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Emergence and Divergence:
Institutional Change in
Central and Eastern Europe and
the Impact of Europe

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and
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The end of communism in Central and Eastern Europe offered a unique opportunity for institutional redesign. At the heart of much of the initial institutional change in the region was a desire to build modern democratic states, invariably, though not exclusively, following West European templates. Throughout the course of the 1990s, however, a more influential mechanism emerged stimulating institutional convergence in Central and Eastern Europe: the European Union (EU). The desire of Central and Eastern European countries (CEEC) to join Europe's best and wealthiest club helped engender the replication of Western European institutions in CEEC, reminiscent of the process of institutional unification which took place in non-Communist Europe after World War Two. The process of institutional convergence in CEEC has not been encouraged and undertaken to achieve institutional uniformity, rather the aims have been the establishment of democratic forms of government and democracy as the only game in town, allowing room for institutional diversity within a democratic framework.

Even a cursory examination of constitutional changes in Central and Eastern Europe reveals several commonalities in overall institutional design. The prevailing institutional model involves parliamentary democracy, a proportional representation electoral system, multiparty systems, coalition governments and constitutional review. During the last decade several applicant countries have shifted towards this pattern, even if their constitutions and electoral laws originally provided for some forms of mixed types of government, such as semi-presidentialism and mixed electoral formulas.

The 'new institutional architecture'¹ adopted by CEEC is largely the outcome of domestic political forces, but the demands of the EU are playing an increasingly important role. The EU requires of its prospective members not just democratic rules and institutions, but also the absorption of its own body of laws, the *acquis communautaire*. Inherent in this dual demand is a tension. On the one hand, the broadly defined political criteria have allowed political leaders to settle institutional battles and to craft such institutional models that allow flexibility, lessen the stakes in politics and minimize zero-sum solutions, but on the other the *acquis* has demanded strict conformity. Incorporating the EU's laws which run to around 80 000 pages and have been built up over decades, could be a long and labourious process. In order to speed up the process and to keep membership from becoming a distant dream, many CEEC have adopted fast-track mechanisms to allow speedy incorporation of the *acquis*.

¹ S. Whitefield (ed.) *The New Institutional Architecture of Eastern Europe* (New York: St. Martin's Press 1993)

This article explores a paradoxical theme: whilst the EU has been at the forefront of encouraging the building of democratic institutions in CEEC, the demands of the *acquis* may hinder the consolidation of consensual institutional frameworks in countries where political actors, their identities and interests are still not settled and the stability of parties and party systems remain rather fragile. The institutional framework that has emerged in CEEC is probably the most conducive to the consolidation of democracy, but the rapid adoption of the *acquis* may undermine the positive effects of the institutions of consensual democracy on political actors. Such fast-track procedures may harm democratic consolidation in the longer-term, because they may lessen the legitimacy of democratic government. The impact of fast-tracking is a symptom of a deeper problem. Effective governance requires some degree of flexibility and institutional diversity. Pressure towards uniformity can, if taken too far, be inimical to efficacious governance. Just as golfers are allowed to pick which 14 clubs they play with, so the states of the enlarged EU should have the right to choose whether to pick the institutional equivalent of the sand wedge or another driver to suit their circumstances, traditions and needs. There is, as Wallace argues, 'in the more mechanical process of EU enlargement' the need to recognise the value of indigenous practice and preference.²

After a brief discussion of the EU's membership criteria, this article will map the process of institutional development in CEEC in the past decade. The article charts the path of institutional change throughout the region during the 1990s and, drawing in part on Helen Wallace's distinction between 'Europeanisation' and 'EU-isation' assesses the impact of Europe (in both the political and geographical sense) on institutional development.³

The Requirements for Those Who Wish to Join the Club

Before embarking on an attempt to chart the progress of institutionalisation in CEEC, it is worth reviewing briefly the EU's membership requirements. To join any club applicants have to demonstrate they are suitable members. The EU is no exception. At the Copenhagen European Council in June 1993, the EU outlined the political criteria for membership. Applicants were required to demonstrate the 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.⁴ The criteria

² H. Wallace 'The Domestication of Europe and the Limits to Globalisation' paper delivered to IPSA Congress, Quebec, August 2000

³ H. Wallace 'The Domestication of Europe'

⁴ Council of the European Union *Presidency Conclusions: Copenhagen European Council* (Brussels: European Union 1993); J. Gower, (1993) 'EU policy to central and eastern Europe'

were broad and did not prescribe any particular institutional model. Indeed, given the variety of institutional forms between different EU member states such as France, Germany and the United Kingdom, it would have been distinctly odd for the EU to have demanded applicant nations conform to a specific institutional model.

The EU's criteria therefore provided ample room for institutional variation, allowing CEEC to establish democratic institutions in accordance with their own political traditions and culture. Initially, a range of different formal institutions and political rules emerged, but a decade on from the revolutions of 1989 many commonalities in the general political set-up among the applicant countries are discernible. Moreover, the key state institutions have become to resemble those of Western Europe. This process of institutional convergence is likely to contribute to overall democratization and stability in the continent, because it increases predictability, i.e. political actors in CEEC are increasingly expected to behave at the state level according to the democratic rules of the game. At the same time, this convergence provides sufficient room for institutional diversity at lower levels.

