Why would some new democratic political politicians constrain themselves and reduce their discretion to extract resources from the state and the processes of privatization? Postcommunist democracies show surprising variation in the adoption of formal institutions of monitoring and oversight. These institutions regulate markets, empower citizen oversight, and police the use and distribution of state assets. These have arisen rapidly in some countries and with considerable delays in others. Accounts that link institutional creation to EU imposition, initial bargaining, and parliamentary divisions do not fully explain the variation. Instead, in the nine consolidated democracies and free markets examined here, robust political competition triggered mechanisms of anticipatory institution building and moderation of government behavior.

**Keywords:** institutional choice; state oversight; discretion; postcommunist; party competition

Why do political actors deliberately constrain themselves and limit their own discretion, or the freedom to make decisions and act within formal institutional bounds? Specifically, why would democratic political parties, who can benefit from their privileged access to state resources, build formal state institutions of monitoring and oversight, such as national accounting offices, civil service laws, auditing chambers, or ombudsmen, that limit their freedom to extract state resources?

This question is especially compelling in relatively new democracies, where political actors have the greatest opportunities to seek private benefits...
and face the fewest existing constraints. Postcommunist democracies both provide a rich source of variation in these institutional configurations and allow us to examine how and why institutional choices are made. Several postcommunist countries built formal state institutions that severely constrained the discretion with which political parties could extract state assets. In Slovenia, Hungary, Poland, Estonia, and Lithuania, these institutions arose early, independent of government control, and with extensive scope to investigate and limit the discretion of politicians and bureaucrats both. Formal constraints on government discretion and state vulnerability were adopted early and “spontaneously,” with minimal external pressure once communism collapsed.

In contrast, in another group of postcommunist democracies, which included Bulgaria, the Czech Republic, Latvia, and Slovakia, formal oversight institutions were absent for most of the crucial decade after communism’s collapse: the period when state assets were privatized, new legal frameworks were set up, and actors learned how to compete and succeed in the new market and regulatory environments. Reforms that would remove state assets from the grasp of the governing parties were significantly delayed. Many were passed only in 2001 and 2002, more than a decade after the first economic or political reforms and under pressure from the European Union.

What makes this variation particularly surprising is that it occurs among the “reform leaders”: These are the first postcommunist countries to consolidate parliamentary democracies and establish market economies. And neither existing explanations of postcommunist institutional development nor the literature on delegation and discretion explains these patterns. The following section explores the postcommunist variation. The section after this examines three competing hypotheses for the adoption of formal institutions, followed by a third section arguing that a specific type of party competition promotes the creation of institutional constraints on discretion. The fourth section shows how these mechanisms unfolded.

Postcommunist Rent Seeking: Variation and Case Selection

New formal institutions of monitoring and oversight had to overcome the legacies of the communist era, which left the state ripe for discretionary exploitation. First, the communist state had no civil service: Bureaucrats were subject to the general labor code rather than to a civil service code that could both ensure their political neutrality and offer state employees protection
against political reprisal. Ministries simply hired their own employees (and could continue to do so after 1989 if no civil service laws were adopted). Second, considerable budgetary and distribution discretion existed—the result of a multiplicity of government ministries (divided by sectoral spheres) and the soft budget constraints. State assets were readily available for the private purposes of the communist party and its elites. Third, few structures of formal accountability existed: There was no regulatory, judicial, or legislative review of government actions, and the communist party used the state as its personal fiefdom.

After the collapse of communism, political parties could thus rely on formal state structures left over from the communist regime to administer and implement policy and avoid building new formal constraints on discretion. Yet some new democratic governments curtailed the discretion of their communist predecessors and built new formal institutions of oversight and monitoring. These formal legal constraints on discretion include (a) institutions of market oversight, such as securities and exchange commissions, which regulated ownership structures and ensured that state ownership would be transparent; (b) national auditing offices and anticorruption laws, which limit discretionary access to state resources; (c) civil service regulations, which lowered discretionary hiring; and (d) institutions that increased societal oversight over government action, such as ombudsmen. Such reforms are self-imposed barriers to rent seeking, as they reduce access of private actors to state resources and help to establish universalist and transparent distribution of state resources.

How do political actors retain, or constrain, discretion? First, they may deliberately fail to design institutions, building in enormous license and opportunity to seek rents. This is the “dog that did not bark” of institutional analysis: Although the majority of research has focused on the characteristics of nascent institutions, and the processes by which they were constructed, political actors can also fail to create any formal institutions in a given domain of state authority. Thus, several postcommunist democratic governments simply did not build formal state institutions, such as securities and exchange commissions, regional governments, conflict-of-interest laws, and so on.

