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# 1

## Explaining the Design and Redesign of Electoral Systems

Electoral institutions are often regarded as ‘sticky’ in the sense that they are difficult to change. However, relatively little attention has been given to the factors that shape them in the early stages of their development or the ways in which they evolve. A number of democratic countries made changes to their electoral laws in the 1990s, belying the view that ‘fundamental changes are rare and arise only in extraordinary situations’.<sup>1</sup> Yet the large-scale rewriting of electoral laws in post-communist Europe between 1989 and 1991 was certainly a phenomenon not witnessed since the adoption of proportional representation across most of Western Europe from the late nineteenth century. Moreover, most countries in the post-communist region altered their electoral laws to some degree after the initial ‘founding’ elections had given the population a political choice for the first time in decades. Even where it failed, electoral reform was on the political agenda of new elites. Political actors generally found it ‘worthwhile to take the risk of launching a new process of bargaining and political change’.<sup>2</sup>

There are thus two distinct stages of electoral design in post-communist countries. The first coincides with the initial impetus to democratization, with free elections as the centrepiece and hallmark of new commitments to democracy. The second involves changes instituted by the newly legitimized elites following free elections once the effects of the new systems had become apparent to all affected. It is far from clear that the same factors should drive both stages of this process, or that the same factors influence the degree of ‘lock-in’ of electoral institutions.

The post-communist regimes were unusual in that the timing of the first free elections generated a wave of near-simultaneous electoral reform. It is not difficult to explain the impetus to reform in a general sense. It clearly resulted from the collapse of the old regimes;

the universal commitment in rhetoric – if not always in practice – to democracy; and the recognition by elites of the need to adapt to popular pressures or to the demands of aspiring counter-elites. In the former Soviet Union changes in electoral law were a central element of General Secretary Gorbachev's urge to 'democratize'. The shift from uncompetitive to fully competitive elections was slower there than in much of Central Europe, where regimes either adapted to dramatically changing circumstances or imploded under the weight of their own inertia. Throughout the region free elections were both cause and consequence of the 'transition to democracy'.

However, the identity of the new electoral 'designers' varied considerably. Sometimes elites negotiated with their challengers, sometimes the challengers themselves took over the process. In some cases existing parliamentarians played a considerable role, in others their role was negligible. Given the variations among actors at this stage as well as their different experiences and objectives, we might well expect diversity in the factors involved in choosing an electoral system, and in the nature of the initial electoral choices. Yet in all cases perceptions of electoral institutions were inflected with attitudes toward the systems associated with the communist regime.

Once free elections had been held, electoral reform became the province of those democratically elected parliamentarians who had benefited from the initial definition of the new rules of the game. Electoral rules have the unique characteristic that their subject and their object are the same, for under normal democratic conditions they are rules made by rule-makers about their own fitness to continue making rules. In voting electoral systems into law, parliamentarians determine the mechanism through which they as individuals may or may not be chosen at the next election. It should not surprise us if they tend to be biased in favour of the systems that elected them. Thus the question of why subsequent change transpired is also crucial to understanding the content of new post-communist electoral legislation.

In this chapter we begin with an analysis of the communist approach to elections. This reveals much of the conceptual baggage carried forward by actors involved in electoral system design, but it also shows how electoral reform could not be painted on a blank sheet of paper. In all cases actors were shaped by and reacted to previous developments. The second section places our topic in a wider context. It identifies the distinguishing features of post-communist electoral reform and the crucial ways in which it differs from the reforms that took place at the time of the 'first wave' of democratization in Western Europe. The third

section deals with the general factors shaping electoral systems. It argues for the need to distinguish the first stage of reform, when multi-party elections had yet to take place, from the second stage of change, following the first fully competitive elections. We present different scholarly explanations of electoral system design and change, with a preliminary assessment of their utility and appropriateness for our analysis. Finally, we outline the focus of our subsequent chapters.

## Elections under communism

The theory underlying communist electoral-system design grew in part from Marx's analysis of the representative institutions of the Paris Commune.

The Commune was formed of municipal councillors chosen by universal suffrage in the various wards of the town, responsible and revocable at short notice. The majority of its members were naturally working men, or acknowledged representatives of the working class. The Commune was to be a working, not a parliamentary, body, executive and legislative at the same time.<sup>3</sup>

Two aspects of this description had a direct bearing on the development of representative assemblies under twentieth-century communism. Firstly, the Commune was a truly popular institution: its members were mostly workers, and they were chosen by the people at large. Assemblies in communist states had relatively large numbers of working-class members and all members retained their previous jobs, attending assembly meetings when required but not becoming professional politicians. Secondly, Marx's description of the Commune as 'a working, not a parliamentary, body, executive and legislative at the same time' indicates his approval for the combination of executive and legislative functions.

Lenin himself directly endorsed the practices of the Paris Commune, most notably in *State and Revolution*, where he saw them as replacing the 'venal and rotten parliamentarism of bourgeois society' with genuinely representative institutions as 'working institutions', including accountability and mechanisms of recall.<sup>4</sup> Communist-style representation was consistently contrasted in subsequent communist political theory with 'bourgeois parliamentarism', making this distinction one of the defining features of communist ideology. The denial of the separation of powers also characterized the communist systems that developed from

Leninist and Stalinist adaptations of Marx, though it was Lenin who originally established the principle of the 'leading and guiding role of the Communist Party'.

Soviet elections departed immediately from the proportional representation system used for the Constituent Assembly elections of 1917, the first direct elections to be conducted on the basis of a universal and equal franchise. Indeed, the Bolsheviks had fared relatively poorly, gaining only 23.62 per cent of the vote.<sup>5</sup> From 1922 to 1936 Soviet elections were indirect and conducted on the basis of a weighted franchise favouring urban workers and excluding those deemed to have been tainted by association with the old regime. This disenfranchisement of 'class enemies' reappeared in the form of limits to the franchise in the immediate postwar elections of independent Eastern Europe, when 'fascists' or 'collaborators' were excluded.

