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Post-Communist Competition and State Development

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Abstract

Theories of institutional development have tended to view discretion, or the leeway to act within institutional bounds, as an often unintended consequence of agency design and institutional specification. Yet the post-communist states show that discretion is a fundamental goal of institutional creation among competing elites. In turn, while political competition has been identified as a key constraint on discretion in institutional creation, widely-used indicators of political competition are inadequate. As post-communist democracies show, the number or seat share of political parties matters far less than what parties do in parliament. The key factor is a *robust* opposition: a clear, credible, and contentious threat to governing parties. Such opposition leads to the rise of formal institutions that both minimize the discretion necessary for rent-seeking, and favor equitable distributional outcomes.

Post-communist state development brings to light a critical but often neglected dimension of institutions: the *discretion* that is built in. Discretion, or the freedom to make decisions and act within formal institutional bounds, has been largely examined as a consequence of agency design, monitoring difficulties, or the level of regulatory detail (Huber and Shipan 2002). The focus is on the relationship between the principals (politicians) and their bureaucratic agents, who shirk, or are prevented from shirking, their duties to their public principals (McCubbins, Noll, and Weingast 1987). Principals can ensure that agents fulfill policy directives through the design of government agencies, reporting requirements, decision procedures, etc. Scholars also focused on the conditions under which politicians can insulate bureaucratic agencies and policies from politics, delegating authority to bureaucracies in the process and limiting the leeway bureaucrats have in implementing policy directives (Huber and Shipan 2002, Moe 1990, Figureido 2002). Formal institutions thus generate and constrain discretion either through the level of regulatory detail, or through agency design.¹

The question then becomes who gets to impose these formal constraints on the discretion of on political and societal actors. Distributive outcomes both determine institutional configurations, and hinder their transformation (Knight 1992). In their coercive variant, theories of institutional formation focus on powerful actors that impose institutions beneficial to themselves on weaker participants (Bates 1988, Krasner 1991, Olson 1982, Moe forthcoming.) In their cooperative version, explanations of institutional development focus on coordination, and the payoffs associated with developing greater certainty and shared expectations through mutual constraints and guarantees (Bawn 1993, Carey 2000, Weingast 1993, Jones Luong and Weintal 2003, Weingast and Marshall 1989). As historical institutionalist analyses point out, the subsequent institutional constraints may be initially unanticipated or unintended, but they can become reinforced over time via a series of feedback mechanisms (Pierson 2002, Thelen 1999).

While these perspectives have greatly advanced our thinking about how and why institutions function, they important issues unexplained. First, they do not explain why formal institutions would fail to arise in the first place, or why laws are passed but left unenforced. Second, in their focus on established principals and agents, they do not explain how the two groups are delineated in the first place. Third, since the distribution of power is exogenous, there is less focus on the circumstances that produce coercion or coordination, other than the formal institutional framework itself (Carey 2000). If coercion tends to produce “winner-take-all” institutions and consensus is more likely to produce institutions with more equitable distributional outcomes (Olson 1982, Weingast et al, Schamis 1999), this is a critical aspect of institutional creation.

Post-communist democracies offer new perspectives on these aspects of discretion. Discretion is not simply an aspect of delegation or an unintended or unanticipated consequence of institutional projects. Rather, it is a fundamental goal driving institutional creation. Political actors (and in the case of the post-communist parliamentary democracies considered here, these are parliamentary parties) deliberately built in discretion for themselves in the process of institutional creation. For these nascent and impoverished actors, the state offers the greatest guarantees of organizational survival. And, as the key actors entrusted with disposing of enormous state assets, they could privatize to favored allies, gain control of these assets directly, and otherwise gain discretionary access to state resources. Second, where the hierarchies of authority have not yet fully developed, the lines between agents and principals are not clear. The key prob-

¹Comparativist and Americanist analyses tend to view formal institutions and discretion in distinct ways. For Americanists, formal institutions are stable foundational documents. Discretion is the wiggle room left behind by formal institutions, as distinct from autonomy: the informal power and authority that is restricted by the political process. In contrast, comparativists, and this article, view formal institutions as varying across time and place, and discretion as consisting both of the leeway left behind by formal institutions, and the leeway built into weak or unstable formal institutions. I am grateful to [name removed] for this point.

lem then is not shirking within a vertical hierarchy of principals and agents, but resolving the identity of the principals. The resulting elite competition and conflict has two effects on discretion: it increases the incentives to build constraining formal institutions, and it informally limits discretion through monitoring and criticism. Third, specific types of competition alter elite expectations regarding their access to the benefits of office. Accordingly, where there is robust competition, actors coordinate and self-constrain. Where there is not, dominant actors can impose their preferred solutions on others.

There are several ways in which discretion is built into post-communist formal institutional frameworks. First, political actors *deliberately fail to design institutions*: thus building in enormous license and opportunity to seek rents. This is the “dog that did not bark” of institutional analysis: while the majority of research has focused on the characteristics of nascent institutions, and the processes by which they were constructed, political actors have the option not to create *any* formal institutions in a given area. The delegation problem is then moot, since there is nothing to enforce or to implement; but the extractive discretion is enormous. Thus, several post-communist democratic governments simply did not build formal state institutions, such as securities and exchange commissions, regional governments, conflict of interest laws, and so on.

Second, political actors construct *winner-take-all-institutions*. These privilege a few extant actors, through vague specification (which allows those in power to interpret the laws and gives them considerable discretion), and by explicitly reinforcing initial privilege (which then increases the discretion of evermore powerful actors to change laws to their benefit). Deliberate vagueness and premeditated lack of enforcement increase the potential for discretion of such laws. Party funding laws that chiefly favor the incumbents, or the award resources according to existing strength are among the examples of winner-take-all (or winner-take-most) institutions.

Third, we also see the rise of lax or unenforced formal institutions. Such “Potemkin” institutions are often characterized by low regulatory standards, ambiguous language, and limited provisions for enforcement (or their informal abandonment). They exist on paper, often to satisfy the requirements of external actors (such as international donors or organizations), but they can not fulfill their ostensible goals. Examples here range from the infamous Soviet Constitution of 1936 (famous for promising every human right but delivering none) to ostensibly devolutionary regional reforms that centralize power.

There is considerable variation in the patterns of post-communist formal institution building. Despite the view that the European Union imposed a whole set of state institutions on these countries (Innes 2000, Moravcsik and Vachudová 2003), several had already built formal state institutions that severely constrained the discretion with which political parties could extract state assets. In this group, exemplified by Slovenia or Hungary (and further including Poland, Estonia, and Lithuania), these institutions arose early and were enforced. These countries adopted formal constraints on government discretion and state vulnerability, and did so “spontaneously” with minimal external pressure once communism collapsed.

