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**Institutions and Democratic Consolidation
in East Central Europe**

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INTRODUCTION

Si l'on ne connaît à fond la nation pour laquelle on travaille, l'ouvrage qu'on fera pour elle, quelque excellent qu'il puisse être en lui-même, péchera toujours par l'application: et bien plus encore, lorsqu'il s'agira d'une nation déjà toute instituée, dont les goûts, les mœurs, les préjugés, et les vices son trop enracinés pour pouvoir être aisément étouffés par des semences nouvelles.

J.J.Rousseau, *Considérations sur le gouvernemnt de Pologne et sur sa réformation projetée*, 1772.

The great sociological paradigms, system and actor, dominate in alternating cycles the theories and empirical analyses of regime transformation. Theses and antitheses of the other side bounce from time to time, if at all mutually received, off the monistic aesthetic armored shield of the other grand theory. Attempts to create a synthesis and efforts to combine the various theories remain rare and were in the most part insufficiently thought out. This is surprising, since the macro logic of the system theory and the micro perspective of the action theory regularly leave a black box in the analysis of regime transformation. Whether young, fragile and not yet consolidated democracies can withstand economic crises, however, depends on the interrelationship between socio-economic conditions, political institutions and the behavior of social and political actors, as well as the extent to which these factors complement each other. It became clear that the impetus of economic growth and social consent during the evolution of capitalistic democracies and communist autocracies in this century, depend less and less on “blind economic forces”, and more and more on a complex network of norms, institutions and organizations, which have formed a network made up of politics, economics and private interests. This “overlapping zone” constitutes the arena whose boundaries first have to be carefully examined by rational actors if they want to succeed in their transition strategies over their competitors.¹ For political

¹ This corresponds to Jon Elster's heuristic “two-filter-model” with which he conceptualizes the behavior of political actors (Elster 1979, 112 ff).

actors, the political institutions embodied in the constitution define their options, because they determine the range of allowed behavior. They encourage certain strategies, and restrain or completely prohibit others.

For this reason alone, political institutions are by no means perfectly neutral (Colomer 1995, 75). They develop out of certain power configurations, and encourage special interests, actors and behavior. Therefore they determine to a very high degree the consolidation prospects of young democracies. Political institutions are the missing link between the macro level of the system and the micro level of political action. Contrary to the “economy first” and the “civil society first” approaches in the study of the transition to democracy, I propose the thesis of “polity and politics first”. This applies especially to the consolidation of post-communist democracies in Eastern Europe, where the simultaneous transformation of economic, social and political systems is to be achieved: a task, which Claus Offe (1994, 20) described as a “magical triangle”: “Resources must be produced and distributed, rights defined and put into effect, respect for identities must become accustomed to, and dependably provided, within the territorial integrity of the post-communist society.”

In such an apparent trilemma, the following strategic question arises: at which level should the transformation process occur, and with which strategy should it be enforced, so that it does not trigger counterproductive obstructions at other levels? My argument for constitutional primacy is as follows: the process of democratic consolidation is best described as a sequence of three interlocking phases. It starts with structural consolidation (constitution, political institutions), influences the level of representative consolidation (intermediate organization of interests: parties, interest groups), in order to then bring about long term attitudinal consolidation (specific and diffuse support of citizens). This, of course, is a pure analytical differentiation. The levels of consolidation, however, influence each other in reality through multiple interrelationships. Moreover, the phase of representative or attitudinal consolidation does not necessarily begin only after the previous level is democratically consolidated. However, the consolidation of the

central political institutions is already completed before the consolidation of the intermediary structures and the emergence of a vital civil society. Therefore, the political institutions play a fundamental role in the consolidation of democracies.

In the sociological, political, organizational and historical-institutional discussions, there are four lines of theory which, if connected, offer the link between the macro level of the system theory and the micro level of human actions, behavior and attitudes. The first of these is the macro-structural research tradition of regime transformation, which rests upon social classes and the state in the neo-marxist tradition of Barrington Moore (1968) and Rueschemeyer/Stephens/Stephens (1992). Secondly, there is the traditional institutional debate among political scientists, which is internationally represented by such authors as Arend Lijphart (1984, 1990, 1992, 1993a and 1993b), Juan Linz (1990 and 1994), Larry Diamond (1993) and David Horowitz (1990); and in Germany by C. J. Friedrich (1963), Karl Loewenstein (1969), Klaus von Beyme (1971), Winfried Steffani (1979) and Dieter Nohlen (1992). Thirdly, we have the new institutionalism (March/Olsen 1989), which - inspired by game theory - views institutions from the perspective of how they influence the strategic behavior of political actors or from the perspective of how institutions can be formed, in order to stimulate cooperative behavior and minimize uncooperative actions (Ostrom 1990). Finally, historical-institutionalism stresses the historical path of the form and function of institutions underlining the fundamental importance of “social capitalism” in society (Putnam 1993, 167).

If one combines Moore’s theoretical class and state perspectives with the considerations of the traditional institutional approach, the rational choice calculations of game theory and Putnam’s thesis of social capital as a socio-economic prerequisite for institutional efficiency, then the neglected meso level of system change is better illuminated. In the following pages, I will focus on this level by analyzing the transition to, and consolidation of, democracy in Hungary, Poland, and Czechoslovakia as well as the Czech and Slovak Republics. In doing so, I will discuss the following questions:

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1. *Democratization*

What kind of connection exists between the type of transition and the type of government established?

What roles do political actors and other power arrangements play in the configuration of large political institutions?

2. *Democratic consolidation*

What kind of formal legitimacy does a new democratic constitution need in order to contribute to the consolidation of a young democracy?

What goals must an institutional structure achieve in order to build up the substantial legitimacy of a democracy?

What type of government, or which institutional arrangement, enhance the chances for democratic consolidation, and which ones diminish them?

I. THE GENESIS OF DEMOCRATIC GOVERNMENTS

The decisive step in the transition from an authoritarian to a democratic system is the transfer of political power from one small group of individuals to a set of institutionalized rules (Przeworski 1991, 11). These newly established norms and institutions define the permitted forms of social and political conflict. They are

the “meta rules” (von Beyme 1994a, 233) of the political system. They determine the prospects of power and influence in the economy and society. The ideal democratic constitution, however, remains neutral regarding the interests of various social groups and political actors. The actual results of the political process are not allowed to be determined *ex ante*. As Przeworski accurately puts it, “democracy is a system of ruled open-endedness, or organized uncertainty” (Przeworski 1991, 13).

There is no doubt that democratic constitutions are created, even during the transition to democracy, by political actors who pursue their own particular interests and who have different normative ideas about the optimal structure of a democratic society. That means constitutions are the contingent results of political, economic and normative conflicts (Przeworski 1988, 59). By what means, though, is this contingency determined, and by what means is it restricted? Why are some political actors in certain contexts able to put their constitutional projects into effect, whereas others fail? Why do parliamentary systems originate in some new democracies while in others presidential or semi-presidential systems emerge? When do majoritarian democracies and when do consensus democracies emerge? What kind of institutional orders came about in Eastern Europe after 1989?

1. Types of Governments

Democratic types of government can be distinguished by the relationship of the legislative to the executive branch. The degree to which governmental power is separated, constrained and dominated determines whether one is speaking about a parliamentary or presidential system. Between the ideal forms of a “pure” parliamentary and a “pure” presidential system are, of course, a multitude of concrete governmental systems which contain elements from both of the two ideal types. In the field of comparative politics (Fraenkel 1957; Loewenstein 1969; von

Beyme 1970; Steffani 1979; Duverger 1980) there exist several distinct sets of criteria that characterize different types of government in Europe. The most parsimonious and elementary distinction between the two systems stems from Winfried Steffani. For him, the parliamentary vote of no-confidence, along with the subsequent compulsory resignation of the government, is the only relevant criterion for the distinction between parliamentary and presidential democracies. All democratic systems where the executive is accountable to the legislative majority are parliamentary systems. When the parliament does not have the prerogative of a vote of no-confidence, followed by the compulsory resignation of the government, then the system is presidential. If this criterion alone is applied, then, with the exception of Belorussia,² every system of government in Eastern Europe or actually in all of Europe must be considered parliamentary. This holds true even for the current Fifth French Republic, which is often mistakenly labelled as a presidential system of government due to the audacious manner in which de Gaulle governed. Likewise, the governments of Finland, Poland and Lithuania, in spite of considerable presidential authority, are still considered parliamentary democracies. Only the system in Russia still lacks a clear definition, due to the fact that the right of the Duma to express a vote of no-confidence by a simple majority is heavily limited. It is the President himself who makes the final decision, whether he dismisses the government or not.

