

From Elections to Democracy in Central Europe: Public Participation and the Role of Civil Society

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The new European Union member states in Eastern Europe do not have fully consolidated democracies. True, popularly elected legislatures are responsible for lawmaking, and citizens can challenge the case-by-case implementation of the law. But most statutes are not self-implementing. Before they can be put into effect, governments need to issue general regulations and guidelines that add specificity to the statutory scheme. At present, this type of government policy making often is not democratically accountable. Procedures inside government lack transparency and accountability, and organized civil society groups that are engaged in advocacy and oversight are few in number and often weakly institutionalized. The Central European experience has lessons for countries further to the east that are poorer and less democratic. Here, full-fledged public participation in the government rule making may not be feasible, but other aspects of the transition to democracy in Central Europe may provide relevant models—for instance, external pressure, government oversight institutions, and grassroots democracy.

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Democracy means more than elections, political party organization, and the protection of individual rights. It also means that policy making is accountable to the public and that officials do not use their offices corruptly for private gain. On one account,

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democracy requires only a stable, competitive electoral system with broad suffrage, institutionalized political parties, and alternations in power.¹ I challenge this definition and argue that full democracy cannot be attained unless the policy-making process is accountable to citizens through transparent procedures that seek to incorporate public input. In a democracy, individuals and institutions must justify the exercise of power over others, and success in an election is insufficient to make this claim. Thus, when policy is made inside the government and the bureaucracy, those making the decisions must learn from individuals, firms, and other organizations what is at stake. The transition process in Europe has lagged in failing to provide transparent procedures that seek to incorporate public input. The rush to pass statutes after the transition produced many that are vague and unclear and that leave difficult policy issues to the implementation stage inside government ministries and the cabinet. Citizens and organized groups should be involved at that stage by taking part in the rule-making process with the government retaining the ultimate authority to issue general rules consistent with its statutory mandates.

During the first decade of the transition, little emphasis was given to broader issues of popular control and government accountability outside of the electoral process.² This relative neglect has been costly for these countries and deserves greater emphasis as the transition proceeds. The costs are not primarily economic. Rather, there is an increased risk of popular disengagement from political life based on disillusionment and distrust of the state and its officials.³

Democracy breeds partisanship, but a democratic state should treat its citizens impartially and fairly. To be sure, the potential alternation in power of different party coalitions does give incumbents a reason to avoid certain blatant forms of corruption and self-dealing.⁴ But rotation in power is unlikely to induce incumbents to behave impartially. Winners want to help their supporters and to hurt their opponents. They want to enhance their power so that reelection is more likely. Neutrality in the interpretation and implementation of laws is not what many politicians want. Accountability, then, means two different things in a democracy.

First, it means that government agents, elected or appointed, are responsible to their principals through systems of monitoring and oversight. This involves internal procedures by which elected politicians can control the career bureaucracy. But ordinary citizens are the principals of these same elected politicians. For them to be able to monitor their representatives, government must operate with transparency, and the press must be free so the public can hold government to account for both overall policies and the day-to-day implementation of programs. If the law requires impartiality, the citizens can, at least, observe if officials are following these standards. If the rules single out particular groups for special treatment, citizens can observe the practical effects. Under this aspect of accountability, one takes policies as given, and the central issue is performance. Call this *performance accountability*.

In contrast, *policy-making accountability* requires that the policies themselves be a reflection of the interests and needs of the population. Competitive elections and a competent legislature are necessary but not sufficient. As anyone who has studied the legislative process understands, statutes frequently leave many difficult policy issues to the implementation stage.⁵ Governments use different mechanisms to fill in these policy gaps. Elections limit the power of individual politicians and political parties, and they are designed to map citizens' preferences and goals into public policies. But as Robert Dahl and Guillermo O'Donnell argue, they are only one step toward the construction of an accountable and competent democracy.⁶

