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## CONSTITUTIONAL ENGINEERING IN TRANSITIONS FROM COMMUNISM\*

### I. INTRODUCTION

The subject of this paper is the systemic transformation following the collapses of the Soviet bloc in 1989–1991, examined from the point of view of constitutional choices. These can be viewed as the process of creating the fundamentals of political order. ‘Constitutional engineering’, elaborated through an institutional approach in political science and constitutional political economy,<sup>1</sup> constitutes the basis of the analysis. The term ‘constitutional engineering’ was popularised by Giovanni Sartori<sup>2</sup>. It refers to the creation of binding meta-norms, meaning the general principles defining the shape of the state and regulating the formation of laws of a lower order.<sup>3</sup> These are, ‘[...]constitutions are, first and above all, *procedures* intent upon ensuring a controlled exercise of power.’<sup>4</sup> The rest, observes Enrico Colombatto, are empty phrases.<sup>5</sup> The basis of constitutional economics is constructed upon a distinction between two analytical planes—the creation of the rules of play

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<sup>1</sup> J.M. Buchanan, The constitution of economic policy, *The American Economic Review* 77(3), 1987, 243–250; idem, The domain of constitutional economics, *Constitutional Political Economy* 1(1), 1990; idem, G. Tullock, *The Calculus of Consent: Logical Foundations of a Constitutional Democracy*, Ann Arbor: University of Michigan Press, 1965.

<sup>2</sup> G. Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives, and Outcomes*, New York: New York University Press, 1994; idem, *Teoria demokracji [Democratic Theory]*, trans. P. Amsterdamski, D. Grinberg, Warsaw: WN PWN, 1994, 379.

<sup>3</sup> L.L. Kiser, E. Ostrom, The three worlds of action: a metatheoretical synthesis of institutional approaches, in: E. Ostrom (ed.), *Strategies of Political Inquiry*, Beverly Hills and London: Sage Publications, 1982.

<sup>4</sup> G. Sartori, *Comparative Constitutional Engineering*, 202.

<sup>5</sup> E. Colombatto, It was the rule of law, *Revue Économique* 58 (January), 2007, 1174.

(the constitution) on the one hand—and playing according to these rules on the other. The former plane is a tool of constitutional engineering. Political economy in turn treats the market and the state as distinct institutional spheres, within which people achieve mutual benefits resulting from unfettered exchange and collaboration. The qualities of these arenas are defined by the rules of play constituting them.<sup>6</sup>

Constitutions are not neutral from the point of view of individual and group interests: not only do they regulate the ability of individuals and groups to achieve these interests, but they also shape their content. By creating social order, wrote Thomas Hobbes, man is both the subject and object of the action. Constitutions are not only an outcome of objective purpose, but also a product of the interplay of competing interests. They are a pact containing the rules that the parties have made formal commitment to abide by. The durability of a compromise (i.e. the stability of constitutional meta-rules) depends on several factors including: their perceived legitimacy; their entrenchment in norms and values shared by society;<sup>7</sup> and belief in their even-handedness. Constitutions privileging the interests of one party remain in force only for as long as that party remains dominant.<sup>8</sup>

The designers of a political system have to work with limited knowledge, and as such are unable to anticipate all the consequences of their choices.<sup>9</sup> This applies not only to the consequences of specific constitutional choices, but also to how these choices are interrelated. Maurice Duverger, for instance, noted that the powers adjudicated to the president in the Finnish constitution are broader than those of the president in France. In reality, Finland has a parliamentary government, while the position of the president in France is highly prominent under any circumstances. Similarly, the draft of a political system contained in the Constitution of the USA differs from that which was to emerge as a result of historical circumstances and customs.<sup>10</sup>

In debates on systems of government and the rationalisation of constitutional acts, there is an unavoidable normative element, meaning the idea of a ‘good state’, of ‘good institutions’. As John S. Mill wrote, ‘A government is to be judged by its action upon men, and by its action upon things; by what it makes of the citizens, and what it does with them; its tendency to improve or deteriorate the people themselves, and the goodness or badness of the work it performs for them, and by means of them. Government is at once a great influence acting on the human mind, and a set of organised arrangements for public business: in the first capacity its beneficial action is chiefly indirect, but not therefore less vital, while its mischievous action may be direct.’<sup>11</sup> Likewise, constitutional political economy regards the state as a tool furthering the com-

<sup>6</sup> V.J. Vanberg, *Market and state: the perspective of constitutional political economy*, *Freiburg Discussion Papers on Constitutional Economics* 2010, no. 04/10.

<sup>7</sup> F. A. von Hayek, *The Constitution of Liberty*, Chicago: The University of Chicago Press, 1978, 181.

<sup>8</sup> A. Przeworski, *Democracy and the Market. Political and Economic Reforms in Eastern Europe and Latin America*, New York: Cambridge University Press, 1991, 36.

<sup>9</sup> *Ibidem*, 35.

<sup>10</sup> See F. A. von Hayek, *op. cit.*, 184.

<sup>11</sup> J.S. Mill, *Representative Government*, 1861; on the website <[https://ebooks.adelaide.edu.au/m/mill/john\\_stuart/m645r/index.html](https://ebooks.adelaide.edu.au/m/mill/john_stuart/m645r/index.html)> [accessed 6 December 2016].

mon good: the institutions of a democratic state should be '[...] analyzed, and compared to each other, with regard to their capacity to enable citizens to realize mutual gains, – and to protect them from being exploited, through the political process, by fellow-citizens or by political agents.'<sup>12</sup>

The political transformations that took place in the former Soviet bloc in 1989–1992 varied: some states adopted authoritarian systems,<sup>13</sup> while others evolved in the direction of constitutional liberalism.<sup>14</sup> Some institutions typical of democracy were in a formal sense present in the totalitarian system (parliament, courts), albeit as sham entities. The transition proceeded in a context of institutional weakness: communist institutions were in a state of collapse, as their personnel were seeking 'life rafts'; while new structural institutions were weak or existed on paper only. What is striking is that in no post-communist country was there a deeper reflection regarding the desired shape of the political order. Constitutional choices remained bargaining chips between groups of interests. The authors of the constitutions seemed to assume that their task was to transplant concepts from elsewhere.<sup>15</sup> Analytical procedure gave way to political expediency.<sup>16</sup>

This paper is structured as follows: the second section comprises a description and appraisal of the consequences of choices related to the system of government. Part three deals with the foundations of constitutional liberalism, emphasising the role of civil society and the ruling elites in shaping the political order, or, in other words, popular sovereignty. The research hypotheses are verified in section four, which is dedicated to a comparative analysis of the structural transformations in post-Soviet territory. Part five contains the most important conclusions drawn from analysis of the new political orders which emerged in former Soviet bloc countries.

## II. CHOICES CONSTITUTING THE POLITICAL ORDER: THE MENU OF STRUCTURAL SOLUTIONS

The purposeful designing of political institutions is not a new undertaking.<sup>17</sup> However, it was only during the period of enlightenment that the possibility of consciously designing states' political systems came to be widely believed in. The first effect of this was the Constitution of the United States of America, followed by the Polish Constitution of 3 May. The intention motivating the authors of the United States constitution was to construct a 'good state', and this affected other constitutions to a certain degree, although European systems differed significantly from the American model.