Such a rough differentiation cannot reflect the various forms of actual governmental systems. Supplementary criteria, therefore, must be called upon, such as the control of government by parliament, the power of the president to dissolve parliament, the dismissal of the government through the head of state, legislative veto rights and special “domaines réservés” such as foreign affairs and defense. If these points are taken into consideration, one can distinguish between

² The “Republic of Belorussia”, independent since 1991, does not fulfill the institutional and procedural minimum of a polyarchy, because the first free parliamentary elections were ruled null and void due to a minimal voter turn out which left the illegitimate communist parliament intact (Golczewski 1995, 8). President Lukashenka, who was elected with 81.7% of the second ballot votes, governs without any democratic parliamentary control. Therefore in the case of the “Belorussian Republic”, it can be spoken of as a plebiscitarily legitimated presidential dictatorship.

two hybrid types of government, which with respect to the political power balance can either be labelled parliamentary-presidential or presidential-parliamentary (Shugart 1993, 30).³ Altogether there are four main types of governments. These four types of government classify European governments in the following way (*see Table 1*):

1. *Presidential Democracy*: The president is directly elected by the citizens as the head of government. He or she nominates or appoints the members of the cabinet. There is no vote of no-confidence and the president has no power to dissolve the parliament.
2. *Presidential-Parliamentary Democracy*: Presidential-parliamentary government possesses a double executive. There is on the one side, the president, who is directly elected by the people. Then there is the prime minister or premier, who is nominated by the president and depends on the continuing confidence of the parliament. The president possesses the right to dismiss individual ministers and/or the entire cabinet even against a parliamentary majority. The parliament on the other hand has a vote of no-confidence over the cabinet, but the vote of no-confidence can be vetoed by the president, and as a last resort he or she can dissolve the parliament.
3. *Parliamentary-Presidential Democracy*: This system also has two executives. The difference with the presidential-parliamentary government is, however, that the president does not possess the power to dismiss the government or any of its members against the majority in parliament.

³ Shugart distinguishes between five types of government: (1) a pure presidential; (2) premier presidential; (3) a presidential-parliamentary; (4) parliamentary with a “president”, and (5) a “pure” parliamentary system. In my four types of systems, types (4) and (5) are combined under the parliamentary type.

4. *Parliamentary Democracy*: The parliament has the power to elect or dismiss the government and has the sole power to pass legislation. The head of state (either a monarch or a directly or indirectly elected president) has only a small autonomous authority to intervene in the building of governments or their dismissal. He or she possesses no independent power to intervene in the legislative process.

The vast majority of European countries have a parliamentary system. A pure presidential system, such as those found in North and South America, does not exist. Only Belorussia possesses a certain variation of presidential government. There is no clear separation of powers; President Lukaschenka has almost dictatorial powers even over parliament.

The 1994 parliamentary elections did not even fulfill the minimal requirements for free and fair elections (Golezowski 1995, 8). In Belorussia's case, we are dealing with the "pure" type of "delegative democracy" (O'Donnell 1994) in the variation of a presidential "dictator", who enjoys the legitimacy of a plebiscite. Russia and Ukraine can be labelled as presidential-parliamentary governments with prominent presidential structures. Seven countries (Finland, France, Lithuania, Poland, Romania, Croatia and Yugoslavia) all have a parliamentary-presidential government. Russia, Ukrania and Croatia also come close to O'Donnell's type of delegative democracy.

Table 1. *Types of Governments in Europe 1995*

<i>1. Presidential Governments</i>	<i>3. Parliamentary-Presidential Governments</i>
	Croatia

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Belorussia	Finland France Lithuania Poland Romania (Rest)Yugoslavia
Russia Ukraine	<div>Albania</div> <div>Austria</div> <div>Bulgaria</div> <div>Czech Republic</div> <div>Denmark</div> <div>Estonia</div> <div>Germany</div> <div>Great Britain</div> <div>Greece</div> <div>Hungary</div> <div>Iceland</div> <div>Ireland</div> <div>Italy</div> <div>Latvia</div> <div>Norway</div> <div>Portugal</div> <div>Sweden</div> <div>Switzerland</div> <div>Slovak Republic</div> <div>Slovenia</div> <div>Spain</div>

2. Presidential-Parliamentary Governments

4. Parliamentary Governments

The rest of Europe, and thereby the clear majority, has a parliamentary form of government. Nevertheless, differing from Western Europe, in Eastern Europe the number of parliamentary and semi-presidential systems (presidential-parliamentary and parliamentary-presidential) are about equal. Whereas all semi-presidential governments, with the exception of Poland, make use of a combined electoral system, with both proportional and pluralistic elements, all parliamentary governments except Hungary possess a proportional electoral system with a minimum percent hurdle, which parties must obtain in order to be represented in parliament (see Table 2).

Constitutional theory and the study of regime transformation supply four different explanations of how certain types of governments are formed.

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1. *The Historical-Constitutional Explanation:* The constitution is considered the result of historical and constitutional experiences, the normative convictions of the constituents, and the socio-cultural particularities of the country.
2. *The Process-Oriented Explanation:* Here, the drafting of the constitution and the type of government are linked to the course of change in the country.
3. *The Action Theory:* The constitution is the result of strategies and actions of self-interest oriented political actors (Elster 1988 and 1994; Przeworski 1988 and 1991; Colomer 1995).
4. *The "Import Explanation":* The constitution is based on an already successful constitution (Brunner 1991).

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Table 2. *Types of Governments and Electoral Systems in Eastern Europe 1995*

1. <i>Presidential</i>			Belorussia	
2. <i>Presidential-Parliamentary Government</i>			Russia Ukraine	
3. <i>Parliamentary-Presidential Government</i>	Poland (1989-93)	Poland (1993 -)	Lithuania Croatia (Rest)Yugoslavia	
4. <i>Parliamentary</i>		Albania Bulgaria Czech Repub. Slovakia Slovenia Romania Estonia Latvia	Hungary	
	<i>Proportional Representation (PR)</i>	<i>Moderate PR</i>	<i>“Combined” Electoral System</i>	<i>Plurality System of Elections</i>

2. Explanatory Approaches

A combination of these four explanations is of course fully possible. The classification serves only the purpose of pointing out certain aspects of constitutional and governmental formation. For this reason, depending on each concrete case or comparative analysis, the explanations could, with differing degrees of importance and various combinations, contribute to a comprehensive explanation of how specific arrangements come about better than any of the explanations above can do by themselves.

2.1. The Historical-Constitutional Explanation

Historical-constitutional traditions and experiences play a certain role in all three, or respectively four, countries under examination. However, the drafters of the constitutions did not necessarily fall back on the experience during the short period of unstable and doubtful democratic constitutions with the exception of Czechoslovakia during the inter-war-period, nor did they entirely retain the constitutions of the communist regimes. Since, unlike the old constitutions of the fascist regimes in Germany and Italy, or the authoritarian regimes in Portugal, Greece and Spain, which disappeared after their collapse, the old constitutions of the former communist countries were taken over and extensively revised. Many institutions of the old regime have survived. “The dead forms of parliament, the judicial systems or the local governments, however, came alive for the first time through the transition to democracy” (von Beyme 1994a, 230 ff).

In 1989, Hungary’s Stalinist constitution of 1949, which was partially reformed in 1972 according to “softer” Kadar authoritarianism, was revised completely. (Brunner 1991, 298). This, of course, did not produce a new

constitution. The reformed, but never democratically legitimized, parliament consciously refrained, because of this lack of legitimacy, from drafting a new constitution. The decision on a new constitution was not to take place until after parliamentary elections in 1990. Since then, even though some additional constitutional amendments were implemented due to frequent constitutional court decisions (Brunner 1993, 102; Szabó 1994, 84), the summoning of a constituent assembly became less and less likely. In a certain respect this can be compared to the provisional nature of the Basic Law in the Federal Republic of Germany. Although insufficiently legitimized after the constitution was put to the test, the legitimacy of the *plébiscite de tous les jours* supplied the Basic Law *ex post* with a solid “empirical legitimacy” and the provisional character of the constitution turned into a lasting mechanism.

The situation in post-communist Poland developed similarly. A truly new constitution never came about. The old Stalinist constitution of 1952, which was cautiously liberalized in 1976 through a revision “in the spirit of authoritarianism” (Brunner 1993, 103), was only put through a series of partial changes (1987, 1988, 1989, and 1990). The only connection to the pre-communist constitution of 1921 can be found in regard to the historical trinity “of the President, Sejm and Senate”. The semi-presidential system in the Republic of Poland after 1989 is without any positive constitutional reference to its history. Since, in the constitution of the 1920s, the parliament possessed nominally a very strong position. This was above all due to the fear of an “omnipotent” president, Pilsudski (Elster 1994, 48).⁴ The “small constitution” of 1992 was not influenced by the historical-constitutional tradition either. In addition, it was purposefully passed as a provisional arrangement. It is only as it says in the preamble, a pure organizational article to the new political system “for the purpose of improving the activities of the highest organs of the state ... until a constitution for the Republic of Poland is passed

⁴ Pilsudski resigned as president because of this on December 9, 1922. The authoritarian “April Constitution” of 1935, which was drafted under the strong influence of the dictator Pilsudski, produced a strong *naczelnik* (governmental leader) position and simultaneously minimized the parliament’s powers.