Policy-making accountability requires participation and oversight by a range of interested actors, but it also requires that the resulting policy be effective, transparent, and capable of assessment by ordinary citizens. Institutional design, then, is a tricky balancing act. How can public bodies be responsive to the concerns of citizens and yet remain insulated from improper influence? How can they perform both as competent experts and as democratically responsible policy makers? This tension is fundamental to all democratic systems, but it has particular salience in the new democracies of Central and Eastern Europe. These countries inherited top-heavy bureaucracies that had lost legitimacy in the eyes of their citizens.⁷ The initial temptation was to

dismantle, rather than reform, these structures. But after an initial round of privatization, the state was left with the provision of public services such as defense and public safety, education, health care, and infrastructure. Furthermore, the state created new bureaucracies to regulate the newly privatized industries and to establish a legal framework for private economic and social life. Now that many of the states in Central Europe have reasonably well-established electoral systems and functioning market economies, their citizens are beginning to criticize both the poor quality of many public services and the lack of transparency in much public decision making.

In my recent book, *From Elections to Democracy: Building Accountable Government in Hungary and Poland*, I illustrate my argument through the study of two post-socialist countries, Hungary and Poland, that have made the transition to electoral democracy but have relatively weak policy-making accountability. They have made impressive progress in “rebuilding the ship at sea,” but the task is not complete.⁸ This article summarizes the main conclusions of my research and discusses its implications for the relatively advanced countries that recently joined the European Union and for the poorer and less democratic countries to the east.

The problem of state building in Hungary and Poland has two sides. These polities need to confront the problem of creating accountable governments that can competently handle the tasks of the regulatory welfare state. But they also need to confront the weakness of civil society and the seeming unwillingness of citizens to engage in political action.⁹ Weaknesses on both fronts mean that governing politicians in East and Central Europe have often been able to run their governments in extremely partisan ways.¹⁰ This produces a polarized electorate that only expects good treatment from government if “their” party is in power. To the extent such problems become entrenched, they present a threat to the legitimacy of the underlying democratic forms the population welcomed so warmly in 1989.

I first outline the policy-making process in Hungary and Poland to highlight existing weaknesses. Next, I discuss the problems facing civil society organizations seeking an advocacy role. The article then discusses the benefits and risks of participatory

processes drawing on the experience of the United States. Fundamental features of U.S. administrative law—notice, openness to a wide range of opinions and expertise, transparent and well-justified decisions, and external oversight—seem basic principles that should guide public policy-making processes in all democratic governments. I conclude with some thoughts on the more difficult reform tasks facing other transition countries such as Ukraine and Russia.

Public participation in Poland and Hungary¹¹

In both Poland and Hungary, the government is held accountable through such institutions as constitutional tribunals, nonexecutive presidents, supreme audits offices, and ombudsmen. The European Union membership process introduced certain accountability requirements. However, over and above these factors, there are few avenues for the direct incorporation of public and interest group concerns into government policy making. The balance between public input and bureaucratic competence has been imperfectly achieved and is tilted toward the side of official expertise and organized interest groups with economic agendas.

Poland. Under the Constitution, the only route for public input at the national level is through elections for representatives to the Sejm (Parliament) and for the nonexecutive president. Ministry regulations can be issued without giving notice, holding a public hearing, or providing reasons. Final regulations must, however, be published. Statutes and rules can be referred to the Constitutional Tribunal for a ruling on their constitutionality, but a referral can only be made by a limited number of bodies; individuals only have access if they can argue that their individual rights have been violated. The administrative courts seldom deal with the rule-making process. Although consultations with interested parties do occur, the law does not generally require that drafts be sent out for comments from political parties, associations, citizens' groups, or experts. The Constitution gives citizens the right to obtain information from the state, and a 2001 Act on Access to Public Information codifies that right. However, the

act's impact remains unclear, and it only deals with access to information, not process. "Tripartite processes" involving labor, management, and the government exist. However, their democratic value is questionable because no more than 20 percent of the workforce are union members. Elsewhere, permanent institutions of stakeholders comment on draft normative acts and on petitions to improve regulations. The Constitution limits formal regulations; thus, public entities often use informal methods. Some statutes are difficult to implement effectively because binding rules cannot be issued and others may be administered through informal acts and case-by-case adjudications.