When the class enemies were declared defeated in the USSR in 1936, direct elections and a universal franchise were restored. Stalin prepared for competitive elections, but he suddenly took fright and reversed his position,<sup>6</sup> at the same time providing ideological justification: since parties were viewed as representing classes, and class harmony was the prevailing order, only one party was deemed necessary to electoral politics. This meshed well with the concept of the 'leading role' of the Communist Party. Thus from 1936 Soviet elections were held in single-member territorial districts, with (until 1989) a single candidate standing in each. The voter's task was to delete or endorse the candidate, whose democratic legitimacy was confirmed by the absolute majority requirement and whose accountability was ensured through his/her 'mandate' (specifying the issues and tasks he or she would undertake for voters, detailed in periodic reports by deputies to their constituents) and the electors' formal right of recall. It is interesting to note that the absolute majority requirement conformed to imperial Russian practice rather than to the procedures employed in the Paris Commune elections, which were governed by a plurality rule.

As the Soviet model spread into Eastern Europe, so too did its electoral practices. The communist assumption of power entailed the slavish adoption of the 'superior' Soviet political system, including the elimination of genuine party competition. Even where other political parties were allowed to exist,<sup>7</sup> as they were in most of Eastern Europe, they remained subject to the demands of class harmony and subordinate to the Communist Party in 'popular front' formations. Majoritarian systems based on single-member districts were introduced in all but Poland and the GDR, which had multi-member districts for much of the

postwar period.<sup>8</sup> All countries maintained the requirement of absolute majority for election, though defeat of a candidate was generally rare and mostly localized.<sup>9</sup> The absolute majority was in most cases defined in terms of the eligible electorate, not the voting population, and it was generally combined with the stipulation that at least fifty per cent of the electorate had to vote for the election to be valid.

However, in some countries provisions for multiple candidacy, dormant in the USSR, manifested themselves quite early. In Poland one response to political upheaval in 1956 was the practice of having more candidates than seats, as well as the inclusion of independent lay Catholics (this was how the future Solidarity prime minister Tadeusz Mazowiecki gained parliamentary experience). Hungary also had some multi-candidate contests after 1966, although they constituted a small proportion of the total (in 1971 single candidates stood in 303 of 352 districts).

The use of a territorial basis for the distribution of seats must be seen more as default choice than as a positive adherence to a geographically based understanding of interests. Territorial representation was also a useful way of giving reluctant peripheral groups the impression that their interests would be listened to and 'their' people guaranteed a place in the decision-making process. There was formal cognizance of ethnicity in elections to the Soviet second chamber, the Soviet of Nationalities. There also remained some vestiges of functional representation in the role played by social organizations and the workplace in Soviet nominating and recall procedures. (This took on a specific form in 1989, when one-third of the seats in the new Congress of People's Deputies was reserved for social organizations.)

The basic precept underlying the concept of representation remained, however, the cross-section or mirror-image: as far as possible representatives should be 'like' their voters in terms of occupation, age and gender. The milkmaid in parliament became the symbol of communist superiority over bourgeois systems, since she not only served her electors but (as a part-time deputy) would not become part of an elite isolated from common concerns. To achieve this 'reflection' the Party issued guidelines regarding composition to 'assist' nominating committees. Thus there was a particular emphasis on the representative function of elections, accompanied by perennial concerns with improving the quality of 'socialist democracy'. Under Khrushchev (1957–64) there was greater emphasis on deputies' mandates and on the right of recall. It was also under Khrushchev that discussions again took place regarding the possibility of multi-candidate elections.<sup>10</sup>

From technical and legal perspectives, late-communist electoral institutions differed little from those in established democracies. Voting hours were long, and the system provided exceptional ease of access to polling stations, which were organized on ships and in hospitals, with mobile ballot boxes to reach the infirm. Yet elections in the communist world were governed not only by formal laws but also by informal institutions, notably effective communist vetting of nominations, and both negative and positive incentives to vote. The latter included ease of voting in another district (Stalin was not the only leader to be returned with a majority of more than 100 per cent because of this), the provision of scarce goods at polling stations, and tolerance of proxy voting. As a result, the system registered high levels of participation in the formal process of voting, but far lower levels of popular involvement in the actual selection of representatives. Western observers took a jaundiced view of Soviet-style elections up to the late 1980s. There was little if any genuine competition;<sup>11</sup> elections mainly served socialization and mobilization functions.<sup>12</sup>

During the late communist period, electoral reform in Central and Eastern Europe involved firstly the liberalization of the terms of contestation and secondly changes to seat allocation formulae. The relaxation of entry requirements gathered speed after 1985, with Gorbachev's reformist regime in the USSR. Reform had already deepened in Hungary in 1983 and in Poland in 1984–5 as a means of enhancing the legitimacy of representative institutions. The limits on candidacies were loosened, and many of the filtering mechanisms which allowed the authorities to maintain control over the selection process were removed.

The Soviet Union was the linchpin of the communist system, and it was reform of the electoral system that heralded the Soviet collapse. Modest electoral reforms had continued to be proposed from within the ruling elite.<sup>13</sup> The first (limited) experiment with competition was conducted under Gorbachev at the time of the 1987 local elections, when approximately 5 per cent of deputies were elected in multi-member districts with limited choice.<sup>14</sup> Electoral institutions emerged as an issue in the public arena at the time of the design of voting systems for the Congress of People's Deputies, elected for the first and last time in 1989. There was not yet any real debate over the continued use of single-member districts; discussions focused more on nomination procedures and the new third element of the Congress, to be elected by All-Union social organizations, including 100 seats for the Communist Party.<sup>15</sup>

Such issues were again the main focus of debate in the rewriting of electoral laws for the various republic elections of 1990. The 'leading

role of the Party' was shortly to be expunged from the Soviet Constitution, and most independent states of Central and Eastern Europe were preparing for fully free elections on the basis of new electoral laws. While most republics retained single-member districts in 1990, Estonia adopted (for that election only) the single-transferable vote and Georgia employed a mixed system. In six republics, Latvia, Lithuania, Estonia, Georgia, Armenia and Moldavia, non-communists gained a majority of seats, intensifying the acute fissiparous tendencies of the imploding Soviet state. The 'new elites' took charge of electoral reform here, while the 'old elite' retained its dominance in the remaining nine republics, including Russia and Ukraine.