(Glaeßner 1994, 217). Presently, in the constitutional committees of the Sejm and Senate, there are seven proposals under consideration. They are all, with almost no exception, influenced by particular political power calculations, “whereas the distinction between the other political powers stands in front and not the contents of the new constitution” (Schade 1995, 693). The *kairós* for a “deliberative constitutional discourse” (Habermas 1992, 351 ff), as strong as it was during the immediate cooperative atmosphere in 1989 within the opposition, is now long gone. The chances in years to come for a constitutional debate which is not influenced by short sighted party calculations are, due to continuing political polarization, quite slim (Geremek 1995, 45).

As a result of the collapse of the communist regime and the subsequent delegitimization of the old regime in Czechoslovakia, the prerequisites for constitutional negotiations between the regime elite and the opposition, as was the case in Poland and Hungary, did not exist. Therefore, all the constitutional actors referred to the inter war constitution, which became the “unavoidable point of reference”, and the main focus of the political and constitutional discussions (Rüb 1994a, 284). This aspect, and the fact that Czechoslovakia was the only country which could look back upon a truly democratic constitutional history made it the only country in Eastern Europe where the historical constitutional tradition played a positive role in the drafting of the “new” constitution. The second positive reference point in the constitutional history of the country was the federal structure of the state, as it was formally anchored in a constitutional law in 1968. In spite of these traditions, though, a new federal constitution in Czechoslovakia never came about; instead, the old “socialist constitution of 1960” and the constitutional law of 1968 were merely fitted, through a mosaic of constitutional amendments, with democratic standards (Rüb 1994, 284).

Although strong consensus elements were worked into the constitutional patchwork, the “new” constitution did not last either. The bi-national structure of the country was aggravated by the different economic structures and economic interests in both parts of the country, as well as the different reform strategies of

Klaus and Meciar. This cumulative aggravation of political conflicts among the elite destroyed the consensus-oriented institutions of the political system. The division of the country into two independent states, was the “second best solution” for both sides (Elster 1995, 38).⁵ The new Slovak constitution already ratified by the Slovak parliament in September 1992 and the new Czech constitution hastily ratified by the Czech parliament on December 16, 1992 broke from the constitutional history of the country and attempted to avoid the negative experiences of the first post-communist provisional constitution.

The formal continuity of constitutions in Eastern Europe is deceptive. Although there are indeed no new constitutions in Poland, Hungary and Czechoslovakia, the passages fundamental to democracy, such as the relation between legislature and executive, between president and government, the electoral system and the role of the constitutional court were, however, considerably revised. And in the specific configuration of the constitutional traditions in the pre-authoritarian democracies, the totalitarian or authoritarian systems only play a marginal role. The only exception here is Czechoslovakia. However, the positive recourse to the democratic constitution of the inter-war-period and the federal components of the communist constitution of 1968, still could not prevent the country’s division. For Eastern Europe the “historical-constitutional” approach is only very limited in its ability to explain the specific configuration of new democratic constitutions.

2.2. *The Process-Oriented Explanation*

⁵ Through game theory, Jon Elster provides the rational core of an explanation for the division of Czechoslovakia. The preferences of the Czech leadership were ranked accordingly: (1) (best solution) the preservation of a strong federation, in which the Czechs no longer had to economically subsidize The Slovak Republic; (2) the division of the country; (3) a loose confederation, in which the Czech part had to support economically the extensive autonomous Slovak Republic. The “agreement” on both sides for the mutually second best solution was therefore, if not unavoidable, completely rational.

The modes of system changes in Eastern Europe were categorized in various types of transformations. Most common are the tripartite and quadripartite typologies. The tripartite typologies are found with Huntington (transformation, replacement, transplacement [1991]), Share/Mainwaring (transaction, breakdown, extrication [1984]), Linz/Stepan (reforma, ruptura, ruptforma [1978]) or Colomer (unilateral reform from above, bilateral negotiations, collapse [1995]).

The quadripartite typologies of transformation are conceptualized by Karl/Schmitter (pact, reform, imposition, revolution [1991]), Klaus von Beyme (controlled from above, pressure from below, ideologically controlled reform from within, collapse [1994b]) and Gert-Joachim Glaeßner (negotiated transition, collapse, directed transition from above, foundation of new states [1994]). Table 3 shows the cross tabulation of “transition modes” and the four “types of government” (presidential, presidential-parliamentary, parliamentary-presidential, parliamentary).

When we compare the type of government with the mode of transition no systematic relationship appears. Even if the crude and misleading simplified types of government (presidential and parliamentary)⁶ and the simple forms of transformation (collapse and negotiated transition) are used, there is still no apparent positive correlation. Out of the negotiated democratization evolves, in the case of Hungary, a parliamentary government, but the likewise negotiated transition in Poland resulted in a parliamentary-presidential system. Even the controlled overthrow and transition from above resulted in both parliamentary (i.e. Bulgaria) and parliamentary-presidential (i.e. Romania) systems. In the case of a government’s dissolution and the emergence of a new one, the number of parliamentary (5) and parliamentary-presidential (5) systems are equal. The alleged connection between modes of transition and the type of government, which is found in some of the works on democratic transition, is now, six years after

⁶ Colomer ascribes to Bulgaria, Lithuania, Estonia (1991/1992), Poland and Romania the presidential type of government.

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1989, at least on a typological level, not sustainable for Europe. If a positive correlation can at all be recognized, it is the fact that only one out of the seven “semi-presidential” governments (Poland’s) can without doubt be called a democracy, whereas seven out of the eight parliamentary governments are democracies and only one case is still uncertain (Albania). Therefore, the comparison of the modes of transition with the types of governmental systems is too vague to be able to form any kind of systematic relationship.

Table 3. *Interdependence of Modes of Transition and Types of Governments*

Mode of Transition:	Type of Government			
	<i>Presidential</i>	<i>Presidential-parliamentary</i>	<i>Parliamentary-presidential</i>	<i>Parliamentary</i>
<i>Negotiated Transition</i>			Poland	Hungary
<i>Transition directed from above</i>			Romania	Albania Bulgaria
<i>Collapse</i>				Czechoslovakia
<i>Foundation of New States</i>	Belorussia	Russia Ukraine	Croatia (Rest)	Estonia Latvia

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			Yugoslavia Lithuania	Slovak Republic Slovenia Czech Republic
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2.3. *The Rational-Choice Explanation*

Related to the process oriented theory, but abstaining from any typological correlation, is the third explanation. It postulates more generally that the concrete institutional configurations of the government as well as the type of the electoral system are all decisively influenced by the actor's self-interests. As a result, it is how the relevant individual and collective actors view their present interests and future chances to gain or increase their political power which determines what kind of power resources they are able to mobilize, which strategies they follow, and into which coalitions they are willing to enter (Colomer 1995; Colomer/Pascual 1994; Elster 1994; Offe 1994; Kitschelt 1994, 4). Institutions are established because they correspond to the strategic calculations of the most powerful actors and, to a lesser degree, because they are especially suitable to the economic, social and political traditions or problems of the country. This is the core of the rational choice explanation (Colomer 1995, 74).

In Poland, the power politics game spread itself out over several rounds of negotiations. In each round a constitutional compromise was achieved by the participants. From round to round, the power resources which the participants (the old regime or *reformers*, *Solidarnosc* or the regime *opposition*, the "Danzig Group", the "Warsaw Group", the president, government and parliament) were able to mobilize for their purposes, constantly shifted (Colomer 1994). In 1989 the Poles invented the "Round Table", which was made possible through the liberalization introduced in 1987 by the authoritarian communist regime. In this first round of negotiations, the reformist members of the old regime sat across

from the moderate forces of the political opposition. These were the main protagonists in the negotiations (Rüb 1994a, 272). The soft-liners of the PVAP wanted to solidify their leadership position and expand their legitimacy by the controlled and subordinate inclusion of *Solidarnosc* in a slightly reformed system. *Solidarnosc*, on the other hand, wanted to secure the first steps toward a western pluralistic-democratic system. The distribution of power between the two collective actors was obviously asymmetric. Just as before, the elite of the regime controlled the core of governmental power. The opposition could “only” mobilize the workers and citizens in resistance to the regime.