Hungary. The Constitution authorizes the issuance of government decrees as long as they do not conflict with statutes. The Constitutional Court held, in a case involving the regulation of abortion, that a fundamental right cannot be regulated by an executive decree. Hungary's Law on Normative Acts permits "citizens—directly or through their representative bodies—to participate in the preparation and creation of legal regulations [i.e., normative acts] affecting their daily life." Unfortunately, the act is mainly hortatory, but it does, at least, express an ideal of broad participation. A number of Hungarian laws in areas such as the environment and education mandate advisory councils. These are permanent bodies with shifting individual membership that have the right to review government proposals and sometimes initiate studies on their own. The government is under no obligation to consult more broadly or to consider whether some interests are poorly represented. Under the Constitution, citizens have a right to learn about and disseminate information of public interest. A 1992 act codified this right, and the Environmental Protection Act also contains a freedom of information provision. However, information is not always easily available and may depend upon personal connections. There is no legal requirement to publish proposed rules and statutes. Ordinary citizens have access to the Constitutional Court for a range of issues, but challenges to administrative procedures are seldom successful. The government has made some moves in the direction of openness. A few agencies post drafts on their Web sites and send them to mailing lists with hundreds of names.

In spite of some salient differences, the Polish and Hungarian governments face similar challenges. The difficulties they face fall into four categories: public knowledge, open processes, government justifications, and judicial review.

Neither government routinely publicizes drafts of regulations and statutes. Even when plans and drafts are made public, few laws require open-ended hearings or information gathering from the public. Instead, consultation is limited to preset advisory groups or to insiders. Neither country requires written justifications for normative acts (regulations), and such justifications are seldom prepared.

The judiciary has not required much in the way of open and participatory policy-making processes inside government. Neither the Constitutional Court in Hungary nor the Constitutional Tribunal in Poland has taken on these issues, although the Polish Tribunal has struck down the administration of a few laws for violating the Constitution. In both countries, the delays, costs, and the small chance of winning keep lawsuits by civil society groups at a minimum.

Thus, the policy-making process inside the government risks being either an insular exercise carried out by ministers and their top assistants or a limited cooperative process that involves a few outsiders serving on advisory committees or associated with the few groups with special access to the government. These procedures make it difficult for those who feel excluded from the process to do anything about it. They have no right to demand to be heard or to insist that the government defend its policies short of a claim of unconstitutionality.

The role of private groups¹²

Consultation procedures in Central Europe emphasize the involvement both of “jurisdictional” organizations and of official bodies that represent particular organized interests. The former are mostly local and regional governments, but the category also includes groups such as university students and government agencies that will be affected by the policy in question. The latter includes labor unions and employers’ associations that

participate in an official “social dialogue.” It also includes other organized groups of economic interests.

Largely missing from official consultation processes are civil society groups representing poorly institutionalized interests. (One exception here is Hungary’s National Environmental Council, one-third of whose members are from environmental groups.) The development of civil organizations that can act as advocates and gadflies is in its infancy in Central Europe, as it is in other emerging democracies. My recent book illustrates the limits of civil society participation through two contrasting cases where organizations are relatively well established—environmental protection advocacy in Hungary and student groups in Poland.

Environmental advocacy organizations in Hungary. Environmental activism in Hungary began at the end of the socialist period with a core of activists able to mobilize large numbers of people to protest particular issues. These mobilizations continued into the democratic transition, but newer groups focus their efforts on affecting policy using technical and policy arguments. Even the most active groups, however, depend on the energy of a few committed people, have few funds, and rely on short-term grants. Relations with public officials are sometimes rocky, but the groups’ access to the media and public sympathy for their efforts have helped keep them in operation and given them some influence. These nonprofits all have problems of (1) financial and human capacity, (2) credibility, and (3) effective access to the policy-making process.