All in all, the communist system provided a large measure of common experience across the region. However, considerable differences were evident among the communist states in the degree of readiness to experiment with reform, in the extent to which changes were elite-led, in the timing of change, and in the identity of leading pro-reform actors.

### **The distinguishing characteristics of post-communist electoral reform**

Arend Lijphart has drawn a parallel between 'first-wave' electoral reforms and those that accompanied 'third-wave' post-communist transitions. Just as the relative decline of the support bases of the old Western European parties moved them to switch from all-or-nothing majoritarianism to proportional systems that would reliably deliver a modest return, so the post-communist transition gave representatives of the old regime reason to consent to reform once they realized that their position was under serious threat.<sup>16</sup> At the same time where new elites emerged, their interest was in institutional mechanisms that would challenge and remove the dominance of the old *apparatchiki* of the communist system.

Yet in many crucial respects the trajectory of electoral reform typical of Western Europe is *not* reflected in the Eastern European experience. Democratization historically involved two principal changes: extending citizen participation (franchise reform) and the liberalization of contestation (reform of candidate entry restrictions). In Western Europe the reform of contestation occurred upon completion of franchise reform and in direct response to it.<sup>17</sup> In much of the post-communist area, however, franchise reform was completed only under communism, and thus coincided with a radical restriction rather than an expansion of the

terms of contestation. Once the 'class enemies' had been dealt with, the universal franchise was unproblematic, with voting rights denied only to the insane and those disenfranchised by a court of law. At the same time, there was virtually no genuine political competition.

This had important implications for the reform agenda that emerged at the time of the communist collapse. In most cases the formal terms of communist-era participation were accepted by the new democracies during the post-communist period. Few changes were made to franchise and voting regulations.<sup>18</sup> Nor were there significant demands for voluntary as opposed to automatic registration or changes in the age of voting. Indeed, we can note in passing that the post-communist states maintained very high rates of voter registration, unlike the Latin American new democracies, where some 10–33 per cent of the eligible population is not on the rolls.<sup>19</sup> This reflects the different non-democratic pasts and different levels of inherited state capacity in the two regions. The most contentious franchise issues were those of voting by immigrant minorities who did not qualify for citizenship in Estonia and Latvia, as well as voting by expatriates in Bulgaria, Poland and the Yugoslav successor states. Elsewhere the communist franchise was accepted. Though designed for ends other than those of democracy, its inclusiveness coincided with the needs of a democratic state. Thus unlike in Western Europe, the electoral reforms that accompanied democratic transition revolved mainly around issues of contestation, not participation.

A second key distinction between the two waves of reform is the relationship between electoral reform per se and the broader changes that were taking place in society. Though the enlargement of the franchise and subsequent changes in seat allocation rules at the turn of the last century had considerable consequences for political development in Western Europe, they were not associated with the kind of fundamental upheaval experienced in Eastern Europe from 1989 onwards.

In this regard Lijphart's explanation of reform in terms of changing perceptions of electoral strength ignores another striking feature of the communist transitions that differentiates them from the 'first wave' of Western European democratizations: the radical *institutional* dislocation that accompanied post-communist political transformation. Virtually all the Central and Eastern European states stepped out of or supplemented normal parliamentary procedures during the initial electoral decision-making process. At its least disruptive, this took the form of constitutional round-table talks at which informal but crucial deals were struck between the communists and the opposition (Poland,

Hungary, Czechoslovakia, Bulgaria). In other cases the violent suspension of existing decision-making structures enabled other actors to step in and legislate on electoral rules by decree (Russia, Romania). In still other cases ordinary politics were at least partially suspended due to civil strife (Moldova, Georgia, Azerbaijan, Croatia). It is noteworthy that where such factors were absent, electoral reform was delayed until after the first multiparty elections (Ukraine, Macedonia, Albania), or democratization itself was delayed (Belarus, Armenia, FR Yugoslavia). Only in the Baltic republics of Estonia, Latvia and Lithuania and in Slovenia did electoral reform take place at the time of democratization under peaceful circumstances exclusively according to normal constitutional procedures.

It is clear, then, that electoral-system change in post-communist Europe was exceptional in several ways: its place in the reform process, the magnitude of the reforms in which it was embedded and the mode of its undertaking. Exceptional events are not always easily accounted for by existing theories, and several scholars have noted that conventional institutional paradigms fail to explain the shape of the emerging structures in Eastern Europe.<sup>20</sup> Previous research may be a better guide to subsequent changes in electoral law that occurred within the new institutional frameworks. However, those frameworks were themselves marked by instability, and uncertainty remained high in all post-communist states, as the changing identities of key actors, evolving perceptions of interests and fluid party configurations continued to reflect the dynamism of wholesale transformation.

## **How electoral systems are shaped**

As suggested above, the post-communist transition process entailed two very different electoral reform contexts. When the legislatures were dominated by communist-era deputies and multi-party elections had yet to take place ( $t = 0$ ), the choice situation was characterized by a different set of factors from that which informed it after the first multiparty elections ( $t = 0 + 1$ ). Furthermore, this second stage should be in many respects similar to that following each subsequent election ( $t = 0 + 2, 3, 4, \dots$ ). It can be anticipated that different factors will have been important at different points in the reform process.

