

# **INFORMAL INSTITUTIONS AND THE POST- COMMUNIST STATE**

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## Executive Summary

In their study of the structures that shape political behavior, scholars have emphasized the impact of formal, or “parchment” institutions. These range from constitutions to legislative bodies to regulatory frameworks, each one serving as a set of rules for political actors. In parallel, scholars have examined the importance of their “graffiti” counterparts: informal institutions such as local customs, reputations, and “folkways” that are found outside of the formal halls of power.

Rather than focusing on either set of institutions alone, this project examines the *interactions* between formal politics and informal institutions—unofficial solutions and unwritten rules—and how these played out in the post-communist states in East Central Europe. Second, while much of the literature has assumed that informal institutions will either become formalized, or persist to undermine formal institutions, I find that under certain competitive conditions informal institutions can *reinforce* formal rules, encouraging their development and strengthening their power to structure politics.

## **Introduction**

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Below, Section I examines the variation in post-communist states. Section II analyzes informal institutions, and their interactions with formal institutions. Section III shows how these interactions played out in the post-communist transformation of the state in the Czech Republic, Slovakia, Poland, and Hungary.

## I. The Post-Communist States

Well over a decade after the collapse of communism, formal political institutions of democracy in the region have largely stabilized and converged.<sup>1</sup> The Czech Republic, Hungary, Poland, and Slovakia have functioning parliaments, electoral systems, and policymaking rules. Parliamentary, proportional representation systems dominate. Democratically-elected political parties created new constitutions, reformed the legal systems, and developed institutional checks and balances that constrained the powers of presidents, the military, and other government actors.

These formal commitments explain several aspects of post-1989 state transformations. First, formal international commitments have led to the transformation of the legal framework and the creation of new state institutions. Countries hoping to enter the European Union had to adopt the *acquis communautaire*, the body of EU laws, in its entirety, radically transforming the legal environment. The accession further mandated formal state reforms. As part of its conditionality for accession, the European Union has reviewed progress in reforming formal state institutions annually for each candidate country, highlighting administrative and democratic shortcomings. These reviews became a powerful spur to further reform, and so public administration reform, regional decentralization, and anti-corruption initiatives have all been introduced across the region by 2002.

Second, formal institutional legacies of the pre-1989 communist systems do help to explain why state administrations would be vulnerable to expansion or “state capture.” The

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<sup>1</sup> The same cannot be said for their Eastern and Southern neighbors, where democratic development had been delayed (the former Yugoslavia, with the exception of Slovenia), or where a consolidated semi- or full-fledged authoritarianism rules (much of the former Soviet Union, with the exception of the Baltic republics.)

communist state had no civil service law in place, and maintained only a tiny administrative core.<sup>2</sup> After 1989, market reforms, regulated ownership structures, and the requirements of the EU all demanded an increase in state employment to provide the bureaucrats to staff the new state agencies. Therefore, the state expanded as a function of these formal institutional deficits.<sup>3</sup>

Finally, new formal electoral institutions determined the number of parliamentary competitors and veto players in charge of state reforms.<sup>4</sup> Higher electoral thresholds and lower district magnitude successfully lowered the number of competing parties and promoted the stabilization of ideological axes of competition, at the price of greater disproportionality.<sup>5</sup> In Poland, for example, the introduction of an electoral threshold in 1993 reduced the number of parties in parliament from 32 (elected in 1991 without a threshold) to 7. Similarly, electoral institutions that favored competition within republics also explain why no party competed throughout the former Czechoslovakia or prevented its breakup in 1993.<sup>6</sup>

Yet these factors open up new puzzles as they explain others. First, why is there variation in response to international demands for reform? If the EU made membership conditional on the same set of formal safeguards and reforms, why have these taken place so much earlier and more vigorously in some cases than in others?

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<sup>2</sup> Public administration employment averaged 1.5% of total civilian employment by 1989, well below the 4.6% OECD average. The structures of the communist party were both enormous and largely informal: but the core state administration was deliberately left weak and small.

<sup>3</sup> Pistor, Katharina. "The Evolution of Legal Institutions and Economic Regime Change," Paper Prepared for the annual Bank Conference on Development Economic in Europe, Paris, France, 21-23 June, 1999. See also Barbara Geddes, *The Politician's Dilemma*. Berkeley, CA: University of California Press, 1994.

<sup>4</sup> Ishiyama, John T. "Communist Parties in Transition: Structures, Leaders, and Process of Democratization in Eastern Europe," *Comparative Politics* 27, January 1995: 147-166, Millard, Frances, "The Shaping of the Polish Party System, 1989-93," *East European Politics and Societies*, Fall 1994: 467-494.

<sup>5</sup> Bielasiak, Zielonka, Jasiewicz, Krzysztof. "Structures of Representation," in White, Stephen, Judy Batt, and Paul Lewis, ed. *Developments in East European Politics*, London: McMillan, 1993b: 124-146.

<sup>6</sup> To enter parliament, a party had to clear the 5% threshold in *either* the Czech or the Slovak republic.

Table 1 shows that some countries concluded their administrative overhaul by 1997, when the EU began to demand state reform. Why has the public administration expanded at differential rates, as we can see from Table 1? If either formal functional deficits or the demands of market reform were responsible, we would expect to see similar rates of growth across the region, instead of the observed variation. And, the imposition of civil service rules did little to stem the tide.

**TABLE 1. SUMMARY VARIATION, 1990-2000**

Country	Formal State Institutions	Public Admin Growth	Party Funding
Hungary	In place by 1997	132%	Limited donors, Highly regulated
Slovenia	In place by 1997	203%	Limited donors, Highly regulated
Poland	In place by 1998	233%	Limited donors, increasingly regulated
Czech Rep	Begun in 1998	340%	Unrestricted and unregulated
Latvia	Begun in 2000	466%	Unrestricted and unregulated
Slovakia	Begun in 2001	313%	Unrestricted and largely unregulated
Bulgaria	Begun in 2000	303%	Unrestricted and largely unregulated

**TABLE 1A: INDIVIDUAL EXPERIENCE OF STATE POLITICIZATION: RELATIVE RANKINGS, SLOVAKIA AS BASELINE (=0)**

<p><b>Importance of Party Affiliation for Employment:</b></p> <p>Czech Republic -.74, Poland -.35, Slovakia 0</p> <p>Poland is .35 standard deviations away from Slovakia. Czech and Polish party affiliations matter less than Slovak.</p>
<p><b>Usefulness of Bribe for Obtaining a Permit:</b></p> <p>Czech -.16, Slovakia 0, Poland .55</p> <p>Bribes are less useful in the Czech Republic than they are in Slovakia, and they are more useful in Poland than in Slovakia.</p>

Finally, why did political parties in some countries directly extract resources from the state far more than in other countries? As Tables 1 and 1a show, there was considerable variation in both the formal opportunities for such extraction, and the resulting individual experiences of the state, its effectiveness, and its politicization. Yet all these countries were under the same careful purview of the European Union, and all functioned in similar formal institutional environments of parliamentary PR systems and state funding laws. To answer these questions, we turn to informal institutions and their interactions with formal rules.