This asymmetric power relationship was reflected in the first compromise as well. The office of the president, with its extensive powers, was especially tailored to Jaruzelski’s person as a governmental guarantee that the reform communists would stay in power. He could nominate the prime minister, convene the council of ministers and could even appoint himself to the head of this council. He possessed the power to initiate legislation in the Sejm, could veto any bills or even dissolve the parliament under certain conditions (Ziemer 1993, 100; Rüb 1994a, 273). Thereby, the president was endowed with constitutional authority similar to that of the current French president. In their counter move, *Solidarnosc* was able to pass a semi-pluralistic electoral law. In the Sejm, 65% of the seats were reserved for the governing coalition and 35% for the opposition. The elections for the Senate, however, remained free of any reserved quotas.

Miscalculations on both sides with respect to their future power prospects aided in bringing about this compromise (Colomer/Pascual 1994, 291). The regime overestimated and the opposition underestimated their own power and the support of the people. It was, therefore, the miscalculated expectations of both sides which determined the dynamics of the liberalization provisions in the first round of negotiations. The PVAP suffered a disastrous defeat in the first semi-democratic elections of 1989, where they only managed to obtain one seat in the Senate. Jaruzelski, though, was elected with only a very slim majority by the parliament, because of the self-imposed restrictions of *Solidarnosc*. The former alliance with

the ZSL (United Farmer's Party) and the SD (Democratic Party) fell apart, as these parties abandoned the reform communists' sinking ship. This made possible the election of a *Solidarnosc* member, Mazowiecki, as the prime minister. Thereafter, the PVAP disbanded (January 1990) and renamed itself the "Social Democracy of the Polish Republic" (SDPR). As a result, the old "regime", the opponent of the opposition, ceased to exist as a supposed partner of the Round Table agreement (Ziemer 1993, 103). The balance of power had shifted in favor of the opposition for the second round of negotiations.

With the disappearance of their authoritarian opponents, the once compact opposition split up. *Solidarnosc* broke up into the Danzig group around Lech Walesa, and the Warsaw group around Mazowiecki, Geremek and Michnik. The third player was, because of his insufficient democratic legitimacy, a rather cautious president (Jaruzelski). He was soon replaced, though, by Walesa in the first direct presidential election in December 1990. In October 1991 the first truly democratic parliamentary elections took place. Thereafter, three legitimate institutional actors faced each other, all attempting to maintain and expand their respective constitutional powers. Differing from the first round of constitutional negotiations, the players were all now, because of the already decided delegation of powers, virtually equally equipped with political power resources.

The constitutional expansionism of the new president stimulated a temporary interest coalition between government and parliament, in which each "party" strove to expand and/or secure its own power. Due to the new "coalition", and because Walesa's charisma had been considerably eroded, the balance of power shifted in favor of government and parliament. The new power relationships were then reflected in the so called "small constitution", which was passed by Suchoka's cabinet. In it, the authority of the president was carefully reduced and the powers of government and parliament were strengthened and more clearly defined (Ziemer 1993, 116).

In spite of the moderate loss of power by the president, the political system

remained, even under the provisional “small constitution”, parliamentary-presidential. Of course the president in the current third round of negotiations now has to deal with constitutionally and politically strengthened actors. The slow consolidation of the party system has also had a positive effect on the strengthening of parliament. According to the power-resource-thesis and the axiom of rational behavior, the actual constitutional powers could shift even further towards the strengthening of parliament. In any case, parliament can, due to the still considerable fragmentation of its parties, only be a very weak corporate actor. The constitutional reforms desired by the cabinet and parliament will henceforth meet with a presidency that, with time, will be increasingly able to withstand reform efforts. Institutions learn, as the experience from other democracies has shown, to immunize themselves, with increasing life expectancy, against fundamental innovations. They become in this sense “inert”. This is especially true of constitutional arrangements, for which changes require broad and qualified parliamentary majorities (Geremek 1995; Schade 1995), and which can become over time “frozen in place”. Bruce Ackerman (1992, 53) made the assumption, already three years ago, that the window of opportunity for constitutional consensus has already been slammed shut.

Similar to Poland, the first of so far two rounds of negotiations to revise Hungary’s constitution also began at the “Round Table”. The reform forces of the Hungarian socialist worker’s party, the so called “oppositional Round Table”, and a few social organizations, which are of lesser importance, were the main protagonists (Brunner 1991, 297). The distribution of power between the two main antagonists was more equal than those in Poland. It was most likely because of this that the consensus for a parliamentary democracy in Hungary was decisively broader. Controversy centered, however, on those institutions of the constitutional order which have been of considerable importance for the distribution of power during the transition and consolidation period: presidential powers and authority, the rights of parliament and government, the electoral system and the authority of the constitutional court. Especially controversial was the dispute over the direct

election of the president and the type of electoral system.

The result of this constitutional controversy was a compromise which made allowance for the various power relationships and divergent interests. A complicated mixed electoral system has been implemented, in which 45% of the mandates are elected through a simple majority vote in single districts and 55% through proportional representation (Szoboszlai 1991, 204; Kasapovic/Nohlen 1996). The old regime elite expected to have an advantage in the single district voting, and the opposition expected to win the proportional vote. The method of electing the president (basis of legitimacy) and the president's constitutional authority still remain unsettled.

These unanswered questions were the main topic of the second round of negotiations, which took place in March/April 1990, after the parliamentary elections. The post-communists (MSZP) favored, just as before, a president with extensive executive powers and directly elected by the people. The MSZP met, however, with the opposition of an informal coalition of the two strongest parties (the Hungarian Forum and the Free Democrats), which signed an agreement directly after the elections to further revisions of the constitutional structures. After two referendums, the post-communists were forced to see that their mobilizable power resources were no longer sufficient to accomplish their goal of implementing a semi-presidential system. The indirect election of the president by the parliament was henceforth anchored in the constitution. A pure parliamentary government prevailed.

The second round of negotiations also showed that constitutional questions, especially when the old regimes are replaced, are above all those of power distribution. In Hungary, the party system was able to consolidate itself earlier than in Poland. The strongest parties (the Democratic Forum and the Free Democrats) prevented, in their own interests, the development of a semi-presidential system. In contrast to Poland and even to Czechoslovakia, the parliament clearly dominated the transition process (Judge 1994, 25; Agh 1995,

254). Of course the parliament functions more as a central decision making arena than as a corporate actor. In other words, it is the center of the political network (DiPalma 1990, 45) in which the parties are the principle players. Parliaments are by no means the most important institutions per se for a democratic consolidation, but only then, when, as in Hungary, parties consolidate early and competing institutions, such as the president or the executive, are not able to mobilize a comparable amount of power resources.

After the collapse of the totalitarian regime in Czechoslovakia, the total delegitimization and, therefore, the rapid loss of political power of the Stalinist elite, the prerequisite for the Polish or Hungarian “logic of power separation” did not exist. The opposition therefore had lost its main opponent in a very early phase of the transition process. Because this actor no longer existed, the elementary prerequisite for a constitutional bargaining process was gone (Rüb 1994a, 284). The pure parliamentary system, bicameralism, the strict proportional electoral system, bi-national veto powers and a mutual ban on each nationality misusing its majority in the “Chamber of the People” did not come out of a negotiation between opposition and regime. Instead, they were agreed upon very early in the transition, as both the Czech and Slovak leadership were still willing to compromise. Thereby, the communist constitution of 1960 was directly taken over as the foundation for the new federal constitutional element of the Czechoslovak system. A tricameral structure (Olson 1994, 39) was supposed to prevent, in the spirit of consensus democracy, a domination of the Slovakian minority by the Czech majority.

Changes in the constitution and in a whole series of other laws not only required a two-thirds majority in the Chamber of the People but also a two-thirds majority in both the Czech and Slovak “National Chambers”. These consensus-democratic institutions, which were supposed to weaken the ethnic cleavage in the country, could only work as long as the political elite of both nationalities were willing to act in a compromising and consensus-oriented manner. The willingness to compromise, which existed for only a short period of time during the post-

communist euphoria, fell apart very rapidly as the transition to democracy progressed. The different problems and interests of the two nationalities within Czechoslovakia and the differing transformation concepts which resulted from this led to inner political conflicts and the hindrance of the decision making process. The “logic of the separation of powers”, which resulted in institutional compromises between the regime and opposition at the Round Table negotiations in Poland and Hungary, led in Czechoslovakia, due to its bi-national structure, to the break-up of the country. The exit option, which resulted from the constitutional and territorial concentration of both nationalities, appeared to both political leaders as an attractive “second best solution” to the political stalemate.

The decisive actors in the very early stages of the transition were therefore not opposition and regime but the Czech and Slovak elite which had emerged from the regime opposition. The “logic of the separation of powers” in the transition to democracy followed priorities in ethnically segmented societies different from those in ethnically homogenous states.