There are four identifiable approaches to explaining electoral system design. The first three focus on historical, external and wider contextual factors, the fourth on interest-based calculations by strategic actors. This section assesses the likely relevance of each approach in the

post-communist context. There will be no attempt to demonstrate that one factor alone provides the explanatory key; it is highly probable in any context that a range of factors work together to determine political outcomes. The aim of this exercise is rather to hypothesize the relative contribution of each of the factors delineated.

### **Historical factors**

Historical approaches abound within the discipline of political science, and history is often deployed as a factor in multi-causal analyses for good and understandable reasons. It is natural to suppose, as many observers of electoral reform have done, that the institutions previously employed in a state will have a bearing on the choices it makes when it (re)democratizes.<sup>21</sup> History is sometimes also mobilized as a residual explanatory variable. Matthew Shugart, for example, uses prior experience of parliamentary democracy to explain deviations from his model's expected outcomes.<sup>22</sup> Yet there is no clearly stated theoretical approach that specifies when history matters to electoral reform and when it does not. One factor is the nature of the historical experience: if positive, it may well be embraced; if negative, it is more likely to be rejected. Proportional representation was widely blamed for the ills of the Weimar Republic and the rise of Hitler, a negative association that helps to explain the adoption of Germany's mixed system, including a 5 per cent (then regional) threshold to counter party fragmentation.

Secondly, recent history will in all likelihood prove more influential than the more distant past. Blais and Massicotte's emphasis on the significance of the colonial legacy<sup>23</sup> does not have direct application in Central and Eastern Europe, where imperial legacies were both historically distant and far from democratic. Only the Austrian Habsburgs offered genuine experience of elections from the late nineteenth century; with universal male suffrage in 1907, the complex estates system disappeared and the two-round majority system was used in single-member districts. Reaction *against* Habsburg majoritarianism was one reason for the adoption of proportional representation in independent Czechoslovakia and Poland.<sup>24</sup> Likewise, pre-1918 Hungary's limited franchise, open voting and electoral 'management'<sup>25</sup> offered no viable model for a democratic electoral system, nor did it provide political experience for its constituent minority groups.

The territories that were part of the Russian empire had only one experience with genuinely competitive democratic elections: the November 1917 elections to the doomed all-Russian Constituent Assembly, conducted under a system of proportional representation. This experience

was unlikely to be deeply embedded in collective memory or to provide an appealing model. Moreover, the more recent experience of the Soviet Union itself was not uniformly regarded as negative, with many adherents of Soviet-style practices remaining vocal across the post-Soviet landscape. Even in other Central and East European states, where political culture could be not just anti-Soviet but anti-Russian (as in Romania, Hungary and Poland), it was the lack of political competition rather than the single-member majority system per se which attracted the opprobrium of its critics. Yet, this does not make the Soviet and Soviet-inspired experience irrelevant. The view that one cannot attribute significance to a 'particular constellation of institutions that was little more than window dressing'<sup>26</sup> undoubtedly understates the socializing effects of lengthy experience, while also ignoring the frequent cases (such as Hungary in 1956 or Czechoslovakia in 1968) when the shell of sham institutions suddenly filled with substantive content. Moreover, patterns of representation can create vested interests as an element of local networks. For example, it is difficult to understand some of the bitter debates over nomination procedures without a grasp of the mechanisms of Soviet elections.

Also of potential relevance are the interwar experiences of the central European states. There were free elections everywhere in the immediate post-independence period except Hungary. Rothschild argues, however, that the franchise did not protect the mainly peasant populations from elite manipulation: in some cases '... universal suffrage functioned as the bureaucracy's tool for breaking the traditional power of "feudal" notables over their dependent peasant clientèles'.<sup>27</sup> Hungary did not even maintain the pretence of democratic elections, with the limited franchise and open ballot in rural areas maintained throughout the Horthy Regency.<sup>28</sup> Similarly, Mattei Dogan characterized the changes of power in interwar Romania as a form of 'mimic democracy' in which elections were nominally responsible for the replacement of governments but in reality changes were decided behind the scenes before the polls were called.<sup>29</sup> Throughout the 1930s King Carol, an acknowledged admirer of Mussolini, was the key figure in Romanian politics, even before the royal dictatorship (1938). Elsewhere too, the experience of free elections was limited, with almost all regimes succumbing by the 1930s to outright authoritarianism under which contestation was severely restricted. Bulgaria, for example, was noted for the violence of its politics. It experienced its first coup in 1923, when the powerful Agrarian Party was reduced to a shadow of its former self. The military took over in 1934, abolishing political parties and trade unions. When Tsar Boris took

control a year later, the country effectively became a royal dictatorship until his death in 1943.<sup>30</sup> In Poland, with Piłsudski's 1926 coup and under the successor 'regime of the colonels' a strong executive-centred, semi-democratic system emerged. Opposition political parties continued to exist, but their treatment varied from administrative harassment to outright repression.<sup>31</sup> Only in Czechoslovakia were fully democratic, competitive multi-party elections held throughout the interwar period.

Proportional representation was the norm in independent interwar Eastern Europe, though the details of the proportional formulae used varied considerably. In Czechoslovakia closed-list regional PR with an upper tier generated highly proportional but fragmented parliaments in which between 16 and 19 parties were represented; however, party discipline and consultative practices generated reasonably effective coalition government. By contrast, the premium system operative in Romania from 1926 – a variation on the Italian fascist electoral law – stipulated that a party which won 40 per cent of the vote automatically won 50 per cent of the seats plus a number of remaining seats corresponding to its percentage of the total vote; the rest were divided proportionally among those other parties exceeding the 2 per cent threshold.<sup>32</sup> Thus the turbulence of this period and the weak hold that democracy had on most of the states in the region suggest that the interwar electoral institutions would not be particularly promising ground from which to mine institutional precedents.<sup>33</sup> But in the absence of more fruitful historical territory, the fragile interwar democracies might be expected to have provided some post-communist electoral system designers with a modicum of guidance.