## **II. Informal Institutions and Practices**

Informal institutions are consciously followed rules of political behavior. Much as formal institutions, they are rules that are widely recognized and taught as such.<sup>7</sup> They are reflexive: actors need to know and to understand what they are. However, unlike formal institutions, they are not sanctioned or codified via legal recognition, legal enforcement, or official access to power/ policymaking.<sup>8</sup>

This is not to say that tribal leaders or mafia captains do not impose strict rules—but without the infrastructural and despotic powers of the modern state behind them, they may find centralized imposition onto large domains difficult.<sup>9</sup> Examples of informal institutions include personal loyalties and networks, reputations, or personalistic resource distribution.

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<sup>7</sup> While formal institutions have been viewed as coordination equilibria, norms, or rules, (see Crawford, Sue E.S, and Ostrom, Elinor. “A Grammar of Institutions,” *American Political Science Review*, vol 89, # 3, September 1995: 582-600), this paper thus focuses on institutions as rules alone.

<sup>8</sup> This is not to say that the state and other formal actors cannot *use* informal institutions, or that they cannot be diffused via coercion.

<sup>9</sup> Mann 1986. Without state enforcement or adjudication, informal institutions are less likely to be imposed systematically and comprehensively, than they are diffused horizontally. This is not to say that they are thus distributed *voluntarily*: horizontal diffusion does not preclude coercion.



This definition implies that informal institutions are more than behavioral regularities or unintentional byproducts<sup>10</sup> of formal institutions.<sup>11</sup> They are not simply clashing, weak, or absent formal institutions. Moreover, even without formal enforcement mechanism, they can be imposed by informal means such as ostracism or shunning.<sup>12</sup> Finally, like formal institutions, informal institutions can be either weakly or strongly influential, and effectively or ineffectively enforced. Their informality does not presuppose either their extent or their impact. As John Carey notes, “not all written rules serve as effective constraints on political behavior, and, conversely, that not all effective constraints on social behavior are written rules.”<sup>13</sup>

Informal institutions function in three main ways, summarized in Table 2: first, they are a way to redistribute resources, via family and personal networks, norms of charity and mutual insurance, or discretionary access to state resources. Second, they are a source of information, as personal reputations and “usable pasts” cut down on transaction costs. Third, they are a constraint: both via informal monitoring, such as the snooping of neighborhood busybodies and via informal sanctions, such as truthful gossip.<sup>14</sup> None of these presuppose either a positive or a negative impact *a priori*.

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<sup>10</sup> Knight, Jack. *Institutions and Social Conflict*. Cambridge: Cambridge University Press, 1992, p. 172. This definition thus also runs counter to the arguments of József Böröcz, who argues that informality consists of avoiding or circumventing formal institutions. József Böröcz, “Informality Rules,” *East European Politics and Societies*, Vol 14, No 2, 2000: 348-380.

<sup>11</sup> See also Helmke, Gretchen, and Levitsky, Steven. “Informal Institutions and Comparative Politics: A Research Agenda,” Manuscript, Harvard University, January 2003, and Lauth, Hans-Joachim. “Special Relationships: the different impact of informal institutions on different democratic institutions,” Paper presented at the Conference on Informal Institutions and Politics in the Developing World, WCFIA, Harvard University, 5-6 April 2002.

<sup>12</sup> See also Laitin and Fearon APSR 1996. Jack Knight 1992 and 2002 argues that the distinction between formal and informal institutions lies in the lack of third party enforcement of the latter. However, as the example of the mafia chief shows, this may not always be a relevant distinction.

<sup>13</sup> Carey, John. “Parchment, Equilibria, and Institutions,” *CPS*, 33, no 7/8, August/September 2000: 735-761, p. 737.

<sup>14</sup> Randall Calvert (Knight and Sened 1995) argues that viewing institutions as constraints takes their effectiveness for granted: rules either cannot be violated, due to the game specifications, or to external sanction. But to assume that institutions are consistent with self-interest is to presuppose that no hegemonic idea or coercive agent can bring

Critically, in the modern polity, informal political institutions continually “come up” against formal rules. Most areas of political life are subject to formal institutions, codified and enforced by the power of the state, even if these formal rules are not necessarily dense or effectively enforced. There are very few domains to which formal institutions do not apply: even decisions made within the family or about one’s own body are subject to formal rules.

As a result, informal institutions can be very effective at structuring expectations and behavior. However, in most situations, their impact is not independent of formal rules, even if the nature of the linkages can vary. Even in organizations outside the purview of the state, such as the mafia, dissent movements, etc., formal institutions delineate the *domain* of informal rules. This is not to argue that informal institutions are merely a “residual category” that explains politics only at the margins, or to ascribe greater explanatory power to either set of institutions.

How then, do formal and informal institutions interact? They do so via substitution, undermining, and reinforcement. First, informal and formal institutions can *replace* each other. Informal institutions formalize, reflecting and consolidating the power advantages of their beneficiaries.<sup>15</sup> Incumbents can make official the unspoken “rules of the game” that favor them. Thus, many political parties, especially in new democracies, changed the laws that govern political competition, increasing electoral thresholds and changing the mechanisms that translate votes into seats. They also passed the laws on their own financing, which allowed governing parties to strengthen their hand at the cost of the extra-parliamentary opposition.<sup>16</sup>

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about involuntary compliance (eg, the role of women in many organized religions), or to make baroque arguments that eventually rely on external sanction (eg, that women go along with institutions that oppress them either because of false consciousness, or fear of the alternatives.)