The actor centered approach, though, in a “soft” informal variation of the rational choice theory, is able to explain most fundamental institutional arrangements of new democratic governments. In Eastern Europe, the strategies, coalitions, as well as the mutual mobilization of power and legitimacy resources of the political actors, extensively shape the configuration of political institutions. This applies especially to the relationship between the executive and legislative, the internal executive balance between the president and premier, and the form of the electoral system.

2.4. The Import-Explanation

In relation to the third explanatory approach, where democratic constitutions in transitions to democracy are shaped above all through the self

interest of rationally acting players, each according to the power resources they are able to mobilize, the thesis of the institutional import takes on a rather secondary role. It applies primarily only as far as the actors compare the models and examples of their own national history or in other countries which comply with the actors' partial political interests. Thereby the historical friendship between two countries undoubtedly helps political leaders to appeal to the people in their own country to accept a constitution or parts of a constitution which are favorable to their own political interests, if they can use the respected governmental type from this country as an example. In this case, the French "parliamentary-presidency" probably served as a model supporting the strategic power calculations which finally led to the implementation of the semi-presidential system in Poland.

Similarly, the friendly relationship between Hungary and the highly respected Federal Republic of Germany promoted the adoption of the constructive vote of no-confidence and the 4% hurdle for parties in parliamentary elections as well as the German model of the constitutional court (Brunner 1991). However, when the proven political institutions collide with the respective power interests of the leading political actors, like the personalized proportional representation in the Federal Republic of Germany did in Hungary's case and the French plurality system in Poland's case, then the constitutional import is very limited.

II. THE CONSOLIDATION OF DEMOCRATIC GOVERNMENTS

Max Weber gave four ideal-typical reasons for why and when a political system is credited with legitimacy: tradition, affective belief (*affektiver Glaube*), belief in rationality (*wertrationaler Glaube*), and legality (Weber 1972, 19). Legitimacy is therefore according to Weber of fundamental significance, because a political system which is accepted purely out of rational motives "is much more unstable" than a system which the people believe to be legitimate. From Max

Weber's point of view it is, therefore, the belief in the legitimacy of a system which accurately answers the question: where does the stability of a political system rest? I will summarize these four sources of legitimacy and discuss the prospects for democratic consolidation in Eastern Europe in the context of "formal" and "empirical" constitutional legitimacy.

1. Formal Constitutional Legitimacy

In constitutional law, the legitimacy of a democratic constitution is derived primarily from the method of its own enactment. This question of "formal" legitimacy can be differentiated at three levels (Elster 1994, 43f):

Legitimacy from above: the constitution can only be credited with legitimacy when the constituent assembly is legitimately formed.

Internal procedure legitimacy: if the decision making process within the constituent assembly is undemocratic, then the resulting constitution cannot be considered democratic.

Legitimacy from below: a constitution which is ratified by the people can claim more convincingly that it represents the will of the people.

These requirements for the procedural legitimacy of the constitution were followed exactly by the French citizens and constitutional assembly members in 1946. In a combination of representative and plebiscite steps of legitimization, they came very close to the realization of Sieyès' Myth of the people as the *pouvoir constituant*. In the "most democratic" example of the *pouvoir constituant* in European history, the political elite of France tried to transform the will of the people into a constitution in four steps of legitimization:

(a) The citizens were consulted on the preliminary decision of whether the

constitution of the third French Republic should be reinstated or whether a new constitution should be drafted.

(b) A constituent assembly with an explicit constitutional mandate was elected.

(c) The constitutional draft was revised in the National Assembly without the intervention of the government.

(d) The citizens were allowed to vote on the draft with the unusual result that the draft, which was passed with a strong majority in the constituent assembly, was rejected in the referendum. A second constitutional draft by a second constitutional assembly was then just barely ratified in the ensuing referendum (von Beyme 1968, 39).

The drafting and amending of the constitutions in the countries of Eastern Europe after the beginning of their transition to democracy in 1989 did not conform to this exemplary formal-democratic procedure. None of the countries elected a constituent assembly with an explicit mandate to draft a constitution. Governments and parliaments, which were simultaneously involved in daily inter-party conflicts of interest, determined the substance and procedures of the new constitution or constitutional revisions. None of the countries' constitutional drafts, passed by parliament, were legitimated by a referendum. Put another way: the players drafted their own rules of the game that they had to play. They did not even make use of the ratifying arbitration of the citizens by referendum.⁷ The people, which were credited 200 years before by Abbé Sieyès with the term *pouvoir constituant*, the attributes and rights of the *potestas constituens*, *norma normans* and *creatio ex nihilo*, were barely heard by the political elite.

The only one of Jon Elster's three levels of formal legitimacy taken into

⁷ The new constitutions in Lithuania (1992), Romania (1992), Estonia (1992) and Russia (1993) were verified in one constitutional referendum.

consideration in Eastern Europe was the internal constitutional procedure. Legitimacy from above was explicitly lacking, since the constituent assemblies, which had the exclusive mandate to draft a constitution, were by no means elected by the people. Legitimacy from below was completely missing. Contrary to the ruling sovereign doctrine of the constituent power of the people, the *pouvoir constituant* let themselves be represented right at the first act of constitutional drafting by the *pouvoirs constitués*. The *pouvoirs constitués* have never been explicitly mandated by the *pouvoirs constituant*. The constituent power in Eastern Europe came almost exclusively from the political elite rather than from the people.

What does this formal democratic deficit, which is discussed in German constitutional law as the “birthdefect theory” (K. Merkel 1995, 52), mean for the legitimacy and therefore the stability of a democratic constitution? Gert-Joachim Glaeßner judges, with reference to C. J. Friedrich, that it is not the almost sacred religious act of “*creatio ex nihilo*”, in which the *pouvoir constituant* creates the constitution, which gives enduring legitimacy to a political system. It is “the new system itself, which builds the foundation of the new authority” (Friedrich quoted by Glaeßner 1994, 209). In Eastern Europe there is actually an empirical basis for this. Not only can it be justifiably doubted that the new constitutions, which Romania (1992), Lithuania (1992), Estonia (1992) and Russia (1993) were given by the blessing of the “*pouvoir constituant*” through a plebiscite, have greater democratic legitimacy and approval rating than the constitutions of Hungary, Poland, and the Czech Republic, but also even that of France’s Fourth Republic, which lasted only eleven years, despite its exemplary formal legitimization.

On the other hand, the Federal Republic of Germany’s Basic Law, which lacked any serious formal democratic legitimacy and was only intended to be a temporary document, has proved itself to be an important pillar in the democratic consolidation process of post-totalitarian Germany.⁸ In post-fascist Italy, where the

⁸ In the reality of the Federal Republic of Germany, the legitimacy of the Basic Law over decades, according to Josef Isensee, has grown into a continuous legitimacy through “an indirect

constitution was drafted by an elected commission and approved by the parliament with a large majority, and exhibited a solid formal legitimacy, constitutional patriotism already appears to be diminishing (Merkel 1995b; Morlino 1995).

As problematic as this may be to the normative-constitutional and participatory-democratic theoretical perspectives, the merit of the formal legitimization of a constitution is only of secondary importance if not completely irrelevant for the consolidation, stability and quality of the democratic system. This is not only empirically reflected quite accurately by the cases mentioned above, but even a theoretical argument supports this assertion. The general inadequacy of plebiscite procedures to reduce complex thematical concepts into a yes-no dichotomy increases the seriousness of the dilemma in drafting constitutions in post-communist Eastern Europe, because every constitutional discussion preceding each referendum stood or rather would have stood under unavoidable pressure, due to the lack of time and the underdeveloped civic culture in these countries. The conditions were miles away from that kind of conceptual structure of public discourse which lifts the referendum out of the area of manipulative ratification into the higher sphere of “deliberative politics”, which was called for by Jürgen Habermas (1992, 367 ff), and for good normative reasons. Should the constitutional plebiscite, however, take place in unenlightened, manipulative or violent surroundings as in Romania (1992) or Russia (1993), then they are irrelevant or even destructive to the democratic quality of the system and its symbolic normative force. Bruce Ackerman (1992, 46) underestimated the delicacy of the dilemma which emerges when there is not much time to draft a new constitution and the population lacks a fundamental base of civic culture. For one thing, he stressed (correctly) that the window of opportunity for the constitutional protection of a liberal revolution is essentially smaller than generally assumed. For another, he underestimated the difficulty of being able to conduct a meaningful democratic, public and constitutional debate in underdeveloped civil

constitutional referendum in permanence” (Isensee 1992, 36). Through an indirect referendum the Basic Law has, “in the years of its legal validity”, gained “legitimacy and stability” (Ibid.).

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societies.