Advocacy groups receive a large proportion of their funds from government and foreign grants. As foreign foundation support is phased out, these groups will become even more dependent on government support unless they aggressively begin to seek domestic private donations or develop eco-businesses to generate revenue. This may limit their advocacy role.

In seeking credibility, the groups follow two broad strategies. Some develop grassroots support and educate people about environmental problems. Others provide expert opinions to public officials. Both of these strategies imply that the media is independent

and willing to publicize actions that challenge government policy. A free press is a key background condition.

Most established groups cultivate their public contacts although some remain aloof. If access is denied or if a decision is opposed to the group's interests, the group can go to the courts either to force greater openness or to challenge decisions after they are made. This is not often a fruitful approach, but in the environmental area, such challenges are sometimes worthwhile especially to enforce the freedom of information act and to challenge individual projects.

Student groups in Poland. Student and youth organizations in Poland present a complementary case. The sector includes both university self-governments and civil organization. One group is the reincarnation of the official student organization under communism. A second group was formed in the 1980s as a counterweight to the official group and to protest regime policies. Other groups are oriented to professional development, often in alliance with professional associations. All these groups interact with the official elected student self-governments. The National Students' Parliament includes representatives from the university parliaments but lacks legitimacy in the eyes of many. Several groups are trying to create an alternative nationwide roundtable, but funds are scarce, and they struggle to find a credible and effective role to play.

Government provides programmatic funds, and the self-governments distribute public scholarship funds and provide services under agreement with the universities. The self-governments are deeply entwined with the state and university administration, a fact that may blunt their ability to act as independent voices. The groups with political party allegiances obtain government financial support, at least when their supporters are in power. All groups rely on donations from private firms and foundations and on the sale of services.

Student leaders struggle with the issues of how to reinvent their organizations, further their own careers, and interact with other types of organizations. This case is an example of the tendency of the state in Central Europe to gravitate toward links with formal, official bodies as the exclusive route for group influence. It illustrates

the weaknesses of that strategy when the official organization lacks democratic legitimacy and becomes a source of conflict.

Thus, in a different country and in a very different policy area, we see some of the same puzzles and problems that face Hungarian environmental groups. How much should groups cooperate with official bodies? What are the costs and advantages of close affiliation or identification with particular political parties? How can funding levels be maintained without compromising independence? How should leaders balance the need for expertise against claims of broad popular support? If a group's leaders have privileged access to policy makers and politicians, will they be a strong voice for more open and inclusive procedures?

In both cases, the administrative process encourages the development of a few "official" voices. In contrast, a process that is more open-ended would encourage the development of groups that are not part of existing hierarchies and that are excluded from formal advisory councils. This would put a greater burden on the government bureaucracy to manage public participation in government policy making, but on the positive side, it would avoid solidifying closed loops of consultation between government and certain privileged groups.

Developing accountable rule-making processes¹³

The weakness of the policy-making process inside Central European governments suggests a search for alternative models. Unfortunately, the European Union, the most obvious place to look, lacks publicly accountable procedures when it makes policy under EU law. Another option is the U.S. administrative process as reflected in the Administrative Procedure Act (APA).¹⁴ I focus on the "notice and comment rule-making" provisions of the APA, where an agency makes policy free of the strictures of a judicialized process. The APA requires that draft rules be publicly announced, and the agency must have a hearing open to anyone with an interest in the subject at hand. Final rules must be accompanied by a statement that explains the statutory basis of the rule and justifies the outcome. Rules can be reviewed in court for conformity with the underlying statute and with the Constitution and for conformity

with APA procedures. Frequently, rules are found wanting, but the courts seldom correct the problems themselves; rather, the agency is required to reconsider its decision or follow improved procedures. There are many practical problems in the American rule-making process, but in principle, it tries to cope with the problem of balancing expertise and bureaucratic rationality against popular concerns for openness and accountability.