Early and avid introductions of these formal institutions were not simply “cheap talk”: The enormity of the battles fought over formal institutions in postcommunist legislatures suggests they certainly mattered to postcommunist political actors. Of course, “not all written rules constrain effectively, and not all effective constraints are written rules” (Carey, 2000, p. 737), and some formal institutions are easily ignored (Kaufmann, 2003). Nonetheless, any discussion about the efficacy of an institution is predicated on its exis-
tence. Moreover, ombudsmen and national accounting offices are effective monitoring tools to ensure bureaucratic accountability (Barzelay, 1997; Bennett, 1997).

Second, political actors construct winner-take-all institutions, or more to the point, winner-take-most. These privilege extant actors by making supposedly neutral formal institutions of monitoring and oversight loyal to governing parties. One key measure is who is named as the institution’s leader: a representative of the government, the opposition, or a widely recognized apolitical expert. To whom is the institution answerable? Where oversight institutions are under the control of a government ministry, they cannot constrain government actions as freely as when they are independent agencies or report to parliament as a whole and have set terms and set budgets. Where they are controlled by the opposition, such institutions may run the danger of becoming politicized, but the opposition has even greater incentives to control the discretion of the government.

Third, we also see the rise of enfeebled formal institutions. Such “Potemkin” institutions cannot constrain governing party discretion effectively, because they are deliberately limited in scope, often with few provisions for enforcement. Accordingly, the scope of institutional action is another measure of its strength. Specifically, can the institution initiate investigations and even impose penalties, as the Estonian Chancellor of the Judiciary is able to? Can it directly investigate the actions of political parties? Or, as has been the case with the Czech ombudsman, for example, can it only respond to parliamentary requests and issue recommendations?

The timing, control, and scope of formal state institutional development and reform vary considerably among the postcommunist democracies. Table 1 shows these patterns of institutional emergence, using a database of more than 60 formal institutions of oversight and monitoring, including national accounting offices, securities and exchange commissions, government procurement regulations, civil rights ombudsmen, and transparency laws. The data on the establishment and functioning of each of these institutions were gathered from the parliamentary records of laws proposed and passed and from domestic media reports. Each cell represents a different institution and the year in which it arose. Parentheses indicate either limited scope or politicized control: For example, the 1996 Slovak local government reform increased the discretionary power of the central government to withhold funds from politically opposed regions. This database also indicates how formal institutions were adopted: The critical threshold here is 1997. Prior to this year, there were few external demands for building formal state institutions.
Table 1
Timeline of Formal Institutional Reforms and Introductions

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Hungary</td>
<td>LO</td>
<td>CS</td>
<td>OM</td>
<td>LO</td>
<td>OM</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td>CS</td>
<td></td>
<td>OM</td>
<td>SE</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SE</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td>NA</td>
<td></td>
<td>OM</td>
<td>SE</td>
<td>CS</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>AC</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SE</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>NA</td>
<td>SE</td>
<td>OM</td>
<td>NA</td>
<td>CS</td>
<td>AC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>OM</td>
<td></td>
<td>LO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td>SE</td>
<td>CS</td>
<td>OM</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>AC</td>
</tr>
<tr>
<td></td>
<td>LO</td>
<td></td>
<td>OM</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech</td>
<td>LO</td>
<td>(NA)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td>NA</td>
<td>(CS)</td>
<td></td>
<td>(SE)</td>
<td>SE</td>
<td>CS</td>
<td>AC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>OM</td>
<td>AC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>LO</td>
<td>(NA)</td>
<td></td>
<td>(LO)</td>
<td>NA</td>
<td>LO</td>
<td>AC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>OM</td>
<td>AC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td>SE</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: CS = Civil Service; OM = Ombudsman; AC = Anticorruption Laws; LO = Local Government; NA = National Accounting Office; SE = Securities and Exchange Commission. Black: early timing predicted by robust opposition; late timing predicted by less robust opposition; gray: not predicted by robust opposition or its absence; parentheses: politicized and limited scope institutions.
In short, two clusters emerge—one of early and avid adopters of formal institutions of oversight and monitoring and another of delayed adoptions—and as we will see below, they were controlled politically and limited in scope. Discretion-limiting reforms of the postcommunist state took different trajectories: They were incomplete and delayed in Bulgaria, Latvia, the Czech Republic, and Slovakia and were pursued far more avidly and earlier in Slovenia, Estonia, Hungary, Lithuania, and Poland. Table 2 summarizes the control and scope of these institutions.