2. The Empirical Legitimacy of Constitutions

Formal legitimacy in drafting a constitution stands across from the *plébiscite des tours les jours*. It expresses itself not in one single act, but in the so-called “indirect constitutional referendum in permanence”. It is nourished above all by the formal impartiality and judicial and social-cultural adequacy and efficiency of constitutional norms and institutions. Only they lead to successive improvement in the legitimacy of the constitution, to the inner growth of its normative power. Only then does a constitution gain the legitimacy (Max Weber) that is indispensable to the consolidation of political structures.

My thesis is that the circumstances in Eastern Europe mentioned above (the lack of time and an underdeveloped civil society) made it nearly impossible to have a democratic constitutional debate. The drafting and passing of the constitution itself could only scarcely emanate normative-symbolic power. The burden of democratic consolidation is, therefore, almost completely given over to the way of functioning and efficiency of the constitutional organs and central political institutions. What qualities should these institutions have, though, so that they are adequately perceived by the citizens as legitimate?

First of all, they must be able to resolve three paradoxes, or put more carefully, three tensions, which are particular to democratic arrangements. These tensions are between:

- conflict and consensus,
- representation and governability,
- consent and efficiency.

These paradoxes allow themselves to be combined in the following sequence (Diamond 1993, 97): democracy implies dissent, but it demands at the same time a lasting degree of approval- approval, though, that is based on the legitimacy of the system. Legitimacy in turn is fed to an important degree by the perceived performance of the political system. David Easton (1965) called this the specific support. The success of democratic consolidation for one is due to the fact that this tension is not simply resolved in favor of one or the other alternatives, but rather that a trade off between both poles is found in the formation of binding and acceptable democratic institutions; and for another, that the democratic institutions and procedures survive long enough so that the norms and values of democracy are sufficiently internalized and habitualized.

For the success of democratic consolidation, there are at least two institutional features of considerable importance. The first is that they should be as inclusive as possible. This means that they should not discriminate against any large social or political groups and exclude them from the institutional access to power or even try to hinder them from doing so. Secondly, they must shelter an adequate problem-solving potential for expected social and political conflicts. First of all, political polarization should be avoided, and a sufficient degree of social acceptance should be secured without the institutions becoming unstable. Finally, efficiency should make the appropriate political decisions possible (Merkel 1994b, 473). In Easton's terms (1965), the impartial and fair inclusion of social forces contributes to "diffuse" support and the performance of the institutions to "specific" support for the system. Both sources of legitimacy are connected with each other, and both decide whether a democratic system can be stabilized.

The way the inclusion and efficiency problems are resolved by young democracies can be tested on two levels: first, by the configuration of the government (in the narrow sense) and secondly by the method of political decision making (the political system in the larger sense). At the first level, the question is whether parliamentary, presidential or semi-presidential governments evolve and with what consequences for democratic consolidation in Eastern Europe. The

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second level deals with the “Lijphart question” of whether political decisions in these governmental systems are made more along the lines of majoritarian or consensual principles.

The question of what kind of governmental system is the best for young and still unconsolidated democracies was answered unambiguously by Juan Linz (1990a and 1990b), Arend Lijphart (1990, 1992, and 1993a) and Stepan/Skach (1993); parliamentary governments with a proportional electoral system fulfill the demands of inclusion and efficiency more appropriately than presidential or semi-presidential governments do for the following reasons:

- As a rule, parliamentary systems have more parties than presidential systems. This provides for a more inclusive and more flexible coalition building in societies which exhibit complex ethnic, economic and ideological conflicts.
- As a rule, parliamentary governments have solid parliamentary majorities at their disposal. In presidential systems, the president governs frequently with ad-hoc majorities in the parliament. If he or she cannot rely on these, then the president is often tempted to rule by presidential decree on the fringe of the constitution.
- The narrow interdependence of the legislative and executive branches in parliamentary systems contains constitutional procedures which make the blockage of the decision making process impossible. The separation of powers in presidential systems cannot attain this.

The objection to Linz could be made (and was made by Horwitz 1990; Lipset 1993; Nohlen 1994) that parts of his criticism not only aimed at a presidential system with a single district electoral system, but also to core elements of the parliamentary Westminster model: namely the relative single district election and adversary politics. Therefore the debate over the optimal form of government appears to me more productive if it were undertaken from the standpoint of

whether majoritarian or consensus elements can more appropriately govern respective social conflicts. In contrast to Linz's argument, which concentrates on the relationship between the legislative and executive branches, Lijphart's scheme (1984, 4 ff) considers the subordinate and corresponding level of the electoral and party systems, the associations, the national government and the relationship among the elite as well. With Lijphart, I would like to argue that consensus democracies have four advantages over majoritarian democracies:

- (1) they are more inclusive and therefore more conducive to integration;
- (2) they avoid U-turns and promote the continuity of policy making;
- (3) with the institutions of federalism, the proportionality of the electoral system, minority rights (regarding cultural concerns, veto rights), the separation, diffusion, and rotation of executive power, they possess procedures which strengthen social acceptance of the political system;
- (4) as a result of greater inclusion, they create in the relevant political and social actors a greater acceptance; because of this, the risk of political decisions being blocked in their implementation, or of not being obeyed, is considerably reduced.

Especially in ethnic-linguistic, religious or regionally fragmented societies, consensus-oriented elements in the constitution are much more inclusive *and* efficient. Put another way, highly integrated and homogeneous societies can afford majoritarian arrangements, but where fragmented, heterogeneous societies exist, consensus-oriented political decision making procedures are required for both social integration and political efficiency.

3. Political Institutions and Democratic Consolidation

How do the post-communist systems in Eastern Europe fulfill the

imperatives of social inclusion and political governability?

Hungary. The Hungarian constitution promotes a strong executive and allocates the parliament a weaker position. The president is recognized with limited constitutional authority, which allows him to intervene only sparingly in daily politics. The government is strengthened and secured against parliament through the introduction of the constructive vote of no-confidence. Of course, it is also controlled by the constitutional court which, like the constructive vote of no-confidence, was taken from the Federal Republic of Germany's Basic Law (Brunner 1991, 297 ff). The clear allocation of authority as well as effective reciprocal checks and balances create a stable constitutional framework which has positive consequences for democratic consolidation (Agh 1993, 256; Szarvas 1993, 275). In addition, the combined electoral system creates a moderate integrating effect on the party system (Kasapovic/Nohlen 1996). The disproportional effects, which result from the conversion of votes into mandates, can be criticized by the fact that the parliament is supposed to be the "true mirror of social opinion" (Mirabeau). These are exchanged, though, for the equally important democratic assets of stable governments and the promotion of alternation in government through elections. Both of these aspects appear to me more important in young unconsolidated democracies than the exact proportional conversion of votes into parliamentary mandates.

In reality, Hungary has been the only country in Eastern Europe in which, at first, a relatively homogeneous center right government was established and then replaced, without turbulence, by a compact "oversized" center-left coalition. The alternation in government without any conflict between different ideological camps is predominantly considered as an important indication of democratic consolidation (Huntington 1991).

Poland. Poland proves to be the opposite of Hungary. The undefined division of authority between parliament, government and president hampers decision making abilities in the executive and legislative branches. The semi-presidential

system and the fragmented party system, caused by a pure proportional representation electoral system, invited Walesa to usurp more and more political power. Conflicts between the president and government and between the parliament and president hindered decision making in parliament and government (loss of *specific support*). The personal and institutional conflicts, which for the average citizen were often obscure, prevented the smooth establishment of affective legitimacy (loss of *diffuse support*).

Until the so called “little constitution” was passed in August 1992, the most important boundaries of constitutional authority were not clearly defined (Ziemer 1993, 116) and institutional competition between president, government and parliament was not subjugated to precise regulations. The Polish president, though, still possesses just as much power as before. In such a political system, which still is not consolidated, the institutional competition of a double executive will continue to exist. The obstruction from both sides in the decision making process resulted in a loss of governability. It is in no small measure this institutional configuration of the Polish government which is credited with the inability of post-communist Poland to fulfill the consolidation criterion of decision making efficiency.

How does it stand, though, with respect to the second criterion, the broad inclusion of social interests and political opinions? Until 1993, the pure proportional representation system, without any effective percentage hurdles for political parties, made an extensive inclusion of political opinions possible. No less than 29 “parties” delayed the legislative process in the Sejm (1991-1993) and made the parliamentary decision making process for the voters completely obscure and unaccountable. Social inclusion, which allows the representation of even such absurd “party formations” as the “little” and the “great beer” parties in parliament, came at the expense of transparency and accountability in policy making, which must be also seen as an important democratic requirement.