Of course, a major caveat may be the limited transferability of the U.S. model. In using U.S. practice as a guide to reform in the post-socialist countries, one must recognize the differences in political structure and in the organization of society. Furthermore, partial reforms may not have the expected consequences. For example, the introduction of greater participation rights without effective judicial review can lead to policy distortions. Adding notice and an ability to comment may have little effect if agencies are not required to give reasons and are not subject to judicial oversight.¹⁵

The introduction of notice and comment rule making may be politically difficult to achieve. Both career bureaucrats and political officials may resist increased participation and transparency on the grounds that they threaten to delay action and to distort choices. Critics argue that the problems with participation are delay, bias, irrelevance, displacement to other methods, and curbs on agency implementation. However, most appear to be the result of poorly designed and biased procedures, not participation per se.

Of course, some delay is an inevitable counterpart of expanded participation. Agencies must take the time and trouble to consult. However, the extremely long time between proposed and final rules in the U.S. experience seems to be driven more by strategic considerations than by cost of the process per se.¹⁶ Some rule makings only attract the interest of a few groups that submit comments. Examination of a random sample of forty-two rule makings found that the median number of comments was about thirty.¹⁷ The deadlines in Hungary and Poland seem too short, but the U.S. process could surely be streamlined. Furthermore, advances in communication and information technology can speed up the comment process. Most U.S. agencies have developed comprehensive and user-friendly Web sites, and many permit comments on draft rules to be submitted via e-mail. Of

course, the agencies still need to be able to process comments in an effective manner, but information technology can make the processing of comments more cost-effective.

Displacement of agency activity to nonbinding guidelines and to implementation through the adjudication of individual cases occurs. However, neither seems to be a general problem given the large number of rules that U.S. agencies continue to issue.¹⁸ In any case, the problem of displacement can be overcome if the legislature includes rule-making requirements in statutes and if the courts resist adding incremental procedural requirements. The proponents of participatory processes need to consider the actual workings of procedural innovations. Rigid, cumbersome, and biased processes are obviously not an improvement.

The costs of the rule-making process ought to be balanced against the benefits. In the well-functioning cases, the benefits are of several kinds. The most important benefit is that officials draft proposed rules in the light of the forthcoming public participation processes. Even if they consult with a biased selection of interest groups before the public hearing process, officials must consider how their proposals will be greeted by the public and the media when they are publicly posted and, later, when they are subject to judicial review.¹⁹

Public hearing processes can raise the salience of an issue with the public and increase public knowledge about a regulatory issue. Furthermore, studies of the hearing process suggest that in the U.S. bureaucrats are not the captives of well-funded groups.²⁰ Successful efforts at public involvement can lead to choices that better reflect public values and are substantively strong, although, of course, fair and open procedures cannot entirely overcome partisan biases.

Open procedures cost time and money, so emerging democracies will need to make some compromises to avoid gridlock and to ensure that processes are not just for show. Practical implementation requires a realistic understanding of the trade-offs involved.

Lessons for lagging transition countries

Transition countries with lower levels of wealth and less well-established democratic institutions cannot immediately reach

the degree of democratic consolidation present in Hungary and Poland and other new members of the European Union. They cannot implement the administrative law system recommended here unless they first establish some of the institutions that provide a necessary background to the public participation processes in Hungary and Poland.