Surprisingly, this variation persists among postcommunist countries that otherwise lead in economic and political reforms: Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia. All are parliamentary democracies, where parties arose before decisions regarding formal institutions were made, within an international context that heavily favored democratization, with few established party organizations at the outset. All began accession talks with the European Union. Finally, the communist party was forced to exit from power in 1989 in all these cases (except Bulgaria), so that it could not remain in power and preclude reform.

**Explaining Discretion**

Several analyses of postcommunist institutional choice have noted a prominent external force behind the introduction of formal state institutions: the European Union (Innes, 2002; Jacoby, 2005; Lippert, Umbach, & Wessels, 2001; Moravcsik & Vachudova, 2003). As part of its accession talks, the European Union demanded state reforms that would increase the candidate countries’ administrative capacity, transparency, and accountability. Although these demands were extensive and nonnegotiable, they do not account for the patterns of institutional adoption. The pressures exerted by the European Union came too late, and too inconsistently, to explain the variation. For one thing, the European Union did little to directly influence developments in state administration prior to 1997 and the Luxembourg meeting. Until then, “neither the commission nor the various Councils progressed beyond a banal impression that ‘administration mattered’” (Scherpereel, 2003a). Even after 1997, much of the European Union’s influence was indirect and passive (Scherpereel, 2003a, 2003b). Thus, even as the European Union influenced the adoption of formal state institutions after 1997 in the “laggards,” it does not account for institutional adoption prior to 1997.

Nor did other international institutions exert pressure for the building of formal state institutions. The Council of Europe, the European Union, the
### Table 2

**Key Institutions of Monitoring and Oversight and Their Discretion-Limiting Capacities**

<table>
<thead>
<tr>
<th>Country</th>
<th>Civil Service</th>
<th>Ombudsman</th>
<th>National Accounting Office</th>
<th>Securities and Exchange</th>
<th>Anticorruption</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Apolitical</td>
<td>Extensive: Launches investigations</td>
<td>Apolitical Powers greatly strengthened in 1990</td>
<td>1993</td>
<td>Apolitical Extensive</td>
</tr>
<tr>
<td></td>
<td>Apolitical</td>
<td>Extensive</td>
<td>Apolitical</td>
<td>1994</td>
<td>1992</td>
</tr>
<tr>
<td></td>
<td>Extensive</td>
<td></td>
<td></td>
<td></td>
<td>1994</td>
</tr>
<tr>
<td></td>
<td>Apolitical</td>
<td>Extensive scope</td>
<td>Apolitical Extensive</td>
<td>1995</td>
<td>1993-1997</td>
</tr>
<tr>
<td></td>
<td>Extensive</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1999 eliminated</td>
<td>Limited in scope</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td>1995</td>
<td>Vague specifications corrected 1999</td>
<td>1995 Apolitical but can be recalled by parliament</td>
<td>1995</td>
<td>1996</td>
</tr>
<tr>
<td></td>
<td>Apolitical − control political parties</td>
<td>Extensive: Can launch investigations</td>
<td>1995</td>
<td>1996</td>
<td>Apolitical (responsible to parliament)</td>
</tr>
</tbody>
</table>

(continued)
<table>
<thead>
<tr>
<th>Country</th>
<th>Civil Service</th>
<th>Ombudsman</th>
<th>National Accounting Office</th>
<th>Securities and Exchange</th>
<th>Anticorruption</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Introduced in response to EU demands</td>
<td>Apolitical</td>
<td>Government controlled until 2000</td>
<td>Ministry of Finance</td>
<td>EU pressure for implementation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Limited powers</td>
<td>No independent investigative powers</td>
<td>Limited scope: No binding regulations for capital markets</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Apolitical</td>
<td>Government control</td>
<td>No independent investigative powers</td>
<td>No prior control of stock market until 1998 civil service</td>
<td>EU pressure for implementation</td>
</tr>
<tr>
<td></td>
<td>Political: excluded Russian minority</td>
<td></td>
<td></td>
<td></td>
<td>EU pressure for implementation</td>
</tr>
<tr>
<td></td>
<td>1999 new law</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Direct response to EU demands</td>
<td></td>
<td>2002</td>
<td>Limited scope: No binding market regulations</td>
<td>EU pressure for implementation</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Under Ministry of Finance control</td>
<td>Limited scope</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Limited scope</td>
<td>Could not originate audits</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No evaluation of efficiency</td>
<td></td>
</tr>
</tbody>
</table>
Organization for Security and Cooperation in Europe, and NATO made numerous agreements and benefits contingent on democratic and economic transformations but without an accompanying focus on state institutions (Smith, 2001). The European Bank for Reconstruction and Development, for example, made many of its loans conditional on meeting democratic conditions, such as free elections, rather than on oversight institutions or administrative capacity. IMF conditionality, meanwhile, focused on meeting economic targets, such as price and trade liberalization, restrictive monetary policies, fiscal discipline, and privatization, rather than on institutional or even political demands (Vreeland, 2003). Other international financial institutions shared this focus on economic targets but not their institutional underpinnings (Nello, 2001).