The requirements for joining the EU in the current decade differs from previous enlargements, most notably the southern European enlargement of the 1980s, because membership clearly depends not just on economic factors, but on political conditions which have become explicit requirements of entry. In the cases of Greece, Portugal and Spain, European Community membership was considered part of the process of democratic consolidation rather than a reward for achieving consolidation.

Mapping the Process of Institutionalisation in Central and Eastern Europe

Although political actors formulate policies and make decisions, they do so through institutional frameworks. Political institutions matter because they provide agency with formative incentives and disincentives that shape both the strategies pursued and the goals achieved.⁵ Nonetheless, it should be

in Karen Henderson (ed.) *Back to Europe: Central and Eastern Europe and the European Union* (London: UCL Press 1993) pp. 3-22, particularly pp. 7-8

⁵ S. Haggard & M. D. McCubbins (eds.) *Presidents, Parliaments, and Policy* (Cambridge: Cambridge University Press 2001); S. Steinmo, K. Thelen & F. Longstreth (eds.) *Structuring Politics: Historical Institutionalism in Comparative Analysis* (Cambridge: Cambridge University Press 1992); A. Przeworski, 'Democracy as A Contingent Outcome of Conflicts' in J. Elster and R. Slagstad (eds.), *Constitutionalism and Democracy* (Cambridge: Cambridge University Press 1988) pp. 59-80; J. G. March and J. P. Olsen *Rediscovering Institutions: The Organizational*

emphasized that institutional frameworks are not conjured up out of thin air, they are created by political actors and are the product of bargaining and negotiation. A major shift in power relations may, therefore, lead to modifications, changes or even a drastic overhaul of an institutional framework. Throughout central and eastern Europe in the past decade there has been a decrease in the occurrence of major institutional change, which has allowed the constitutional arrangements to acquire stability and value. What change there has been has resulted in a trend of institutional framework convergence across Central and Eastern Europe.

In order for a social arrangement to be called an 'institution', two conditions have to be met. First, institutions play a socializing role in that they prescribe desirable and proscribe undesirable behaviour. In other words, they restrict modes of actions (negative part) and reward preferable activities (positive part). Second, institutions do not only perform the role of 'congruent socialization'⁶ but should also function correctly, i.e. should be able to solve problems they were created to cope with. In short, institutions impose obligations upon actors as well as produce policy outcomes.

The initial constitution-making process in CEEC yielded a wide variety of constitutional structures. This diversity was a product of the inputs into the decision-making process. Inherited structures, historical experiences, political actors' preferences during the transition, deal sweeteners during the round-table talks, a concern for historical continuity, in Central and Eastern Europe's case, 'the European inheritance of parliamentarism'⁷ and the pull of the European Union all played their part. The output of each constitution-making process was determined by the differing mix of these ingredients in CEEC. The constitution-makers were not operating in a genesis environment. Constitutions had existed before 1989. Under communist rule, however, constitutions were reduced to little more than extensions of Communist party programmes designed to lend a 'vener of legality to monocratic rule.'⁸ In framing the institutional structure

Basis of Politics (New York: Free Press 1989); J. March and J. Olsen 'The New Institutionalism: Organizational Factors in Political Life' *American Political Science Review* 78, no3, September 1984, pp. 734-49.

⁶ C. Offe 'Designing Institutions in East European Transitions' in J. Elster, C. Offe and U. K. Preuss *Institutional Design In Post-communist Societies: Rebuilding the Ship at Sea*. (Cambridge: Cambridge University Press 1996) pp.199-226.

⁷ M. S. Shugart 'The inverse relationship between party strength and executive strength: a theory of constitutional choices' *British Journal of Political Science* vol 28, 1998, pp1-29 at p. 28

⁸ K. Williams 'Constitutional Choices and Separation of Powers in East Central Europe' unpublished lecture, School of Slavonic and East European Studies, UCL, 29 November 2000

politicians looked to three models: the 'distant past', the modern West and the 'accomplishments of the immediate past of the state socialist system.'⁹

The largely formal and empty texts of the Communist times have been replaced with democratic constitutions on the Western model. Concepts at the heart of all democracies such as the division of powers and human rights were enshrined in these documents. The constitutions established the guiding principles regulating the rules and procedures through which actual policy outcomes are reached. These rules of the game are enshrined in the constitutions and invariably require specific procedures such as constitutional assemblies and extraordinary majorities in order to be changed. Although the desire to construct democracies was at the heart of much constitution making in CEEC in the early 1990s, it is worth reiterating these constitutions were drawn up not by saints, but by politicians driven in part by their own personal political interests. Framers may have offered impartial arguments based on concepts such as the public good, individual rights or democracy, but the motivation may have had much to do with their own self-interest and 'the position in which politicians find themselves at the time of design'¹⁰ As an outcome of a bargaining process, constitutions therefore 'resemble bundles of compromises rather than acts of legal professionalism'.¹¹ Nevertheless, despite their human frailties political players have been able to solve institutional conflicts under valid rules of the game; a sign of their commitment to democratic procedure.