<sup>15</sup> Knight, Jack. *Institutions and Social Conflict*, Cambridge: CUP, 1992. de Soto, Hernando 1990.

<sup>16</sup> Mair 1995 demonstrated that parties in Western Europe have turned to the state as a survival strategy, and given its dominance by the parties, the state readily obliges with increased funding, staffing, etc.

Alternatively, informal institutions can persist and have a direct impact when formal institutions are either sparse or unconsolidated, thus substituting informal rules for weak formal regulations.<sup>17</sup> Informal institutions may then eventually disappear as the forces of modern political and economic institutions replace localized informal arrangements.<sup>18</sup> In both accounts, the relationship between formal and informal institutions is zero-sum: one functions in the absence or weakness of the other.

Second, informal institutions can *undermine* formal rules. In this “parasitic”<sup>19</sup> relationship, informal institutions necessarily feed off, undermine, and weaken formal institutions.<sup>20</sup> In examining the persistence and influence of informal political institutions, scholars have emphasized their negative impact, and their corrosive effect on democracy.<sup>21</sup> Informal practices and institutions are seen as promoting corruption, delaying the consolidation of democratic institutions, and eroding emergent formal rules. Political actors exploit formal institutions by mining legal loopholes and capitalizing on poor specifications of formal institutions. Clientelism and patronage, personalistic awarding of jobs and contracts, and public policies that favor private allies fall into this category. Tax loopholes, lax incorporation

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<sup>17</sup> Bates, Robert. *States and Markets in Tropical Africa*. Herbst, Jeffrey. *States and Power in Africa: Comparative Lessons in Authority and Control*. Princeton: Princeton University Press, 2000. Laitin, David D. *Hegemony and Culture: Politics and Change among the Yoruba*. Chicago: University of Chicago Press, 1986. See also Volkov, Vadim. “Who is Strong When the State is Weak?” in Beissinger, Mark, and Crawford Young, eds, *Beyond State Crisis?* Washington, DC: Woodrow Wilson Center, 2002, p. 83.

<sup>18</sup> Huntington 1968, Lipset.

<sup>19</sup> Lauth, Hans-Joachim. “Special Relationships: The different impact of informal institutions on various democratic institutions,” Paper presented at the Conference on Informal Institutions and Politics in the Developing World, WCFA, Harvard University, April 5-6, 2002.

<sup>20</sup> József Böröcz, “Informality Rules,” *East European Politics and Societies*, Vol 14, No 2, 2000: 348-380.

<sup>21</sup> See, for example, O’Donnell, Guillermo. “Another Institutionalization: Latin America and Elsewhere.” Kellogg Institute Working Paper Series, University of Notre Dame, # 222, March 1996. Borocz, Lauth. \ See also Ganey 2001, Cirtautas 1997, Lewis and Gortat 1995.

requirements, subcontracting and subletting, or earning an income in contexts unregulated by the state,<sup>22</sup> are all forms of informal institutions that exploit the gaps in formal regulations.<sup>23</sup>

Informal institutions can also be used to deliberately violate formal strictures. Examples include covert party funding, and the awarding of contracts in contradiction to formal stipulations. Such undermining occurs more readily when formal regulation or monitoring is weak. An excess of formal institutions—for example, when the formal rules are dense and contradictory—can also produce subversion, as informal solutions necessitate the breaking of formal rules.<sup>24</sup>

For example, the dense regulatory body of Italian law constantly leads to the breaking of formal rules—it is more efficient to pay a bribe than to continually try to meet conflicting regulations and laws.<sup>25</sup> Similarly, in the Soviet era, “local party officials became complicitous in the evasion of revolutionary discipline. ‘Family circles’ and ‘local cliques’ protecting one another from the demands of the central authorities began to spring up everywhere.”<sup>26</sup> Informal ties and patronage also buffered Chinese villagers from the predation of local cadres or notables.<sup>27</sup>

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<sup>22</sup> Portes, Alejandro, and Schauffler, Richard. “Competing Perspectives on the Latin American Informal Sector,” *Population and Development Review* vol 19, no 1, March 1993: 33-60.

<sup>23</sup> József Böröcz, “Informality Rules,” *East European Politics and Societies*, Vol 14, No 2, 2000: 348-380.

<sup>24</sup> De Soto, Hernando. *The Other Path*.

<sup>25</sup> Frei, Matt. *Getting the Boot: Italy’s Unfinished Revolution*. New York: Random House, 1995, p. 12.

<sup>26</sup> Hanson, Stephen. *Time and Revolution*. Chapel Hill: University of North Carolina Press, 1997, p. 164.

<sup>27</sup> Shue, Vivienne. *The Reach of the State: Sketches of the Chinese Body Politic*. Stanford: Stanford University Press, 1988, p. 121.

In contrast to these two familiar patterns, scholars of informal *economic* institutions have found that informal institutions and practices can persist and coexist with formal institutions.<sup>28</sup> For example, analyses of post-communist property relations emphasize informal elite networks and “recombinant” property as important aspects of economic reform and privatization.<sup>29</sup> In such settings, informal institutions are a way to share risks and information, as well as to redistribute and even to create new forms of property ownership.

To go a step further, informal political institutions can also *reinforce* formal institutions. They can provide information and expectations for strategic choices, allowing formal rules to function. For example, when the creation of formal institutions is rapid and/or chaotic, extant rules and reputations may then provide the information that allows actors within formal institutions to make decisions in the absence of clear and readily available new data. Informal elite networks in Easter’s study of the early Soviet state buttressed the state’s administrative capacity.<sup>30</sup> Post-Soviet Russian credit card companies rely on personal reputations in making their credit decisions, in the absence of credit reports and credible financial statements.<sup>31</sup>

Similarly, the informal rules and expectations—the “folkways”—of the United States Senate served to smooth its formal functioning and policymaking.<sup>32</sup> Post-communist managers after 1989 appropriated and relied on their companies’ personal networks to succeed in the new

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<sup>28</sup> Portes, Alejandro, and Sassen-Koob, Saskia. “Making It Underground: Comparative Material on the Informal Sector in Western Market Economies,” *American Journal of Sociology*, 93 No. 1 (July 1987): 30-61. Portes, Alejandro, and Schauffler, Richard. “Competing Perspectives on the Latin American Informal Sector,” *Population and Development Review* vol 19, no 1, March 1993: 33-60. Kang, David.