In contrast, in the “latecomer” group of post-communist democracies, which included the former Czechoslovakia, Latvia, and Bulgaria, formal oversight institutions were absent for most of the crucial decade after communism’s collapse: the period when state assets were privatized, new legal frameworks were set up, and actors learned how to compete and succeed in the new market and regulatory environments. Reforms that would remove state assets from the grasp of the governing parties: civil service laws, central oversight and control institutions, or regional decentralization, have been significantly delayed. Some were passed only in 2001-02, over a decade after the first economic or political reforms, and under heavy pressure from the EU.

How do we explain these configurations? If discretion offers the opportunity for rent-seeking, what limits discretion? Previous research has found that political competition limits corruption and rent-seeking (see Rose-Ackerman 1999, Shleifer and Vishny 1993). Yet competition itself is not an automatic

check: a key dimension of party competition is the vulnerability of the incumbents, or their relative security of tenure (Bartolini 2000). As we will see below, this requirement means that mechanistic aspects of competition, such as fragmentation or turnover, do little to constrain parties.

Instead, this variation in formal state reform is a function of *robust opposition*. The more robust the opposition—the more contentious, clear, and credible an alternative it presents to the government—the greater the threat of replacement it poses to the parties in power. This threat leads the government to undertake the formal reforms of the state rapidly, which limit parties' ability to obtain state resources for private ends. The more robust the competition, the greater the incentive to build formal institutions, and to build them as “equitable” institutions, which protect all parties, rather than “winner-take-all” institutions, which privilege the governing parties alone.

In explaining the rise of formal institutional configurations that promote rent-seeking, this paper makes three contributions. First, both coercive and contractual approaches have focused on institutional creation—but political actors can also refuse to build formal institutions, or build deliberately vague and ineffectual ones. Second, as political actors compete to gain the resources necessary for their survival, they can constrain each other's discretion in two ways: both by creating incentives for the creation of formal institutions, and by informally criticizing and constraining other parties. Third, only specific kinds of competition result in building formal institutions that reduce discretion. Existing indicators of competition fail to explain the variation in formal institutional development, and do little to explain why some parties were able to build in so much more discretion than others.

Below, Section I shows the post-communist formal state institutions. Section II demonstrates how a specific type of party competition led to the formation of institutional barriers to discretionary rent-seeking. Section III illustrates how robust opposition constrained rent-seeking in seven post-communist parliamentary democracies.

I. Post-communist rent-seeking: Variation and Case selection

The state, broadly defined, is the set of institutions that legitimately implement policy and enforce legal sanctions. The political control of the state may change (in the form of governments), but state structures endure as the executive framework (Lawson 1993, McFaul 1995). These institutions comprise the formal rules and structures that administer citizen obligations (taxes, military service, etc) and public provisions (contract enforcement and laws, management and disposal of state property, market regulation, welfare, defense, etc.).

Under communism, the state was a minion of the communist party. It was fully subordinate to the political goals of the party and its administrative structures were fused with the party's. Several aspects of the communist state made it ripe for exploitation for the private benefit of the communist party. First, the communist state had no civil service: bureaucrats were subject to the general Labor Code, rather than to a Civil Service code that could both ensure their political neutrality and offer state employees protection against political reprisal. Staffing of government and state structures took place via the *nomenklatura* system: an extensive list of positions whose occupants had to be vetted by the party. Ministries simply hired their own employees (and could continue to do so after 1989 if no civil service laws were adopted). Second, considerable budgetary and distribution discretion existed, the result of a multiplicity of government ministries (divided by sectoral spheres), and the soft budget constraints with the “flexible” quotas that determined supply and demand. The planned economy itself made most workers into employees of the state, and demanded extensive administrative personnel, while the low differentiation of state and party functions made “political clout the foundation for economic control” (Comisso 1986). State assets were readily used for the private purposes of the communist party and its elites. Third, administration was centralized: the state structures were an exercise of power rather than a service to the citizens, and no elected government existed. Finally, few structures of formal accountability existed. All this discretion built into the system via porous employment policies, lack of oversight institutions and accountability

channels, and informal practices of resource extraction could now be used by new democratic political actors to extract resources as their communist predecessor had.

This, then, was the communist baseline: a highly politicized state ruled by a hegemonic party with considerable discretion in the management and distribution of its assets. The regime's collapse ended the communist party's control and duplication of state offices. As the communist state withdrew from the economy and the polity after 1989, this unwieldy behemoth was expected to shrink in both size and scope, and become less vulnerable to party incursion (Holmes 1996, Shleifer and Vishny 1998.) The former communist rulers now became competitors in multiparty democracies, and the new democratic state was expected to become an apolitical and effective administrative and executive force.

Yet the processes state rebuilding after communism did not smoothly and uniformly depart from this starting point. In several cases, the post-communist state is controlled and discretionarily exploited by political parties, rather than run by apolitical administrators following formalized rules. Even as the communist monopoly on the state has faded, democratically elected political parties continue to draw material resources from the public domain of the state (Ganev 2000). Discretion means that the ad hoc needs of political agents drive public policy: public contracts privilege private interests, and nonexistent or poorly specified laws allow resource extraction for private ends (rent-seeking).² Such rents can consist of jobs, contracts, or financial transfers. Political loyalty, rather than merit, is a key criterion for their attainment.

The extent and pacing of formal state institutional development and reform vary considerably among these countries. This development is measured by the efforts of ruling coalitions to introduce formal legal constraints on discretion. These include: a) institutions of market oversight, such as securities and exchange commissions, which regulated ownership structures and ensured that state ownership would be transparent, b) party funding laws, which limited discretionary access to state resources, c) civil service regulations, which lowered discretionary hiring, and d) institutions that increased societal oversight over government action, such as regional governments and civil ombudsmen. Such reforms are self-imposed barriers to rent-seeking, as they reduce access of private actors to state resources and help to establish both universalist and transparent distribution of state resources.

These have been implemented with considerable alacrity in some cases, and great delays in others. Table 1 shows these patterns of institutional emergence, using a database of over fifty formal institutions of oversight and monitoring, including national accounting offices, securities and exchange commissions, government procurement regulations, civil rights ombudsmen, constitutional courts, and transparency laws. Each cell represents a different institution, and the year in which it arose. Institutions in parentheses were either not enforced, or deliberately built in discretion: for example, the 1996 Slovak local government reform, which increased the discretionary power of the central government to withhold funds from politically opposed regions. The critical threshold here is the year 1997: prior to this year, there were no external demands for building formal state institutions. It was only in 1997, with the Luxembourg Conference, that the European Union began to exert heavy pressure on its post-communist membership candidates to reform their administrative framework and introduce formal state reforms as a precondition of membership.