(a) The Separation of Powers

Many CEEC began the process of the institutionalisation of democracy with vaguely drafted constitutions. The provisions specifying the separation of powers in particular tended to be ambiguous.¹² Such ambiguity, allowing varying interpretation, allied with weak checks and balances, was a recipe for outcomes not conducive to the consolidation of democratic polities. Hence, some constitutions, instead of being capable of solving political crises, themselves became the source of political conflicts. The position, role and powers of the presidency, for instance, have led to countless controversies. In

⁹ J. Elster, C. Offe and U. K. Preuss Institutional Design in Post-communist Societies: Rebuilding the Ship at Sea. Cambridge (Cambridge University Press 1998) p15

¹⁰ Shugart, 'The inverse relationship' p2

¹¹ S. Holmes(1995) 'Conceptions of Democracy in the Draft Constitutions of Post-Communist Countries' in B. Crawford (ed.) *Markets, States and Democracy* (Boulder: Westview 1995) pp. 71-81 at p. 73

¹² J. Zielonka 'New Institutions in the Old East Block', *Journal of Democracy*, 5(2), 1994, pp. 87-104;

S. Holmes, Steven 'Back to the Drawing Board', *East European Constitutional Review*, 2(1), 1993 pp. 21-25.

part this may be a legacy of the communist tradition of (at least nominal) collective leadership. With the exception of Czechoslovakia and Romania a single head of state was, to some extent, an institutional novelty.

Poland has witnessed significant shifts in the relative positions of president, government and parliament throughout the 1990s.¹³ With at least half a nod towards Poland's institutional history, but also an outcome of the bargaining process, the 1989 round table discussions created a strong, but indirectly elected president. The Head of State was accorded powers to veto legislation with a two-thirds override requirement for both houses of parliament, to dissolve the legislature, and gave the office holder executive control over defence and foreign policy ministerial appointments. Thanks in large part to Lech Walesa's desire to increase his power he pushed for a more powerful presidency. Parliament rejected Walesa's constitutional plans which envisaged a shift in power in favour of the Head of State. In fact the balance of power shifted in the other direction. Under first the so-called 'Little Constitution' in 1992 and then more significantly the 1997 Constitution the powers of the cabinet and the Prime Minister increased at the expense of the president. The President retains veto power, but can be overridden by a majority of three-fifths of MPs, not two-thirds, as in the previous constitution. The Presidential power to dissolve parliament was also curtailed. (S)he can do it only when parliament fails to enact the budget within four months and when the government is unable to form a cabinet. In addition, presidential power over the nomination of ministers was curtailed. Polish constitutional development, therefore, provides a good example of a shift from a hybrid system towards a more clear-cut parliamentary democracy. Although Poland ended up with a balance of power between president, prime minister and parliament typical of many EU members, the cause appears more likely to be found in personalities and internal political debates and arguments than in any attempt to adopt a European model.

Slovakia's hastily drafted constitution of 1992 incorporated countless vague and contradictory rules. Although most of the provisions were typical of parliamentary democracies, several unclear powers, typical of semi-presidential systems, were vested in the presidency. Thanks in part to the lack of constitutional clarity, but also to an almost visceral hatred between the two office holders, President Michal Kovac and Prime Minister Vladimir Meciar, Slovakia experienced tense relations between prime minister and president in the mid-1990s. In January 1999, the new parliament passed an amendment to

¹³ G. Sanford 'Parliamentary Control and the Constitutional Definition of Foreign Policy Making in Democratic Poland' *Europe-Asia Studies* vol 51, no. 5, 1999, pp.769-797

the Constitution, which not only provided for direct elections of the president, but also limited the head of state's power. The President, for instance, lost his/her power to preside over the cabinets meetings and to intervene in the process of forming a government and may impose a veto on regular laws, not on "constitutional laws," (i.e. laws passed by a 3/5 majority in parliament). As in the Polish case it is hard to argue the motivation for these constitutional changes was the EU. The constitutional amendment passed in 1999 had more to do with the outcome of the coalition formation discussions in late 1998 and a desire to avoid a repeat of the Slovak parliament's failure to elect a new president after Kovac's term had expired in March 1993, leaving the country without a president.

A process of constitutional convergence is discernible across the region. Most CEEC constitutions now have a weak head of state, even where the president is directly elected, who plays mostly a symbolic role and intervenes in politics only in explicitly defined cases to limit institutional conflicts. A notable exception to this trend is Romania, which retains a semi-presidential system based on the French model. Under the 1991 constitution, for instance, the President and not the legislature nominates the Prime Minister. The lack of clear constitutional rules concerning the dismissal of the Prime Minister has led to political disputes. While the 1991 dismissal of Petre Roman by President Illiescu did not raise controversy, the 1999 removal of the Prime Minister Radu Vasile by President Constantinescu has provoked institutional disagreement, which the Constitutional Court refused to interpret. Nonetheless, a more typical development has been that witnessed by Romania's southern neighbour Bulgaria. Through her institutional trials and tribulations in the early 1990s, particularly the severe tensions between president Zhelyu Zhelev and his prime ministers Philip Dimitrov and Ljuben Berov¹⁴, Bulgaria appears to have found a balance of power through a process of simultaneous learning.