In Hungary and Poland, outside pressure from the European Union played an important role in setting the legislative agenda in the runup to membership. In the case of countries farther east, the World Bank and the IMF are the key external players. However, the relatively undemocratic character of the European Union makes it an awkward locus of pressure for democratic reform, and that observation holds as well for the World Bank and the IMF in the states of the former Soviet Union. Nevertheless, despite such problems, these institutions have acted as spurs to those seeking to improve accountability and transparency. European Union and World Bank experience, however, highlights the risks of relying only on outside pressure in cases where the institution itself lacks legitimacy inside the country. Pressure from these institutions is probably a necessary goad, but domestic actors need to ask themselves if the particular reforms proposed will really be effective, given local conditions.²¹

Nevertheless, there do seem to be some basic framework institutions where the burden of proof ought to be on those who oppose their creation. I discuss the role of these institutions in my longer study, but here I simply provide a list to provoke discussion.²² They are a nonexecutive president, a constitutional court that can review laws and rules for conformity with the constitution, an independent audit office, an ombudsman who not only takes individual complaints but can also initiate investigations, an administrative court system, and an independent general prosecutor. In addition, some countries have other institutions such as a federal election commission, an agency to administer the freedom of information act, an anticorruption or other prointegrity branch, and a human rights commission. In a state with few civil society organizations and serious problems of corruption and political overreaching, they are all options that should be on the table.

Finally, even when national government institutions are weak, accountability can sometimes be obtained from the bottom up. Even poorer, less democratic countries can experiment with grassroots participation, modeling their efforts on those in such countries as Brazil and India where ordinary people are becoming involved in local policy making.²³ These can be democratic training grounds for citizens, and they can help prevent extreme distortions in local public spending and corruption of local politics.

Conclusions and recommendations

Most emerging democracies need to improve policy-making accountability inside the government. It is not sufficient to strengthen parliaments and political parties, on one hand, and to ensure that implementing officials in particular cases are competent and honest, on the other. The important intermediate level where policy is made under statutory mandates needs to be opened to public scrutiny and input. My recommendations are as follows.

In countries with established electoral institutions, policy-making procedures inside governments, in the cabinet, and in the individual ministries need to be transparent and open to public input. One plausible model is to require that rule making or norm setting involve public notice, open hearings, and reason giving followed by limited judicial review.

The success of such structures of administrative law, however, depends upon the existence of groups, in addition to labor unions, business associations, and professional chambers, willing and able to participate. Thus, the reform agenda must also strengthen organized civil society through financial incentives and legal rules that make it easy to create such organizations.

In poorer countries with weaker institutions, institutional reforms inside government are a needed first step—for example, ombudsmen, audit offices, and independent courts as well as efforts to publish and make available all statutes and rules. In addition, bottom-up participation in government decisions that directly affect people's lives may succeed even where national institutions are weak.

My argument for deeper and more effective public participation in government policy-making processes is based on a broad view of the democratic project. It is an effort to strike a balance between the obligation of governments to make technically competent policy choices under statutory delegations and their obligation to respond to the concerns of citizens and organized groups. In a world with cross-cutting cleavages that do not map neatly onto party labels and with statutes that do not specify in detail how to deal with complex modern problems, consultation procedures and judicial oversight are one route to policy-making accountability. They are, to me, a necessary route, given the weaknesses of the alternatives.

My basic claim is twofold. First, legislative texts cannot resolve all the policy issues of interest to private individuals and groups. Thus, the task of putting laws into effect is not just a technical, expert enterprise but is itself deeply political. By “political,” I do not mean political party involvement. Instead, I wish to signal that in most policy areas the participants have policy preferences and personal goals that they seek to further in strategic interaction with other actors. Second, given the first claim, modern governments cannot make policy under democratic principles unless the law requires decision makers to consult broadly. A government that tries to channel public input into permanent advisory committees risks freezing out new groups, concerned individuals, and emerging interests.

My proposals for the consolidation of democracy in Central Europe are a reflection of how far these countries have come in creating electoral systems and reforming the state and the economy. The problems that remain are those of countries that have democratic electoral and constitutional structures, secure borders, no organized violence, and a functioning private sector. They are not different in kind from those facing democracies with much longer histories. True, the scale of the difficulties is larger for some issues, and the existing institutions in the public and the private sectors are fragile and untested, but no one expects an imminent breakdown of the state. These observations are not meant to breed complacency, but they do mean that Central Europe can learn from experiences elsewhere. Its

politicians and policy makers can be in a productive dialogue with those in wealthier, more established democracies as they seek ways to create more accountable policy-making institutions that can garner popular support.