<sup>12</sup> V.J. Vanberg, *Market and state*, 21.

<sup>13</sup> F. Zakaria, *The rise of illiberal democracy*, *Foreign Affairs* 76(6), 1997.

<sup>14</sup> Regarding the notion of constitutional liberalism, see G. Sartori, *Democratic Theory*.

<sup>15</sup> P. Winczorek, *Dobre państwo – spojrzenie prawnika*, in: W. Kieżun, J. Kubin (ed.), *Dobre państwo*, Warsaw: Wyd. WSPiZ, 2004, 27.

<sup>16</sup> J. March, H. Simon, *Organizations*, New York: John Wiley and Sons, Inc., 1958.

<sup>17</sup> For example Harold Berman acknowledged the system of canon law created by Pope Gregory VII in the eleventh century as a constitutional act as currently understood (idem, *Law and Revolution: The Formation of the Western Legal Tradition*, Cambridge, MA: Harvard University Press, 1983).

Agreement exists in three matters. Firstly, the basis of a constitutional system is the principle of a tripartite division of power: the executive, legislative, and judicial branches. Secondly, over the past two centuries liberal-democratic systems have led to unprecedented economic development and a reduction in poverty. This is due to the strong foundations that the constitutions provided for protection of the rights of ownership, for economic freedom, and for the execution of agreements and political liberties. The third issue concerns the realm of fundamental structural solutions: the type of government, the methods by which the citizens choose their political representation, and the hierarchisation of the organisation of the state.

### 1. Types of government

Debate regarding types of government was provoked by Juan Linz with his criticism of presidential governments as unstable and easily descending into dictatorship.<sup>18</sup> Presidents are reluctant to accept the discipline of limited terms of office, which leads to constitutional violation and dictatorship. A sense of superiority over parliament resulting from having been voted into office via a general election is conducive to this. They can utilise state administration and power-wielding bodies to impose a dictatorship. A state's stability is also at risk when the president is of a political party other than that with the majority in parliament, creating the risk of governmental paralysis or a coup. If presidents respect the commitments they made during election campaigns, this results in rigid presidential governments, while the leaders of parliamentary governments form alliances while governing, thus ensuring flexibility in their actions. The empirical data cited here confirms the greater stability of democracy under parliamentary governments.

The arguments of Juan Linz and Alfred Stepan are of unequal weight, with data regarding South America serving for the basis of their generalisations. Some critics have observed<sup>19</sup> that instability appears in presidential governments when coupled with proportional representation in parliamentary elections. A combination of presidential government and proportional representation is conducive to corruption.<sup>20</sup> The implementation of pre-electoral commitments testifies to the greater transparency of this form of government. In addition, the presidential system enables a clear division between the legislative, executive and judicial powers in the state, in other words a transparent mechanism of scrutiny and balance. In conditions where the government is appointed by parliament, the executive and legislative powers are closely tied, which may curtail the independence of the judiciary.

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<sup>18</sup> J. Linz, The perils of presidentialism, *Journal of Democracy* 1(1), 1990; idem, A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Postcommunist Europe*, Baltimore and London: Johns Hopkins University Press, 1996.

<sup>19</sup> S. Mainwaring, Presidentialism in Latin America, in: A. Lijphart (ed.), *Parliamentary versus Presidential Government*, Oxford and New York: Oxford University Press, 1992, 114; M.S. Shuggart, J.M. Carey, *Presidents and Assemblies. Constitutional Design and Electoral Dynamics*, Cambridge: Cambridge University Press, 1992.

<sup>20</sup> T. Persson, G. Tabellini, F. Trebbi, *Electoral rules and corruption*, Discussion Paper Series, no. 2741, London: Center for Economic Policy Research, 2001; J. Kunicova, S. Ross-Ackerman, Electoral systems and constitutional structures as constraints on corruption, *British Journal of Political Science* 35(4), 2005.

Ultimately, the stability of presidential governments depends on the strength of the other state bodies, on the readiness to respect the constitutional order displayed by their personnel, and on the viability of civil society institutions. In such conditions an attempt made by the president to violate the constitution and abolish democracy entails a serious and personal risk. Without delving deeper into the matter, suffice to add that with other fixed factors it is easier to build a stable and democratic state with a parliamentary than with a presidential government.<sup>21</sup>

Finally, a distinguishing characteristic of a semi-presidential government is that when the president and parliamentary majority belong to the same party it veers towards presidentialism, and when the opposite is true, it is closer to parliamentarism.<sup>22</sup> However, such swings do not lead to fully presidential or fully parliamentary governments, and this justifies their separate treatment.

## 2. Types of electoral system

The voting system affects the internal structure of political parties and the number thereof, the recruitment of people into politics, and the relationships between the governing and the governed. Duverger's law<sup>23</sup> describes the impact that electoral systems have on the number of political parties. Thus in a plurality system the number of parties tends towards two. In a two-party system one of the parties governs while the other constitutes the opposition. Multi-member voting districts are tied to multi-party systems and coalition governments, and a stabilising factor here is the 'pursuit for the median'. 'Both parties choosing their programme on a left-right axis have the motivation to move closer to voters occupying its middle-ground, meaning the position where at least half the electorate is equally or more radical, and at least half is equally or less radical'.<sup>24</sup>

Debate between the proponents of single-member and multi-member constituencies was initiated at the turn of the 1990s by Arend Lijphart,<sup>25</sup> who recommended that post-communist countries adopt multi-member constituencies, as they are fairer and provide better representation for minorities. His opponents identified features of such a system which, in their view, constituted weaknesses, such as: difficulty forming a government, poor account-

<sup>21</sup> Easiness does not necessarily mean superiority of parliamentarism over the presidential system. For example the authors of a well-known empirical study into the economic effects of constitutional systems (T. Persson, G. Tabellini, *The Economic Effects of Constitutions*, Cambridge, MA: MIT Press, 2003) demonstrate the superiority of the latter. A discerning appraisal of the findings of empirical studies into constitutional economics was presented by Stefan Voigt (Empirical constitutional economics: onward and upward?, *Journal of Economic Behavior & Organization* 80(2), 2011, 319–330; idem, Positive constitutional economics II – a survey of recent developments, *Public Choice* 146(1–2), 2011, 205–256).

<sup>22</sup> G. Sartori, *Comparative constitutional engineering*, 121–140.

<sup>23</sup> M. Duverger, *Political Parties: Their Organization and Activity in the Modern State*, London: Methuen, 1954.

<sup>24</sup> M. Kamiński, Metody głosowania w okręgach jednomandatowych i ich własności, *Decyzje* 2015, no. 23(June), 11–12.

