PRIEST AND PENITENT:
The EU as a Force in the Domestic Politics of Eastern Europe

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Executive summary

The search for blueprints for post-communist transitions has, in recent years, fallen into disfavor in some quarters. Even while this shift in attitudes has occurred, however, the formal applications of five countries for European Union (EU) membership has made the emulation of West European institutions and policies an important strategy of East European ministerial elites. East European officials have, however, come face-to-face with a dilemma. Detailed revelation of institutional and policy shortcomings – as measured against EU standards – is, on the one hand, a formal prerequisite for getting EU help; but on the other hand, publicizing such problems holds the potential to jeopardize a country’s chances for accession.

This paper uses the metaphor of religious “confession” to show how this dilemma shapes the actions of East European ministerial elites as they negotiate the accession process. Further, it concludes that Eastern European countries are responding to the dilemma by building dual institutions, in which one part works for the organization’s clients, while the other answers to EU patrons. Under these conditions, paradoxically, many institutional changes take place which have little effect on local actors.
Institutional Transfer: From Voluntaristic to Leveraged

For good or ill, the blueprint has been a dominant metaphor of post-communist transitions. On the political side, the use of blueprints often took the form of constitutional cheerleading, while on the economic side, a series of neoliberal stabilization and privatization imperatives have been sold as the path "back to Europe." True, those who promote blueprints have also had their critics. Recently, there has even been a shift away from the term "transition," which implicitly assumes a known end point, in favor of the term "transformation."

Yet if the search for ready-made blueprints has been widely discredited, the formal applications of five countries for European Union (EU) membership has catapulted West European institutional and policy models back to the top of the agenda for many ministerial elites in Eastern Europe. But where elites in the region have long emulated West European structures in a partial, voluntaristic, and experimental fashion, the EU Commission now asks them to do so systematically and permanently. Thus, what we can call the "institutional transfer" of the EU’s 80,000 page acquis communautaire has become the formal target for aspirant member states.

Accordingly, the EU Commission’s Phare program, which coordinates EU (and much non-EU) aid to the region, no longer refers to its institution-building programs as "demand driven." While demand-driven programming had meant that Phare was to respond to the priorities set by the governing elites in East European states, Phare officials now intend to set the agenda for institutional changes in the run-up to accession. The policy shift is captured nicely in a statement one now hears frequently from EU officials in the region: "The East European states are joining us; we are not joining them."

But there is a paradox in the current EU dealings with East European countries. Just as the EU has begun a significant new effort to promote specific institutional reforms in Eastern Europe – often transferring patterns familiar from Western Europe – the aspirant members have grown reluctant to reveal precisely where they most need the help. The paradox is the result of a dilemma for East European elites – especially ministerial personnel – in which the detailed revelation of shortcomings is both a prerequisite for external help and a grave risk.
The risk is that detailed evidence of institutional dysfunction might be used against aspirant members by opponents of EU enlargement. The stakes are extraordinarily high, and with each public call from prominent West Europeans to delay accession, the dilemma is sharpened. I will argue that many actions in the face of this dilemma can best be understood through a different metaphor — confession — and that national elites are responding by building dual organizations in which one part does the work for the organization’s clients while the other part is maintained to pacify its EU patrons. The dual nature of state organizations helps explain why transferred rules and structures may “stick” even when they remain meaningless to local actors.

**Screening as a Religious Ceremony**

The EU seeks to ready East European states for membership through a detailed check on existing structures and procedures. Some of this was done in national applications and Commission responses. But much is left to do, most importantly a so-called “screening” process involving ten countries designated by the EU at the London Council meeting in March 1998. Of those ten, five – the Czech Republic, Poland, Hungary, Estonia, and Slovenia – have been tabbed as the “ins” to constitute the first wave of potential enlargement.¹ Task forces have been assigned to explore existing legislation and the implementation capacity in all areas covered by EU legislation. The task forces are headed by non-nationals – for example, the task force for Poland by a French citizen, and the task force for the Czech Republic by a British citizen. But the task force staff is joined by sectoral experts from each nation for meetings on the sector in question. The Commission has designated 31 discrete “chapters” for screening in a process that began in April 1998 and is projected to run through the summer of 1999.