Notes

1. This view of democracy builds on Joseph Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper, 1942), chap. 12. It has been most forcefully expressed in recent years by Adam Przeworski et al., *Democracy and Development: Political Institutions and Well-Being in the World, 1950-1990* (Cambridge: Cambridge University Press, 2000).
2. For example, Jon Elster, Claus Offe, and Ulrich Preuss, *Institutional Design in Post-Communist Societies: Rebuilding the Ship at Sea* (Cambridge: Cambridge University Press, 1998), 110-11, mention three elements of the transition from socialism that the book ignored in spite of their importance. Two of these are devices for interest articulation besides political parties and the reform of the state administration.
3. Elster, Offe, and Preuss, *Institutional Design*. See also Susan Rose-Ackerman, "Trust and Honesty in Post-Socialist Societies," *Kyklos* 54 (2001): 415-43; and Susan Rose-Ackerman, "Trust, Honesty and Corruption: Reflections on the State-Building Process," *Archives of European Sociology* 42 (2001): 526-70.
4. Jana Kunicová and Susan Rose-Ackerman, "Electoral Rules and Constitutional Structures as Constraints on Corruption," *British Journal of Political Science* 35 (2005): 573-606. The exception here is a very unstable system where incumbents, if overthrown, do not expect to reenter politics. In such cases, they may try to steal as much as possible before leaving office. See Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences and Reform*, (New York: Cambridge University Press, 1999), 113-21.
5. Susan Rose-Ackerman, *Controlling Environmental Policy: The Limits of Public Law in Germany and the United States* (New Haven, CT: Yale University Press, 1995); and Bo Rothstein, *Just Institutions Matter* (Cambridge: Cambridge University Press, 1998).
6. Robert Dahl, *Polyarchy: Participation and Opposition* (New Haven, CT: Yale University Press, 1971); and Guillermo O'Donnell, "Illusions about Consolidation," *Journal of Democracy* 7 (1996): 34-51.
7. Elster, Offe, and Preuss, *Institutional Design*; Grzegorz Ekiert and Jan Kubik, *Rebellious Civil Society: Popular Protest and Democratic Consolidation in Poland, 1989-1993* (Ann Arbor: University of Michigan Press, 1999); Marc Morjé Howard, *The Weakness of Civil Society in Post-Communist Europe* (Cambridge: Cambridge University Press, 2003); and János Kornai, *The Socialist System: The Political Economy of Communism* (Princeton, NJ: Princeton University Press, 1992).
8. See Susan Rose-Ackerman, *From Elections to Democracy: Building Accountable Government in Hungary and Poland* (Cambridge: Cambridge University Press, 2005). The quoted phrase is from the title of Elster, Offe, and Preuss, *Institutional Design*. According to Anna Grzymała-Busse and Pauline Jones Luong, "Reconceptualizing the State: Lessons from Post-Communism," *Politics and Society* 30 (2002): 529-54, at 544, Poland and Hungary in 2002 were "nearly consolidated democratic states." They also place the Czech Republic, Slovenia, and the Baltic States in that category. Anna Grzymała-Busse, "Political Competition and the Politicization of the State in East Central Europe," *Comparative Political Studies* 20 (2003): 126-51, argues that Hungary and Poland are similar in their relative success in establishing a depoliticized bureaucracy. Graeme Gill, *Democracy and Post-Communism*, (London: Routledge, 2002), 24-31, places Poland and Hungary alone in the category where civil society forces emerged before the fall of the regime and were seen as appropriate negotiation partners by the incumbent leaders. The result is a stable democracy where the former Communist Party has transformed itself into a social democratic party.
9. Table 1.2 in Rose-Ackerman, *From Elections to Democracy*, 10, reports on the low levels of political activity other than voting in Central and Eastern Europe.