<sup>25</sup> A. Lijphart, Constitutional choices for new democracies, *Journal of Democracy* 1991, Winter; idem, Double-checking the evidence, *Journal of Democracy* 1991, Summer.

ability of politicians, and the disintegrative impact that such a system has on society. Lijphart initially yielded, asserting that proportional representation was better for the reasons given above, but that a certain weakness of the approach was lack of accountability.<sup>26</sup> Three years later<sup>27</sup> he voiced the view that multi-member constituencies would ensure greater economic efficiency. This thesis was questioned by Liam Anderson,<sup>28</sup> who demonstrated that when corporatism and the autonomy of the central bank are taken into account, the dependency between proportional representation and economic efficiency becomes ostensible.<sup>29</sup> In summarising the discussion, Pipa Norris<sup>30</sup> stated that the choice between methods of representation depends on preferences: whether one treats government responsibility and effectiveness or the representation of minorities and social justice as the more important.

In a majoritarian voting system, the electorate—by giving a parliamentary majority to one of the parties—chooses the government, which is obliged to implement its electoral programme. Negotiations around the programme take place outside of parliament—in civil society. In a proportional system, a coalition forms in parliament, and only there is the government's programme agreed upon. In a word, in a majoritarian system the citizens—the electorate—are sovereign, while in a proportional system—the politicians in parliament are.

The selection of candidates for members of parliament also differs between systems. Where there are single-member constituencies a party puts forwards candidates with a chance of winning in a specific constituency, and counts on them as those who have local support. In a proportional system, even with open lists, voters vote for a party, while the candidates owe their position on the list to the party leadership, and the vector of dependence therefore leans towards the party leaders at the expense of the citizens' say. This restricts the electorate's ability to hold their representatives accountable, and in certain conditions this ability may become fictitious.

Comparative studies allow other differences to be demonstrated. Torsten Persson and Guido Tabellini<sup>31</sup> believe that parliamentary governments with proportional representation are more costly to maintain than the majoritarian system. According to both Torben Iversen and David Soskice,<sup>32</sup> single-member

<sup>26</sup> A. Lijphart, *Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies, 1945–1990*, Oxford and New York: Oxford University Press, 1994, 144.

<sup>27</sup> A. Lijphart, Reflections – dimensions of democracy, *European Journal of Political Research* 31, 1997.

<sup>28</sup> L. Anderson, The implications of institutional design for macroeconomic performance: reassessing the claims of consensus democracy, *Comparative Political Studies* 34(4), 2001.

<sup>29</sup> Anderson summarised the findings of his research as follows: 'In an ideal world, the most appropriate constellation of institutions for achieving optimal macroeconomic performance would appear to be a majoritarian political system, a corporatist system of interest intermediation and an IBC [independent central banks—A.K., B.K.]' (idem, op. cit., 448–449). According to other authors as well, public finances are in a better condition in a single-member constituency system (T. Persson, G. Tabellini, *The Economic Effects*, cited by S. Voigt, *Empirical constitutional*).

<sup>30</sup> P. Norris, Choosing electoral systems: proportional, majoritarian and mixed systems, *International Political Science Review* 18(3), 1997, 301.

<sup>31</sup> T. Persson, G. Tabellini, *The Economic Effects*.

<sup>32</sup> T. Iversen, D. Soskice, Electoral Institutions and the politics of coalitions: why some democracies redistribute more than others, *American Political Science Review* 100, 2006, 165–181; see S. Voigt, *Empirical constitutional*, passim.

constituencies tend to favour centre-right parties, and multi-member constituencies—centre-left.

The statistically significant findings of comparative research studies into political systems frequently show a rather low level of correlation.<sup>33</sup> This is not surprising, since the outcome of the electoral system depends on many environmental factors, such as the standard of culture of civil society, type of government, degree of centralisation in decision-taking and the administrative system. By and large, it depends on the state of the other institutions supporting vertical and horizontal accountability.

### 3. Federal and unitary governments

The division of power in state hierarchy is encapsulated on the continuum between the total centralisation and total decentralisation of powers. The word continuum may evoke some reservations, since there is a qualitative difference between a system that has emerged through the bottom-up integration of autonomous units and one that has been constructed from above by the sovereign decisions of a central authority.<sup>34</sup>

A federal system has its own specific dynamics. It is a playing field between the aspirations of the constituent parts to broaden their powers, and the similar intentions of the centre. Both tendencies must be subject to scrutiny; otherwise the system will shift in a unitary direction, or towards disintegration. One should therefore distinguish between the federal structure and process, since even under the conditions of formal federative solutions a mighty, all-powerful centre may emerge.<sup>35</sup> Equilibrium between the powers within the state's hierarchy occurs when the 'federation is a polity compounded of strong constituent entities and a strong general government, each possessing powers delegated to it by the people and empowered to deal directly with the citizenry in the exercise of those powers'.<sup>36</sup>

The side effects of federalism, which are beneficial for the quality of democracy, were spotted long ago. Lord Acton observed that federalism significantly reinforces the mechanism of scrutiny and balance functioning horizontally via the addition of a vertical dimension.<sup>37</sup> The autonomy of organisational units

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<sup>33</sup> For example Jana Kunicova and Susan Rose-Ackerman (Electoral systems) ascertained that systems with proportional representation are more exposed to corruption and political rent-seeking than those with majoritarian representation. They discern the reasons for this in the electorate's limited ability to hold governments accountable. Similar findings were obtained by T. Persson, G. Tabellini, F. Trebbi, *Electoral rules*.

<sup>34</sup> This does not rule out the possibility of an evolution of monarchical absolutisms towards a constitutional system (see P. Kaczorowski, *Państwo w czasach demokracji*, Warsaw: ISP PAN, 2005, 163–198).

<sup>35</sup> According to some authors in the USA, since World War II there has been a trend towards excessive centralisation (V. Ostrom, *The Meaning of American Federalism: Constituting a Self-Governing Society*, San Francisco: Institute of Contemporary Studies, 1991; M.R. Levin, *The Liberty Amendments. Restoring the American Republic*, New York: Threshold Editions, 2013; D.J. Elazar, *Exploring Federalism*, Tuscaloosa and London: Alabama University Press, 1987, 67–69).

<sup>36</sup> D.J. Elazar, op. cit., 7.

<sup>37</sup> Lord J. Acton, *Essays in the History of Liberty*, ed. by J. Rufus Fears, Indianapolis: Liberty Fund, 1985, 211.

within this system enables the achievement of an 'economy of scale'. This is possible if no rung of government dominates over the others.<sup>38</sup> Thus the mechanism of scrutiny and balance functions here not only on the horizontal dimension, but also on the vertical, enforcing accountability on specific governments and state bodies. As Larry Diamond states, 'Only if political power over certain issues and government functions is devolved to lower levels of authority that are democratically elected can government be truly responsive, representative and accountable.'<sup>39</sup>

John S. Mill emphasised the influence of federalism on the standard of civil consciousness. He tied the success of the democratic system to education, the ability of citizens to understand the idea of the general interest, and their will to function in keeping with it. An individual may acquire one and the other only when fulfilling public functions, which is rendered possible by the decentralisation of government and local government practice. The central government may then focus on priority goals, on the country's security and development, leaving the rest to local government at different levels of state hierarchy.<sup>40</sup>

### III. DIGRESSION: DETERMINANTS OF CONSTITUTIONAL LIBERALISM

We contend that the attitude of the elites and the state of civil society determine the end effect of a transition towards a system of constitutional liberalism.<sup>41</sup> The political elite comprises individuals or groups occupying positions of power in society, directly influencing the content of key political decisions. At the moment of a structural turning point these include decisions determining the shape of the state. They are not arbitrary; in taking them, the elite takes into account how society may respond: the weaker the integration in society, the greater the freedom for taking arbitrary decisions; conversely, the more integrated society is, the more the political class must take its reactions into consideration.

