2000s the ČSSD's more vocational elites had apparently been largely sidelined by corrupt practices, internal party network disputes and the growing dominance of formerly senior communists in the party's top ranks.[65]

Regulatory facades

Could this elite opposition to civil service reform be interpreted as a neo-liberal approach to administration that eschews the bureaucratic conventions of a more statist age in favour of a flexible but regulated managerialism? If the regulatory codes that governed it were coherent or binding such an argument might be made. Unfortunately, the evidence for a duplicitous approach to regulation exists across the board. Because corruption is a major issue of public and media concern all political parties must be seen to address it and so they do, in endless initiatives, anti-corruption programmes and public decrials of the latest scandals afflicting ministers and their subordinates. If we examine the façade of regulation versus the practice, however, the discrepancies have been consistent. Czech governments have become adept at playing a double game in which multiple anti-corruption initiatives are launched and publicised at both the parliamentary and ministerial level because the leadership is safe in the knowledge that none of these projects will gain traction. Under the continuing rhetorical justification of liberal market development, for example, lobbying has remained unregulated under all administrations: the main force for reform has come from professional lobbyists wishing to distinguish themselves from the dominant, unofficial lobbies. But any bill that might make it to parliament with NGO and lobby group sponsorship seems doomed to fail: earlier attempts in 2009, promoted by Social Democrats, were voted down in the Senate by the ODS. As of now there is no specific obligation for registration of lobbyists or for the reporting of contacts between lobbyists and public officials.

At the ministry level the evidence suggests that regulations adopted in response to corruption scandals or required by international organisations were simply not-implemented. Back in 1999, under Špidla's influence and under growing pressure from the EU to improve state function, a Government Programme for Combating Corruption (PCC) was adopted on 17th February and re-adopted in more developed form again in 2001, 2002 and 2003. But it soon became clear that the PCC was so notionally implemented that many of the agencies with roles in the Programme had little knowledge of it.[66] By 2003, moreover, the EU/OECD sponsored organisation SIGMA (Support for Improvement in Governance and Management), highlighted the following obstructions to clean government in the Czech Republic: a Czech Bribery Law that was broadly in line with EU standards but which was unsupervised and so ineffective; a 'dormant' Civil Service Act; a Conflict of Interest law dating from 1992 which applied to no-one below the level of Minister or Administrative Head of Department, for which there was little proof of compliance and which provided no sanctions for violations; a weak 'general duty' to avoid conflicts of interest stated in a broadly un-enforced Labour Code and a weakly developed and barely implemented Code of Ethics for public officials and elected officials; the absence of effective protection for whistle-blowers despite a legal obligation to report corruption.[67]

SIGMA's writ ran out with Czech EU membership in 2004, however, hands-off monitoring continued via the OECD's working groups on its Governance Conventions. But as with the EU pre-accession period, Czech governments have proven willing to comply with soft measures such as publicising the existence of OECD Conventions and the country's signatory status, but unwilling to act on substance. The OECD's 2009 report regrets that no action had been taken in the Czech Republic to introduce legal liability for foreign bribery despite requests to fulfil this legal cornerstone of the Convention dating back almost a decade. Czech authorities explained to an OECD investigative group in December 2007 that "experts from the Ministries of Justice and Interior were looking at the issues," but when the OECD required more "convincing action" it was ignored.[68] As of the time of writing the Republic has yet to record a single indictment for foreign bribery. EU efforts to encourage state capacity building in terms of regulatory impact assessments (RIA) and policy audit have also fallen on stony ground. The Czech Legislative Rules of Government introduced a RIA requirement in 1998 after strong EU encouragement but it only entered into force in January 2008 under the technical government of Jan Fischer. But with the Department for Regulatory Reform based in the Ministry of Interior the RIA unit had no power to monitor or supervise other line ministries which have subsequently shown no interest in adopting the standards.[69] With formal international obligations unfulfilled over many years it appears that the Czech political executive has developed a culture of sham compliance with formal rules or simple refusal to comply.