<sup>29</sup> Bruszt and Stark 1997, Borocz, Borocz and Rona-Tas..

<sup>30</sup> Easter, Gerald. *Reconstructing the State: Personal Networks and Elite Identity in Soviet Russia*. Cambridge: CUP, 2000.

<sup>31</sup> I am grateful to Ivan Krastev for this example.

<sup>32</sup> Matthews, Donald. *US Senators and Their World*. New York: Vintage Books, 1960.

market conditions. As a result, “by funneling to their new companies the orders that would have gone to their old employers, they could get off to a secure start.”<sup>33</sup> These types of interactions can thus lower transaction costs engendered by formal institutions.<sup>34</sup>

Informal institutions can also reinforce formal institutions by creating incentives to comply with formal rules, which can strengthen formal institutions directly by changing the actors’ behavior. They “provide information about the choices of other players by structuring their choices to achieve equilibrium outcomes,”<sup>35</sup> as well as lend additional constraints on behavior induced by formal rules. Informal rules can thus reinforce formal regulations via informal sanctioning (truthful gossip), or reporting to formal authorities.<sup>36</sup>

Alternatively, informal institutions can inadvertently reify formal rules: for example, even as informal financing and mobilization techniques are used in electoral campaigns, they reinforce the notion that elections are the legitimate means of elite competition.<sup>37</sup> As Russian criminal groups and their leaders acquired economic assets of their own in the late 1990s, their new risk aversion meant that they underwent “an evolution toward becoming legal business enterprises playing by the formal rules and engaged in capital investment and charity.”<sup>38</sup>

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<sup>33</sup> Róna-Tas, Ákos. *The Great Surprise of the Small Transformation*. Ann Arbor: University of Michigan Press, 1997, p. 219.

<sup>34</sup> Pejovic, Svetozar. “The Effects of the Interaction of Formal and Informal Institutions on Social Stability and Development” *Journal of Markets and Morality*, 2, #2, (Fall 1999): 164-181.

<sup>35</sup> Knigh and Sened 1995, p. 10.

<sup>36</sup> Ellickson, Robert. *Order Without Law*. Cambridge: Harvard University Press, 1991.

<sup>37</sup> See Kotkin, Stephen, and Sajos, Andras. *Political Corruption: A Sceptic’s Handbook* Budapest: CEU Press, 2002, for more of these ironies of new democracies.

<sup>38</sup> Volkov, Vadim. “Who is Strong When the State is Weak?” in Beissinger, Mark, and Young, Crawford, eds, *Beyond State Crisis?* Washington, DC, Woodrow Wilson Center, 2002, p. 102.

Informal retirement arrangements and other rewards have also perpetuated formal bureaucratic institutions of bureaucracy, which do not replicate themselves automatically.<sup>39</sup>

This simple threefold framework differs from existing distinctions based on the strength of formal institutions, and the compatibility between formal and informal rules.<sup>40</sup> The taxonomy presented here is more appropriate for the analysis of post-communist state institutions, and for transitional settings in general—the very places where we might expect informal institutions to play an especially significant role.

First, many formal institutions have not yet consolidated, and many are likely to change their strength over time. It is also unclear what the relevant aspects of formal institutional strength might be: influence, density, or the degree of enforcement are all aspects of institutional “strength.” Second, the strength of formal institutions may be a function of informal institutions, especially in a transitional setting. As a result, interactions remain dependent on formal institutions, but the latter can be so undermined by informal institutions as to be rendered ineffective.<sup>41</sup> Third, the standards for compatibility are fuzzy and difficult to establish a priori, and to build them into the typology is to presuppose the outcome to be explained.

In the post-transition setting, we cannot assume the strength of any particular formal institution: political actors both set up new formal institutions, and transform existing ones. They are also in the position to make the most lucrative use of the extant informal institutions. Instead, political actors themselves, and how they are constrained by each other through competition, can determine how informal institutions undermine, reinforce, or substitute for formal ones. In the

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<sup>39</sup> Evans, Peter. *Embedded Autonomy: States and Industrial Transformation*. Princeton: Princeton University Press, 1995, p. 70.

<sup>40</sup> Helmke and Levitsky 2003.

<sup>41</sup> Another classification is found in Lauth 2002: formal-informal interactions can be a) complementary (coexistence and mutual reinforcement), substitutive (functionally equivalent), or conflicting (incompatible.)

post-communist parliamentary democracies, the relevant political actors consisted chiefly of political parties, who assumed key roles in both democratic politics, and in the creation of the institutions of governance, economic exchange, and political competition. Their competition affects substitution at the margins, limits undermining, and encourages reinforcement, as summarized in Table 2.

**TABLE 2. FORMAL AND INFORMAL INSTITUTIONAL FUNCTIONS**

	<b>Resource Redistribution</b>	<b>Source of Information</b>	<b>Constraint on Individual Action</b>
<b>Formal</b>	Welfare state, taxation, corvee	Statistics, Stock reports,	Legal regulations and policing
<b>Informal</b>	Informal party funding, public administration staffing, power sharing	Reputations, Gossip, Family and personal networks	Informal monitoring, Ostracism, shunning

For competition to have these effects, the competitors must have both incentives and capacities. First, there must be gains from publicizing each other’s misdoings: the capture of marginal voters for the whistleblower, ostracism of the offending party in parliament, and so on. If voters, other parties, or oversight institutions such as courts or ombudsmen do not care about politicization, there is little gain to be had from accusations thereof.

Second, the actors must be in a position to effectively critique and threaten each other: that is, they cannot be *a priori* excluded from governance, or seen as illegitimate. Extremist parties, for this reason, may not offer enough of a threat to alter other parties’ behavior. They must also offer clear alternatives, so that voters know which parties to punish. The sheer number or size of parties in parliament itself is not as indicative of their potential to monitor and to sanction as their parliamentary “weight”—how critical and contentious an opposition they



present. Where parties are considered unacceptable coalition partners, and eliminated *a priori* from consideration in coalition negotiations, they are less able to constrain others. For example, the Czech ODS did not have a numerical balance in parliament, but the two main opposition parties, the communists and the republicans, were both ideologically unacceptable to the other parties, and never considered as potential coalition partners.<sup>42</sup>

Thus, if parliament is too fragmented and coalitions too unstable to pass any laws, competition limits substitution by hindering the translation of informal conventions into formal laws. Actors then have the incentives, but not the capacity, to formalize informal institutions. Minimal competition has the same effect on substitution, but for opposite reasons: actors have the capacity, but not the incentives, to formalize informal arrangements.