A gauge of the state of society is the sovereignty of its citizens, which corresponds to the sovereignty of the consumer in constitutional economics. Citizen

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<sup>38</sup> V. Ostrom, *The Political Theory of a Compound Republic: Designing the American Experiment*, 2nd edn. revised and enlarged, Lincoln and London: University of Nebraska Press, 1987, 137; Ch. Lindblom, *The Intelligence of Democracy: Decision-making through Mutual Adjustment*, New York: Free Press, 1965.

<sup>39</sup> L. Diamond, *Developing Democracy: Toward Consolidation*, Baltimore and London: The Johns Hopkins University Press, 1999, 159.

<sup>40</sup> J.S. Mill, *Representative Government*; idem, *Zasady ekonomii politycznej [Principles of Political Economy]*, vol. 2, trans. E. Tylor, Warsaw: PWN, 1966, 785–786; A. Brady, Introduction, in: *The Collected Works of John Stuart Mill: Essays on Politics and Society*, vol. 18, ed. by J.M. Robson, Toronto and Buffalo: University of Toronto Press, 1977, xl.

<sup>41</sup> We shall not go into the notion of 'civil society' here due to the lack of space. An excellent review of the various meanings and concepts of this notion is given in an article by Jerzy Szacki (Wstęp. Powrót idei społeczeństwa obywatelskiego, in: *Ani książę, ani kupiec: obywatel*, Znak and Fundacja im. Stefana Batorego, Kraków and Warsaw, 1997). See also I. Słodkowska, *Spółdzielstwo obywatelskie na tle historycznego przełomu: Polska 1980–1989*, Warsaw: ISP PAN, 2006, 44–74).



sovereignty ‘requires that the institutions and decision-making procedures [...] are designed so as to maximise the prospects that the political process works to the mutual advantage of all citizens’.<sup>42</sup> From a normative point of view, the role of the elites therefore involves the implementing and maintaining of constitutional rules ensuring citizen sovereignty. Quite when elites agree to sacrifice self-centred interests for the interest of the whole is unclear.<sup>43</sup>

The attitudes of the elite and the state of society are interdependent values; in the long run, the quality of leadership depends on the level of development in political culture—on the demand for citizen sovereignty. In its absence, the implementation of rules that maximise citizen sovereignty should be a task for the political leadership. This suggests the expediency of treating these categories separately: the political elite may at any moment, to better or worse effect, discharge their functions towards civil society. As we show later in this paper, it is precisely the relationship between the quality of the political elite and the state of society that defines the factual content of the fundamental structural choices.

The significance of the elites in creating a political and economic system was tackled by Henryk Szlajfer.<sup>44</sup> He distinguished between holistic and self-centred nationalism: ‘[...] depending on the nationalism variant, it focuses either on the maximization of particular gains (*particularistic nationalism*) or on the achievement—in complex interactions between the state and societal actors—of certain collective goods, defined as national interest, including the demand for economic growth and the consolidation and strengthening of the national economy (*holistic nationalism*)’.<sup>45</sup> In his opinion, Max Weber’s approach to the state and economy is the ‘ideal type’ of holistic nationalism. Particularistic nationalism reduces the interest of the whole down to the level of sectoral interests.<sup>46</sup> This distinction corresponds to the one we have adopted—between two alternative types of value system held by political elites (Table 1).

**Table 1**

Value system of the national elite and the level of horizontal and vertical accountability

		Value system of the political elite—leadership	
		Dominance of particular interests	Universalism of interests: the national interest
Accountability — the citizen’s political sovereignty	Low	I (stagnation)	II (relative stability and growth)
	High	III (unstable equilibrium)	IV (stability and prosperity)

<sup>42</sup> V.J. Vanberg, *Market and state*, 21.

<sup>43</sup> B. Ackerman, *Constitutional economics / constitutional politics*, Faculty Scholarship Series, Paper 134, 1999 <[http://digitalcommons.law.yale.edu/fss\\_papers/124](http://digitalcommons.law.yale.edu/fss_papers/124)>.

<sup>44</sup> H. Szlajfer, *Economic Nationalism and Globalization: Lessons from Latin America and Central Europe*, Leiden and Boston: Brill, 2012, 91–99.

<sup>45</sup> *Ibidem*, 91.

<sup>46</sup> *Ibidem*, 93–94.

Each of the boxes presents a different scope of political and economic opportunities. Box I combines low accountability and the particularism of the elite, which results in a high level of corruption and economic stagnation. Box II features weak formal institutions for the accountability of public servants, and a high level of orientation towards collective success in the elite—with a drive towards national glory and prestige, and so on. Box III contains an unstable arrangement of equilibrium, which leads either to political parties taking control of the state (Box I) or, thanks to the effective resistance of structural institutions supported by a civil society, to the imposing of discipline over particular interests (Box IV). Box IV embraces the conditions favourable for constitutional liberalism: the prevalence of universal values, with a vibrant civil society and strong institutions ensuring stability and feedback stimulating political and economic development.<sup>47</sup>

For a post-communist transition the space between boxes I and II is significant: low accountability makes the motivation for the elite the key variable. We are presuming that, in the attitude shown by post-communist elites towards structural changes, particular interests held sway, while the force of civil society was the external (or exogenic) variable. Thus the end effect of the transitions depended on the state of civil society: on its ability to restrict the aspiration of the political elite to cement its position of power and privilege. We shall deal with this later in the paper.

We assume that in certain conditions the political elite can rise above its own particularistic interest and work for the public good.<sup>48</sup> When may such a republican attitude be shown by the elite? Two situations are conducive to this: an external threat to the state's existence or an internal threat from an active civil society. Both threaten the elite's existence, which justifies the search for social support. Neither do we rule out the possibility of republican ideas appearing in the ethos of the elite, ideas inclining them to serve values broader than their narrowly-grasped own interests. These attitudes tend to occur in circles with historical traditions rather than in a newly-born elite.<sup>49</sup> The behaviour of the elite is also most probably affected by the dependence of its financial and social position on the state: the more these interests depend on connections with the state apparatus, the less inclined it will be to think in public terms.

<sup>47</sup> R.D. Putnam, *Demokracja w działaniu. Tradycje obywatelskie we współczesnych Włoszech* [*Making Democracy Work: Civic Traditions in Modern Italy*], in collaboration with R. Leonardi, R.Y. Nanetti, trans. J. Szacki, Kraków and Warsaw: Znak and Fundacja S. Batorego, 1995, 247, 276–277; A.Z. Kamiński, B. Kamiński, *Korupcja rządów: państwa pokomunistyczne wobec globalizacji*, Warsaw: ISP PAN i Wyd. TRIO, 2004, 265–268; D. Acemoglu, J.A. Robinson, *Dlaczego narody przegrywają?* [*Why Nations Fail*], trans. J. Łoziński, Poznań: Zysk i S-ka, 2014.