This was indeed the case in Czechoslovakia, where free democratic elections took place in 1946. Czechoslovakia in effect resuscitated its 1920 law. In Hungary Soviet authorities supported the resurgence of major political parties in a 'popular front' strategy and pressed hard for a common list of parties in the provisional government. Bargaining with the Smallholders yielded agreement on a proportional system but with the proviso that the four-party coalition would continue regardless of the results of the 1946 election. In Poland, Romania and Bulgaria the communists were sufficiently strong to rig the first postwar elections and the electoral system hardly mattered.

The third factor which may be expected to increase the influence of past experience is that of timing. Decision-makers in a hurry may reach for the easiest acceptable alternative. An election deadline concentrates the mind wonderfully. Adapting historical exemplars may short-circuit decision-making when compromise seems otherwise unattainable.

Thus we have a tentative model suggesting that historical precedents will more likely be relevant if (1) the historical experience is viewed positively; (2) the experience was not too distant for contemporary relevance; and/or (3) the decision-makers are under pressure to reach a decision rapidly.

### Foreign influences

Like the general historical approach, the role of foreign influences has been identified as a potential factor relevant to the shaping of electoral institutions. The transplantation of institutions was much in vogue after 1918 but soon went into decline, reflecting Mackenzie's quip that the 'only thing that can be predicted with certainty about the export of elections is that an electoral system will not work in the same way in its new setting as in its old'.<sup>34</sup> Still, there remains the possibility of direct or indirect influence. Certainly there were large numbers of electoral 'experts' from one country trying to engineer outcomes in another, and these usually gained at least a polite hearing.<sup>35</sup> But more often domestic institution crafters relied on foreign models without actual intervention.<sup>36</sup> Foreign experts were often called in *after* local policy-makers had already made up their minds and wanted outside counsel to validate their preferences. Here one should distinguish between advice given by foreigners and intentional replication or adaptation of a foreign electoral law, with or without advice from that country's experts. The degree of actual influence of foreign models can be expected to vary according to a number of factors. One is the availability of domestic experts in electoral system design. If they are few, there may be a greater temptation to take an 'off-the-rack' system from another country. Another factor is the level of cultural affinity with other countries, which may encourage institutional emulation. But overall it seems likely that most countries pick, choose and adapt in a process that owes more to *bricolage* than slavish copying or imposition, and that the adaptation of existing models involves a large measure of creativity. Foreign 'inspiration' might thus be a better term than 'influence', and we can anticipate that such inspiration will be refracted through a variety of factors specific to the domestic political context of the country in question.

### Contextual factors

It is often held that electoral systems ought to be 'appropriate' to the social and political context in which they operate. But this does not mean that for each state there is an ideal electoral system. Subjective factors are vital in determining how 'appropriateness' is interpreted.

All social systems have numerous attributes that influence electoral outcomes; those that are most salient in a given state will depend on perceptions of representation and the professed aims to be achieved through the electoral system.

Multi-ethnicity is frequently considered to demand proportional representation in order that minorities can feel themselves properly represented through the election of people from their own group.<sup>37</sup> The introduction of proportional representation in Belgium in 1899, which began the turn-of-the-century wave of electoral reform in Europe, was motivated by the desire to accommodate minority interests.<sup>38</sup> The benefits of broad social inclusiveness in a democratizing state can be counted here as well. In establishing the constitutional basis for a new regime, it is often thought desirable to adopt a system that will provide the opportunity of representation to as many groups as possible, to avoid attempts at undermining the fragile new constitutional settlement.<sup>39</sup> Some more geographically concentrated minorities, however, prefer majoritarianism, as they can use the compactness of their voters to carry districts.

In other cases, views of electoral systems will be affected by the mundane economic considerations that impinge on electoral system design, such as administrative cost differentials across systems<sup>40</sup> and the cost of different systems to participants. The reluctance of the Albanian opposition to endorse single-member districts in 1991 was said to result from its lack of cars and the petrol necessary to mount grassroots campaigns in far-flung rural areas.<sup>41</sup> Economic considerations are more likely to affect decisions about aspects of the electoral law directly related to campaign financing, such as public subventions and spending regulations. In the post-communist situation where most political parties were new and the population experienced intense economic stress, it is not surprising that public funding became widespread.

The political context can also be expected to have been important in shaping perceptions of the role of electoral institutions. In the post-communist setting the aim of creating an institutional space for the promotion of alternative ideologies was initially prominent in political discourse. However, a variety of institutional outcomes are found in cases of high elite continuity or highly asymmetric power relations that advantaged old elites; similarly, countries with strong opposition forces did not necessarily adopt the same type of electoral system.

The capacity of electoral laws to shape party systems figured in many contemporary debates in which ideal party system types were linked – correctly or erroneously – to various aspects of electoral regulation.<sup>42</sup>

Herbert Kitschelt and his colleagues developed an argument which held that the type of communism experienced by a state (bureaucratic-authoritarian, patrimonial or 'national-accommodative') determined the strength of the (former) communists during the transition period, which in turn affected the type of electoral system adopted.<sup>43</sup>

The broad institutional framework also has an undeniable shaping role on institutions subordinate to the fundamental law. This is a factor that may be expected to distinguish the initial change of electoral law from subsequent changes. In many post-communist states constitutional amendments were needed to remove the Communist Party's legal monopoly, but full constitutional settlements came after the adoption of the first electoral law. Some countries then included general provisions constraining subsequent change. As in many Western European states (and effectively also the European Union), Poland, the Czech Republic, Estonia and Latvia introduced constitutional requirements that the assembly must be elected according to a given type of electoral system. In Hungary and Czechoslovakia (1990–2) change in the electoral law was subject to a super-majority in parliament. Yet at the outset there were no such restraints in the communist-era constitutions, leaving law-makers free to pass new electoral laws by majority vote. Constitutionalization may thus be seen as a second-order effect that must itself be explained by other factors.