Surprisingly, the variation persists among countries that are the frontrunners of economic and political reforms: Bulgaria, the Czech Republic, Hungary, Latvia, Poland, Slovakia, and Slovenia. These cases were chosen on the basis of the variation in main causal variable: political competition. Their shared status as the reform leaders allows us to eliminate the possibility that an overall lack of reform impetus is responsible. Moreover, the communist party was forced to exit from power in 1989 in all these cases save

²It is possible, of course, that low rent-seeking exist in an environment of high discretion, and vice versa. The former demands high levels of self-constraint by the relevant actors. The latter is formalized predation: political actors and the rents they seek are isolated from both domestic and international pressures. Neither set of conditions obtained in the post-communist cases examined here.

Bulgaria, so that the ruling communist parties could not entrench themselves and preclude reform. They all fall within the same boundary conditions: parliamentary democracies, with parties arising before decisions regarding formal institutions were made, within an international context that heavily favored democratization, and with few established party organizations at the outset. Finally, all were subject to considerable pressure from the European Union to reform their public administration.

Despite these similarities, we see distinct trajectories in the development of formal state institutional constraints. The Czech and Slovak Republics have seen extensive delays. Reform has been haphazardly implemented, with delays and scandals contributing to repeated accusations of deliberate sabotage of state effectiveness and transparency.³ Civil service laws were not passed until 2001-02, and local government reforms either centralized power further (the 1996 law in Slovakia), or were implemented with great delay and under considerable EU pressure (with the 2001 and 2002 laws in the Czech Republic and Slovakia, respectively.) Party funding has been neither transparent nor regulated—state firms and local governments often contributed to party coffers, while state-owned banks offered preferential credits. In the Czech Republic, the extent of the delays in state reforms sharply contrasts with the country's earlier image as the reform leader (Appel, 2001). In Slovakia, discretion was even more extensive, with awarding of state contracts to government allies, no civil service law or oversight institutions, a 1996 regional government law that centralized power, and no limits on party financing until 1998, when a new government began to reform state institutions. In Latvia and in Bulgaria, discretion, and subsequently rent-seeking, were even higher. Latvia has consistently scored as one of the most corrupt post-communist democracies. Both countries failed to establish a firm regulatory framework for privatization and for market exchanges, allowing political parties to siphon off considerable resources (Ganev 2003, Auers 2000).

Slovenia, Hungary, and Poland embarked on far earlier and more ambitious reforms of formal state institutions. Slovenia and Hungary were the first to implement a civil service law, in 1992. Several administrative decisions were taken out of the hands of national political parties, as the administration decentralized extensively in 1990. In both countries, a strong constitutional court reviewed party decisions, acting as a powerful check and oversight institution throughout the 1990-1998 period. Polish reformers prepared regional and civil service laws by 1993, although these were not implemented until 1998 and 1996, respectively. The government increasingly codified an independent civil service, and made party financing increasingly regulated and public. The Civil Rights Ombudsman (already established in 1987), and the National Chamber of Control served to check state policy. And, while both Polish and Hungarian parliaments paid serious attention to these issues beginning in 1990, their Czech and Slovak counterparts rarely addressed them until 1998, once the EU stepped up the pressures to reform as part of the accession conditions.

In short, discretion-limiting reforms of the post-communist state took different trajectories: incomplete and delayed in Bulgaria, Latvia, the Czech Republic and Slovakia, and were pursued far more avidly and earlier in Slovenia, Hungary, and Poland.

³See the scandals that broke out in the Czech press in 1996-98, and in Slovakia in 1998-99.

Table 1: Timeline of formal institutional reforms and introductions:

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Hungary	LO NA		CS SE	OM	LO	OM						AC	
Poland	OM NA LO	SE			NA		CS	AC			LO		
Slovenia			CS		OM SE NA	NA						AC	
Czech	LO		(NA)						SE	AC	NA	LO	CS OM
Latvia					NA			(SE)			SE	CS	AC OM
Slovakia	LO			(NA)			(LO)					NA	LO OM SE
Bulgaria			NA			SE					CS	AC	
												NA	NA

Black: predicted by theory. Gray: not predicted. (Institutions in parentheses) = lax or unenforced.
Institutions: CS = Civil Service, OM = Ombudsman, AC = Anticorruption Laws, LO = Local Gov't,
NA = National Accounting Office, SE = Securities and Exchange Commission.

II. Political Competition and State Reform

Why, then, do we observe this variation? Discretion in formal institution building is the result of the twin projects undertaken by democratic political parties: ensuring their role as the dominant political actors while reconstructing state authority. These simultaneous processes either reinforced each other, or came at each other's expense, depending on the configurations of party competition. The key is not which democratic party won the elections, or even what its share of the seats was; but the kind of opposition it faced, and the intensity of the threat of replacement under which it operated.

After 1989, democratization proceeded over months and years, rather than over decades and centuries. As a result, political parties faced numerous challenges for which they were ill prepared, and had little time in which to gain the necessary experience. For example, the first free elections in several countries were held within months of the collapse of the communist regime. The future remained uncertain even for parties who entered parliament, as political groupings continued to fissure and to fragment. Where they existed, the main anti-communist opposition movements fragmented into new parties. Thus, the Czechoslovak federal assembly went from six to twenty parties in under two years. The two anti-communist movements, the Czech Civic Forum (OF) and the Slovak Public Against Violence (PVN), rapidly shattered as well over the course of 1990-91. Nearly thirty parties entered Poland's first freely elected parliament in 1991, eleven of whom only had one seat. In Hungary, the post-communist MSZP and the post-opposition Hungarian Democratic Forum and the Smallholders' Party saw splits as well.

Moreover, most party organizations are weak, counting memberships in the thousands, rather than in the millions as in West Europe. Rates of party membership as a share of the electorate fall below 3.5 percent, less than half of the West European average of 8.2 percent, and only a tenth of the membership rates of countries such as Austria or Sweden (Mair and Van Biezen 2003). Party identification remains low: up to a third of those surveyed could not even identify the party for which they would vote (Tuner 1993, Ilnoski 1998). Electoral volatility (constituency-switching) averaged 18.3, over twice the West European rates, and was especially high in the first few years after 1989 (Bartolini and Mair 1990, Lewis 2000). Party members were not only scarce, but poor, given the general economic downturn and fall in real incomes after 1989. Similarly, there was minimal support initially from fledgling new entrepreneurs. In short, political parties had few of the resources necessary to survive: loyal organizations, financial reserves, or stable electoral support. In a situation where party membership was as scarce as it was unstable, organizations were barely founded, and few business ties existed, state resources were the most stable source of party support. As one party activist argued, counting on anything else was "a utopia."⁴ Thus, the motive for building in leeway to extract rents from the state is straightforward: party survival.