<sup>48</sup> This was also allowed by Karl Marx (*Przyczynki do historii kwestii polskiej. Rękopisy z lat 1863–1864* [*Manuskripte über die polnische Frage (1863–1864)*], trans. Z. Bogucki, Warsaw: 1986, 153), indicating the Constitution of May 3 (cf. B. Ackerman, *Constitutional economics*).

<sup>49</sup> G. Mosca, *The Ruling Class. Elementi di Scienza Politica*, New York, Toronto and London: McGraw-Hill Book Company, 1938, 144; A. de Tocqueville, *Dawny ustrój i rewolucja* [*L'Ancien Régime et la Révolution*], trans. A. Wolska, Warsaw: Czytelnik, 1970, 166.

The state of civil society depends on complex historical determinants. The political system may develop self-organising capabilities in society, or actively destroy them; a nation's culture may favour collaboration between groups, building bonds of trust and enabling the universalisation of values.<sup>50</sup> The stability of the communist system required the destruction in society of the ability to collaborate, while in contrast a well-functioning constitutional-liberal order demands high levels of cooperation. An important aspect of the ability to work together, of the essence of the civil society, is patriotism—a sense of national identity. This contributes to one's readiness to sacrifice current particularistic interests in favour of the long-term interests of the community.<sup>51</sup>

For citizens to be capable of holding governments to account, certain institutional conditions need to be met: freedom of the press and associations, democratic elections, and an efficient and independent judiciary. Society's culture in turn influences the action of structural institutions, via occupational socialisation. On this depends the functioning of the entire mechanism of scrutiny and balance at a state level. Thus the relationship between the political elite and society is complex, and has a direct impact on the content of the constitution and its influence on the wielding of government.

The tug-of-war over systemic decisions is not limited to the creation of a constitution, but lasts within the process of implementing its principles. Its participants are the circles of the political elite and external players: states and international institutions, as well as non-governmental organisations and associations. The provisions of the constitution are subject to manifold interpretations. Apart from the fundamental structural choices, their combinations also count. Each state system constitutes a unique case, and what proves itself in certain circumstances may lead to a dysfunctional outcome in others. Bearing these reservations in mind, the designing of a constitution is a public act that determines for many years to come the legitimacy of the system, the efficiency of the state, and its social and economic development.

The deliberations so far permit the positing of four hypotheses (Table 1), which we shall attempt to verify in the next section of this paper:

1. The combination of a particularistic elite and weak society, incapable of civil cooperation, leads to authoritarian structural solutions.

2. The combination of a relatively strong civil society and particularistic elite leads to a structural compromise, limiting society's ability to hold those governing to account, while retaining the semblance of a consolidated democracy.

3. The combination of a holistic elite and weak civil society leads to structural choices and politics favouring society's intellectual and moral development.

4. The combination of a holistic elite and a strong civil society theoretically leads to the optimal choices; however, in regard to post-communist countries, this is an empty set.

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<sup>50</sup> R.D. Putnam, *Demokracja w działaniu*.

<sup>51</sup> E. Shills, *The Virtue of Civility. Selected Essays on Liberalism, Tradition, and Civil Society*, ed. by S. Grosby, Indianapolis: Liberty Fund., 1997.

#### IV. THE WINDING ROAD OF POST-COMMUNIST TRANSITIONS

A communist regime is unconstitutional and anti-liberal. The abolition of private ownership and the market, and of representative institutions and an independent judiciary, meant the incapacitation of society and the physical and material destruction of its elites. The communist revolution thereby removed all the mechanisms of horizontal and vertical accountability of government. As a consequence, supervision over the transition from communism was exercised by 'new people', frequently as an alliance of part of the anti-communist opposition with certain elements of the communist establishment. The depth and scope of changes in the political and economic composition is what distinguishes post-communist transitions from previous waves of democratisation.

In our analysis of the transitional trajectories we shall initially adopt a model comprising two elements: society (S) and the communist establishment (CE). The CE embraces those in high political and administrative positions in the party and state—the positive side of rule.<sup>52</sup> S represents the negative side of rule. Its condition is defined by the continuum between atomisation and defective civil society (in these conditions). The CE polity is connected by an overriding interest in the system surviving. This requires effective political control over S and a rate of economic growth essential for satisfying the needs of the state apparatus. Weakness in this control leads to the emergence of a relatively organised opposition (O) within S.

Once a certain stage of development had been reached, these two goals—political control and economic growth—were unreconcilable. From the point of view of the requirements of control, the more unified and atomised S, and the more disciplined the CE, the greater the political stability of the communist state. On the other hand, economic growth requires tolerance for a diversity of interests and opinions, which destabilises the system. When the CE is split by internal conflict, three situations are possible: (1) the tensions may lead to the system's disintegration when one of the groups within the CE invokes social support (Hungary 1956, Czechoslovakia 1968); (2) an informal and quasi-integrated O (Poland 1976–1989) or otherwise a group of dissidents may emerge within society. In order for the O to survive it requires the support of S and weakness of the CE. The existence of an O brings an element of accountability into the political system. Mutual relations between the elements of the S-CE-O triad define the direction and radicalism of the post-communist transformation.

By citing Scott Mainwaring<sup>53</sup> we shall consider three types of transition: (1) via settlement (*transaction*); (2) overturning of the system (*regime defeat*); and (3) through outmanoeuvring (*extrication*). Any of these three situations may occur in the CE-O-S arrangement.<sup>54</sup> In the first case, the arrangement is in a state of relative equilibrium, which makes the outcome of direct confrontation highly uncertain: a transaction between the parties makes it possible to avoid

<sup>52</sup> R. Dahrendorf, *Class Conflict in an Industrial Society*, London: Routledge & Kegan Paul, 1959, 213–218.

<sup>53</sup> S. Mainwaring, *Presidentialism*, 323.

<sup>54</sup> A similar typology of transition scenarios was proposed by Samuel Huntington (idem, *Trzecia fala demokratyzacji* [*The Third Wave: Democratization in the Late Twentieth Century*], trans. A. Dziurdzik, Warsaw: WN PWN, 1995, 220–223).

this. In the second case, the O prevails over the CE and decides by itself how the changes are to be carried out. In the third—the CE controls S (there is no O) and marks out a trajectory of change favourable for itself.

The relationship between the CE and S is a key issue: a strong S implies weakness of the CE; and a strong S generates an O. Conditions favourable for the emergence of an O occur in societies rooted in western European culture with a distinct sense of national identity—in other words a potentially strong S. There are two reasons for this: their system of values does not favour the stabilisation of the communist system—loss of sovereignty evokes their resistance. In a situation of post-communist transition they will be more inclined to accept the financial sacrifices imposed by a programme of deep economic reforms.