The reform of the electoral law of 1993, which introduced a 5% hurdle for

parties and one of 8% for electoral alliances, contributed to a rationalization of the party system, legislation and the formation of governments. Instead of 29 parties only 7 party alliances received seats in the Sejm's third legislative period. It still remains to be seen, however, whether the party alliances can consolidate themselves into reliable actors, or whether competing factions within the parties will crystallize. If so, then fragmentation would just occur within the party organizations, and the rationalization of the party system would just be pure fiction. The relative stability of the coalition between the PSL (Polish Farmer's Party) and the SLD (Alliance of the Democratic Left), however, indicates that at least some kind of consolidation in the party system has occurred. The misguided institutionalized inclusion of the social interests and political opinions into the party system, as well as the ambiguous separation of powers within the executive, damaged excessively governmental stability, accountability and the efficiency of policy making in Poland until 1993. The end of "cohabitation" in 1995 presented new chances for consolidating the political system. However, the political convergence of a post-communist president and the post-communist government (SLD, PSL) will only strengthen democratic consolidation, if the socialists do not misuse their extremely large power resources and the political opposition (as well as the Catholic Church) does not polarize political competition and culture in Poland any further.

Czechoslovakia. The overly complicated, tricameral parliamentary structure of Czechoslovakia (Olson 1994, 88), with its strict proportional electoral system and its ideologically as well as ethnically polarized multi-party system, also led to governance problems in the executive branch. With federal tricameralism, the proportional representation system, mutual veto powers by both nations, and the prevention of the ethnic groups from overriding the other in many policy domains by parliamentary majorities, as well as with the overrepresentation of the Slovak minority in federal offices, numerous elements of a "consociational democracy" were installed (Lijphart 1984, xiv). Yet the theoretically inclusive institutional arrangement was in no position to defuse the

accumulation of ethnic, cultural and social-economic conflicts, since the political elite acted even more confrontationally than one would expect by the only diffuse subculture segmentation between the two nations (Rüb 1994b, 285).

In addition, there was no homogeneous Czechoslovak party system, which could have had an integrating effect on the behavior of the political elite and the attitudes of citizens across the country. Instead of this, two country-wide party systems - Czech and Slovak - developed and strengthened the centrifugal tendencies in both parts of the country. This split party system rewarded uncooperative behavior of the Czech and Slovak political elite, since they drew their legitimacy primarily from votes from their respective parts of the country. Institutional inclusion failed because of the behavior of the political elite, and because the particular configuration of both the party and parliamentary systems made uncooperative behavior a rational strategy, with considerable electoral rewards for the political elite.⁹ The ethnic-cultural interests conflicted less with the institutional system than the institutions themselves did with the power interests of leading Czech and Slovak politicians. The at first unplanned division of Czechoslovakia into two independent states must therefore be considered as a resolution of the uncooperative political situation and a measure to improve governance at least in the Czech Republic.

The Czech Republic. The newly established Czech Republic, with the House of Representatives and the Senate, possesses nominally a bicameral system. Yet three years after the constitution was passed, article 15 § 2, the installation of the Senate as the second house, was not realized until 1996. The dominant party in Vaclav Klaus's government was afraid that a second house would diminish its power, and therefore obstructed its establishment for more than three years. Vaclav Klaus's ODS and the smaller parties of the government coalition not only hold every chairmanship in the parliaments' committees, they also have by far the

⁹ This uncooperative game was initiated by Vladimir Meciar for power-tactical considerations. This did not have to be forced on his opponent Vaclav Klaus, since the "exit" option for him also promised more power and greater political freedom.

most committee members (Calda/Gillis 1993, 17).

For the government to be inaugurated, a vote of confidence of the House of Representatives is needed. It can be brought down by a simple vote of no-confidence. The authority of the president is clearly and strictly defined. Institutional competition within the executive or between the parliament and the president was thereby prevented. The government firmly dominates the parliamentary committees and, therefore, the legislative process. Presently, the Czech government resembles more of a majoritarian rather than a consensus democracy.

Government and governance doubly violate the principles of conventional legitimacy: first of all, the constitution (the delayed implementation of the Senate)¹⁰, and secondly (a point which should not be overlooked), the inclusion-principle through an exclusion of the political opposition from parliamentary decision making arenas. Yet neither the violation of the constitution nor the lack of political inclusion have had a great negative impact on policy making efficiency or on the “legitimacy-belief” (diffuse support) of the citizens. On the contrary, the Czech government enjoys not only a much greater approval rating than the parliament among its citizens, but also has the highest approval rating among all governments in Eastern Europe (Plasser/Ulram 1994, 13).¹¹ The Czech Republic suggests that governance-efficiency can claim a primary position in successful democratic consolidation over social inclusion, if the latter does not flagrantly violate the rights of structural (i.e. ethnic, religious) minorities. This is the case in

¹⁰ It was not until September 1995 that an electoral regulation for the senate was passed. Eighty-one senators were elected in the same number of districts according to the absolute majority principle of two rounds of elections. The mandate of the senators lasts six years. In the future, every third senator will be elected every two years. The government of Vaclav Klaus expressed clearly that it considers the senate an unnecessary “simple addition” to the constitutional system (*Frankfurter Allgemeine Zeitung*, 29.9.1995).

¹¹ For 1994, Plasser/Ulram (1994) give the following approval ratings for the governments of Eastern Europe: the Czech Republic 56%, the Slovak Republic 31%, Poland 25%, Hungary 21% (East Germany 25%, Russia 19%). The parliament and political parties of the Czech Republic also receive (even if they are still quite low) the best rating in Eastern Europe.

the Czech Republic. In addition, economic success and a rapidly developing civic culture supplies the political institutions with increasingly specific and diffuse support. Therefore, at the governmental level, the Czech Republic possesses rather favorable institutional prerequisites for a quick democratic consolidation in spite of the already mentioned “majoritarian flaws”.

The Slovak Republic. The Slovak parliament had already passed on 1 September 1992, virtually in anticipation of the dissolution of Czechoslovakia (which until then was only agreed upon in principal), its own constitution (Brunner 1993). Afterwards, on 1 January 1993, a parliamentary system was put into effect. Compared to the other parliamentary systems in Europe, it reveals a few particularities.

The government is responsible to the parliament and can be brought down by a “destructive” vote of no-confidence, which requires only the simple majority of the parliament (Rüb 1994a, 19). If the prime minister resigns, then the whole government must resign. Furthermore, the parliament can give a vote of no-confidence on single members of the government, which forces them to resign. In theory, the Slovak parliament is the strongest actor among the constitutional institutions. It possesses not only the power to control the president, but also can bring down the entire government or single ministers relatively easily. On the other hand the president must send laws back to the parliament for re-negotiation if the government requires this. Due to this and some other procedures, the Slovak government is far away from the efficiency of a “rational parliamentarism”. While the governing coalition in the Czech Republic “only” controls each committee chairman in parliament, the opposition in the Slovak Republic is completely excluded from parliamentary committees (Olsen 1995, 57). The committees in turn control to a considerable degree the legislation in the Slovak parliament (Malova 1995, 74). The apparent power of the parliament over the executive is actually the power of the parliamentary majority over the government. The parliament in turn is controlled by the government through increasing party discipline. Majority parties instrumentalize the executive and legislative branches for their own

interests. The rigid domination of a majority in parliament, the colonization of the justice and public administrations, the cleansing of the public media and the intimidation of the private media through Meciar's left-right-coalition of the HZDS, SND, and ZRS since 1994 show the minuscule autonomy that constitutional organs and constitutional norms enjoy *vis-a-vis* the winning electoral majority in the Slovak Republic. Mainly for this reason, the three of the Hungarian minority parties joined forces as a "defensive alliance" against the growing exclusion and discrimination of the Hungarians in Meciar's Slovak Republic. Up to the foundation of the Slovak Republic (1993), they were still separately organized because of their respective ideological differences (Abrahám 1995, 86). Stronger than in the Czech Republic, the majoritarian principles determine political decision making culture in the Slovak Republic. The trend towards pure majoritarian rule, which discriminates against ethnic and political minorities, is by now very likely to continue.

The actual application of the constitution in the Slovak Republic violates to an extreme degree two central imperatives of legitimacy. This applies, for one thing, to the obvious discrimination against ethnic and political minorities, and for another, to the rigid execution of majoritarian principles which practically blocks out the parliamentary opposition. Meciar's style of politics violates important elements of governmental efficiency, because the central political organs are not guaranteed any institutional autonomy which can limit their usurpation by the winning electoral majorities. Institutions, however, who lose their autonomy to party-political interests lose their normative force. The specific function of political institutions to guide social behavior and to constrain both collective and individual actions is undermined. In this way, politicized institutions do not create mutual trust and reliability but rather the complete opposite. Economic investors, collective social actors and the citizens themselves lose, in the long run, a reliable framework for more rational and social actions. The oscillations of the governments of Černomyr, Meciar, Moravčík and Meciar (again), which the limited autonomy of constitutional institutions made possible, have had a clear

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destabilizing effect on the economy, society, and democracy in the Slovak Republic.