(b) Executive Leadership

In general, constitutions in CEEC give little guidance about the organization of cabinets. Usually constitutions state that decisions are to be taken collectively or they assign a particular role to the Prime Minister. This situation is not, however, unique to CEEC. Cabinet decision-making in Western Europe is often more a matter of practices than of constitutional rules. Parliaments play an important role in cabinet formation thanks to the fact that in most CEEC newly formed cabinets have to pass some form of parliamentary investiture.

¹⁴ V. I. Ganev (1999) 'Bulgaria' in Robert Elgie (ed.) *Semi-Presidentialism in Europe* (Oxford & New York: Oxford University Press 1999) pp. 124-149

Dependent as it is on the constitutional positions of the president and parliament and the nature and strength of parliamentary parties, the position of prime minister in the matrix of power, differs significantly throughout Central and Eastern Europe. The constitutions of most CEEC provide for a weak prime ministerial leadership, although both the Hungarian and Polish constitutions include provisions strengthening the position of the prime minister. Not everything, however, is down to the wording of the constitutions. The relatively strong position of the premier in the Czech Republic seems to have less to do with the constitutional arrangement and more to do with the political context particularly the relative stability of party system, the cohesion and party discipline of the ruling political parties and inter-party cooperation. Moreover, the former Slovak prime minister Vladimir Meciar was not immune from ignoring the provisions of the constitution to increase his control over political system.

In addition to constitutional limitations, prime ministers in CEEC are also hampered by political limitations on their power. The cabinet they chair is invariably not of their own making. They do not have a free hand to 'hire and fire' ministers. In many CEEC prime ministers can be forced to accept parliamentary decisions on the dismissal and appointment of individual ministers. More significantly, the selection of cabinet members is more often the result of bargaining between coalition partners than a purely prime ministerial decision. In the post-fascist democratic transition in Germany and Spain constitution drafters designed the position of prime minister carefully to help promote stability in the polity, most notably through the introduction of the constructive vote of no-confidence. In contrast the constitutional arrangement of the executive, and in particular the position of the premier, in CEEC did not receive as much attention as in the German and Spanish case. Indeed, the relative neglect of the premier's position marks a clear deviation from the Western European model. The failure to devote adequate attention to the position of the prime minister could have significant implications for the future of CEEC. Stable executives not only assist applicant countries in their quest for EU membership, but they also strengthen the position of member states within the EU structures. Although a sweeping generalization, it appears clear a strong and united government can achieve more within European structures than a weak and divided one.

There is a general agreement about the poor performance of CEEC executives in general.¹⁵ Among the reasons for this dissatisfying functioning of

¹⁵ Zielonka 'New Institutions'; R. Taras 'The politics of Leadership' in S. White, J. Batt & P. G. Lewis (eds.): *Developments in Central and East European Politics 2* (London: Macmillan 1998) pp. 103-125.

the executive is not so much their weak constitutional powers as a general lack of experience on the part of new ministerial elites. The very structure and organization of cabinet has been under constant review. Almost every new government has changed the structure of ministers and ministries, the committee systems, and some have also altered procedures of decision-making. Such tinkering is not unique to CEEC. Western Europe has also indulged in similar amendments, but not to the same extent or with the same frequency.

The nature of coalition government has complicated cabinet formation and operation. Fragmented and unstable party systems, often accompanied by high polarization, have hampered the rule of the executive. Moreover, lack of trust among coalition partners has necessitated detailed coalition and policy agreements. Such documents often include not just a description of the spoils of office - which party gets control of which ministry - but also outline policy. Detailed agreements can form the basis of stable government, but as the current (1998-) Slovak government has demonstrated, both differing interpretations of these texts and problems not explicitly dealt with in the documents can cause tensions and difficulties between the coalition partners. In order to resolve difficulties between coalition partners, pre-cabinet bodies such as coalition councils have been instituted. Even the existence of such institutions, however, does not preclude cabinet meetings from degenerating into opportunities for parties to criticize the policies of their partners in government. The Czech Republic has employed an unusual mechanism for promoting stability, the so-called opposition agreement, between the Social Democrats (CSSD) and the Civic Democratic Party (ODS). After the 1998 elections CSSD fell short of an overall parliamentary majority. Rather than form a regular minority government, CSSD leader Milos Zeman signed a pact with his sworn enemy ODS' Vaclav Klaus, allowing CSSD to govern in return for policy guarantees and control of important parliamentary bodies. Although the agreement provoked howls of disagreement amongst the smaller parties excluded from even a sniff of power, and has at times been awkward for both sides, it has achieved its overriding aim of providing Czechs with a stable government.