Second, competing political actors limit the extent to which any one can exploit formal institutions or set up highly disproportionate ones, since competition creates incentives for political actors to monitor each other's behavior. This oversight, in turn, both reduces the creation and the exploitation of formal loopholes for discretionary purposes. Finally, competition leads informal institutions to reinforce formal ones when political actors seek out sources of information and expectations necessary to compete successfully. Especially after a regime collapses, informal institutions provide information that formal institutions cannot yet supply. Moreover, competition encourages the creation of formal guarantees in the face of enormous uncertainty. Political parties balance in parliament against marginalization or power grabs by

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<sup>42</sup> Such a priori elimination itself is an informal mechanism for keeping some parties out of power. In the Czech case, therefore, the KSCM did not transform itself sufficiently to become an acceptable governing party, but it was also in the ODS's benefit to have two opposition parties lack governing potential.

other parties. Actors are also more likely to try to close formal loopholes and strengthen universalist formal institutions when the informal discretion of others is likely to hurt them in the immediate future.

The opportunities for such monitoring and institution-building were a function of party competition: the greater the electoral uncertainty of parties in parliament, the more likely they were to seek to examine the actions of other parties as a way to gain electoral advantage for themselves. Greater electoral uncertainty meant that parties constantly watched each other's hands, reporting any misdoings since that could be an electoral advantage. The electoral uncertainty also meant that no party had either the incentive or the capacity to propose "winner-take-all" formal institutions, such as single member districts, funding based exclusively on number of seats, and so on, since it was unclear who would benefit.

Incentives existed, therefore, to build strong formal institutions of oversight and power-sharing. Parties also publicized each other's shortcomings, thus informally sanctioning parties that sought rents from the state. Where numerous parties faced electoral uncertainty, and each party could benefit from pointing out the errors and transgressions of the others, mutual suspicions and accusations (often publicized in the print media) served as a form of informal monitoring.

This was the situation in Poland and in Hungary, with its alternation in power of clear political camps, strong and contentious opposition, and mutual public criticism by the competitors. Each party faced considerable uncertainty about its electoral future, and thus all parties had incentives both to monitor each other's performance, and to close loopholes that would unduly benefit ruling parties with state resources. These parties repeatedly publicized each other's misdoings, in the newspapers, television interview programs, and in parliament itself—

and where party votes were highly fragmented and fluid, gaining even a few voters via such appeals could mean the differences between governance, entering parliament or failing to clear the threshold.

In contrast, where the political competition was limited, parties were returned to office again and again, as in the Czech Republic and Slovakia. The Movement for Democratic Slovakia (HZDS) and the Civic Democratic Party (ODS) ruled for most of the critical institution-building period after 1989 (until 1998 in both cases), with minimal opposition. Such dominant parties could more readily build in advantages for themselves, confident they would be the beneficiaries. Given the feeble mutual monitoring and sanctions, political parties could poorly specify the legislation on party financing so that local governments and state firms could contribute financially to the governing political parties. They could also exploit the lack of meritocratic laws regarding public hiring and staff the public administration with their loyalists, and delay the formal reforms that would limit their discretion.

### **III. Institutional Interactions in East Central Europe**

If the configurations of formal institutions leave unexplained the timing of administrative reform, the expansion of the public administration, or resource extraction from the state, how can informal institutions and their interactions help to explain them?

**TABLE 3. FORMAL-INFORMAL INTERACTIONS**

	<b>Substitution</b>	<b>Reinforcement</b>	<b>Undermining</b>
<b>Mechanisms</b>	Informal institutions (II) are either transformed into formal institutions (FI), or act in lieu of weak FI	II provide the information for FI to function or “inadvertent reification”	II used to exploit loopholes in FI, or to subvert FI directly
<b>Impact of Competition</b>	If intense: incentives to formalize II If low: capacity but not incentives to formalize II	Intense competition encourages reinforcement of FI by II	Intense competition limits undermining of FI by II
<b>Examples</b>	Implementation of formal state institutions	Coalition formation, power-sharing	Party rent-seeking

*Substitution*

First, interactions between informal postcommunist institutions and their formal counterparts explain why some countries embarked on reforms of the state considerably earlier and more effectively than others. Where robust political competition forced the government’s hand, formal administrative institutions were set up and enforced much more quickly and effectively than where no such competitive pressures existed. Informal rules were replaced by formal state administration structures.

In its negotiations with the post-communist candidate countries, the EU has demanded that state capacity in the candidate countries needs to be developed and enforced, with greater transparency, the reform of the civil service, and the development of local government administration. These demands began in 1997, with the Luxembourg conference, and the pressure grew over time, leading even the laggards to adopt a whole raft of administrative reforms in 2000-2002.

Yet some countries, such as Hungary, nonetheless passed numerous state reforms in the early 1990s, long before the EU began to seriously emphasize state reform. Others, such as the Czech Republic or Slovakia, did not pass any of these laws for well over a decade after the

regime change, long after it was clear these reforms were necessary. These delayed reforms were implemented chiefly to fulfill EU conditions, and the resulting institutions were poorly planned, unenforced, and often badly suited to the administrative problems at hand.

Underlying this variation are the patterns of domestic political competition: the more an effective opposition criticized the government and presented a clear electoral alternative, the earlier implementation of these formal reforms of the state, as a way of preventing the entrenchment of any one political party.<sup>43</sup> The informal understandings generated by domestic party competition thus determined the adoption and force of formal state institutions.

Where competition was intense, as in Poland or Hungary, many of the institutional changes demanded by the EU had already been anticipated, and implemented long before the EU began to pressure for them in 1997. These include civil service laws, regional reform, ombudsmen, securities and exchange commissions, etc. All of these had one goal: to constrain other parties from informally exploiting the public administration, state resources, or weak property rights.

Where competition was less robust, there were no incentives to build in such self-limitations: and so the Czech Republic and Slovakia had to scramble to decentralize government, embark on civil service reforms, institute formal institutions of control and oversight, etc. mostly after 2001. Even then, several political parties were vehemently opposed to civil service regulations and other formal state institutions as “expensive and unnecessary.”<sup>44</sup> Thus, robust

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<sup>43</sup> Grzymala-Busse 2003.