If international imposition does not account for the variation, two other explanations focus on the interactions of domestic political parties. In explaining the broad patterns of institutional choices in postcommunist countries, scholars examined the grand bargains struck between opposing forces during the communist collapse, such as the construction of electoral laws and the choice of representative systems, constitutions, and the judiciary (Hendley, 1996; Ishiyama, 1997; Lijphart, 1992; Linz, 1994; O’Neil, 1993; Remington & Smith, 1996; Stepan & Skach, 1993). These bargains were struck by actors with different levels of uncertainty and power: The greater the political backing or bargaining power of the actors, the more likely they were to impose their preferred institutional outcome (Colomer, 1995; Geddes, 1994; Frye, 1997). Political parties supported changes in the electoral law that they perceived would benefit their parliamentary standing (Benoit & Hayden, 2004; Jones Luong, 2002). The expectation, therefore, is that where powerful governing parties prefer discretion, few formal institutions will be implemented, and they will be limited in scope and politicized. Where multiple and evenly matched actors bargain, discretion for rent seeking will be reduced (Geddes, 1994; Rose-Ackerman, 1999; Shleifer & Vishny, 1998).

More broadly yet, an extensive literature has focused on discretion as part of the relations of accountability and delegation between principals and the agents acting on their behalf (Huber & Shipan, 2002; Kiewet & McCubbins, 1991; Lupia & McCubbins, 2000; Strom, 2000; McCubbins, Noll, & Weingast, 1987). The focus has been on the difficulty of ensuring that agents fulfill rather than shirk their obligations to principals: How, for example, do politicians make sure bureaucrats implement policies? Discretion here is the agent’s leeway in fulfilling principal directives. To do violence to a great profusion of detailed and systematic analyses (Bendor, Glazer, & Hammond, 2001), one general implication is that the more certain
a government is that the future favors its program, the more discretion it will grant to state agents (Moe, 1990; Moe & Caldwell, 1994). More specifically, political parties build in the greatest discretion for bureaucratic actors and, thus, delay or avoid formal institution building, under several conditions: the absence of conflict over policy, low levels of fragmentation, the existence of nonstatutory regulators such as civil law courts, and an undivided government (Epstein & O’Halleran, 1999; Huber & Shipan, 2002). All of these strengthen the government’s conviction that its policies will be implemented—and that it will be around to propose further policies to implement. Of these, civil law systems and parliamentary (and thus undivided) governments are found in all the cases. We, therefore, expect formal institutions of oversight and monitoring to arise in party systems that are more driven by competition and conflict: those that are more fragmented and polarized.6

Both explanations focusing on postcommunist bargains and principal-agent relations predict that fragmentation, polarization, and length of incumbency covary with the timing and scope of formal institutions that constrain discretion. Parliamentary fragmentation constrains exploitation by making party collusion far more difficult and by further increasing the electoral uncertainty that leads parties to build in mutual guarantees (Grzymala-Busse, 2003). As Geddes (1994) notes, where several equally powerful parties exist in parliament, they alone have the incentives to reduce patronage and clientelism for fear of losing seats if they do not reform. Ideological polarization may preclude constructing mutual guarantees and harm reform outcomes (Frye, 2002; Mainwaring, 1993). Finally, longer incumbency promotes corruption, and the entrance of new parties precludes it (La Palombara, 1994). Alternation in power precludes purely predatory behavior associated with the certainty of losing office permanently and promotes policy learning (Orenstein, 2001).

These proxies for party competition point to important trends in the patterns of political competition. However, there are no clear correlations between these measures or other indicators of competition and early or late adoption of formal state institutions. As Table 3 shows, we cannot reject the null hypothesis that the two clusters’ mean values of fragmentation, turnover, openness of competition, polarization, or volatility do not differ significantly from each other. Nor does disaggregating the measures by year or electoral term change these nonrelationships. The effect of turnover, volatility, openness, and polarization are cumulative: Political actors extrapolate from past and present patterns to generate predictions about future behavior.