In most CEE countries cabinet meetings tend to be lengthy and time-consuming procedures, with the exception of Hungary where a sophisticated hierarchical and multi-level system of government was established. The complicated procedures and relations among coalition parties can undermine the administrative capacity of the executive. CEEC could benefit from assistance or advice from the EU in this regard, because the political context and the party system cannot be subjected to institutional engineering

Executives are dependent on bureaucracies to implement policy. The concept of a 'neutral' state bureaucracy was not prevalent in CEEC in the early 1990s. The boundaries between political and administrative appointments have been established only gradually. In the first half of 1990s, the general pattern of the ruling political parties was to replace as much of staff as it was possible in the state administration, which undermined the overall performance of the government. In response to the constant chopping and changing of bureaucrats, one of the top priorities of the National Accession Partnership Programmes was to pass civil service related legislation to limit the high turnover of personnel in the state administration and to stabilize the positions and competencies of officials. The aim of such legislation is to foster political independence and reduce the scope for political interventions in the appointment of officials. The EU deserves praise in this regard. Without the EU's pressure it is not clear, most notably in the Czech and Slovak cases, whether political parties would have been willing to pass such legislation. Reform of the state administration aimed at achieving a politically impartial and rationalized bureaucracy, however, is hampered by two factors. Firstly, the existing terms and conditions of those officials currently in place; and secondly, the comparatively low levels of salaries in the public administration compared to the private sector are not attractive for well-educated young people. Low salaries also reinforce the incentives for increased corruption in the state sector.

In contrast to Western Europe, some CEEC incorporated NGOs in the process of the government, taking over public administration functions normally performed by the government. In Bulgaria, for example, the training of governmental staff was organized by NGOs and not by the state institutions. In Slovakia, for instance, some bills were drafted with the assistance of NGOs. The fact that some institution building was undertaken by NGOs suggests that when the state is weak, civil society may take over its functions and act as a democratic consolidator.

(c) The Place of Parliaments

The new constitutions in Central and Eastern Europe tend to accord a greater role for legislatures than most of the recent Western European constitutions, such as the 1949 German Constitution, the 1958 French constitution, and the 1978 Spanish Constitution.¹⁶ The more elevated status of parliaments is in part a product of the legacy of communist rule, when theoretically at least, the constitutions invested all power in parliament, but part of the explanation is also to be found in the process of democratic transition. In the initial stages of

¹⁶ J-E Lane and S. Ersson *The New Institutional Politics: Performance and Outcomes* (London and New York: Routledge 2000)

transition parliaments served a dual purpose, not just as an *ordinary* legislature, but also as a constituent assembly. Thanks to their 'institutional self-interest' the constituent assemblies crafted institutions with a more powerful role for the legislature¹⁷. At the beginning of institutional crafting, for example, the Polish and Romanian parliaments were given the power to override the rulings of the constitutional courts. Whether the relatively exalted status of parliaments in CEEC compared to their legislative cousins in Western Europe is desirable or a portent of troubles ahead when CEEC join the EU is an open question. There are so many variable factors, not least the personalities and party programmes of future parliamentary deputies, that it would be unwise to predict an outcome. The EU would, however, be well advised to think through possible scenarios and either prepare contingency plans and nip possible future problems in the bud.

The choice between a unicameral or bicameral parliament was rather contingent. In so far as a pattern can be observed, it follows that which has been noted in the rest of Europe, with unicameral legislatures existing in countries with small populations. Two of the region's largest countries, Poland and Romania, opted for bicameral legislatures. The decision of the Czechs to institute a Senate had less to do with concerns of size than historical traditions, institutional self-interest and political bargaining. Slovenia's upper chamber with its advisory function and recruitment by appointment appears to be more the legacy of the self-governing regime in the former Yugoslavia, than the outcome of considered institutional choice.

Whether bicameral or unicameral parliaments are powerful actors in the political process in CEEC, although the extent of their power varies from country to country. Parliaments in CEEC tend to enjoy many powers over the establishment, replacement and suspension of the executive, judicial bodies and their incumbents. Although the institutional framework creates the parameters of the parliaments' power, the extent to which parliaments can use this power is dependent on non-institutional factors such as the composition of parliament, the party system, and party discipline and cohesion.

Thanks to fractious parliaments and unstable coalitions, the legislative process can be long and drawn-out. One might expect unicameral systems to have speedy legislative processes. According to the European Commission's annual reports the legislative process in most applicant countries has been rather slow, even in those with one chamber parliaments. The reasons vary from country to country. One of the most important of which is the existence of parliamentary rules and procedures. In most CEEC, for example, standing

¹⁷ Elster *et al* 'Institutional Design'

orders usually require three readings to adopt any piece of legislation. Each reading takes time. If all laws relating to the implementation of the *acquis* went through this procedure CEEC would consume enormous amounts of legislative time and would be left with far less time to deal with purely domestic laws and would put a brake on fulfilling accession aspirations. CEEC have resolved this problem by instituting shortened procedures for *acquis* related laws.

In Bulgaria, for example, the National Assembly set up a Council on European Integration, chaired by the Speaker to consider all draft laws related to the adoption of the *acquis*. It is made up of three members from each of the five parliamentary groups, which are represented on an equal and non-proportional basis. Where the Council members agree there is consensus on a draft law, the Council can replace the committees and send a draft law straight to the plenary for a vote, thus speeding up procedures. However, should one parliamentary group object, the draft law must go through the normal procedures. Such a procedure appears wise and well thought-out, enabling rapid incorporation of *acquis*-related laws where general consensus exists, but where initial agreement is absent, consensus is valued higher than raw speed. In a similar vein to the Bulgarian model, the Czech Republic's lower chamber has amended its rules of procedure to introduce a fast track possibility for EU related laws. Prior to the submission of legislative drafts by the government to the parliament, ministers discuss the matter with the Committee for European Integration.