Post-communist transformations present a different picture than the second and third waves of democratisation.<sup>55</sup> The communist regime was a ‘world system’, comprising states subordinate politically and economically to the USSR. In the communist bloc during the post-war period, the USSR’s mechanisms of *control* over its satellite states underwent evolution, through the formalisation and loosening, within certain boundaries, of these states’ direct dependence on the USSR in their internal politics.<sup>56</sup> Overstepping these limits as a result of internal fighting within the CE or pressure from S threatened the regime’s collapse in a particular country, which made an *epidemic* more probable and required countermeasures from Moscow.<sup>57</sup> The leaders of the satellite states strived to broaden their autonomy from this mother city, but at the same time it was in their interests to retain the bloc as a whole. In the face of political destabilisation, each of the parties to the negotiations—the CE, S or O—had to take the threat of external military intervention into account in their calculations. This applied in particular to three ‘stubborn’ societies: Czechoslovakia, Poland and Hungary.<sup>58</sup>

Let us return to our description of the three trajectories of political transformation distinguished here: two of them are democratic trajectories (DT1, DT2), while the third leads to an authoritarian system (AT). Each involves a different arrangement of constitutional choices:

**DT1**—a powerful S with a quasi-institutionalised O and externally diverse CE; a high level of uncertainty as to the intensions of the Kremlin. This could have inclined the threatened leaders of a satellite country to identify and strengthen those elements of the O they would like to have as prospective

<sup>55</sup> *Ibidem*.

<sup>56</sup> The notions of control, epidemic and a community of interests were brought into analysis of the international communist system by Luarence Whitehead, Democracy and decolonization: East-Central Europe, in: idem (ed.), *The International Dimensions of Democratization: Europe and the Americas*, Oxford and New York: Oxford University Press, 1996, 524. A.Z. Kamiński, *An Institutional Theory of Communist Regimes: Design, Function, and Breakdown*, San Francisco: ICS Press, 1992).

<sup>57</sup> The events in Poland and Hungary in mid-1956 had a mutual effect on each other, leading to an escalation of the anti-communist rebellion. Military intervention in Hungary by the USSR informed the Poles that they had reached the limits of the Kremlin’s tolerance. The intervention by Warsaw Pact forces in Czechoslovakia in 1968 provided an opportunity for proclaiming Brezhnev’s doctrine, which entitled Moscow to take military action when the durability of the communist system in a satellite state was under threat.

<sup>58</sup> Each of these societies reacted differently to the situation of subordination (A. Kamiński, Coercion, corruption, and reform: state and society in the soviet-type socialist regime, *Journal of Theoretical Politics* 1(1), 1989; idem, *An Institutional Theory*, passim).

partners in talks. The passivity of the Kremlin enabled a transformational pact. As a result of negotiations the communist party transformed into a social democracy, entering the process of democratisation. This is the case of 'cooperative transition' (Poland and Hungary).<sup>59</sup> Balanced CE-O relations (the O becoming autonomous in relation to S): depending on random factors, either a parliamentary government (Hungary) or one with a semi-presidential tendency (Poland) emerges; proportional representation in parliamentary elections.

**DT2**—the disintegration of the USSR leads to the liberation of states occupied by Moscow since the Second World War: Lithuania, Latvia and Estonia.<sup>60</sup> The societies with a strong sense of national identity quickly appoint their national elites (O), remove the Moscow-imposed authorities from power, and take over government. These elites were recruited from non-governmental, cultural and ecological organisations.<sup>61</sup> Likewise the Velvet Revolution in Prague swept aside the entire elite placed there in 1968 by the armies of the Warsaw Pact. S/O stronger than the CE: because the CE controls administration, the O establishes parliamentary governments for taking control of the state; proportional representation in parliamentary elections.

**AT**—with a weak civil society, the CE fully controls the process of transition, setting itself in the position of the 'party of reform' and seeking legitimisation in either nationalistic ideology or social-democratic slogans. Each of these choices had different consequences, though both led to authoritarian governments. The choice of social-democratic ideology (Croatia) did not shut the door to liberal-democratic transformations, while the choice of nationalistic ideology closed society within an authoritarian system, for example Russia, Belarus or the states of Central Asia. CE stronger than S/O: the CE reinforces the executive at the cost of parliament, placing society's democratic representation in a marginalised parliament; presidential government, majoritarian or mixed electoral system.

Trajectories DT1 and DT2 lead to a consolidation of the liberal-constitutional system and can be treated together, as a transformation towards democracy—DT; an AT trajectory results in a variety of forms of authoritarian system. Certain states changed their trajectories from AT to DT—Serbia, Slovakia and Bulgaria. The above model is a simplification, and does not cover the diversity of the actual phenomena occurring, but provides an opportunity for explaining some of the issues related to transformation in a liberal-constitutional direction.

An external factor with a powerful influence on the transformation processes is geopolitics. Europe is divided between two poles of gravity, each of which influences the transition in a different way and lends it a different direction. 'Proximity to Brussels' (EU influence) favours the DT trajectory, while

<sup>59</sup> We only partially accept the stance of V. Bunce (Rethinking recent democratization. Lessons from the post-communist experience, *World Politics* 55(2), 2003) and M. McFaula (The fourth wave of democracy and dictatorship: noncooperative transitions in the postcommunist world, in: M. McFaul, K. Stoner-Weiss (eds.), *After the Collapse of Communism: Comparative Lessons of Transition*, Cambridge and New York: Cambridge University Press, 2004), who treat all post-communist transitions to democracy as non-collaborative. In the case of Poland and Hungary we were dealing with an agreement between a 'reformative' splinter of the EK and part of the O.

<sup>60</sup> The case of Lithuania is, in a number of respects, similar to the TD1 model, unlike in the rest of these countries.

<sup>61</sup> A. Lieven, *The Baltic Revolution. Estonia, Latvia, Lithuania and the Path to Independence*, New Haven and London: Yale University Press, 1993, 220.

‘proximity to Moscow’, where the influence is from the Russian Federation (RF)—favours AT.<sup>62</sup> The ‘West’ supports DT with the assistance of positive enticements: financial aid, counselling and political support. The EU and USA did not directly contribute to the initial decision for liberalisation, but in the next stage their influence on the shape of institutions supporting competitive markets and democratic transformations was crucial (e.g. via *acquis communautaire*). Secondly, they prompted these countries to open their markets to the competition of other EU economies and to remove restrictions on direct foreign investments. This opening up to the outside world contributed to modernisation of the manufacturing and service sectors, and benefited the quality of management of the economy and curtailment of the level of corruption.<sup>63</sup> Finally, it is worth adding that the ‘proximity of Brussels’ facilitated the removal of historical obstacles to cooperation between the nations of Central and Eastern Europe.