This lack of correlation begs the broader question of whether existing measures of competition are useful in explaining discretionary outcomes.
<table>
<thead>
<tr>
<th>Party Competition: Widely Used Indicators, 1990-2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective Incumbency(^a)</td>
</tr>
<tr>
<td>---------------------------</td>
</tr>
<tr>
<td>Hungary</td>
</tr>
<tr>
<td>Slovenia</td>
</tr>
<tr>
<td>Estonia</td>
</tr>
<tr>
<td>Poland</td>
</tr>
<tr>
<td>Lithuania</td>
</tr>
<tr>
<td>Czech</td>
</tr>
<tr>
<td>Slovakia</td>
</tr>
<tr>
<td>Latvia</td>
</tr>
<tr>
<td>Bulgaria</td>
</tr>
<tr>
<td>Difference of means test(^e)</td>
</tr>
</tbody>
</table>

\(^a\) Percentage of years from 1990 and 1991 to 2004 held by the longest serving government incumbent.

\(^b\) Average percentage of parliament seats held by new parties or parties that did not participate in previous elections. \(\Sigma S_i / N - 1\), where \(S_i\) is seat share of the new party and \(N\) is the number of electoral terms.

\(^c\) Lewis (2000) and author’s calculations. Effective number of parties is \(1 / \Sigma S_i^2\)

\(^d\) Frye (2002).

\(^e\) Two-tailed \(t\) test.
The measurement problem reflects both a variable misspecification and a conceptual shortcoming. First, “mechanistic” indicators of competition simply do not capture the constraining nature of party competition, if any. They reflect the relative size of or ideological distance between political actors but provide no hint as to the substance or intensity of the competition. As a result, both a balance of power and a dominant party can result in limiting discretion, as was the case in Hungary and in Slovenia, respectively. Alternatively, evenly matched parties may not be able to overcome the difficulties associated with collective action and may produce the same discretionary outcomes that powerful actors prefer. Fragmentation and polarization may produce electoral uncertainty, but if only the opposition is divided, governments rest secure. Second, these indicators conceptualize competition as a static configuration of parties—but not as their dynamic interaction. Yet if competition constrains parties, it must do so by altering the expectations and behavior of the competitors. As we will see, such dynamic measures may be consistent with some existing indicators, but they are empirically and analytically distinct.

Robust Competition

Therefore, to examine how the interactions between political actors affect institutional adoption, this study uses the concept of a robust competition: a measure of competition based on what parties do rather than of their static qualities. Such competition is critical, plausible, and clear: These components are additive, and together, they create a credible threat of replacement to governing parties. It is this threat that both constrains government actions and creates incentives for formalizing rules that prevent any one party from monopolizing access to state assets.

First, a critical opposition constantly monitors and publicizes the misdeeds of the government, criticizing its actions in parliament, questioning its motivations, and turning also to media channels to voice criticisms. One indicator is the average number of parliamentary questions asked by each member of parliament, as recorded in parliamentary transcripts: As we can see from Table 4, these vary from Slovenia’s querulous 4.42 questions to the more quiescent Latvian parliament’s 0.84. These inquiries held the government accountable and demonstrated that the opposition was constantly monitoring the government. The opposition asked the vast majority of these questions, on topics ranging from privatization decisions to accounting for ministerial actions to inconsistencies in budgeting or in policy reversals. Both party electoral campaigns and media evaluations repeatedly referred to
Table 4
Party Competition: Robust Opposition, 1990-2004

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Avg. No. Questions</td>
<td>Avg. Seats Held by Ostracized Parties (%)</td>
<td>Communist Exit, Regeneration, Highest Vote</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>2.30</td>
<td>1</td>
<td>Yes, regenerated, 42% of vote in 2002</td>
<td>3/3</td>
</tr>
<tr>
<td>Slovenia</td>
<td>4.42</td>
<td>0</td>
<td>Yes, regenerated, 36% of vote in 2000</td>
<td>3/3</td>
</tr>
<tr>
<td>Estonia</td>
<td>3.54</td>
<td>0</td>
<td>Yes, party dissolved, no regeneration</td>
<td>2/3</td>
</tr>
<tr>
<td>Poland</td>
<td>3.78</td>
<td>3</td>
<td>Yes, regenerated, 41% of vote in 2001</td>
<td>3/3</td>
</tr>
<tr>
<td>Lithuania</td>
<td>3(^a)</td>
<td>0</td>
<td>Yes, regenerated, 44% of vote in 1992</td>
<td>3/3</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>0.97</td>
<td>21</td>
<td>Yes, no regeneration</td>
<td>1/3</td>
</tr>
<tr>
<td>Slovakia</td>
<td>0.94</td>
<td>19</td>
<td>Yes, limited regeneration, 15% in 1992-1998</td>
<td>1/3</td>
</tr>
<tr>
<td>Latvia</td>
<td>0.84</td>
<td>18</td>
<td>Yes, party dissolved, no regeneration</td>
<td>0/3</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>1.54</td>
<td>0.2</td>
<td>No, no immediate regeneration</td>
<td>1/3 (plausible)</td>
</tr>
</tbody>
</table>

\(^a\) Chancellery of the Parliament estimate (June 2005).
these questions. Parties documented the number of questions their representatives had asked and how they forced the governments to account for themselves. Furthermore, interpellations were frequently reported in the media—journalists ridiculed trivial ones, or those focused too much on strictly local concerns. In short, parliamentary questions were an indicator of both the opposition’s vigor and its readiness to assume national power. Not surprisingly, they were termed “fundamental instruments” of the opposition.