Given the high frequency of political corruption and the limited progress made on the implementation of previous years' anti-corruption strategies, the European Commission urged Czech governments to step up the fight in 2013. But again they proved willing to take only soft, non-legislative measures and made little progress on long-cycling legislative drafts to fill in the following regulatory holes: laws on the independence of the prosecution service, conflicts of interest, freedom of information, creation of specialised courts, regulation of lobbying, the Public Servants Act, financing of political parties, extension of the powers of the Supreme Audit Office, protection of whistleblowers and reform of parliamentary immunity.[70] To take political party financing as an example: the Council of Europe's Group of State Against Corruption (GRECO) evaluation report in 2011 singled out nine areas of concern in regard to the non-transparency of Czech party political funding, the most important of which was that the supervision mechanism, in the hands of parliamentarians themselves, was of a purely formal nature, and neither independent nor effective as a control mechanism. However, after several months of Ministry of Interior and Government activity in discussing a new draft law, the Government decided to maintain the status quo. The rejection of the draft bill duly prompted the initiation of an entirely new drafting process.[71] In the meantime, party spending on elections has increased fourfold since 2002, in what Haughton characterises as a "largely permissive regulatory and financial environment", with the ODS spending some 541 million crowns in 2010, against the Green Party's (SZ) 16 million.[72]

The evidence suggests that the Republic's weakly institutionalised political parties have legislated for an increasingly porous state/business sector boundary that enables them to behave as barely regulated brokerage agents between the state and the corporate sector. Absent value-based self-regulation, moreover, these fluid boundaries have enabled Czech political elites to instrumentalise government for essentially private ends. In such an environment, party survival becomes primarily a financial goal.

Evidence for corporate state capture in the Czech Republic

With no whistle-blowing protection law (but, as of 2012, an obligation to report corruption to management or to law enforcement bodies) it is difficult to publicise manipulation of the public procurement, grant subventions and policy making processes in the gift of the relevant ministers and subject to few forms of appeal. However, according to recent data compiled by

ZIndex at the Institute of Economics, Charles University, 80% of all public procurement contracts awarded by Czech ministries between 2006 -2010 were awarded without competition or "in private". Some 67% of purchases occurred entirely outside of the Ministry of Information's Public Procurement Information System (ISVZ) and a further 14% involved an identical number of candidates and winners, typically, one. Only the Ministry of Finance had more than 50% of its contracts going through nominally traceable channels (52%) and as the purse-holder to the other ministries this, post-privatisation, is unsurprising. Every other ministry, however, showed less than 30% of their procurement going through traceable channels and the Ministries of Defence, Local Development and Justice managed only 17%, 14% and 11% of transparent contracts respectively. The value of contracts awarded through these opaque channels is estimated at 276 billion crowns or roughly one-fifth of the current national debt.[73]

These findings are confirmed by both internal audit mechanisms and by public, most notably, business opinion. The Office for the Protection of Competition (UOHS) reported in 2012 that the most common irregularities concerned discriminatory and non-transparent conditions for bidders in public procurement contracts.[74] Moreover, according to the 2013 Eurobarometer business survey, fully 77% of respondents considered that corruption is widespread in public procurement at the national level and 67% in tenders managed locally.[75] In the 2013 Eurobarometer business survey, 71% of Czech respondents – the highest percentage in the EU – considered corruption a major obstacle to doing business, while 69% considered patronage and nepotism a similar impediment, again, the highest number in the EU[76].

In its annual reports, the Czech Security Information Service repeatedly raised concerns related to public procurement, highlighting undue influence and conflicts of interests in multiple sectors. The CSIS emphasised that these practices were based on informal, clientelistic structures undermining to the public authorities.[77] Moreover, in an echo of the fate of both state reform and party finance reform, the Czech Republic introduced an ostensibly far more robust procurement act in 2012, only for this to be watered down by an amendment adopted in 2013 which removed those provisions in the 2012 Act aimed at increasing transparency.[78]

When it comes to the use of EU funds, the Czech Republic had been allocated some 26.7 billion Euros in structural funds for the 2007-2013 programming period. But in 2011 the Commission discovered systemic failures in the Czech Management and Control System for the implementation of all fourteen European Regional Development Fund and Cohesion Fund programmes. The Commission duly interrupted payments for all operational programmes in March 2012 and required an action plan to amend the lack of independence of delegated audit bodies, the function of the audit authority, the national system for handling irregularities, management verifications and administrative capacity. Although the Republic appeared to have fulfilled most of the Action Plan requirements, payments were once again stopped fully or partially for another six operational programmes in March 2013, the issues cited being weaknesses in public administration, in the legislation dealing with conflicts of interest, lack of transparency in the ownership of participating companies and the bypassing of public procurement legislation.[79]