Screening is intended to force national ministries to articulate and confront the gap between current structures and practices and EU compatible ones. In many of these areas, comparative research has shown the gap to be sizeable – yet does screening encourage elites to acknowledge and address such gaps? Partially and unevenly. Screening has important technical and political dimensions, but its cultural

¹ National leaders from each have been assured that these five need not join as one group in case some are deemed ready well before others. Cyprus, the final “in,” is not considered here. The “pre-ins” are Bulgaria, Slovakia, Latvia, Lithuania, and Romania.
assumptions – which bear strong resemblances to confession in a priestly religion – are equally intriguing. Three features underpin the analogy to a confession. First, self-revelation about inadequacies and shortcomings is the starting point of the exchange. Even though sectoral experts from the relevant Directorates General can attend screening meetings, the Commission and its task forces are highly dependent upon national ministries to divulge the nature and magnitude of sins of omission and commission. To be sure, the task forces conduct their own independent investigations of each domain, but they clearly rely very heavily on the relevant national ministries for key data about institutional form and organizational effectiveness.

Second, the priestly authority has the right, indeed the obligation, to impose responsibilities upon the penitent to remedy the weakness, lest forgivable lapses give way to a pattern of institutional misbehavior. The Commission’s approach articulates to prospective members the low tolerance for non-compliance with the acquis (“hate the sin”), which must be fully and completely implemented from the start of accession. But the Commission also emphasizes that both the “in” and “pre-in” states of Eastern Europe are, unlike, say, Turkey and Russia, already members of the community of European nations, notwithstanding their current weaknesses and shortcomings (“love the sinner”).

Third, the process is characterized by elements both of secrecy and of thinly-veiled identity. The former ostensibly protects East European states against prejudicial information being leaked to opponents of enlargement, while the latter is the precondition for matching the EU’s new institutional promotion programs to those deemed best able to make use of them.² Note that screening’s uncovering of deficiencies probably promotes more transfer of structures and practices even if those deficiencies are largely kept hidden from the EU. For example, while a full confession might maximize the chances of securing EU aid to a troubled institutional domain and accelerate processes of institutional transfer, there is little that prevents ministerial elites from claiming more or less full compliance with the acquis and then quietly copying EU structures on their own and without formal aid programs.

The Commission, playing the role of Old Testament prophet, constantly warns that the day of judgment will come. Up to now, a fourth potential area of similarity between screening and confession — the ultimate threat of excommunication — has not officially appeared. The EU has taken great pains to reassure elites inside national ministries that the Commission's intentions are strictly to promote better institutional functioning, but national elites fear that disclosure runs the risk of compromising later negotiating positions with the Council of Ministers. The EU has tried to circumvent this dilemma by building two separate tracks for the disclosure-assistance and negotiation processes. The preparations for membership, including Phare activities and the so-called Accession Partnerships, are being run by the Commission's DG1A (external relations). Screening, on the other hand, is part of the Commission's contribution to the formal opening of negotiations — a process that will be run by the Council of Ministers. As such, the task of the screening process is to explore any potential areas of difficulty prior to those negotiations — which may begin as early as this winter — and to suggest solutions. While problems are "signaled" to colleagues in DG1A, the current intent is that only "serious" problems would be reported to the Council at this point.