Second, opposition is plausible as a governing alternative when it has won elections and governed at some point. Such parties cannot be ostracized, excluded a priori from all coalitions. This sort of ostracism also limits coalition diversity, which, in turn, is associated with the delay or blocking of reforms (Hellman, 1998) by narrowing down the field of potential alternative governments and making securer the existing governing parties’ hold on power. The logic here is that the fewer the potential alternative coalition partners, the lower the likelihood that a coalition can form that can replace the government: The governing parties are more certain of staying in office. Credibility is measured by the percentage of parliamentary seats held by parties that are excluded from coalition consideration by all the other parties. Parties were coded as ostracized when all the other parties excluded them from coalition consideration in their public declarations (as recorded in the media before the elections). As Table 4 shows, the rates range from no exclusion, as in Slovenia, to the exclusion of parties holding close to 20% of the parliamentary seats, as in Slovakia or Latvia. The greater the number of seats held by excluded parties, the lower the number of potential alternative governing coalitions—in short, the securer the hold on power of the incumbent government.

Third, a robust opposition is clearly profiled: It forms a readily identifiable alternative to the current government. Two proxies measure the clarity of opposition: First, the communist exit from power during the regime collapse instantly differentiated the authoritarian incumbents from the democratic opponents. In all cases but Bulgaria, this occurred. A second indicator is the communist regeneration: whether communist parties successfully shed their past authoritarian profiles and constituencies and reinvented themselves as committed democratic parties. Such parties anchored the “Left” side of the political spectrum and, thus, provided the most salient alternative to the governments with roots in the anticommunist opposition, which took over power in nearly all the cases considered. The result of communist regeneration was the rise of two clear alternative governing camps, so that both voters and governments had little difficulty identifying the potential replacements for the incumbents. The two camps are a natural source of opposition:
They have the strongest incentives to monitor and publicize each other’s misdoings because they are defending their historical and political records.

In short, we are most likely to see robust opposition where the communist parties had to exit power in 1989 so that competition could begin in the first place, where communist parties reinvented themselves, and where the two camps alternated in government, thereby establishing their credibility and increasing the incentives to vociferously criticize each other.

Robust competition produces two distinct mechanisms of constraining discretion. First, it leads to the preemptive adoption of formal institutions of monitoring and oversight by parties that expect to be out of office in the next electoral term: a way of constraining one’s political opponents from exploiting their access to state resources for their own gain. That opposition, in turn, when it assumes office, tends to adopt and strengthen these institutions further, in an attempt to constrain its successors. Where parties fear losing elections, they want to constrain their successors’ discretionary access to state resources, and so they build formal institutions of constraint that limit their own capacity to extract resources.

Second, opposition parties question and criticize government actions in parliament, and government parties respond by constraining and justifying their actions for fear of electoral retribution. Where a robust opposition constantly monitors government actions, government parties are more likely to limit their discretion to extract state resources for fear of adverse publicity and electoral losses. A robust opposition thus changes the calculation of governing parties regarding the desirability of formal constraints on discretion, and it offers informal constraints on the discretion exercised by any party through parliamentary oversight and control.

Once established, such formal institutions would remain in place so long as the governments faced a robust opposition. Their strength was not just a function of repeated play but of a shared fear of other party governments’ taking up state resources and using them to prevent challengers from gaining office again. An institutional creator did not expect his successors to abolish institutions, and successors, in turn, retained them for fear of becoming losers again. This anticipation of repeated elections and turnover meant that there were very few attempts to undo formal institutions. Accounts emphasizing parliamentary turnover make a similar argument, but robust opposition also provides an explicit anticipatory mechanism.

In short, we should see earlier and more far-reaching adoption of formal institutions of monitoring and oversight where the competition is more robust: where it is critical, plausible, and clear. Where competition is weaker, fewer incentives exist to build formal institutions of monitoring and oversight. These will be limited in scope and controlled politically, serving to pro-
vide a gloss of legitimacy for state-building claims of nationalist leaders or a reassurance to foreign investors but with little constraint on the discretion of political parties in exploiting state resources. Governing parties face few informal constraints that would moderate their extractive behavior and do not anticipate the opposition coming to power, which would lead them to impose formal institutions.