Since the same party elites stood to create new democratic institutions and to benefit from their access to state resources, a considerable opportunity existed to lock in the advantages of holding onto power, leaving as much discretion as possible in the access and distribution of state resources such as jobs, contracts, or privatization deals. Attempts to build neutral administrations and oversight institutions or to devolve authority downwards stood in potential conflict with the parties' desire to build stable material bases for themselves.⁵

Moreover, given the rapid pace of the transition and the limited opportunities it created for policy learning, the highly discretionary structures and practices of the communist state, with all its vulnerabilities, were the default for the new elites. The process was less "state building from scratch" than it was *bricolage*, of building the state using both new institutional bricks and the leftover materials from communist state structures (Stark and Bruszt 1997, Gryzmala-Busse and Jones Luong 2002). Political parties

⁴Wisław Kaczmarek, SLD MP, *Życie Warszawy* 8 December 1999.

⁵This echoes William Riker's argument that political parties exert greater control over their local politicians in highly competitive situations (since that is when the local officials' behavior can most affect party electoral outcomes).

could thus rely on formal state structures left over from the communist regime to administer and implement policy, and avoid building new formal constraints on discretion.

The tension between securing private benefits for their survival and reforming the state, combined with the lack of existing constraints or international attention to the state,⁶ meant that the chief constraint on party behavior would consist of the parties' own mutual monitoring and sanctions. The more other potential governing parties publicized the misdoings of the government parties, the greater the threat of electoral turnover and loss of office. Thus, the variation observed is a function of party competition: the greater the competition, the less was the state available for party exploitation.

Yet few existing measures of competition are useful in explaining discretionary outcomes. Some are constant across the cases examined here: for example, minimalist or general notions of democracy as electoral contestation (Przeworski et al 1997, Schumpeter 1948). All post-communist cases examined here fulfill the standard of competition as pluralism or free elections. Other proxies for political competition prevalent in the literature on the impact of political competition include fragmentation, turnover, openness of party competition, polarization, and volatility (Frye 2002, Orenstein 2001, Mair 2002, Mainwaring 1993, Rose-Ackerman 1978, 1999). Yet these indicators have no discernible relationship to the development of formal institutions or the prevalence of rent-seeking. As we can see from Table 2, there are no clear correlations between these measures and the two clusters of early and late adopters of formal institutions.

This measurement problem reflects both a variable misspecification and a conceptual shortcoming. First, the "mechanistic" indicators of competition simply do not capture the constraining nature of party competition, if any. They reflect the relative size of or ideological distance between political actors: but provide no hint as to the substance or intensity of the competition. Second, these indicators conceptualize competition as a static configuration of parties—but not as a dynamic *interaction* between parties. Yet if competition constrains parties, it must do so by altering the expectations and behavior of the competitors, a dynamic aspect of competition.

To get around these conceptual and coding problems, this article uses the concept of a *robust opposition*: a measure of competition based on what parties *do*, rather than of their static qualities. There are three aspects to this measure: first, a robust opposition is *contentious*, constantly monitoring and publicizing the misdeeds of the government. Such criticism can be very costly electorally, as the parties' behavior is exposed. One indicator of contentiousness is the average number of parliamentary questions asked by each member of parliament: and as we can see from Table 3, these vary considerably, from Slovenia's querulous 4.42 questions, to the more quiescent Latvian parliament's .84.

⁶The European Union began to pay attention to the state and administration only in 1997. The World Bank under James Wolfensohn also began to focus on the state, but only in 1996.

Table 2: Party Competition: Widely Used Indicators 1990-2004

	Incumbency ⁷	Openness of Competition ⁸	Electoral Volatility	Fragmentation	Effective # of parties ⁹	Polarization ¹⁰	avg excluded vote
Hungary		<1.0	25.0	.68	3.1	11.4	13.0
Slovenia	.57	7.4	21.5	.84	6.2	19.3	10.4
Poland	.27	15.8	29.0	.77	4.9	31.8	14.0
Czech	.75	2.1	17.0	.71	3.4	12.0	12.5
Slovakia	.50	17.1	31.5	.78	5.2	4.9	14.6
Latvia	.71	24.7	44.5	.76	4.2	14.6	10.3
Bulgaria	.27	18.6	19.0	.71	2.7	30.9	12.6
Difference of means test¹¹	P=.51	P=.45	P=.74	P=.62	P=.50	P=.49	P=.48

Second, such opposition is *credible* as a governing alternative, because it has won elections and governed at some point. Such parties cannot be ostracized, excluded *a priori* from all coalitions. This sort of ostracism also limits coalition diversity, which in turn is associated with the delay or blocking of reforms (Hellman 1998) Credibility is measured by the percentage of parliamentary seats held by parties that are excluded from coalition consideration by all the other parties, thus narrowing down the field of potential alternative governments, and making the existing governing parties' hold on power more secure. The logic here is that the fewer the potential alternative coalition partners, the lower the likelihood that a coalition can form that can replace the government: and so the governing parties are more certain of staying in office. As Table 3 shows, these range from no exclusion, as in Slovenia, to the exclusion of close to 20 percent of the parliamentary parties, as in Slovakia or Latvia.

⁷ Percentage of years from 1990/1991 to 2004 held by the longest serving government incumbent.

⁸ Average percentage of parliament seats held by new parties/parties that did not participate in previous elections. $\sum S_i / N - 1$, where S_i is seat share of i th new party and N is the number of electoral terms.

⁹ Source: Mair 2002. Effective number of parties is $1 / \sum S_i^2$

¹⁰ Source: Frye 2002.