Yet after the first several chapters had been screened, it was striking to learn from several participants in both the Commission and various national ministries that virtually no serious problems had been uncovered in the areas of science and research, telecommunications and information technologies, education and training, cultural and audio-visual policy, and industrial policy. One explanation, to which the Commission itself tends, is that the easy chapters have been taken first. But while there is certainly some truth to that view, subsequent chapters (including things like company law) also encountered no serious difficulties. Since many comparative studies continue to emphasize large divergences between East European structures and practices and those in the EU member states, this apparently smooth

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3 The broader setting of anti-Enlargement politics is obviously beyond the scope of this essay, but for evidence of a growing skepticism even within Germany and Austria, see Heather Grabbe, "A Partnership for Accession? The Nature, Scope and Implications of Emerging Conditionality for CEE Applicants," Fiesole, EUI Working Paper, October 1998.

4 For example, Nikolaus Van der Pas, head of the Enlargement Task Force, claimed in June 1998 that "we didn’t run up against any major difficulties, which isn’t really surprising, because we have programmed the screening in such a way as to start off with rather easy chapters to provide us and the candidate countries with a smooth introduction in this highly technical exercise.” Quoted in Uniting Europe, 10, June 8, 1998, p. 1.
screening process seems paradoxical, implying as it does that the perspective members will be willing and able to fully implement the *acquis* in each screened area by the time of their admission.

**Formal Structure as Myth**

While I prefer the priest-penitent analogy to András Sajó’s foreign missionary-local savage analogy, I want to elaborate on Sajó’s observation that Eastern elites often feel obliged to create “appearances that are ‘adequate’ for some kind of Western acceptance.”\(^5\) To do so, I draw on the sociological concept of a functional dualism in organizations. The central idea, as articulated by John Meyer and Brian Rowan, is that since many organizations depend on external support for their existence and prosperity, they often develop formal structures that are favored by other actors in their broader “institutional environment.”\(^6\) Meyer and Rowan argue that “loose coupling” between the organization’s *structure* and its practical *tasks* often results from a proclivity to respond to myths whose affirmation helps perpetuate the organization.\(^7\) Environments where “rational myths” have been widely propagated thus promote the diffusion of favored organizational practices and structures “even if no evidence of their effectiveness exists.” In such cases, formal organizational structure is often ceremonial and is, to that end, buffered from the “actual work activities” of the organization. Pressures from the EU constitute a significant institutional environment that does promote certain organizational structures. In short, the screening process functions as a conduit for rational myths about organizational structure and function.

As Meyer and Rowan note, when an organization adopts rational myths, it “displays responsibility” to other actors sharing its environment. Organizations that fail to take appropriate symbolic steps risk facing “turbulence” for inadequate isomorphism with their environment. To be sure, it is possible for some organizations—especially firms that produce for markets where customers can

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\(^7\) The theory holds that the “myths generating formal organization…are rationalized and impersonal prescriptions that identify various social purposes as technical ones and specify in a rulelike way the appropriate means to pursue these technical purposes rationally”; Meyer and Rowan, p. 44. Other quotations in this paragraph and the next are pages 61, 41, and 45.
measure organizational efficiency by using prices – to avoid ceremonial obligations and still prosper. But as societies grow more complex, organizational goals often become more ambiguous and difficult to evaluate. When this condition holds – and it does for virtually every government ministry in the region – conformity with the larger institutional environment grows in importance.

Put differently, because East European organizational outputs are extraordinarily difficult to measure, organizational shapes and routines gain popularity as indirect evidence of proper design and performance. In this context, screening is setting the stage for the transfer of EU structures to Eastern Europe, so that, for example, a few weeks after the screening of company law in late June, the Hungarian parliament enacted a major change in its own company law. Navigating among broader EU directives and picking and choosing from British and German antecedents, the new laws were drafted in a process in which the legislation prevailing in current member states was constantly before the drafters.

To pursue the analogy one step further, the expectation of remedial action – penance – is built into the structure of screening. When screening reveals deficiencies, national ministries in Eastern Europe may pursue externally sanctioned structural or procedural models, even if the net contribution to the organization’s efficiency is modest (or even negative). The key screening tool is the “harmonogram,” a complicated grid listing for each area to be screened the relevant EU directives and the applicant country’s existing legislation pertaining to each directive. Depending on the gap that results, the harmonogram goes on to list a set of legislative and institutional tasks needed to meet the directive fully, and a description of the appropriate ministry personnel tasked with completing this action by a specified date. In short, screening can promote transfer as a technique of external validation. In many instances, however, the new box in the organizational chart or the new law on the books significantly precedes the ministry’s ability to implement it.