Robust Opposition in the Postcommunist Context

Postcommunist democratic political parties had to ensure their survival while reconstructing state authority. These simultaneous processes either reinforced each other or came at each other’s expense, depending on the configurations of party competition. No matter what their ideological orientation, political heritage, or organizational goals, new democratic political parties were fragile and in need of considerable resources to survive. Because the same party elites stood to create new democratic institutions and to benefit from their access to state resources, a considerable opportunity existed to lock in the advantages of office, leaving as much discretion as possible in the access and distribution of state resources such as jobs, contracts, or privatization deals. Attempts to build neutral administrations and oversight institutions or to devolve authority downward stood in potential conflict with the parties’ desire to build stable material bases for themselves.

The tension between securing private benefits for their survival and reforming the state, combined with the lack of existing constraints or international attention to the state, meant that the chief constraint on party behavior would consist of the parties’ own mutual monitoring and sanctions. As a result, in countries with robust competition—Hungary, Slovenia, Estonia, Poland, and Lithuania—85% of the formal institutions of oversight and monitoring (29 out of 34 from Table 1) adopted were established by parliaments independently of external pressures or existing templates. Where the competition was weaker—the Czech Republic, Latvia, Slovakia, and Bulgaria—only 32% (10 out of 31) of formal institutions were adopted prior to the European Union’s beginning the push for administrative reform. Of these, many were explicitly politicized or deliberately enfeebled.

Where the communists held onto power, as in Bulgaria, they had few incentives to transform themselves and act as a moderate but vociferous opposition. Some accounts even argued that Bulgarian opposition parties were virtually created by the communist incumbent (Karasimeonov, 1996). The communist party did not exit from office during the regime collapse and
instead won the first election in 1990, returning to office in the 1994 elections. The opposition was often squabbling internally rather than focusing on government actions. As a result, in the eyes of several commentators, 1990 to 1997 was a period lost to reform: The Bulgarian Socialist Party (BSP) continued to exploit the state and enrich itself at the state’s expense. It was only after 1997, under EU influence, that reforms slowly began.

Facing a weak opposition, the BSP governments used their absolute majority to delay several reforms of the state, including civil service, national accounting, and anticorruption offices. Even as the government prioritized the reform of state institutions in 1993 and 1994, formed a government department for public administration reform, and adopted a “New Strategy of Administration Reform in Bulgaria” in 1996, few reforms actually resulted (all the more so because the fall 1994 elections brought the BSP back to power). Judicial reform was deliberately and profoundly delayed. Both the National Securities Commission (NSC) and the National Audit Office (NAO) were introduced in 1995. However, NSC officials could not trace property rights and enforce transparency laws. The NAO was also limited in scope: As one critic charged, “there is little or no emphasis on measuring results achieved against objectives.” It was only given real teeth, and the capacity to easily start investigations, in 2001. In other institutional developments, local governments were brought under the control of the center by reducing the power of local councils and mayors in 1995. And once the BSP government fell in 1996 and 1997, the new caretaker successor closed down the department for administrative reform.

However, once Bulgaria was officially invited to begin negotiations for EU membership in 1999, immediate changes followed. The prime minister himself, Ivan Kostov, took over the Ministry of State Administration and began to implement an ambitious plan of formal institutional reform. In keeping with the Law on Public Administration, adopted in 1998, and the demands of the European Union, the government promised to further reform laws, including the reorganization of the administration, and public procurement. Civil service laws were passed in 1999. A national Anti-Corruption Strategy was adopted in 2001, as was a new law on the NAO. No ombudsman or regional reform, however, was introduced. Not surprisingly, given “the doubtful commitment of the ruling elite to implement these changes” (Todorova, 2001), the European Union was the chief engine of formal institutional reform in Bulgaria, belated though it may have been.

Where the communist party was forced to exit, the subsequent configurations of party competition proved critical. In the Czech Republic and in Slovakia, the early reformist governments of the Civic Forum and the Public Against Violence passed local government reforms designed to eliminate
communist domination of local administration in 1990. By 1991, however, these movements had fallen apart, and the same set of elites governed for more than 8 years. Parliaments were dominated by the Civic Democratic Party (ODS), led by Václav Klaus in the Czech Republic, and the Movement for a Democratic Slovakia (HZDS), led by Vladimír Mečiar in Slovakia. As Czechoslovakia peacefully split into the two constituent republics in 1993, these two parties continued to dominate politics: The opposition was marginalized and splintered well into the 1990s.