‘Proximity to Moscow’ works in the opposite direction, favouring weak authoritarian governments easily yielding to control. Moscow treats democratic changes in the countries of the former USSR as a direct threat to its *raison d’être*. The RF exerts influence via economic dependency, clandestine activities, and the threat of military aggression. Economic dependency enables blackmailing with fuel (gas or oil) or the closure of one’s own market to exports from a particular country. Moscow also uses dependent enclaves for destabilising neighbouring states (Transnistria, Abkhazia and South Ossetia, Crimea, Donetsk and Luhansk). This enables the ‘diffusion of authoritarianism’ from its Russian epicentre.<sup>64</sup>

Structural choices made at the start of the transformation have long-term consequences for the quality of governance. To appraise their impact on the development of the political system we have used two measurements applied by the World Bank in studies of the quality of governance in over two hundred countries—‘voice and accountability’ and the ‘rule of law’. With the help of these gauges we have compiled an aggregated political system index (APSI) (Table 2). We set the limit of the category of democratic states arbitrarily at a level of 55%, meaning that the state in question achieves a result on this scale that is ‘better’ than 55% of the others. Thirteen new EU member states fulfil this condition, and Georgia and Serbia are close. The APSI values for Ukraine and Armenia place these countries between the in-between and the authoritarian group: even from the perspective of 2016 it is not certain what direction the change in the political system will take there.

By comparing the APSI values with two of the fundamental constitutional choices—the type of government and the voting system—one finds that all authoritarian states have—formally speaking—presidential governments, while

<sup>62</sup> A. Z. Kamiński, B. Kamiński, *Bezpieczeństwo Polski i regionu w podzielonej Europie*, *Sprawy Międzynarodowe* 4(LXV), 2012, 21–25.

<sup>63</sup> B. Kamiński, ‘The ‘EU Factor’ in transition: credibility of commitment, institutional change and integration’, in: S. Antohi, V. Tismaneanu (eds.), *Between Past and Future: The Revolutions of 1989 and the Struggle for Democracy in Central and Eastern Europe*, Budapest: Central European University Press, 2000.

<sup>64</sup> Max Bader (Democracy promotion and authoritarian diffusion: the foreign origins of post-soviet election laws, *Europe-Asia Studies* 66(8), 2014, 1350–1370) presents an abundance of materials documenting the ‘diffusion of authoritarianism’ emanating from Russia. He indicates the model of electoral law in Russia as the source of the poor quality of electoral laws in states remaining under its influence.

all states classed as democratic have proportional representation. Authoritarian states have diverse voting systems, which is inconsequential considering that the 'electoral law' is stacked in favour of the governing elites.<sup>65</sup>

The political elites opting for a proportional voting system were certainly not guided by the principle of social justice; and those opting for a majoritarian system did not do so because of the effectiveness and accountability of governments. Neither did decisions regarding the form of government have anything to do with the opinions of Juan Linz. How these matters were resolved depended on the prevailing interests and calculations of their effects.<sup>66</sup> Let us take a look at these choices from the point of view of the CE–S–O relationship, meaning the arrangement of interests established in the communist structural institutions of the CE, society (S), and the new arrangement of interests of the opposition (O) arrived at by S.

Political crises are accompanied by the disintegration of the ruling class, and disintegration of the ruling class is the prelude to structural change. It is also an essential condition for society, as a collective body, to be able to enter the stage of events. The next step enabling passage beyond the stage of rebellion is organisation. In Poland this was provided by the 'Solidarity' Trade Union. An organisation must have leaders and an apparatus. At this point society gains representation, the strength of which in the face of the totalitarian state depends on social support. The leaders of the O constitute a coalition and not a homogeneous collectivity, coming together in situations of threat, but each individual and group has its own interests and ambitions. The communist government can influence relationships within the O, giving subtle support to some at the expense of others. The initiation of informal talks, followed by formal negotiations between the CE and O loosens the close bond between S and the O. The O's leaders may arrive at compromises that are hard for society to accept; CE representatives are in a similar situation with regard to the apparatus. Both parties must conceal part of the information, manipulate, and also mislead their backers. S becomes a source of uncertainty and even a threat for the O: the thread of mutual trust is weakened, particularly when as a result of conciliation the hitherto oppositionists take positions of power and privilege that they are loath to lose. Regardless of the trajectory, the new power elite strives to shape the new system in such a way as to ensure itself lasting access to power and privilege.<sup>67</sup> In such a situation, proportional representation that limits the electorate's ability to hold governments accountable is favourable for the political elite, since it weakens the electorate's scrutiny of the government. This problem occurs mainly with DT1, as the category DT2 embraces the former republics of the USSR with a significant Russian minority. In the face of a combined external and internal threat, the elites had to seek support and cooperation from the national majority, neutralising the resistance of the Russian minority—and as such they had to strive to reinforce the national S.

<sup>65</sup> Ibidem.

<sup>66</sup> G. O'Donnell, Ph.C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*, Baltimore and London: Johns Hopkins University Press, 1986, 4–7; J. Zakrzewska, *Spór o konstytucję*, Warsaw: Wyd. Sejmowe, 1993; V. Bunce, Rethinking recent democratization, 170–174.

<sup>67</sup> J. Pope, *Confronting Corruption: The Elements of a National Integrity System*, Berlin: Transparency International, 2000, 131–132.



Table 2

Political systems and their trajectory effects (data from 2012)

Country	Democracy			In-between			Authoritarian				
	WB APSI	Type of government	Electoral system	Country	WB APSI	Type of government	Electoral system	Country	WB APSI	Type of government	Electoral system
Estonia	84.10	PA	PR	Georgia	51.70	PREZ	MX	Kazakhstan	23.20	PREZ	PR
Slovenia	79.10	PA	PR	Serbia	50.00	PA/PREZ	PR	Russia	21.80	PREZ	PR
Czech Republic	78.20	PA	PR	Macedonia	48.80	PA/PREZ	PR	Azerbaijan	18.30	PREZ	MA
Poland	76.50	PA/PREZ	PR	Bosnia	46.50	Hybrid		Kirgizstan	20.40	PREZ	PR
Lithuania	73.70	PA	PR	Moldavia	45.50	PREZ	PR	Tadzhikistan	10.40	PREZ	MX
Latvia	71.60	PA	PR	Albania	36.50	PA	MX	Belarus	8.50	PREZ	MA
Slovakia	70.40	PA	PR	Between authoritarian and in-between				Uzbekistan	4.70	PREZ	MA
Hungary	69.20	PA	PR	Ukraine	32.90	PA/PREZ	PR	Turkmenistan	2.80	PREZ	MA
Croatia	57.50	PA/PREZ	PR	Armenia	30.30	PREZ	MX				
Romania	56.90	PA/PREZ	PR								
Bulgaria	55.00	PREZ	PR								
Average	70.20				45.10				17.30		
Variance	0.14				0.14				0.60		

Key: (1) PA—parliamentary; PA/PREZ—semi-presidential; PR—proportional representation; MX—mixed representation; MA—majoritarian representation. (2) In 2004 Ukraine changed its governmental system from presidential to semi-presidential, and its electoral system from mixed to proportional representation.