The screening process can be quite uncomfortable for the national ministries. While national ministries seek organizational forms and rules that carry the EU seal of approval, they also seek to avoid monitoring by outsiders, unless such monitoring can be “ceremonialized” and rendered harmless. Real evaluation can uncover problems that damage organizational legitimacy because “higher” political units often use evaluation to substitute for jurisdiction over arenas under the formal control of “lower” levels of
government. And as Meyer and Rowan point out, “evaluation and inspection are public assertions of societal control which violate the assumption that everyone is acting with competence and good faith.”

Given longstanding fears in the region that the EU may use accession criteria to delay or suspend the process of enlargement, particular features of the negotiations to come may make the threat of revealed incompetence extraordinarily costly to the entire government and nation (not just the ministry).

Potentially crucial in this regard is the EU’s principle that “nothing is decided until all is decided,” which is a frank reminder that enlargement is a political decision, successful screening notwithstanding. This feature may help explain why the screening process has revealed so little thus far, and helps make comprehensible the apparent paradox of significant institutional deficiencies yet reluctance to pinpoint locations for institutional reforms. Betting that the complexity of monitoring compliance with the acquis may yet overwhelm the Commission, some ministries are steadfastly avoiding self-incrimination while seeking to ceremonialize what little independent inspection does occur.

Meanwhile, other ministries are just overwhelmed by the size of the task! The process of transposing the 80,000 pages of the acquis confirms the claim that an increasingly institutionalized environment tends to increase the complexity of individual organizations. As examples of organizational responses to the environment created by the EU, the Czech Republic has established institutions at at least three different levels: the Government Council for Integration (an advisory body that includes ten ministers and the prime minister), a subordinate Working Committee of the Council (which is staffed at the level of deputy ministerial chiefs), and 22 separate Working Groups (which have responsibility for functional areas like transportation or health care). Note that while some of these structures (such as the Council) appear self-contained, the Working Groups add to the complexity of existing organizations.

Complexity grows between existing organizations as well as inside them, and the experience of the Working Group on Compatibility with EC Law shows that creating more organizational interconnections may also help reduce external oversight. As its director explains, in the early years of the

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8 Meyer and Rowan, p. 59.
Working Group's existence, "we had a hard time with the EU Commission because they did not want to give us access to databases with EU legislation, but just wanted to send us experts instead."\(^{10}\)

In time, however, legislative databases of EU laws and directives were made available to the Working Group and are now updated via CD-rom about every five months. By installing PC's in 36 different ministries, the Working Group greatly increased its own ability to gather relevant information about the degree of present compliance with EU law while distributing new information about the *acquis* to all of the ministries. In turn, each ministry is, in theory, able to check the status of fields of law that are related to its own agenda but under the authority of a different ministry. In short, the need to comply (or appear to comply) with EU law has thickened the connections between organizations.

Returning to the effectiveness side of organizational dualism, these denser connections between organizations go only so far toward helping individual ministries do their daily work of implementing existing laws. While the EU's Essen White Paper on Eastern enlargement generated a list of 1,000 directives to be transposed, the entire *acquis* consists of closer to 10,000 directives, producing a veritable flood of legislation. If the screening process obliges states to have the right things "on the books," the reality is that it may well take five years just to translate the entire 80,000 pages.

Given the time pressures to bring screened chapters up to EU standards, ministries often find that simply passing the new legislation is an overwhelming task. And as the national ministries adopt more pieces of legislation via a "cookie cutter" method of transfer, they also make it easier for the Commission to monitor them because it can use the same categories to compare them both to other member states and to other potential members. Thus, while organizational complexity within a nation makes EU monitoring more difficult, organizational homogeneity across the region may make it less difficult. In short, the hypothesis that organizational managers who focus heavily on abstract and ritualistic efforts inside the organization do this to the neglect of more pragmatic problems bears careful evaluation in the next few years as the transposition process reaches a crescendo.