One informal structure that requires specific attention in the early stages of post-communist transition is the device of the round-table among elites. Such round-tables were used to hammer out constitutional deals in Poland, Hungary, Czechoslovakia and Bulgaria. In Hungary and Bulgaria district design and seat allocation formulae were decided in these fora. Such deliberations took place outside formal institutional structures and were later ratified by parliament; the initial Polish case provided an example readily adopted by others.

A number of what Nagel terms 'disinterested actors' representing other institutions are also frequently involved in decisions over electoral laws.<sup>44</sup> In the post-communist context, however, such players cannot always be assumed to be disinterested. Institutional conflict is common in circumstances of ambiguous jurisdiction and the absence of precedent, and this conflict can shape preferences over the institutions that govern the composition and powers of the legislature. Presidents very often have perspectives on parliamentary and party-system development, as well as other political interests. Even weak presidents may play a role in initiating debate or in exercising suspensive veto powers. Other institutions such as upper parliamentary

chambers and the judiciary, notably constitutional courts, may also play a role.

Finally, a force of potential relevance to electoral reform is that of public opinion, often expressed through the referendum, which played an important part in the New Zealand and Italian reforms. Though numerous referendums were held in Eastern Europe during the early stages of transition,<sup>45</sup> only in Slovenia was a referendum conducted on the shape of a proposed revision of the post-communist electoral law.

The relevance and nature of contextual factors will obviously vary from state to state according to the specific social, cultural, historical and economic situation that obtains. Under certain circumstances aspects of the electoral law that are given negligible attention in most places will take on overwhelming importance due to some specific feature of a state's socio-political configuration, as with non-citizen voting in Estonia and Latvia, registration options in Bosnia and expatriate votes in Croatia.

It is, however, possible to formulate several general expectations as to the likely impact of these factors. The political circumstances surrounding post-communism were invariably an important aspect of the contextual forcefield. It is also difficult to imagine a situation in which the existence of strongly demarcated ethnic groups played no role in shaping institutions (though more fluid ethnic barriers as found, for example, in Ukraine and Belarus may not be of great significance in determining rules of competition). Economic conditions seem less likely to have a strong direct impact on electoral laws, and the impact of other institutional provisions will be mediated by their actual or anticipated reciprocal structuring effects. The undeveloped nature of many institutions, including political parties, appeared to create considerable scope for contingency. Understanding contextual variations is vital to a number of perspectives, since differences in context may themselves help explain the shaping of interests and strategy.<sup>46</sup> The political setting influences the likelihood that individuals will pursue their aims through formal political parties, it shapes perceptions of the likely consequences of different electoral alternatives and of their overall desirability, and it can be decisive in determining who has the final say over outcomes.

### **Interest-based calculations**

Interest-based approaches are prominent in much of the recent literature on the topic of electoral system design and reform. Broadly speaking, interest-based models can be classified firstly according to the types

of actors assumed to be involved in strategic decisions over electoral laws, and secondly according to the goals those actors are held to seek. Theories developed in the context of states with established party systems tend to take parties as the main actors,<sup>47</sup> and a party-centred approach has been found to be useful in transition countries such as Spain and Korea as well.<sup>48</sup> In the post-communist context, many commentators followed in this explanatory path. They frequently argued, for example, that communists and ex-communists tended to prefer majoritarian institutions, including single-member district electoral systems; communists believed these would cater to their strengths in terms of candidate attributes and distribution of support. Emergent opposition groups by contrast tended to prefer proportional representation, which would emphasize ideology over personal characteristics and give representation to organizationally weak partisan groupings.<sup>49</sup> A formal elaboration of the party-actor approach in the Central and Eastern European setting is provided in the seat-maximizing model of Ken Benoit and his colleagues.<sup>50</sup> The basic assumptions of this model follow in the tradition of Stein Rokkan:<sup>51</sup> electoral systems change when a party or coalition of parties supports an alternative increasing its seat-share and has the decision-making weight to effect it. Electoral systems will not change when the party or coalition of parties with the power to adopt an alternative can gain no more seats than under existing arrangements.

However, analyses of transition contexts, and more especially of the dynamics of post-communism, have found that parties cannot always be assumed to be coherent actors, and that it thus makes sense to examine the interests of individual politicians in addition to those of collective partisan entities.<sup>52</sup> This will be the approach adhered to in this volume, where one of the main themes is that the very identity of actors is endogenous to the process of electoral system design: whereas at the outset individuals may have preferences over electoral system types that reflect their own personal likelihood of enhancing their political power, collective choices will generate collective actors – typically in the form of political parties – that will acquire interests over further electoral reform as a consequence of the initial choice.

Once the identity of the main players is conceptualized, it is necessary to postulate their aims. In theory the players in the institutional design process could seek to achieve any number of goals. They might be genuinely virtuous and strive to produce the fairest, most democratic electoral system (we might term this a ‘justice-maximizing’ or sociotropic model, where the public good takes precedence over self-interest).

But even the most virtuous system designers in all probability also look beyond the democratic aspects of the electoral system to the character of its outputs, and most would have ambitions to make substantive changes in politics and society as well as in institutions. We can therefore assume that most actors will have self-interested goals in addition to or in place of their desire to promote the collective good. Kathleen Bawn has, in the West German context, proposed what she terms a 'policy-maximizing' model, which holds that legislators will seek to maximize their control over government policy by maximizing their chances of gaining cabinet positions.<sup>53</sup> But those who have analysed post-communist transitions have generally found that levels of uncertainty are too high for such incentives to function, and that a seat-maximizing model is more convincing.<sup>54</sup> At the outset at least, the majority of politicians can be assumed to aim for a seat in the legislature whose electoral system is under consideration. Some may see a term in parliament as a stepping stone to sinecures in public administration, in which case their main objective may not be (re)election but to ensure that the subsequent parliament is structured such as to promote chances of success in some other domain. Alternatively, some may put the political composition of subsequent assemblies over their own future parliamentary success because the rise to power of political forces may threaten their non-parliamentary economic interests. But for the most part, it is probably safe to assume that most politicians involved in deliberations over electoral laws view their personal interests in terms of the likelihood that they will win parliamentary seats.