¹¹ Two-tailed T-test

Table 3. Party Competition: Robust Opposition, 1990-2004

	Contentious? Avg annual # parliamentary questions / MP	Credible? Avg seats held by ostracized parties	Clear? Vote for blended post-communist/ post-opposition elites:	Summary:
Hungary	2.30	1%	6% (MIEP)	3/3
Slovenia	4.42	0%	3.3% (DeSUS)	3/3
Poland	3.78	3%	7% (UP)	3/3
Czech Rep.	.97	21%	8% (SPR-RSC)	1/3 (clear)
Slovakia	.94	19%	48.5% (HZDS, SMER, DU)	0/3
Latvia	.84	18%	39.9 % (LC, LTF, LVP, DPS, LDLP)	0/3
Bulgaria	1.54	.2%	23.9% (BANU, BE, NS)	1/3 (credible)

Third, a robust opposition is *clearly profiled*: its elites do not circulate between government and opposition, and its programmatic alternatives are relatively consistent, rather than courting different political camps over time. Two proxies measure the clarity of opposition: first, the communist exit from power during the regime collapse instantly differentiated the authoritarian incumbents from the democratic opponents. In all cases but Bulgaria, this occurred. Second, the average vote for parties that blend elites from both the former communist camp, and from the pre-1989 anticommunist opposition shows the degree to which the voters have a clear alternative. Such “blended” parties enjoyed considerably more support in Bulgaria, Latvia, and Slovakia than in the rest of the cases under consideration. If this modeling of competition is correct, we should see lower rates of discretion where the competition is more robust: where it is more contentious, credible, and clear.

III. Robust opposition in the post-communist context

For competition to induce the creation of formal institutions that limit discretion, governing parties must worry about being replaced: and a robust opposition offers a credible threat of replacement. Where parties fear losing elections, they want to constrain their successors’ discretionary access to state resources: and so they build formal institutions of constraint that limit their own capacity to extract resources. Where a robust opposition constantly monitors government actions, government parties are more likely to limit their discretionary resource extraction for fear of it becoming publicized and costing them votes. A robust opposition thus changes the calculation of governing parties regarding the desirability of formal constraints on discretion, and it offers informal constraints on the discretion exercised by any party through parliamentary oversight and control.

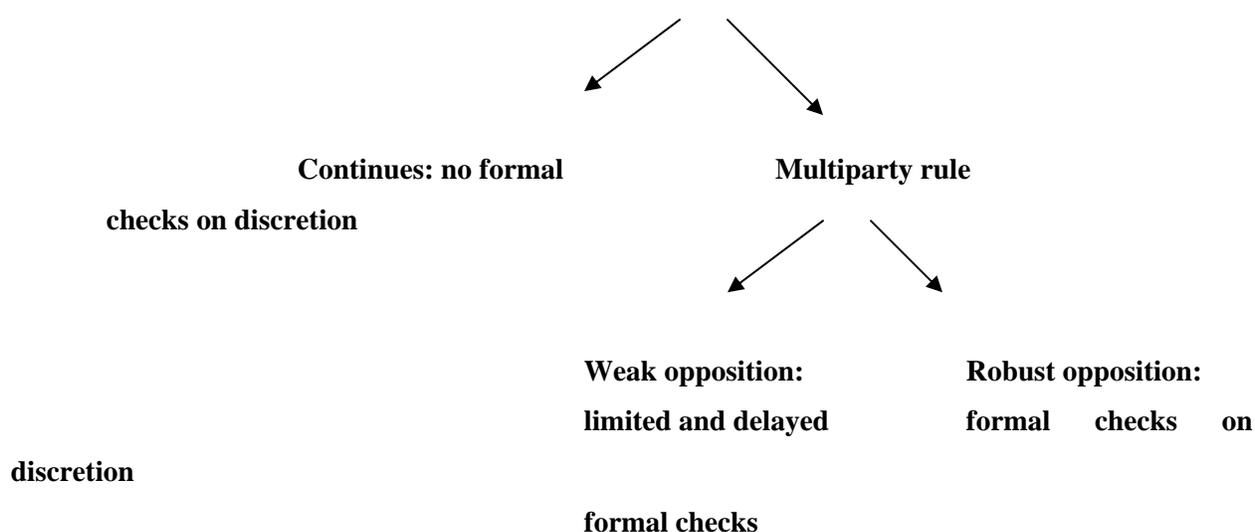
In the post-communist context, the clearest configuration for such competition is in the form of a divide between the former communist parties and their former opposition. These two camps are a natural source of opposition: they have the strongest incentives to monitor and publicize each other’s misdoings, since they are defending their own historical and governance records in criticizing the other. Therefore, we are most likely to see robust opposition where the communist parties had to exit power in 1989 so that competition could begin in the first place, where communist and opposition elites did not diffuse into the

same parties, and where the two camps alternated in government, thereby establishing their credibility and increasing the incentives to criticize each other vociferously. In turn, for them to succeed electorally and enter government, communist parties need to have radically transformed themselves after 1989, becoming moderate and credible democratic competitors.¹²

The variation follows a pattern schematized in Figure 1. Where no credible or feasible alternatives existed to the communist party at the time of the transition, the communists could continue in power, as they did in Bulgaria (or Romania and Albania). No robust opposition arose: in Bulgaria, some accounts argued that opposing parties were virtually created by the communist incumbent (Karasimeonov 1996). Given the lack of opposition, communist parties could continue to extract resources from the state and thus build in advantages for themselves, even if their post-1989 continuity in office was brief.

Figure 1: The sequencing of formal institutional reforms

One party rule



Where political alternatives existed, and the communist party was forced to exit, the subsequent configurations of party competition proved critical. In the Czech Republic and in Slovakia, the same set of elites governed for over eight years. Parliaments were dominated by the Civic Democratic Party (ODS), led by Václav Klaus in the Czech Republic, and the Movement for a Democratic Slovakia (HZDS), led by Vladimír Mečiar in Slovakia. As Czechoslovakia peacefully split into the two constituent republics in 1993, these two parties continued to dominate politics: the opposition to their rule was effectively marginalized and splintered, well into the 1990s.

In the Czech Republic, there was no robust opposition until 1995-6 that could create the incentives for building formal institutional constraints on discretion. The ruling ODS-led coalition could confidently centralize power and refuse to either reform the state administration or to regulate the market. The deep division between the former communist rulers and their opposition meant the opposition was clear: but it was neither credible nor contentious. The two biggest opposition parties, the Communist Party of Bohemia and Moravia, and the Republicans, were both excluded *a priori* from all governing coalitions.

¹²One source of such successful transformations are specific communist legacies: communist practices of elite recruitment and advancement, which themselves are not endogenous to the communist party-state.

The other potential opponent (the Social Democratic ČSSD) only gained popularity in 1995-96, and had 8 percent of the seats until the 1996 election, allowing the ODS-led coalition to set the terms of policymaking and state politicization largely on its own. Few questions were asked of the government, and the ODS dominated both the parliament and the cabinet, so that it could push through its wishes even if all its coalition partners united against it.