Conclusions

Director of Czech Transparency International David Ondráčka concurs that it is no exaggeration to speak of the privatisation of the Czech party system. The brokerage of private business interests dominates all the main political parties both from the top down and the bottom up since the limited membership of political parties makes their local entrepreneurial takeover easy.[80] The intensification of this process over the last ten years – the period in which the Republic's control of corruption rankings have deteriorated – is in lock step with the significant increase in the legalised permeability of the Czech state to the private sector at all levels. The shrinking market for privatisation apparently encouraged political elites to turn to wider and more continuously available state-based opportunities: public procurement, control of the remaining public utilities, the contracting out of public services and EU funds *etc.* According to Ondráčka it has consequently ceased to be appropriate to look for inner party democracy or ideological commitment in Czech political parties as party structures have become vehicles for vote buying, patronage and manipulation, primarily in the services of building and maintaining private corporate brokerage networks.

Programmatic competition and differentiation in public policy continue because successful competition remains essential to gain and regain entry into government. But Czech government has become primarily a financial market for networked individuals who use parties as vehicles for private gain, even as they continue to make public policy: politicians engaged in these levels of rent-seeking cannot be understood as acting primarily as ethical partisans. As Alexandr Vondra, Nčas's Defence Minister and Deputy Chairman of the Civic Democratic Party (ODS) put it so unselfconsciously to the leading economic broadsheet: "Self- evidently business and politics work in a mutual relationship. But it's not possible that politics would be governed by a single business project. That would be the end of politics" [81]

The ODS received their lowest ever electoral vote in the 2010 elections, the ČSSD their lowest since 1992, and two new parties, TOP 09 and Public Affairs (VV) broke through with 26.7% of the vote. Some 38.5% of the 2010 electorate voted for parties formed in the previous two years.[82] A three-party coalition combining the ODS, TOP 09 and VV came to power in July 2010, only to confirm the deep institutionalisation of the corporate brokerage mode. Despite projecting themselves as 'purifier parties',[83] TOP 09's Finance, Agriculture, Defence ministers were quickly mired in corruption scandals. But more remarkably still, VV was exposed as an entrepreneurial front for a security firm, ABL, formerly owned by the Transport Minister, Vít Bárta, although ODS Prime Minister Petr Nečas admitted that Bárta had acted as *de facto* Interior Minister since 2010.[84] The ascendance of Nečas to the premiership, moreover, may be attributed to the fact that he did *not* head a brokerage network and was consequently the only leader on which factions could agree, leaving him demonstrably weak. In the lifetime of his government there were numerous instances of his promoting apt policy solutions only to find them shut down by ministers as they ran against vested interests, most notably in the case of pension reform. Nečas's term was cut short when his chief of staff (and alleged lover) was arrested for bribing MPs and using military intelligence to spy on his wife:[85] exceptionally, Nečas resigned.

What can we conclude about this unregulated corporate brokerage party system? I would argue that the patterns of patronage-as-control uncovered by Kopecký were not primarily a technocratic response to the weakening of internal party ties because had that been the case the enforcement of regulatory frameworks and the professionalization of the civil service would have been essential corollaries. These patronage trends more evidently ensure network control over increasingly extensive procurement rights. Kopecký himself points out that the survey suggests more dubious motivations and he cites the political takeovers of the Czech Consolidation Agency, banks and insurances companies, and appointments to most of the energy regulators. But he concluded that it was hard to judge the scale of such activities. However, when we explore the radical widening of public-private investment and outsourcing arrangements the functions of patronage-as-control take on a more systemic hue. And the quality of the regulatory framework becomes critical to the judgement of whether political elites have acted primarily for the party, the public or themselves. The consistent evasion of regulation, the chronically high frequency of personal bribery and corruption scandals, the enormous sums of public money involved and the fact that Klaus's final act as outgoing President of the Republic in 2013 was to declare an amnesty that included the most notorious cases of fraud and embezzlement during his tenure, suggests the last. Andrej Babiš, the Republic's second richest man and the leader of ANO successfully campaigned in 2013 on the idea that the state should be run like a business and that government is a poor manager. Babiš has been Finance Minister since 2013 and so the question stands: if the Czech state is a business then who are its owners? And if governments are not to be its managers, what are political parties for?

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