Matters look different in Russia, which fulfilled the function of the capital of the communist bloc. The situation in the USSR differed from that of China, where following the death of the founding father, Mao Tse-tung, work began on setting the economy on a market-oriented course, which steered the country towards rapid economic growth and an improvement in the prosperity of the population within the existing political system. In the 1980s the USSR was suffering a deep economic and political crisis. Attempts to break out of this situation ended in the state's disintegration. Leaving the three Baltic republics aside, control over the transitional process in the other states to emerge remained in the hands of the communist establishment—the CE. This was achieved by concentrating executive powers in the office of the president, and by relieving social tensions through a temporary liberalisation of public life and by allowing quasi-free elections. Thus the semblance of democratisation could be retained. The mixed electoral system was preferred. As Andrew Wilson observed, proportional representation made it possible for centrally-controlled parties to come into being, while the majoritarian system enabled the usage of primitive forms of administrative pressure.<sup>68</sup> The privatisation of the economy consisted in placing a significant portion of the state sector into the hands of CE people, thus further integrating the ruling class as the 'owners of the state'.

The Russians saw in the USSR an expression of national aspirations and a guarantee of superpower status. As such their attitude towards the communist system differed to that of the nations which, as a result of war, had lost their sovereignty. Attitudes toward the regime among other nations were marked by rejection, or at the best—indifference. The collapse of communism evoked a sense of national calamity among the Russians. Nationalism, in its Russian form, hindered democratic transition in Russia. The abundance of mineral resources constituted a second obstacle; the rise in price for oil and gas allowed the new elite to 'buy its way out' of the necessity for economic reform. Russia, while being a country with a highly-qualified workforce and a well-developed scientific and technical base, nevertheless has an economic structure typical of countries at a significantly lower level of development. The usage of natural resources in internal politics, and in external politics as well, saw its consequence in the guise of the 'curse of mineral resources'<sup>69</sup> and led to the centralisation of authoritarian government. As a result the government became independent of the free-market sector of private enterprise, while its priority has become to maintain control over the flow of funds generated by the fossil fuels sector. This releases those governing from focusing on the development of institutional infrastructure protecting private ownership and stimulating growth processes in the economy. The political elite of the states in this category has become slave to an inert economic structure, dependent on external demand.<sup>70</sup>

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<sup>68</sup> A. Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*, London and New Haven: Yale University Press, 2005, 87.

<sup>69</sup> R. M. Auty, *Sustaining Development in Mineral Economies: The Resource Curse Thesis*, London: Routledge, 1993; J.D. Sachs, A.M. Warner, *Natural Resource Abundance and Economic Growth*, NBER Working Paper 5398, 1995.

<sup>70</sup> A review of the literature goes beyond the format of this paper. Instead, we recommend a synthetic discussion of the findings of scientific research into the connections between

## V. CLOSING REMARKS

The consequences of the structural solutions adopted in specific states constitute the subject-matter of research conducted by political scientists and political economists dealing with constitutionalism. Their studies are conducted with the assistance of statistical comparative analyses. In the first section of the paper we presented a general outline of the basic structural choices within the field of interest of those researching this area. We placed our emphasis on the ideological attitudes of the political elite, meaning the persons and politics taking decisions in constitutional matters, and on the condition of civil society. These factors are of particular significance in periods of structural change, when the preferences of the 'structural designers' are of particular importance, meaning whether the persons deciding on the content of choices and the condition of society are capable of fulfilling a role limiting the arbitrariness of these choices.

We treat the structural choices here as a play of accountability between the new power elite aiming to achieve narrow self-centred interests and civil society. The findings presented differ from what one could expect based on the existing condition of knowledge in political science and constitutional political economy: the connection of presidential government with majoritarian representation in a situation of post-communist transition is the worst solution and leads to authoritarian government (see Table 2). However, the choices made by those countries and their consequences cannot be recognised as having contributed anything to the debates discussed in the first section of the paper. Apart from one thing only: the condition of civil society is the factor determining the quality of government.

In the play for accountability, the transition elites act in keeping with their particularistic interests, attempting on the one hand to broaden the scope of freedom in relation to the communist establishment, while on the other opting for institutional solutions curtailing the ability of civil society to hold them accountable for the consequences of their actions. Two types of case emerged in the transitional processes considered here: 1) a combination of a particularistic elite with a weak society incapable of civil collaboration; 2) a combination of a particularistic elite with a civil society capable of limited self-organisation. The former resulted in constitutional decisions based on a presidential government together with majoritarian or mixed proportional representation in parliamentary elections, which in all cases led to an authoritarian system. The second route leads to constitutional liberalism, and is characterised by parliamentary government and proportional representation. A sub-category here is that of states in which we saw a 'transformational pact', namely Poland and Hungary. The uncertainty tied to the activities of civil society resulted here in a silent agreement between

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economic conditions and democratisation: N. Bandeli, B. Radu, *Consolidation of democracy in postcommunist Europe*, Paper 0604, Center for the Study of Democracy, University of California, Irvine 2006.

a section of the anti-communist opposition and part of the forces of the old regime, the aim being social demobilisation. In Poland the protraction of the constitutional process in particular was subordinate to this, as too were the structural choices themselves.<sup>71</sup> In both cases, it led to an unstable constitutional order.

Regardless of the internal balance of power, there was an external factor that influenced the content of the structural choices: the proximity of the EEC/EU vs. the proximity of the Russian Federation. All countries 'close to Brussels' chose a trajectory leading towards a constitutional-liberal system; and all states 'close to Moscow' chose an authoritarian system. This, to a certain degree, corroborates the theses of Feliks Koneczny<sup>72</sup> and Samuel Huntington<sup>73</sup> regarding the duality of European civilisations: Latin and Byzantine.

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## CONSTITUTIONAL ENGINEERING IN TRANSITIONS FROM COMMUNISM

### Summary

While there is a wealth of studies on selected aspects of economic and political transitions from communism, there are few, if any, analyses of the emergence of new political orders in terms of constitutional engineering, i.e. the adoption of the meta-rules governing the rules defining both the political structure and determining underpinnings of the ordinary law-making process. The paper begins with the review of the menu of institutional choices related to the type of government, electoral system and vertical organisation of the state and their impact on performance as reported in political science and constitutional political economy literature. It is posited that the binary outcome: democracy vs. autocracy is a function of two variables assuming two values: society (weak vs. autonomous sovereign citizen) and communist establishment (strong vs. weak). A strong communist state at the initial state of transition produces autocratic outcomes although proximity to Brussels may change the political trajectory, whereas a strong autonomous society generates a trajectory leading to democracy. Surprisingly, the choice of the rules of political game bore little resemblance to what the literature might suggest: ordinary political struggle has determined the choice of institutions with constitutions as a legal act being the result rather than a product of conscientious intellectual design.

<sup>71</sup> A.Z. Kamiński, *Dezercja elit. Konsolidacja ustroju politycznego w pokomunistycznej Polsce*, Warsaw: ISP PAN, 2014.

<sup>72</sup> F. Koneczny, *Cywilizacja bizantyńska*, London: Wyd. Tow. im. R. Dmowskiego, 1973.

<sup>73</sup> S. Huntington, *Zderzenie cywilizacji i nowy kształt ładu światowego* [*The Clash of Civilizations and the Remaking of World Order*], trans. H. Jankowska, Warsaw: Muza, 2004.