The ODS was thus relatively certain of its continued rule, and saw no reason to constrain itself. No formal institutional reforms occurred under the ODS's watch: Vaclav Klaus criticized regional reform as "adding another layer of bureaucracy," and oversight institutions as "hampering the market." Formal institutions that would have constrained discretion were either very weak or missing altogether. Czech regulation of the market was minimal: bank reform was both delayed and minimal, regulatory mechanisms were disassembled, judicial review of privatization ceased, and privatization decisions were not justified. Faced with a weak opposition, "with virtual impunity, the Klaus administration continued on its path, nodding at instances of corruption within its own electoral alliance. It ignored efforts to establish a national securities council and other measures that would have enhanced the transparency of Czech capital markets" (Orenstein 2001).

The NKU, or the Supreme Audit Office, was established in January 1992, only to be refounded as an institution under government (ie, ODS) control in January 1993, with no capacity to choose where and whom it could audit. (Frič 1999). A Securities and Exchange Commission was not established until 1998, long after the Czech stock market acquired a reputation for opacity and unclear property rights. In short, government executive bodies "operated with virtually no transparency" (Freedom House 2000). Numerous reform attempts were scuppered by the government: the "ODS maintained a strong enough political position to dodge attacks waged by less powerful political actors and deftly delayed legislative progress on administrative reform bills" (Scherpereel 2003). The ODS also used its domination of the parliamentary committees (none were under opposition leadership during its tenure in office) to preclude opposition bills from ever reaching the parliamentary floor.

After the elimination of regional government in 1990, the central state government was in charge of staffing all levels of the polity. The ODS refused to pass laws on self-governing regions or a civil service, because to do so would "bolster the institutionalized strength of competing parties and inflame centrifugal pressures within the ODS" (Scherpereel 2003). Since no intermediate levels of government were introduced under the ODS (despite their figuring in the constitution as an integral element of the state), and employment decisions were centralized, an "informal nomenklatura" arose. Ministries simply continued to hire at their own discretion. The ODS hired mid-level officials, who in turn hired political allies—those seeking posts in the administration had to have the ODS imprimatur. As one analyst noted, "an applicant for a management position had no chance without the appropriate party sponsorship" (Novotný 1999). A Civil Service Act was only passed in late April 2002, after enormous obfuscation and subsequent pressure from the European Union, a decade after it went into life in Hungary (1990-92), and six years after it did in Poland (1996.)

Once the 1998 elections resulted in a virtual deadlock (neither the ODS nor the ČSSD could form a coalition, and neither had the votes to rule by themselves), the ODS and the ČSSD concluded the "Opposition Agreement." This grand coalition received so many seats in parliament (64 percent) that it no longer bothered to enforce voting discipline in many cases (Linek and Rakušanová 2002). In return for not supporting votes of non-confidence against the ČSSD, the ODS received ministerial posts and economic acts that strengthened the dominant market players tied to the ODS (Linek 2002). The two parties also pushed for a majoritarian electoral law, which would have ensured their primacy. While this was declared unconstitutional by the Supreme Court in January 2001, it came close to consolidating the centralization of power and elimination of opponents the ODS had earlier worked for. Throughout the post-communist period, then, the governing parties faced little critical opposition, and largely resisted the formation of formal constraints on discretion. It was the European Union, and the pressures it brought to bear on the post-

1998 government, that resulted in the creation of market oversight, devolution to the regions, and civil service regulations.

In Slovakia, robust opposition was limited. It was not clear, since *all* governments were post-communist to some degree until 1998: former communist elites diffused into many political parties, including the HZDS, the SNS, the ZRS, the DU, and the official communist successor, the SDL'. As a result, no clearly profiled two camps arose, and no credible alternative government formed until 1997. The HZDS ruled from 1991 to 1998, with short interruptions when its government fell in 1991 and 1994. Its key opponents were not effective critics, the KDH and the SDL' (the Christian Democrats and the communist successor) could not work together, even as they battled internal conflict within their own ranks, while the Hungarian minority party was unacceptable to all as a potential coalition partner until 1998. The SDL' further undermined its role as the opposition by openly flirting with joining the HZDS coalition in 1996. These parties thus presented little threat to the HZDS, and its own coalition partners, the ZRS and the SNS (the Association of Slovak Workers, in parliament 1994-98, and the Slovak National Party, 1990-2002) were completely beholden to the HZDS for their position, given their relatively small representation and extremist views.

Rather than refusing to build formal institutions, the HZDS government built in discretion into several of the institutions it implemented, including market oversight and regional reform. Meciar and the HZDS repeatedly argued that this institutional creation was part of the state-building efforts in the newly independent nation, and marginalized any opposition criticism as “irresponsible” and “antistate.” The explicit goal was discretionary state building to further entrench the HZDS in power.

During “the night of the long knives” on November 3-4, 1994, an all-night session of parliament decimated non-Mečiarites from state administration. These included the heads of the National Control Chamber, the Special Control Body (OKO) the General Attorney and his office, and the National Property Fund. The opposition was entirely excluded from these bodies for the duration of HZDS's stay in office. Privatization decisions were transferred to the HZDS-run National Property Fund, rather than the Ministry of Privatization, so that parliament had no oversight over the lucrative privatization process. The HZDS then continued to pack the public administration with party activists and cronies, more than tripling the size of the public administration from 1991 to 1998. Needless to say, civil service laws were not considered.

The regional reform of 1996 only centralized power further by making the regions financially and politically dependent on the HZDS (and by gerrymandering the new regions to reflect HZDS political strength). The HZDS instituted the “action fives,” groups of five political appointees whose job was to appoint or reappoint personnel to non-elected positions at district level. These boards “conducted a general, government-led purge of the ranks of district state administration based on explicit political criteria.” (Krivý 1997). It was only in 2001, under heavy EU pressure and three years after the HZDS won the elections but was forced out of power by a temporary uniting of the opposition, did regional reform devolve power and funding to the local governments.

In the meantime, with no effective oversight, the Mečiar administration was free to distribute both posts and contracts, and build itself enormous leeway in disposing of state assets. The HZDS benefited from such deals disproportionately—far more than its coalition partners, the ZSL and the SNS.¹³ The HZDS, which nurtured the links between privatizing investors and top politicians, made privatization bids contingent on party contributions, and the contracts themselves went to party allies (Freedom House 2000). Two brief departures from office, in 1991 and 1994, did little to stymie the HZDS's dominance. Both times, the exit was the result of Meciar supporters defecting, rather than opposition efforts, and in

¹³ *Dilema* (2000, January.) Kto jest bez viny, nech hodi kamenom. [Let him without fault cast the stone.]

both cases the opposition was further weakened.¹⁴ It was only after 1998, and the HZDS's exit from power (it won the plurality of the votes but was unable to form a coalition), that civil service, regional, oversight, and depoliticization reforms began in earnest. For example, only in July 2001 could the National Control Chamber again audit and control all economic subjects with state funds.¹⁵

The significance of a robust opposition is further illustrated by Latvia. Ostensibly, its party system is highly competitive, with high turnover and fragmentation. However, no robust opposition arose in the early years of the transition: all the governments after the communist collapse were nationalist coalitions that excluded *a priori* the participation of the main opposition party, the pro-Russian PCTVL. Numerous parties blended post-communist and post-opposition elites, and each new election was won by a party that had formed within a year of the election. Voters thus had often confusing choices, and little criticism of the governing parties developed. Latvian "cabinets often tend to be formed by the same parties, they also tend to feel limited responsibility for promises and decisions made by previous governments" (Tisenkopfs and Kalniņš 2002). Instead, one party, Latvia's Way, remained in government since 1990 and controlled critical ministries such as Foreign Affairs and Transport (in charge of the profitable oil pipelines).