10. Linda Cook and Mitchell Orenstein, "The Return of the Left and Its Impact on the Welfare State in Russia, Poland and Hungary," in L. J. Cook, M. A. Orenstein, and M. Rueschemeyer, eds., *Left Parties and Social Policy in Postcommunist Europe* (Boulder, CO: Westview, 1999), 47-108; and Howard, *The Weakness of Civil Society*. On the Czech Republic, see Milada Anna Vachudova, "The Czech Republic: The Unexpected Force of Institutional Constraints," in Jan Zielonka and Alex Pravda, eds., *Democratic Consolidation in Eastern Europe*, vol. 2, *International and Transnational Factors* (Oxford: Oxford University Press, 2001), 337.
11. This section is based on Rose-Ackerman, *From Elections to Democracy*, 126-62, which provides sources for the material discussed here.
12. This section is based on *ibid.*, 163-215, which includes references to published sources and interviews with the leaders of environmental groups in Hungary and student groups in Poland.
13. For a more comprehensive review of the literature on the U.S. case, see *ibid.*, 219-233.
14. The Administrative Procedure Act (APA) passed in 1946 is at 5 U.S.C. §§ 551-559, 701-706. It has been amended through 552 (Freedom of Information Act), 552b (Government in the Sunshine Act), 561-570 (Negotiated Rulemaking Act), Appendix 2 (Federal Advisory Committee Act).
15. The Taiwanese APA has notice and comment rule making with no requirement for reason giving and limited judicial review. The act provides only limited public accountability. See Wen-Chen Cheng, "Alternative Agenda[s] in Constitutional Reengineering: Ensuring the Rule of Law and Political Trust in Taiwan" (Presented at the International Conference on Constitutional Reengineering in New Democracies: Taiwan and the World, Taipei, Taiwan, 28-29 October, 2005).
16. Cornelius M. Kerwin and Scott R. Furlong, "Time and Rulemaking: An Empirical Test of Theory," *Journal of Public Administration Research and Theory* 2 (1992): 113-38. A major rule making at the Environmental Protection Agency (EPA) averages almost three years and requires many hours of input from both bureaucrats and outside interests from industry and the environmental community. Many rules are challenged in court before they go into effect, introducing further delay. See Cary Coglianese, "Assessing Consensus: The Promise and Performance of Negotiated Rulemaking," *Duke Law Journal* 46 (1997): 1255-1349.
17. William F. West, "Formal Procedures, Informal Processes, Accountability, and Responsiveness in Bureaucratic Policy Making: An Institutional Analysis," *Public Administration Review* 64 (2004): 66-80.
18. Between 1992 and 2001, the number of final rules issued each year ranged from 4,132 in 2001 to a high of 4,937 in 1996. Of the 4,509 rules in the pipeline in October 2001, 149 were major rules, defined as those with at least a \$100 million economic cost. Clyde Wayne Crews Jr., *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State* (Washington, D.C.: Cato Institute, 2002), 11-16.
19. West found that a common reason for delay was agency lawyers' efforts to withstand court challenges (West, "Formal Procedures," 72). In one rule that was substantially changed after notice and comment, he quotes an official who claimed that the agency staff had "failed to do their homework on this one" by neglecting to consider the interests of some of the producers affected by the rule.
20. See, for example, Wesley A. Magat, Alan J. Krupnick, and Winston Harrington, *Rules in the Making: A Statistical Analysis of Regulatory Agency Behavior* (Washington, D.C.: RFF Press, 1986); and Nina A. Mendelson, "Agency Burrowing: Entrenching Policies and Personnel before a New President Arrives," *New York University Law Review* 78 (2003): 557-666.
21. Rose-Ackerman, *From Elections to Democracy*, 37-54.
22. *Ibid.*, 55-99.
23. Case studies of several of these experiments are reviewed in Susan Rose-Ackerman, "Governance and Corruption," in Bjørn Lomborg, ed., *Global Crises, Global Solutions* (New York: Cambridge University Press, 2004), 316-22.