As mentioned above, the context of the first, 'zero-stage' electoral system design experience in the post-communist states was radically different in several important ways from post-zero-stage reforms. In seeking to account for the choice of electoral institutions in the region, it thus makes sense to distinguish between initial and subsequent change.

### *The founding stage*

Strategic decisions at the founding state of the transition both bring about and reflect regime change. In the post-communist context decision-making at this stage is characterized by three features: the weak institutionalization of parties, high levels of uncertainty about electoral outcomes, and a common acceptance that the new system should be (seen to be) democratic. The implications of these characteristics for design outcomes will be considered in turn.

The transition process is one in which parties are formed as collective actors, and choices over institutions depend on the propensity of

individuals to integrate themselves into parties, which depends in turn on the resources at their disposal. Matthew Shugart addresses founding institutional design as a struggle between individual preference-seeking and collective (party) preference-seeking. If politicians think they have better career prospects by keeping parties weak, thereby allowing the individual room to cater to local interests, then they will select an electoral system of single-member districts (offset by a strong president with the decree power to break legislative logjams). If, on the other hand, they prefer to stake their careers on association with a political party, they will opt instead for the party-centred system engendered by proportional representation (as well as a weak president). Shugart relates preferences to the way in which the transition to democracy began, specifically the how (pace and sequencing) of change and the who of decision-making (insiders or outsiders).<sup>55</sup>

Attention to the high level of uncertainty under which actors operated suggests additional constraints. The main interest of all players at the founding stage is to ensure that they remain in the electoral game. For individuals acting under conditions of high uncertainty, this may entail a strategy of multiplying channels of access to parliament by means of a mixed electoral system – an approach not incompatible with the preference for single-member districts predicted by Shugart. Considerations of high uncertainty also provide an additional clue as to why party-oriented actors have tended to prefer proportional representation. For collective actors, avoiding defeat means minimizing their greatest possible loss,<sup>56</sup> and the possibility of participating in government will most likely take second place to the desire to remain in parliament. We might interpret high uncertainty as being akin to a Rawlsian veil of uncertainty and hypothesize that under such conditions many partisan actors will choose a system that is fairest to parties in general – proportional representation.

Finally, there was a strong collective interest at the time of the founding elections in ensuring that they would reflect democratic norms so as to legitimize the representative system as a whole. This imperative can be expected to be manifest in a collective interest among elites involved in the electoral reform process to opt for institutional mechanisms that are perceived to reflect the values of democracy as commonly understood in their own political context. If a certain option lacks popular credibility, it may be in the interest of legislators to avoid it, even if it has the potential to enhance their ability to win seats.<sup>57</sup> In the context of post-communism we can expect the legitimacy imperative to generate liberal candidate entry requirements in the first post-communist

elections, as communist-era restrictions on contestation are removed and normative commitment to equality is high.

All in all, the common features of the communist electoral systems cannot be expected to translate into similar post-communist founding electoral systems due to the diversity of the transitions experienced by individual states. The contingent circumstances of the transitions were important in structuring the fora in which initial electoral-system design decisions were made, as well as the identifications of the actors involved and their relative strengths. We ought thus to expect that this stage of the electoral-system design trajectory will be characterized by strategic diversity and that country-specific factors will loom large.

### *Post-zero-stage bargaining*

Once a new democratic electoral system has operated in practice for the first time, the strategic context is altered. At this stage uncertainty decreases, actors become increasingly more knowledgeable and better aware of their interests, and successful contestants become institutionally embedded in the structures of the parliamentary chamber to which they have been elected. Likewise parliament becomes the main locus of decision-making. We ought to expect electoral systems to become 'sticky' at this point and path dependency may be an important explanatory factor.

An institution might be maintained for a variety of reasons, which can be classified according to structural factors on the one hand, and according to the interests (individual, party-centred and collective) they represent on the other. Structural impediments to change include formal constitutional obstacles, the constraints and transaction costs of the parliamentary process,<sup>58</sup> and the legitimacy the system may have acquired through use in the founding electoral events. When constitutional provisions specify the character of an electoral system, the nature of the amendment process (usually requiring a two-thirds majority) may serve as a barrier, as may super-majority requirements established specifically for electoral-law change. Change may also be difficult in the midst of post-communist economic reform, when a state may have other priorities and electoral change may be pushed onto the back burner. Finally, the repeated use of a law may convey either the legitimacy of familiarity or the sense that the law is genuinely good or appropriate.