Governing parties continued to build up resources, both because there was little monitoring or sanctioning of their actions, because their coalition partners had "nowhere else" to turn. Without a credible threat of replacement, formal institutions were either weak or delayed: all but one were implemented after 1997. A law on state civil service was adopted in April 1994, the reform never achieved its goal, due to limited resources (which meant many employees could not take the civil service exam), and loss of political backing after the banking crisis of 1995. In 1995, the Ministry of State Reform (established in 1993) was abolished, and "the focus on administrative reforms came back only as recently as 1999 largely due to criticism from the European Union" (Tisenkopfs and Kalniņš 2002).¹⁶ Market oversight institutions, civil service laws, anti-corruption offices, and an ombudsman were all established only in 2000-02.

Similarly, in Bulgaria, little impetus for the creation of formal institutions existed until well into the 1990s. The communist party never exited from office, won the first election in 1990, and returned to office in the 1994 elections. The opposition was often squabbling internally rather than focusing on government actions. As a result, in the eyes of several commentators, the 1990-1997 period was lost to reform: the BSP continued to exploit the state and enrich itself at its expense.

The government used its absolute majority to delay several reforms of the state, including civil service, national accounting, and anti-corruption offices. Even as the government made public administration reform a priority in 1993-94, formed a government department for public administration reform, and adopted a "New Strategy of Administration Reform in Bulgaria" in 1996, few reforms actually resulted. Judicial reform was deliberately and profoundly delayed. Local governments were brought under the control of the center by reducing the power of local councils and mayors in 1995. And even as the BSP government fell in 1996-97, the new caretaker successor closed down the department for administrative reform, and the new UDF government dismantled the remaining reform structures and rejected the 1996 strategy.

¹⁴ In 1991, Meciar founded the HZDS just as the VPN and the KDH withdrew their support for his Prime Ministership. Shortly thereafter, the VPN itself fractured, and Jan Carnogursky, the new KDH PM who gave the nationalist wing of his party seats in the government, was promptly undermined by the newcomers. In 1994, parties the vote of non-confidence was made possible by the defection of the Minister of Foreign Affairs, and eight other deputies from the HZDS and the SNS. The new governing coalition received less than half of the vote they expected and lost several seats in the elections held six months later.

¹⁵ "Správa o boji proti korupcii na Slovensku," Report of the Slovak Government, available at <http://www.government.gov.sk>, October 2001.

¹⁶The commercial banking crisis in 1995 depressed the GDP, and occupied most of the policy debates that followed in 1995-97.

However, once Bulgaria was officially invited to begin negotiations for EU membership in 1999, immediate changes followed. The Prime Minister himself, Ivan Kostov, took over the Ministry of State Administration, and began to implement an ambitious plan of formal institutional reform. In keeping with the Law on Public Administration, adopted in 1998, and the demands of the EU, the government promised to further reform laws, including the reorganization of the administration, and public procurement. Civil service laws were passed in 1999. A national Anti-Corruption Strategy was adopted in 2001, as was a new law on the National Audit Office. Not surprisingly, given “the doubtful commitment of the ruling elite to implement these changes” (Todorova 2001), the EU was the chief engine of formal institutional reform in Bulgaria, belated though it may have been.

Thus, where governing parties faced little robust opposition, they had no incentive to constrain themselves by instituting civil service reforms, strengthening and making autonomous formal oversight institutions, or devolving power downwards by decentralizing. Such moves would remove considerable decision-making and material resources. Relatively certain of returning to office and continuing as the chief beneficiary of state resources, these parties could either delay the creation of formal institutions, or build them to their own benefit.

In more competitive systems, built-in discretion was more limited. Given the constant monitoring and oversight by opposition parties, no party could delay formal institutional development or retain discretion to seek rents. Thus, in Hungary, Poland, and Slovenia, the post-communist and the post-opposition camps were clear, contentious, and credible: and such competition created the incentives to build in strong, self-checking formal constraints on state politicization as soon as possible, so that no party (including the governing one) could benefit from discretionary access to state resources. A robust opposition directly led to the construction and enforcement of formal institutions designed to decentralize power, reduce discretionary access to and distribution of state resources, and limit the ability of any one party to use the state for its private ends. These were the deliberate responses of governing parties to the uncertainty of holding office and a way of building in guarantees for themselves as the future (and inevitable) electoral losers.

In Hungary, the communist party exited from power and transformed itself into a moderate democratic party that was the fulcrum of the robust opposition: it was both the chief target of political criticism and the main critic of other governments. Hungarian governments faced constant criticism, ranging from the extraparliamentary radicals’ “choleric arguments ... to the systematic analysis provided by the opposition” (Keri 1994). Parties had clearly differentiated themselves, and only one party was ostracized in parliament: the extremist MIEP. Power was dispersed among several political actors, and each wanted to ensure the others would not get an electoral advantage. As early as 1990, parties agreed that parliamentary committees would be filled and led by opposition parties in proportion to their votes. After 1994, a special investigative committee category arose, which could be set up at the written request of a fifth of parliament, and “the opposition groups used these new committees to scrutinize the government more extensively” (Ilonszki 2002).

Hungary was the front-runner of state reform. It was the first post-communist country to institute a civil service law and regional decentralization. The 1989 laws on the civil administration made whole sets of state positions incompatible with party membership, including most of the civil servants. A 1992 novelization, the Civil Service Act, furthered the strictures and regulated nominations, promotions, and salaries. The 1990 Act on Local Government devolved power away from the center. It was the earliest and most comprehensive local government reform in the region. It also introduced democratically elected municipal councils, giving the parties another round of political competition and access to power (Hegedüs 1999). The side benefit of devolution was that opposition parties won 35 percent of local

mandates, the largest share in the region (Baldersheim et al 1996).¹⁷ Regional reform followed in 1994, as the regions gained new authority and decision-making powers, decentralizing government authority in Hungary.