III. CONCLUSION

What do practical experiences in Eastern Europe contribute to general research on institutional consolidation? Do they confirm Linz's thesis (1990a and 1990b) that parliamentary governments are better than (semi-)presidential ones? Do they strengthen Lijphart's arguments which favor consensus democratic institutions and proportional representation?

Linz's preference for parliamentary systems actually finds empirical support in Eastern Europe. At least up to now, two of the four governmental systems, namely the pure parliamentary systems of Hungary and the Czech Republic, possess the best institutional requirements for democratic consolidation. However, Linz's theoretical arguments cannot be used to support this argument of "parliamentary" supremacy, because it was not the inclusive and flexible possibilities of coalition-building, nor the close interdependence of the legislature and the executive, nor limited political polarization, which made the political systems of Hungary and the Czech Republic stable and their executive branches more efficient than (semi-) presidential Poland. It was precisely defined prerogatives of the constitutional organs, and the institutional stabilization of the executive, which created the advantages of these systems in the course of democratic consolidation. The possibility of the decision making process being blocked by one of the actors in the system, or of the executive being destabilized by party-political motives, was thereby kept within reasonable limits.

In the Slovak Republic, however, the combination of a strong parliament, a constitutionally weak executive and majoritarian decision making procedures, are on the one hand not sufficient to guarantee effective policy making and policy implementation, but on the other hand, they cannot keep a governing majority from discriminating against ethnic and political minorities in the country. Therefore, the Slovak Republic possesses a much weaker chance for consolidation than do the Czech Republic or Hungary, although it exhibits that institutional configuration which Linz used to justify the superiority of parliamentary over

presidential systems. The Slovak Republic, at the same time, is also a good example of how even parliamentary governments carry a considerably high risk of falling back into a (semi-) authoritarian regime -a risk which Linz in his comparison of presidential and parliamentary systems does not discuss. A powerful premier with authoritarian populist traits, and a parliamentary majority at his disposal, can also conceal a considerable “regression potential” in an unconsolidated democracy. This can be seen in Meciar’s parliament, which cannot be sufficiently balanced and controlled by other constitutional organs. In such a situation, an explicit regression back to a fully authoritarian system is not so much the danger as is the slippery slope toward a hybrid system which O’Donnell (1994) accurately defines as a “delegative democracy”: a premier and his parliamentary majority are free and fairly elected and have, therefore, a solid vertical democratic legitimacy at their disposal. Until the next elections, the premier’s powers allow him to interpret the interests of the nation and shape his policies accordingly. Still, unlike consolidated representative democracies, the horizontal constitutional checks and balances are only weakly established in this system. The plebiscitarily supported majoritarian democracy dispenses with the constitutional limitations that are so important for minorities within the system. Vladimir Meciar’s Slovak Republic shows that “delegative democracy” not only represents a danger to unconsolidated presidential governments as O’Donnell’s discourse suggests, but also to unconsolidated parliamentary democracies.

In the Slovak Republic, political institutions and the current governing elite have a negative impact on democratic consolidation. The same can be said of the Polish government, which also exhibits a fundamental defect in its construction. The double executive with a sort of power symmetry between the president and premier offers too many contradictory constitutional rules, “whose framework makes it possible for too many players (institutional actors) to play too many games” (Rüb 1994a, 287). The constitutional construction of the parliamentary-presidential system ignores one major rule of game theory: namely the profit from following the rules must be greater than the costs of breaking them (North 1988;

Ostrom 1990). In Poland it was exactly the other way around. When Walesa broke the rules, he received an even stronger political power position over his “opponents” (parliament and government). This explains why, in Poland, constitutional conflicts broke out time and time again.

Since the end of 1990, constitutional conflicts within the executive as well as between president and parliament have hampered the political decision making process and have hindered the constant accumulation of diffuse support from the population for the new democratic institutions. Poland’s experience with the semi-presidential system undermines Sartori’s argument that this is a very successful type of government (Sartori 1995: 18 ff). The mechanistic reasoning based on Aristotle used by Sartori, which states that “hybrid systems are more preferable than “pure presidential” or “pure parliamentary” governments, neglects the problematic overlapping of powers within the executive branch. His argument that semi-presidential systems can better handle the problem of divergent majorities between parliament and executive is repeatedly falsified in the still unconsolidated semi-presidential system in Poland. The institutional configuration of the semi-presidential system in Poland offers, therefore, along with the Slovak Republic, the most unfavorable polity for a rapid structural and overall democratic consolidation.

Lijphart’s preference for the proportional representation system in young unconsolidated democracies (Lijphart 1993a, 157) does not find any support from Eastern Europe either. This system used in Poland until 1993 helped 29 “parties” gain seats in parliament. The extreme fragmentation of parliament prevented the formation of stable governments and rational policy making. Even with the inclusion of a percentage hurdle in the electoral system of the Czech Republic (5%), the Slovak Republic (5%) and Poland (5%, 8%) after 1993 could not compare to the governmental stability of Hungary’s combined electoral system. Hungary was the only country to furnish a stable *oversized* governmental coalition. This mixed electoral system with its strong single-district component not only facilitated the formation of a stable governmental majority but has also led to a larger, more

inclusive governing majority than proportional representation has in the other three countries. Almost all of these produced minimal winning coalitions. If one wants to advance beyond Sartori's tautological sentence that "the better political form is that which can best be used" (Sartori 1995, 18), then some concrete institutions of Hungary's government for the "better political form" of still unconsolidated democracies can be recognized: a parliamentary government, whose parliament has kept the balance within the executive through a strong prime minister, a combined electoral system, which allows the citizens to express their primary and secondary preferences with two ballots, and at the same time favors stable governing majorities, as well as a constitutional court endowed with sufficient authority to counter the majoritarian misuse of governmental institutions by the winning political coalition, with effective constitutional checks. The "semi-parliamentary system" (Sartori 1995, 19) of Hungary seems to me for these reasons to be the best institutional solution to the specific constitutional problems of the young democracies in Eastern Europe.

Lijphart's preference for stronger consensus-oriented governments in young democracies can be traced back to both theoretical and normative conclusions. Of course, it can be doubted whether the criteria operationalized by Lijphart for the distinction between consensus and majoritarian democracies can explain at all the actual consensus dimensions in *polity*, *politics* and *policy making* simultaneously. The example of the Slovak Republic may be able to clear this up. Of the five criteria concerning the first classification element, which is supposed to measure the allotment of power and level of inclusion (Lijphart 1989, 36), only one can be classified as majoritarian (concentration of executive power versus executive power-sharing). Executive dominance versus executive power-sharing, the two-party versus multi-party systems, one-dimensional versus proportional representation, single-district elections versus proportional representation, Lijphart's other four criteria, point accurately to a consensus character for the Slovak Republic. Only the second (less important) centralism-federalism dimension classifies the Slovak Republic as a majoritarian centralistic democracy.

The actual majoritarian, exclusionary and discriminatory traits of the Slovak political system cannot be included in Lijphart's indicator catalogue.¹² If one classifies the Slovak Republic as a democracy with extensive consensus elements, and compares it with the majoritarian system of Great Britain, then one can falsely interpret the character of both systems.

This points to two things: first of all, the operationalization of Lijphart's criteria 2-15 (Lijphart 1994, 211) does not explain sufficiently the consensus or majoritarian character of a system. This is especially valid for consolidated institutional arrangements in young democracies. Secondly, the institutional structures must be re-coupled to the contextual conditions in which they operate. Above all, in the post-communist societies, the economic and civic cultural contexts of the political institutions must be considered if one wants to be able to judge the effect of political institutions on the consolidation of democratic systems. With this, even my thesis of *politics first* introduced at the beginning of this work finds its limits. Institutions not only affect positively or negatively their social and economic environments, but these environments in turn are prerequisites for smoothly functioning institutions. Therefore, the considerably better chances for the consolidation of democracy and a market economy in the Czech Republic than in the Slovak Republic are based somewhat on their more favorable economic and social conditions. Therefore, a functioning constitutional arrangement in the Czech Republic can prove to be a high-risk arrangement for the consolidation of Slovak democracy. This leads us back to Rousseau's sentence about Poland's constitution and government: One must know the nation exactly, for which one develops a constitution; otherwise the final draft will, as perfect as it might be in theory, prove to be insufficient, when it is put into effect (Rousseau 1962, 425).

¹² More appropriately, the president of the Slovak Republic protested as well in a speech before parliament in September 1995 that the society is "hopelessly polarized", the government pursues a "policy of permanent confrontation"; put simply, the entire political system in the Slovak Republic is "penetrated by chronic squabbling" (*Frankfurter Allgemeine Zeitung*, 7.9.1995).

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