<sup>44</sup> Both the ODS and the HZDS announced they would scrap the passed laws if elected into office in the 2002 elections in the two countries.

political competition affected the timing and extent of effective state institutional reforms. Several states with such competition could even pre-empt EU conditions, substituting informal discretion for formal constraint and regulation.

### *Undermining*

If formal institutions can explain the number and relative strength of parliamentary players, informal institutions clarify how some parties were able to persist and even to profit in the turbulent early years of party democracy, extracting resources from the state. The extent to which parties were able to informally privilege themselves is a function of party competition.

Thus, the Czech and Slovak laws left considerable loopholes in party funding and public administration staffing, allowing political parties to directly benefit and thus raise their likelihood of survival as organizations and competitors. As a result, *state* firms and enterprises often funded national party activity, as did local government coffers. As Vacláv Klaus's ODS arose to power in 1991, it "reluctantly allowed" state funding, but refused to expand the regulatory framework. The Czech Republic saw repeated scandals over party financing, and the tendency of the governing parties to break the few rules on the books: for example, the main ruling party, the ODS, could not explain why a dead Hungarian and a resident of Mauritius were its main donors during 1995-6, why it concealed over 170 million Kč in Switzerland,<sup>45</sup> or why it received 7.5 million Kč from Moravia Steel after the latter was allowed to lower its bid for Trinecke Železárny by 300 million Kč.<sup>46</sup>

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<sup>45</sup> *Respekt*, 1 December 1997.

<sup>46</sup> The ODS also claimed it had received over 2 million Kč from the American Committee for the Support of ODS, despite the latter's denial it had ever paid the money.

It was only when the opposition Social Democrats began to govern in 1998 that state organs were no longer permitted to fund parties and regulations tightened somewhat. However, since parties could be a joint owner of businesses, and local governments often owned these, funds could still be easily funneled from local state offices to political parties, via informal networks of party members and allies. Since these gifts could remain anonymous until the 100,000 Kč (\$30,000) threshold, parties could benefit greatly from these lax funding regulations.<sup>47</sup>

In both the Czech Republic and in Slovakia, limited competition stifled the incentives for closing formal loopholes. Two causal mechanisms underlie this correlation: first, the access of other parties to policymaking and administrative decisions was limited. This was especially the case for opposition parties whom the governing parties denounced as “illegitimate,” such as the Communists or the Republicans in the Czech Republic, and the Hungarian minority parties or the Christian Democrats in Slovakia. Second, given the electoral dominance of the ODS and HZDS, there were fewer marginal voters to capture via such public reports of their misdoings—and the governing parties were certain enough of future victories to continue to build in advantages for themselves without fear of subsequent electoral loss. As a result, the opposition had neither the access nor the incentives to change the formal regulations that favored the dominant parties.

In contrast, Polish and Hungarian electoral laws quickly eliminated several loopholes such as financing by local government, by government-subsidized institutions, and by state enterprises.<sup>48</sup> Both countries moved to highly regulated systems of party funding. The constant suspicions among the numerous and squabbling Polish political parties and their mutual

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<sup>47</sup> Vládní program boje proti korupci v České Republice. “Zpráva o korupci v České republic a možnostech účinného postupu proti tomuto negativnímu společenskému jevu.” 17 February 1998.

<sup>48</sup> See Grzymala-Busse 2003.

accusations meant that informal practices would limit subversion, and create incentives for the formalization of this monitoring. Thus, by 2001, a new Polish election law mandated full reporting and effective sanctions,<sup>49</sup> since “all agree that to limit corruption it is necessary to publicize the sources of party financing.”<sup>50</sup> As a result, the new law eliminated public fundraising, capped contributions, and stipulated that all campaign spending has to come from a public electoral fund set up by each party and monitored by an independent commission.

The opportunities for such subversion were even more limited in Hungary, where the initial fragmentation and uncertainty prior to the communist exit made all the democratic parties wary of any one benefiting disproportionately. Formal party funding was both generous and strictly regulated. According to the October 1989 law, parties receiving more than 1% of the vote were eligible for state funding, but faced strict regulations.<sup>51</sup> Party funding reports were made public, and an independent monitoring agency, the Government Control Commission, was set up. Subsequently, professional accounting standards for parties were introduced in May 1991, and repeatedly upheld.<sup>52</sup> Similarly, despite the rise of foundations closely allied with the parties, and the ties of business with parties, party finances were more public, more stringently controlled, and allowed less rent-seeking, since “strong limits have developed upon party penetration into state and social life.”<sup>53</sup>

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<sup>49</sup> Parties not submitting a report, or those that did not pass the forensic accountants’ scrutiny, would not receive state funds for that electoral period.

<sup>50</sup> 19 May 2000, *Rzeczpospolita*.

<sup>51</sup> As a result, some parties, like the MSZP, received only 24% of their funds from the state. The MDF received 60%, the FKGP 73%, while the others (Fidesz, KDNP, and SzDSz) received over 80% from the state.

<sup>52</sup> Petroff, Włodzimierz. “Finansowanie partii politycznych w postkomunistycznej Europie,” Kancelaria Sejmu, Biuro Studiów i Ekspertyz, June 1996, #95, p. 14.

<sup>53</sup> Körösényi, p. 168.



Second, formal regulations regarding the civil service or public administration employment were readily exploited by political parties where they faced no monitoring or oversight by their competitors. And, since the absence of regulations favored political appointments, civil service laws were often delayed. This undermining explains the expansion of public administration, as parties directly extracted further resources from the state by setting up new state agencies and hiring party allies to staff these.

Where party competition was intense, parties were constrained. Hungary was thus relatively immune from the exploitation of formal structures by informal practices. From the start, the nascent political parties concerned themselves with ensuring that their relatively weak and uncertain positions would not be further imperiled. As a result, a civil service law, in place since 1 April 1992, effectively established the independence of the public administration system from political parties. It was followed up by a stringent conflict of interest law in 1996.<sup>54</sup> These heavily enforced laws eliminated potential loophole exploitation, and so very few political appointments were made in the executive structure.<sup>55</sup>

Polish party coalitions were highly unstable, and the considerable conflict within the coalitions mean that even coalition partners tried to limit each others' efforts. Estimates of actual numbers placed by the parties in the public administration fall below 20,000, or less than a tenth of the total public administration employment.<sup>56</sup> Any transgressions were immediately publicized by other Polish parties (and subsequently stopped), and they did not lead to the accumulation of resources by parties over time. For example, after the 1997 elections, the ruling

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<sup>54</sup> Freedom House, *Nations In Transit 2001*. Washington DC: Freedom House, 2002, p. 204.