Institutional inertia may also be due to the fact that elites retain the power to promote its reproduction, and because the status quo is supported by the cost-benefit assessments of individual actors. The 'power

explanations' offered by some path dependency approaches stress that those who wield power gained through the existing electoral regime have little incentive to change it.<sup>59</sup> But although path dependency is often associated with the 'locking-in' of existing institutions, it does not assume that once generated, institutions are set in concrete. Explanations of change, in other words of deviation from the established path, depend on change in the elements promoting stasis. An exogenous shock may transform the functional requisites of the system. Actors may change their cost-benefit perceptions through learning and experience, including the emergence of unexpected consequences. The power or cohesion of the elite may weaken. Changes may occur in the values or subjective beliefs of actors. One cannot merely assume that institutional design will remain uncontested; indeed groups may perceive institutions as highly malleable, and stability is far from assured. Alexander hypothesizes that attempts to change institutions 'occur not only when groups try to reform or overturn designs which systematically privilege their opponents or when smaller or less electorally confident groups oppose win-concentrating designs, but also when strong and confident groups try to revise low-stakes designs in win-concentrating directions'.<sup>60</sup>

The strategies of political actors differ during the post-founding phase, depending not least on processes of party institutionalization. If individuals play a prominent role as independent deputies, then the question arises whether those who are politically well-endowed will seek to join parties or again try their electoral luck as independents. The answer to this will depend mainly on (1) the extent and cast of their reputations and (2) the material, organizational and human resources they can command. If they remain independent, they can be expected to favour institutional structures that benefit political entrepreneurs such as single-member districts, liberal nomination procedures and exclusively private campaign finance with no restrictive spending limits. If they decide to join parties, they will in all probability prefer open lists and small districts.

Where parties come to dominate the electoral reform process, their perspectives will to some degree depend on their internal cohesion and their ideological disposition. However, parties will also have increased information regarding their perceived electoral strength, the geographical distribution of their support and their linkage structures (all of which may well be inaccurate). This clearly facilitates the pursuit of seat-maximizing strategies. Large parties will favour high effective electoral thresholds (whether achieved though manipulation of district

format, seat allocation formulae or formal thresholds). Likewise, parties whose support is based on personal or clientelist ties will tend to prefer electoral systems that favour the cultivation of personal votes, such as those with small district size and/or voter influence over the order of candidates over party lists.<sup>61</sup> We can expect that at this point their preferences will be both better defined and more accurately calibrated to maximize their interests as parties.

The third and final set of interest-based considerations concern those identified with the collective interest which may be more prominent during democratic transitions than during periods of 'ordinary politics'. The functionality of the system, or its propensity to contribute to the collective good, can be expected to be instrumental in ensuring its retention. The systemic requirements of a state such as its dependence on trade, the need to liberalize markets and its efficiency as a tool of governance have been hypothesized to affect choice of electoral system.<sup>62</sup> Empirical evidence has not always been found to support such claims,<sup>63</sup> and it has been argued that they are in any case not applicable to distributive institutions such as electoral systems.<sup>64</sup> However, such considerations must be borne in mind, especially in the context of transition, where virtually all political players have a common interest in a successful outcome.

## **Expectations and chapter plan**

Like the first wave of electoral reform, the post-communist wave was triggered by a dramatic change, but that change involved the terms of contestation, not the terms of participation. And as we shall see, it was around various aspects of the terms of contestation that the reform debates in most cases revolved. These included criteria of eligibility, rules affecting the means through which contestants were able to mobilize support and rules governing the way in which the winners were ultimately decided ('electoral systems' in the narrow sense).

The overall explanatory framework advanced here is one that might be termed 'contextualized rationality'. Like many previous analysts of electoral system design, we anticipate that strategic calculations by elite actors will play a decisive role in determining the electoral systems that are adopted in the post-communist context. But we expect that contextual factors will prove more influential in the post-communist transition setting than they would be in an established democracy, or even a post-authoritarian state that had a usable pre-existing party system such as postwar Germany or post-Franco Spain. This is because the complex

and varied circumstances of post-communism can be expected to be crucial in shaping the basic ingredients of the choice situation: the actors involved, the aims they pursue and the perceptions they have of design alternatives. In other words, we anticipate that shared contextual factors will tend to unify decision-makers within a given state, whereas rational calculations will divide them. The former will set the menu for choice, the latter will determine what is ultimately selected.

Further, we can expect that in states where ideologically oriented movements led to pronounced cleavages among the political elite during the transition with political parties coalescing early on, partisan affiliation will have been the strongest determinant of perceived interests, and members of parliament will have behaved in accordance with party or proto-party interests. But where ideological structuration was weak, legislators should have behaved mainly according to their (perceived) individual interests. This will be one of the main forces that shapes bargaining over electoral systems, such that party system and electoral system will structure each other. It is also likely that we will observe an increase over time in electoral entry requirements as successful players seek ways of locking out newcomers; this will both result from and reinforce party system institutionalization.

The chapters that follow will test the relevance of these different factors. In so doing they will shed light on the adequacy of the individual theories and on the ways in which they interact. The country studies will also point to problems with existing approaches and suggest alternative explanatory strategies. Finally, detailed attention to the texture of the debates surrounding electoral reform deepens our understanding of the way in which factors such as models, context and interest bargaining operate in practice, how they inflect debate, and the strengths of each type of argument. Appreciation of the mind-set of the actors involved in key decisions through analysis of the discourse of reform will enable us to gain access to the 'black box' of the policy process and will enhance our appreciation not only of *what* matters to electoral reformers, but also of *how* and *why* it matters.

The chapters are organized by country in a rough 'transition' chronology: Poland, Hungary, the Czech Republic and Slovakia, Romania, Bulgaria, Russia and Ukraine. Drawing on the explanatory framework outlined above, each chapter will seek to answer a series of embedded questions organized along the two main dimensions of process description and explanation. The first dimension encompasses the various features of the reform process. The main questions that will be addressed in this context are firstly, *the role of electoral-system design in the transition,*

including the extent to which electoral reform was contentious during and after the communist collapse, the major players in the debate and how far the mass public was interested, informed and involved. Each chapter also addresses the *trajectory of electoral-system design*: when, where and what key decisions as to the shape of electoral-system design were made, and how firmly entrenched were the new rules. Accounting for outcomes entails analysis of the *menu for choice, the discourse of electoral reform and the role of strategic bargaining among actors*. We will be concerned here with which aspects of electoral law received the most attention, how actors deployed arguments in this debate, perceptions of different options, and the factors that determined ultimate outcomes. The final chapter compares findings across countries in order both to draw parallels and to explain differences.

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