Formal oversight and monitoring institutions were strengthened by governments throughout 1990-98. The Hungarian Constitutional Court was highly activist, and acted as a very strong safeguard against potential abuses (Örkény and Lane Scheppele 1999). The Ombudsman, introduced in 1994, was a further formal oversight innovation. While Hungary's politicians were hardly blameless,¹⁸ their actions were rapidly exposed, and the turnover limited any one party's gains. For example, when the MDF tried to push through a politicized Hungarian Central Bank in October 1991, the opposition mobilized. As a result, the Central Bank was given considerable autonomy, and made answerable to the Parliament as a whole, rather than to the Prime Minister alone. Similarly, when the same coalition attempted to pack the media oversight board. The opposition insisted on its participation, and effectively killed the government proposed media law in parliament because it favored the government too much.

In Poland, as in Hungary, early rules constrained discretion. As in Hungary, the communist party exited power during the collapse, and rapidly remade itself into a popular democratic competitor that rapidly assumed the central role as both the target and origin of criticism. Polish opposition parties not only questioned constantly and publicly what the government was doing, but informally monitored the coalition parties' actions (and gleefully informed the media at every possible turn). No one party could monopolize discretion, nor did it have the incentives to do so: given the likelihood of exit from power in the next elections, it made more sense to build in formal constraints that not only gave one greater public legitimacy, but constrained the next ruling coalition as well.

These formal oversight institutions grew in strength: the Civil Rights Ombudsman continued to play a powerful role as a watchdog, as did the NIK (National Control Chamber) and the strengthened Constitutional Court. An informal rule rapidly developed that the National Control Chamber would be led by a member of the opposition, a practice followed from its founding.¹⁹ Even critics of government bills acknowledged that discretion was highly limited "due to internal disagreements within the ruling coalition, criticism by the opposition parties and independent experts and the Constitutional Tribunal's rulings" (Łoś and Zybortowicz 2000).

Public administration and the civil service reforms also followed this trajectory: of some delay in formal reforms as a result of government instability, but with competition as an informal constraint on attempts to politicize. Thus, when it came to power in 1993, the coalition of the Democratic Left Alliance (SLD) and Peasants' Party (PSL) replaced numerous civil servants and regional governors associated with the previous Solidarity governments. The flawed Act on Civil Service, passed in 1996 by the SLD/PSL coalition, was revamped and expanded in 2000, making the exams considerably more difficult, creating a class of public servants as a separate legal category, and making merit the determinant of both pay and position. Both the 1993-97 and the 1997-2001 governing coalitions were rife with internal, mutual accusations that the coalition partner was using state office for private gain in employment, and in both cases the parties acted to limit each other's access (Rydlewski 2000)

¹⁷New parties won 7 percent of the mandates in Poland, 26 percent in the Czech Republic, and 34 percent in Slovakia. The bloc civic opposition movement (Solidarity, Civic Forum, Public Against Violence) won 32 percent, 47 percent, and 47 percent, respectively.

¹⁸In the Postabank scandal, the bank made numerous loans to political and society figures, costing Hungarian taxpayers some 150 billion forints, and the 1998-2002 Fidesz-MPP government also attempted to meld the financial and political worlds. (Iłonszki 2000)

¹⁹Interview with Marek Zielinski, 7 May 2002, UW HQ, Poznan. (UW, 1993-2001 in Public Admin Reform committee, Funduszs Inwestycyjnych)

Similarly, in Slovenia, where the same party (the LDS) governed since 1991, the clear and vociferous opposition created a credible threat of replacement (ably demonstrated by six major coalition crises or collapses²⁰). The opposition was clear, since the communist party exited from power and few parties blended elites, and highly contentious: the Social Democrats were an especially vociferous party, and made frequent use of the institutions of interpellations: formal investigations and votes of confidence in individual ministers and entire governments, which could be called by as few as ten MPs. No party was excluded from governance, and instead all parties at one point had governed.

As early as December 1991, when the chair of government attempted to prolong the existence of the governing coalition, opposition criticism ended his attempts (Zajc 1995). The prospect of competition “made coalition members eager to monitor each other’s moves so as to prevent any single competitor from gaining any political advantage that might later translate into a big electoral gain. The parties searched for monitoring mechanisms that would enable all the parties to learn through them and react on time...They did this by bringing the social service sector in to the parliament where the rules of the game were highly institutionalized” (Rus 1996).

Where low competition led to discretion, robust competition led to extensive regulation and constraint: the 1991 Slovenian privatization law was said to “overregulate” privatization, since parties “defend themselves against each others’ potential abuse by taking all possible contingencies into account in a series of complementary laws and regulations” (Rus 1996). By 1994, civil service regulations, securities and exchange commission, national accounting offices, and an ombudsman were all in place, as formal mechanisms of constraint.

In short, where a credible threat of replacement exists, governing political parties are less able to gain leeway and seek rents, and will instead build formal barriers that would prevent any party from locking in advantages of the state. Electoral uncertainty provides an incentive to make sure no electoral loser would be a permanent one. Governments thus seek self-constraints and guarantees for all parties, rather than benefits for governing parties alone. Even if some parties attempt to treat their role in government as a door to rents, others can hold them in check.

Conclusion

Post-communist state development in the cases examined here occurred under a set of constraining conditions: the pressure of international actors to maintain political pluralism prevented simple predation strategies. Lack of established party organizations that could deliver goods and monitor voters precluded classic clientelist strategies. The very sequencing of democratization: the rise of parties before the redistribution of state assets or transformation of state institutions meant that political parties would be the key actors. Finally, the source of the robust opposition were the communist successor parties, whose transformation made them into powerful opposition critics and the main target of criticism when in government. These conditions suggest that in other contexts, political actors may adopt other strategies of rent-seeking, and a robust opposition may arise from a different source. This analysis suggests, however, that a robust opposition would be the key brake on discretion and its consequences.

In new parliamentary democracies, political parties in charge of rebuilding the formal institutions of the state and the economy will attempt to both transform the state and ensure their own survival in the process. A robust opposition both placed informal constraints on rent-seeking, and hastened the implementation of non-discretionary formal institutions. Both these mechanisms of competition hastened the departure from the discretionary communist baseline. Thus, where the formal institutional framework is

²⁰The DEMOS anti-communist coalition collapsed in 1991, allowing the post-communist LDS into power. Coalition crises occurred later in 1991, and in 1993, 1994, 1996, and 2000.

nascent, specific types of competition determine whether formal institutions of constrain will develop, whom they will benefit, and who the new principals will be.

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