<sup>55</sup> Nunberg, Barbara. *Ready for Europe: Public Administration Reform and European Union Accession in Central and Eastern Europe*. World Bank Technical Paper No. 466. Washington, DC: World Bank, 2000, p. 274.

<sup>56</sup> 22 January 2000, *Polityka*.

AWS openly spoke of exchanging 4,000 positions,<sup>57</sup> but was immediately criticized for trying to establish a new “party nomenklatura.”<sup>58</sup> Rather than continuing to allow this exploitation, moreover, parties moved to close loopholes, by passing civil service laws in 1996 and in 2001.<sup>59</sup>

The two laws illustrate the importance of party competition: the 1996 law built in a *formal* advantage for its communist successor authors: it specified that civil servants with more than 7 years of service were exempt from passing tests, and were to be favored in advancements. Needless to say, the only civil servants with this tenure were from the communist era. As a result, when the opposing AWS coalition entered office in 1997, it immediately announced it would change the law. The communist successor SLD then announced it would carefully monitor the creation of the new civil service legislation, repeatedly criticizing the novelization but keeping its meritocratic proposals when it re-entered office in 2001.<sup>60</sup>

In contrast, in the Czech Republic and Slovakia, civil service laws were not passed until 2002. Both state employment and state structures expanded where competition was weak. In both countries, public employment more than tripled during 1989-2001, despite the elimination of the regional governments in 1990. In the Czech Republic, the government approved a basic outline of the public administration code, and then shelved it.<sup>61</sup> The situation had become dire enough in the Czech Republic for the EU to conclude that “the occupying of positions in the

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<sup>57</sup> 18 December 1999, *Polityka*.

<sup>58</sup> 22 January 2000, *Polityka*.

<sup>59</sup> The extreme fragmentation, however, could also delay the implementation of formal constraints. Thus, while a civil service law was ready in 1992-3 in Poland, the fall of three different governments prevented its passing.

<sup>60</sup> See *Gazeta Wyborcza* (cites from SLD file here)

<sup>61</sup> OECD, *Issues and Developments in Public Management: Czech Republic-2000*, p. 10.

state machinery according to party membership or on the basis of personal acquaintances is in contradiction with the requirements of the rule of law and with the interests of the public.”<sup>62</sup>

In Slovakia, the HZDS moved to centralize power, and “rewarded its members and supporters in the organs of the state administration, especially on the regional and local level.”<sup>63</sup> Not surprisingly, a subsequent audit emphasized the need to eliminate many medium-level organizations, sections, committees, and divisions.<sup>64</sup> In the absence of effective public employment regulations, an enormous amount of informal discretion was left: in one blatant example, the HZDS instituted the “action fives,” groups of five political appointees who “conducted a general, government-led purge of the ranks of district state administration based on explicit political criteria.”<sup>65</sup> On the night of 3-4 November, 1994, the HZDS also instituted what subsequently became known as the “night of long knives,” when almost all heads of oversight, monitoring, and administrative bodies were summarily exchanged for HZDS loyalists.

Political parties did not stop at exploiting loopholes: they also deliberately broke laws and violated formal operating procedures, relying on faulty monitoring and enforcement mechanisms to escape punishment. Favorable privatization privileges and deals drained resources out of the state treasury, rather than funding public goods. These deals were concluded on the basis of individual and political networks, rather than on the basis of highest bids in the formal tenders, as in Slovakia during 1992-8.

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<sup>62</sup> PHARE and NVF, “An Analysis of Public Administration of the Czech Republic,” Summary Report, Prague, September 1998.

<sup>63</sup> Mesežnikov 1997, p. 45.

<sup>64</sup> “Audit súladu činností a financovania ústredných orgánov štátnej správy,” Slovak Government Information Service, August 2000, also available at [http://www.vlada.gov.sk/INFOSERVIS/DOKUMENT\\_UOSS\\_2000/audit\\_UOSS\\_2000\\_august.shtml](http://www.vlada.gov.sk/INFOSERVIS/DOKUMENT_UOSS_2000/audit_UOSS_2000_august.shtml)

<sup>65</sup> Krivý, Vladimír. “Slovakia’s Regions and the Struggle for Power,” in Szomolányi, Soňa and John Gould, eds. *Slovakia: Problems of Democratic Consolidation*. Bratislava: Friedrich Ebert Foundation, 1997, p. 116.

Thus, in Slovakia, the second wave of voucher privatization, scheduled for 1993, never took place, but privatization nonetheless accelerated at beginning of 1994, via direct sales in favor of the HZDS and its coalition partners.<sup>66</sup> HZDS often informed would-be participants in the privatization process that partnership with HZDS-tied companies was a “necessary precondition of the successful realization of their privatization projects.”<sup>67</sup> The HZDS also used formalization to subvert earlier laws: a 1995 law gave tax breaks to the allies of the HZDS government who bought enterprises via direct privatization.<sup>68</sup> Another law gave the state power over 74 key companies, and transferred power to administer privatization from the Ministry of Privatization to the National Privatization Fund, so that the state no longer had formal control over privatization decisions.<sup>69</sup>

This informal exploitation of loopholes in formal regulations generated a feedback effect: parties that were powerful enough at the outset to privilege themselves, such as the HZDS and ODS, gained the material resources and clientelistic ties to gain an advantage in subsequent elections and could build in further loopholes for themselves, making it more difficult for other parties to compete and reverse this spiral.

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<sup>66</sup> Mikloš, Ivan. “Economic Transition and the Emergence of Clientelist Structures in Slovakia,” in Szomolányi, Soňa and John Gould, eds. *Slovakia: Problems of Democratic Consolidation*. Bratislava: Friedrich Ebert Foundation, 1997, p. 61.

<sup>67</sup> Mesežnikov, Grigorij. “The Open-Ended Formation of Slovakia’s Political Party System,” in Szomolányi, Soňa and John Gould, eds. *Slovakia: Problems of Democratic Consolidation*. Bratislava: Friedrich Ebert Foundation, 1997, p. 38.