Slovenia's Parliament also treats EU-related laws as a legislative priority and has used extraordinary sessions to speed up their adoption. The European Commission remained critical, complaining that 'the legislative process is still slow and no progress has been made in streamlining the parliamentary process'¹⁸, because every law still requires three readings and *acquis* related laws are not allowed to jump the legislative queue. All laws are dealt with in the order they are submitted to parliament. Criticism of the slow pace of legislation has stimulated the Slovenes into introducing an accelerated procedure for adopting EU-related laws, where three readings were held within one or a few days. To legitimise these procedures the ruling political parties pushed for the adoption of a new Parliament Standing Order, which would shorten the current three-reading procedure, and limit the speaking time of parliamentarians. Due to difficulties in obtaining a 2/3 majority in parliament, this attempt to change the current standing order has so far been unsuccessful.

¹⁸ European Commission 'Regular Report' 2000 on Slovenia posted at <http://europa.eu.int/comm/enlargement/slovenia>

More drastic tactics have been adopted in Romania, where the fragile ruling coalition in the highly fragmented parliament was able to pass only 59 of the 453 (!) bills in 1999. The government have tried to circumvent a parliament with more than its fair share of un-cooperative MPs by issuing extraordinary decrees, which immediately enter into force and need only retrospective approval by parliament. However, the frequent use of this governmental procedure although backed up by the constitution, may distort the institutionalisation of democratic legislature and weaken the state administrative capacity.

Fast-tracking for EU-related laws has important consequences for the institutionalisation of democratic norms. Attracted by the lure of joining the club that flows with milk and honey, applicant nations have cast aside the norms typical of democratic legislatures. Regular parliamentary procedure, which provides for several steps in making legislation ensures that all political forces in the parliament can provide input into the legislative drafting process, but slows down the process. The speedy procedures for the *acquis* related legislation run the risk of reducing parliaments to little more than rubber stamps and may undermine the overall institutionalisation of parliaments and weaken their legitimacy. In particular, the consolidation of committee system may suffer, because whenever fast-tracking is adopted committees tend to be bypassed. Committees play an important role in fostering habits of political bargaining and cross-party cooperation. Fast-tracking will therefore hamper the emergence of these habits.

The institutional effectiveness of parliament depends in part on the men and women who sit in the chambers. Many of the new parliamentarians in the early 1990s were, by and large, inexperienced in parliamentary affairs. Although the situation has general improved over the past decade, as the recent Lithuania example showed, the number of inexperienced newcomers can still be high. In the early post-communist days deputies were also hampered by the lack of support staff and general resources, a situation much improved in the past ten years or so. The performance of the parliaments is also dependent on the political context. Parliamentary party discipline and cohesion, or the lack of them, have complicated matters sometimes blurring the distinction between government and opposition. Fluid party systems and weak party loyalty amongst deputies result in shifting coalitions and changes in government. A pattern which appears to be particularly true in the smaller countries such as the Baltic States and Slovenia.

Parliaments throughout Central and Eastern Europe have begun increasingly to resemble their sister institutions in Western Europe. Legislative

effectiveness, organizational articulation and rule abiding patterns of behaviour have been or are being acquired. In terms of organization, membership and procedures, the institutional capacity of parliaments has been gradually increasing, and has been assisting in the institutionalisation of democracy in the region.

(d) Electoral Systems

The choice of electoral system is important because it helps to shape a country's party system¹⁹ and consequently also its institutional framework, i.e. the composition of the parliament, the form of executive, and the overall profile of executive-legislative relations. The chosen electoral system plays a significant role in explaining the degree of fragmentation of parliaments and thus influences the creation and durability of governments which depend on the enduring confidence of a parliamentary majority. In creating the electoral system a number of choices need to be made. The most obvious choice is that between majoritarian, proportional or mixed formulas, but other issues such as open versus closed party lists, preference voting, thresholds, assembly size, district magnitude and different mechanisms employed to count the votes (Hagenbach-Bischoff/Droop, D'Hondt, STV, Imperiali etc.) are important and can be of significance.²⁰

In accordance with the prevailing norms in Western Europe, CEEC have tended to opt for proportional representation electoral systems rather than using the plurality formula. Hungary and Lithuania with their mixed PR/plurality systems are exceptions to this general trend. Even within PR, however, there are variations. Just as Western European systems differ as to the number and magnitude of constituencies, the existence and type of party list and the methods for counting votes and remainders, so the PR systems instituted in CEEC differ from each other. As the Polish experience shows, the introduction of thresholds, for example, can have a 'reductive effect'²¹ on the number of parties in parliament and therefore increase governability, but it can also nullify the votes of a significant portion of the electorate. Indeed, in elections in the early 1990s around a quarter of Czechs, Slovaks and Bulgarians voted for