\(^{10}\) Interview with Jan Volny, Director, Department for Compatibility with EC Law, Czech Ministry of Justice, July 20, 1998.
To summarize, it appears that accession’s proximity has given a significant impetus to a new kind of institutional transfer in Eastern Europe. But only some of these transfers are likely to improve institutional functioning. In others cases, national elites are responding to ceremonial myths as a substitute for the kind of real implementation which their underdeveloped public administrations cannot deliver. Responding to environmentally sanctioned myths may help ministerial elites avoid oversight but may also undercut other serious efforts at institution building. Finally, organizational complexity is growing without much “demand” for it inside the society. Taken together, the dual nature of organizations is a factor that helps transferred rules and structures to “stick” even when they are meaningless to local actors. To the extent this is true, “loose coupling” may lead to cynicism and come to be seen as much less functional than Meyer and Rowan imply. While they see loose coupling as a coping strategy that allows mature organizations to serve multiple constituencies, perhaps in the newer organizations of Eastern Europe the imperative of securing external support undercuts the organization’s daily work.

**The EU Commission as Agenda Setter**

To argue as I have that the EU has become an agenda setter in Eastern Europe is to run counter to much received wisdom, which locates the epicenter of decisions about institutional design squarely in the domestic politics of each nation. While this domestic emphasis surely has been appropriate, it has always cried out for a complementary focus on external influences – influences that are growing stronger rather than fading with time. The comprehensiveness of EU legislation is now making it a very significant force for legislative change in the region, far out of proportion to other multilateral organizations in the region. This fact is somewhat obscured in some of the more comprehensive surveys that give more or less equal coverage to organizations like the OECD and the Council of Europe.

But how exactly does the prospect of EU membership change the legislative agenda of individual national ministries? Returning to the example of the Czech system already introduced, the Commission, using agents like Phare and private consultants, has only been able to strongly influence the Czech legislative agenda when the Czech government has permitted it to do so. As Milada Vachudová has shown, the successive Klaus governments used glittering aggregate economic statistics to keep the
Commission monitors at bay while professing their commitment to EU practices. Only with the Commission's report on the formal application for membership (coinciding with a sharp economic downturn) was the magnitude of the remaining work at transposition widely understood.

All the while, as Klaus himself openly questioned whether EU institutions were appropriate for the liberal Czech republic, national ministries felt comparatively little pressure to rapidly bring their structures and practices into line with EU rules. This skeptical distance changed only with the Tosovsky government, which portrayed an image of the Czech Republic as an apprentice eager to fulfill the requirements of membership. With this change in perspective, which has been continued so far by the new social democratic government, national ministries have become much more responsive to the Commission's agenda.

Wider openings for Commission influence have gone hand in hand with Commission efforts to maximize its own leverage, especially with states that hope to join in the first wave. The Polish experience in losing over $30 million in Phare monies this past summer has focused the attention of national elites on the importance of paying homage to Commission priorities and justifying their work in approved Brussels vernacular.

Partly in an effort to preempt purely ceremonial adherence, the Commission also has begun writing "conditionality" clauses into its official documents with aspirant members as insurance against shifting political coalitions. For example, the Accession Partnerships speak of working together with the applicant "on the basis of a clearly defined programme to prepare for membership, involving commitments by the applicants to particular priorities and to a calendar for carrying them out.... In addition, the subsequent allocation of financial assistance will be closely tied to the respect by the government of the commitments made in the National Program for the Adoption of the Acquis." Given the rise of conditionality in so much multilateral lending since the 1980s, it may be lost on some observers

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12 For details of the case in which 11 Polish projects were denied funding, see _Uniting Europe_, 9, June 1, 1998, pp. 4-5.

just how novel this kind of language is in the relationship between the Commission and the East European states. Certainly, such language did not appear before the 1995 Essen White Paper.