<sup>68</sup> Mikloš, Ivan. “Economic Transition and the Emergence of Clientelist Structures in Slovakia,” in Szomolányi, Soňa and John Gould, eds. *Slovakia: Problems of Democratic Consolidation*. Bratislava: Friedrich Ebert Foundation, 1997, p. 77.

<sup>69</sup> The NPF, a quasi-private joint stock company created to administer the privatization decisions of government and administer state properties, was fully under the personal discretion of the HZDS. Szomolányi, Soňa. “Identifying Slovakia’s Emerging Regime,” in Szomolányi, Soňa and John Gould, eds. *Slovakia: Problems of Democratic Consolidation*. Bratislava: Friedrich Ebert Foundation, 1997, p. 17.

## *Reinforcement*

Informal practices reinforced formal institutions by a) providing decisionmaking rules for actors within formal institutions where the latter generated few formal guidelines and b) by monitoring and punishing the undermining of formal institutions. The first is a function of the greater availability of information from existing informal rules at a time when formal institutions are being rapidly constructed, but have not yet become familiar or powerful enough to generate strong incentives. The second is a function of party competition: the more intense the competition, the more actors relied on informal monitoring and sanction.

First, informal rules cut down on the costs of obtaining information—for example, before parties developed ideological reputations and practical experience, an informal “regime divide” structured the potential for formal coalitions and cooperation between parties with origins in the former opposition on the one hand, and the successors to the communist parties and their various satellites on the other.<sup>70</sup> The more profound this divide, the less likely the coalitions across these two camps, even when ideological proximity and other affinities would have dictated them. For example, the Polish communist successor party could only form coalitions with its former satellite. Its policy and ideology were far closer to the centrist Freedom Union, as both parties admitted, but its provenance made such a coalition impossible. In contrast, the Hungarian communist successor could govern with a former opposition party, chiefly because the regime divide was less stark.

As a result, coalitions thus formed not on the basis of ideological or numerical considerations, but of past conflict or cooperation.<sup>71</sup> Size considerations account for roughly a

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<sup>70</sup> Kitschelt, Herbert, Mansfeldová, Zdenka, Markowski, Radosław, and Tóka, Gábor. *Post-Communist Party Systems*. Cambridge: Cambridge University Press, 1999., Grzymala-Busse 2002.

<sup>71</sup> Grzymala-Busse, Anna. “Coalition Formation and the Regime Divide,” *Comparative Politics*, October 2001.

quarter of post-communist governing coalitions, and ideological proximity for less than half of the coalitions that formed. But nearly 90% of the coalitions that formed adhered to the rule that former communists and their former opponents could not form alliances in parliament.<sup>72</sup> Existing informal rules were thus a powerful source of information at a time when formal institutions are being rapidly constructed, but have not yet become familiar or powerful enough to generate strong incentives.

When it came to the state and its structures, informal institutions provided distributive guidelines. Governing coalitions in all four countries named representatives to enterprise boards on the basis of informal power-sharing: if the head of a board was from one governing party, the vice chair was from the other. Positions were filled according to the political preferences of the governing coalition, and these in turn relied on extant personal alliances.<sup>73</sup> Similarly, when governing parties were to appoint regional leaders in Poland, senior governing coalition partners named the voivode, and the juniors, the vice-voivode.

Second, informal institutions reproduced formal institutions by expanding the latter's sphere: several informal arrangements were made subject to formal oversight organizations, expanding the formal regulatory role of the state. For example, the creation of quasi-public agencies in Poland and in Hungary to take on privatization and other state roles allowed informal personal networks to carve out a sphere of activity that was formally codified and legitimated.<sup>74</sup> At the same time, however, these were subject to the rulings of the Constitutional and other

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<sup>72</sup> Grzymala-Busse, Anna. "Coalition Formation and the Regime Divide," *Comparative Politics*, October 2001.

<sup>73</sup> *Wprost*, 5 March 2000.

<sup>74</sup> These institutions first gained these funds in the 1980s, and were resurrected in the 1994-5, when branch ministries heavily pressured the center to create more extra-budgetary institutions.. Interview with Zyta Gilowska, by Elzbieta Misiak. 3 September 2001, available at <http://www.platforma.org/new/wywiady/10.shtml>.

courts, strengthening the courts' prerogatives, expanding the domain over which the courts could rule, and gaining the courts greater legitimacy.<sup>75</sup>

These informal power-sharing rules reinforced formal institutions by making decisions within formal structures considerably more streamlined, greasing the gears of the formal state machinery by providing shortcuts and strategic templates that allow formal institutions to function and to perform their codifying roles.

## Conclusion

As Michel Crozier noted forty years ago, organizations rely on both formal, “rational,” rules, and informal checks and norms.<sup>76</sup> Neither formal nor informal institutions alone can explain the puzzles presented above. Rather, the two interact in complex ways that influence the outcomes we observe. As a result, informal mechanisms do not simply hinder democratic accountability or formal institutions,<sup>77</sup> but function in considerably more nuanced ways. Informal institutions are thus not just a “missing variable,” to be included to account for more of the variation—they also contribute to a distinct explanatory framework that does not assume a clear divide between formal and informal, or the kind of interaction between them.

The analysis of the ways in which political competition determines how informal institutions interact with formal institutions provides us with two advantages over current accounts of the transformations of party and state. First, it specifies the mechanisms by which

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<sup>75</sup> Scheppele and 2002.

<sup>76</sup> For Crozier, the formal *was* the rational (universalist and consistent), while I assume both formal and informal institutions can function in this way. Nonetheless, Crozier eloquently warns against being “so haunted by the fear of being misled by the formal structure and the formal definitions of the roles,” that one examines only “irregularities, backdoor deals, and subtle blackmail.” Crozier, Michel. *The Bureaucratic Phenomenon*. Chicago: University of Chicago Press, 1964, p. 166.

<sup>77</sup> O'Donnell 1996.

political competition affects state development. Robust political competition limits the discretionary distribution of state resources, relies on informational shortcuts provided by informal institutions, and monitors and sanctions state politicization. Second, it provides a more complete explanation than either formal or informal institutions alone. It is the *interaction* between formal and informal institutions engendered by competition that explains some of the unanswered puzzles of post-communist political development.