¹⁹ M. Duverger *Political Parties: Their Organization and Activity in the Modern State* (New York: Wiley

1954); R. Taagerpera and M. S. Shugart *Seats and Votes: The Effects and Determinants of Electoral Systems* (New Haven and London: Yale University Press 1989)

²⁰ Elster *et al* 'Institutional Design'; M. Gallagher 'Comparing Proportional Representation Electoral Systems: Quotas, Thresholds, Paradoxes and Majorities' *British Journal of Political Science*, 22, 1992, pp. 469-96

²¹ G. Sartori *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (Houndsmills, Basingstoke: MacMillan 1997) p. 32

parties which failed to cross the respective thresholds. This fact highlights an important broader point. Whatever the constraining effects of the electoral systems might be, these may be mitigated by the degree of institutionalisation of the party system.²²

The initial decision to opt for PR was in part a desire to emulate Western European democracies, but it was also the product of political traditions, the political bargaining process, an aversion to the idea of one-party rule and the desire to foster political pluralism.²³ With the exceptions of Poland and Bulgaria (which will be discussed below), none of the applicant countries seriously considered a plurality electoral system as a possible solution, although conventional political science wisdom asserts that this arrangement is more likely to enhance political stability in the form of government durability than proportional electoral formulas.

Despite the fact that Poland's 1989 electoral law provided for a plurality system it was soon abandoned. Thanks to the fracture of both major party groupings a new round of electoral system negotiation began. Given the fact that in a fragmented party system no individual actor could hope to benefit from plurality voting rules, most Polish legislators favoured and adopted a party list PR system. The upshot of this new arrangement was a proliferation of parties in parliament and the inability to create a stable government. In response, most legislators backed the introduction of a threshold requirement typical of Western European democracies. One of the unexpected outcomes of this attempt at 'institutional engineering' was the elimination of several post-Solidarity parties who had backed the threshold's introduction from the parliament.

Initially Bulgaria opted for a mixed electoral system combining multi-member district proportional representation with a 4 percent threshold and single-member district majoritarian representation. After the Bulgarian Socialist Party (BSP) began losing support, however, the BSP led a successful reform of the process resulting in a closed-list, multi member district proportional representation system which favoured larger parties to the detriment of the smaller splinter parliamentary parties. In both the Polish and Bulgarian

²² R. G. Moser 'Electoral System and the Number of Parties in Postcommunist States' *World Politics* 51, April 1999, pp. 359-84 at p. 360; T. Haughton 'The Institutional Framework of Slovak Politics' unpublished paper, School of Slavonic and East European Studies, UCL, London University, 2001

²³ B. Geddes 'Initiation of New Democratic Institutions in Eastern Europe and Latin America' in A. Lijphart & C. H. Waisman (eds.) *Institutional Design in New Democracies* (Boulder: Westview Press 1996) pp15-42

examples the decision to move towards proportional systems was largely due to the power balance concerns of domestic politics.

Before moving on, one point deserves to be highlighted. Although, as with other aspects of the institutional framework, the decision to adopt variety x rather than variety y and later to amend x or y had much to do with the perceived advantages and disadvantages of the different systems for the political actors involved in crafting the institutional framework, political actors accepted the outcomes even if they were disappointing and cost them power. Politicians in CEEC in this regard, therefore, demonstrated their commitment to procedural democracy.

(e) Judicial Review

CEEC have copied Western European models by instituting judicial review, but they have accorded it a stronger position in their polities. Both constitutional courts and the very concept of constitutional review are almost completely new phenomena in CEEC. Only a few of the countries in the region, such as inter-war Czechoslovakia, had pre-communist experience with constitutional courts. But even in the Czechoslovak case, it did not play a major role in the political system.

In Western Europe judicial review is a rather contested institution, as it makes non-elected judges politically influential, although there is no mechanism for holding those judges accountable. Why did the political elite and legal experts in CEEC allocated so much power to small groups of lawyers without instituting any mechanism of accountability? The answer probably lies in CEEC' communist experience and the desire for an independent and neutral arbiter. Czechoslovakia's Charter 77 provides an illustrative example. That particular dissident movement was founded explicitly (although other ulterior motives were also present) to complain that the Communist government was not obeying its own laws on human rights. More broadly, emerging from forty years of Communism and into a fluid and uncertain political environment, CEEC were keen to see the emergence of a body which could solve conflicts about the interpretation of the rules of the game and at the same time protect human rights, including minority rights, which had been neglected and violated in the past.

Although all applicant countries have furnished their polities with a constitutional court, there are some variations. Constitution-drafters in several countries perceived the concept of judicial review as contrary to the main idea of popular and parliamentary sovereignty. Poland and Romania, for example, somewhat reluctantly included the constitutional courts in their constitutional

designs, but limited their actual powers by allowing a special parliamentary majority the right to overturn the courts' decision.

The stronger version of constitutional courts in CEEC has played a prominent role in consolidation of democracy, as many political and legal disputes between ruling parties and opposition have been settled by constitutional jurisdiction. Their binding decisions have established a minimum but necessary certainty of the rules of the game. Political elites throughout the region have not always agreed on the interpretation of constitutional provisions and have at times tried to use the constitutional courts to resolve arguably non-constitutional political disputes, but throughout Central and Eastern Europe a general acceptance of the courts' rulings has prevailed.