The screening process also contributes significantly to the Commission's new influence over the legislative agenda. For each chapter to be screened, a Commission organization called TAIEX prepares a checklist of the relevant EU directives. The responsible ministry then fills in this so-called “A-list” with the relevant existing and pending legislation, while noting any deficiencies yet to be addressed, along with a timetable for doing so. The resulting harmonogram, which functions as an agenda for discussion during the screening of the relevant chapter, subsequently becomes a key tool for ministerial actors to coordinate their legislative initiatives and, as it were, “announce” them as answers to legislative deficits. Commission experts from the relevant DGs gain access to the domestic deliberation process insofar as they are allowed to critique the ministries’ self-grading process, sometimes disputing judgements that existing structures represent “full compliance” or “partial compliance.”

A brief example may suffice to show the basic pattern. The screening of EU legislation on consumer protection showed significant differences between existing Czech laws and EU legislation. Of the 16 pieces of relevant EU legislation, all but one of which was judged in spring 1998 still to be in need of additional work, seven have been designated for legislative activity over the subsequent six months. In Hungary, the hodge-podge of laws that make up the domain of consumer protection could build on a firmer communist-era legal basis than in the Czech Republic. Even here, however, the Hungarian equivalent of the EU’s prohibition on unfair contract terms was more limited in scope and placed the burden of proof on the injured party rather than, as in the EU directive, on the producer of the good or service in question. Not until 1997, did subsequent legislation then move closer to full harmonization with EU directives.

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14 Though the Czech Republic declined to ask for any derogations.
16 ibid., pp. 276-279.
Conclusion

The priests have heard many confessions, while the penitent, in a reversal of the usual order, have been paid handsome indulgences as a reward for revealing their weaknesses. From the EU perspective, the drama now is to see which will go back to their old ways and which have had the “mighty change of heart.” From a social science perspective, however, it is clear that particular kind of “Europeanization” is occurring through institutional transfer in Eastern Europe. That process, to be sure, is accompanied by a good deal of ceremonial activity as a way of satisfying the demands of an institutional environment suddenly dominated by the EU, but it is also a process in which power is quite evident. This paper begins with a claim about organizational dualism and the possibility that a “loose coupling” between an organization’s public face and its daily work might be functional in institutional environments where myths were prominent. In the East European context, however, the result of dualism is also likely to be growing organizational complexity at a time where social interests are still not well formed and state actors are sometimes remarkably incompetent.

This disjuncture occurred because the Commission has played a dual role as both institutional tutor and monitor. In so doing, it has emphasized a particular variant of the idea of “rejoining Europe,” one that underlines the need for members to implement the *acquis* from the start and without backsliding. Acting as gatekeeper, the Commission also has taken the idea of rejoining Europe and attached to it a list of specific institutional and procedural conditions. In so doing, it has made the romantic idea both more concrete and more bureaucratic. Further, in institutionalizing the idea, the Commission has tried to emphasize that there should be a very small gap between formal rules and actual practices.

But having finally moved to allow some East European states to enter, the Council will have to decide how strictly to insist upon the Commission’s principles. It will do so knowing full well that if the idea of “rejoining European institutions” should fail, then alternative ideas will likely gain ground. Currently, what might be called “cosmopolitan skepticism” about the wisdom of joining Europe is dominated by two general camps – those neo-liberals who fear that West European socialism is being reimported through the back door via Brussels and those social protectionists who fear that East European economies and polities are not yet prepared for the rigors and the dangers of full participation in European
structures. Should either or both of these camps find common ground with nationalist groups – the non-cosmopolitan skeptics, as it were – then the EU will have significantly misplayed its hand. In any event, the specter of Western models will continue to entice, and occasionally haunt, the citizens of the region.