(f) Informal Rules and Unwritten Agreements in the Institutional Framework

The importance of informal rules in the institutional framework has been alluded to earlier, but before concluding it is worth reiterating. Thanks to the multi-party systems and fragmented parliaments in CEEC, problems are resolved by means of coalition bargaining, including establishment informal coalition bodies and formal coalition agreements, cabinet reshuffles and, if all else fails, early elections. Prior to 1989 these processes were mostly unknown in the region and have needed to be learnt. However good an institutional structure, informal rules between political actors are essential for the successful functioning of a democratic polity, because not all conflicts can be managed through formal structures. Successful democratic institutionalisation requires an unwritten understanding that the change-over from one government to another will not harm the stability of the democracy and that the new government will continue along the same democratic path.

Conclusions

Central and Eastern Europe has witnessed significant institutional change since the end of Communism. Both Western European models and the EU have played an important role in the process, but domestic political factors and the institutional histories of the countries in the region have also been significant. The prevalent institutional model in CEEC consists of parliamentary democracy, a proportional representation electoral system, multiparty politics, coalition governments and constitutional review. All applicant states with the exception of Romania have opted for some form of parliamentary system of government, even if their presidents are directly elected. This framework, as Linz and others predicted, has lessened stakes in politics, minimized zero-sum

outcomes, and contributed to the consolidation of democracy.²⁴ Moreover, the adoption of proportional voting systems has limited the chances of majority rule and the emergence of a more adversarial type of politics. It has helped to promote consensus and has taught political leaders of the need to craft and maintain coalitions, even if they have to be embedded in formalized coalition contracts. The reality of the last decade in Central and Eastern Europe has shown that in spite of a plethora of problems the main political actors in CEEC have, with a few exceptions, demonstrated their respect for democracy and the rule of law, making their countries reliable partners for EU accession. A paradox at the heart of the EU enlargement process, however, is that some institutions established to fasten adoption of EU related laws may harm the institutionalisation of parliamentary democracy and as well the national interests of candidate countries. The Bulgarian solution to this problem (as outlined above) appears to be a good solution, combining as it does a desire to fulfil the aspiration of EU membership, whilst ensuring the desire to follow the procedures of a consensual democracy are not thrown into the procedural rubbish bin.

The emerging institutional pattern in CEEC has significant consequences for their respective polities. As Lijphart suggested, institutional frameworks which promote consensus tend to yield parliaments and governments where sometimes fractious coalitions are more likely to predominate and where mustering the requisite majorities to pass legislation can be difficult.²⁵ The institutional framework in CEEC has helped to hinder effective cabinet government, particularly in those countries where former communist or new nationalist forces do not sufficiently support democratic values. The obstacles in the way of effective executive decision-making, although theoretically beneficial to the fostering of a pluralist democracy, may undermine the institutional and organizational ability of the state to implement the social, economic, and administrative reforms necessary to build a modern democratic state on the Western European model.

Enlargement is a challenge not just for the applicant states of Central and Eastern Europe, but also for the institutions of the EU itself. At the Nice European Council, EU leaders hammered out a deal aimed at reforming the EU's decision-making procedures to enable effective governance in an enlarged Union encompassing up to 28 states. The provisions of the Nice Treaty, particularly the extension of qualified majority voting, should help to ensure

²⁴ J.J. Linz 'The Perils of Presidentialism', *Journal of Democracy*, 1, Winter 1990, pp. 51-69; J.J. Linz 'The Virtues of Parliamentarism', *Journal of Democracy*, no. 1, Fall 1990, pp. 84-91.

²⁵ A. Lijphart *Democracies* (New Haven: Yale University Press 1984)

more effective decision-making, but effective governance may require further reform. Coping with diversity by centralization may not be the answer. Effective governance in the enlarged EU requires a balance to be struck between a workable institutional framework for the EU and a recognition of diversity and complexity across the European continent.

Despite what the Eurosceptics tell us, particularly in Britain, the most important decision-making bodies in the EU remain those which are constituted of member states' executives: the Council of Ministers and the European Council. Given the relatively weak position of CEEC' executives and their greater dependence on fragmented parliaments, it may be wise, therefore, for CEEC to consider strengthening their executives in order to ensure better representation and articulation of their national interests within the EU decision-making framework and hence increase their bargaining power. The relative weak executive leadership in CEEC has been partly replaced by EU conditionality and other external pressures. The reliance on the desire to please external actors, particularly the EU, therefore may lead to a decrease in the legitimacy of the state and its institutions. One means of restoring or enhancing the legitimacy of the state may lie in strengthening the position of the executive. Procedures adopted by legislatures in CEEC to pass EU related laws highlight the benefits and drawbacks of such systems. The *national aspiration* to join the EU can be pursued more easily and effective governance can be increased, but it can hinder the emergence of the necessary democratic values including consensus. In politics, where good arguments exist on both sides of the debate, balances have to be struck. It may be wise for CEEC to place all the arguments back on the scales, weigh up the options and strike a new balance.

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