In the Czech Republic, there was little robust opposition until 1995 and 1996 that could create the incentives for building formal institutional constraints on discretion. The deep division between the former communist rulers and their opposition meant the opposition was clear, but it was neither plausible nor critical. The two biggest opposition parties, the Communist Party of Bohemia and Moravia and the Republicans, held more than 20% of the seats in the parliament but were excluded a priori from all governing coalitions. As a result, even if the ODS coalition partners left the ODS and tried to form an alternative government with the opposition, they could only get 75 seats.¹³ The other potential opponent (the Social Democratic ČSSD) only gained popularity in 1995 and 1996 and had 7% of the seats until the 1996 election, allowing the ODS-led coalition to set the terms of policy making and state politicization largely on its own. Few questions were asked of the government, and the ODS pushed through its wishes even if all coalition partners united against it.

The 1998 elections resulted in a virtual deadlock: Neither the ODS nor the ČSSD could form a coalition, and neither had the votes to rule by itself. The erstwhile opponents now concluded the “Opposition Agreement,” a mutual nonaggression and power-sharing pact. For most of the postcommunist period, then, the governing parties faced little critical opposition and largely resisted the formation of formal constraints on discretion. It was the European Union, and the pressures it brought to bear on the post-1998 government, that resulted in the creation of market oversight, devolution to the regions, and civil service regulations.

Until then, the ODS government saw no reason to constrain itself. Few formal institutional reforms occurred under the ODS’s watch: Václav Klaus criticized state oversight institutions as “adding another layer of bureaucracy” and “hampering the market.” Formal institutions that would have constrained discretion were either very weak or missing altogether. Czech regulation of the market was minimal: Bank reform was both delayed and minimal, regulatory mechanisms were disassembled, judicial review of privatization ceased, and privatization decisions were not justified. Faced with a weak opposition, “with virtual impunity, the Klaus administration continued
on its path, nodding at instances of corruption within its own electoral alliance. It ignored efforts to establish a national securities council and other measures that would have enhanced the transparency of Czech capital markets” (Orenstein, 2001, p. 110).

Thus, the NKÚ, or the Supreme Audit Office, was established in January 1992, only to be refounded as an institution under government (i.e., ODS) control in January 1993, with no capacity to choose where and whom it could audit (Frič, 1999). A securities and exchange commission was not established until 1998, long after the Czech stock market acquired a reputation for opacity and unclear property rights. No ombudsman existed until 2002. Numerous reform attempts were scuppered by the government: The “ODS maintained a strong enough political position to dodge attacks waged by less powerful political actors and deftly delayed legislative progress on administrative reform bills” (Scherpereel, 2003b, p. 231). The ODS also used its domination of the parliamentary committees (none was under opposition leadership during its tenure in office) to preclude opposition bills from ever reaching the parliamentary floor. As a result, government executive bodies “operated with virtually no transparency” (Freedom House, 2000).

After the elimination of regional government in 1990, the central state government was in charge of staffing all levels of the polity. The ODS refused to pass laws on self-governing regions or a civil service because to do so would “bolster the institutionalized strength of competing parties and inflame centrifugal pressures within the ODS” (Scherpereel, 2003b, p. 223). Ministries continued to hire at their own discretion. A civil service act was only passed in late April 2002, after enormous obfuscation and subsequent pressure from the European Union, a decade after it went into life in Hungary (1990-1992) and 6 years after it did in Poland (1996).

In Slovakia, competition was not clear. The communist party partially reinvented itself, but its elites also diffused into the HZDS, the SNS (the Slovak National Party), and the ZRS (the Association of Slovak Workers). As a result, no clearly profiled two camps arose. No plausible alternative government formed until 1997: The key opponents were not credible. The Hungarian minority party was unacceptable to all as a potential coalition partner until 1998. The SDL (Party of the Democratic Left) also undermined its role as the opposition by openly flirting with joining the HZDS coalition in 1996. Only the KDH (Christian Democratic Movement) remained both clear and critical opponents. These parties were of little threat to the HZDS, and its own coalition partners, the ZRS (in parliament 1994-1998) and the SNS (in parliament 1990-2002), were completely beholden to the HZDS for their position.
Rather than anticipating the opposition, then, the HZDS government built discretion into several of the institutions it implemented, including market oversight and regional reform. The HZDS repeatedly argued that this institutional creation was part of the state-building efforts in the newly independent nation and marginalized any opposition criticism as “irresponsible” and “antistate.” First, the National Control Chamber (NIK), the Special Control Body (OKO), the general attorney and his office, and the National Property Fund were led and staffed entirely by HZDS allies. The NIK was headed by a HZDS crony and did not initiate audits. Finally, the regional reform of 1996 only centralized power further by making the regions financially and politically dependent on the HZDS (and by gerrymandering the new regions to reflect HZDS political strength).

These moves gave the Mečiar administration enormous leeway in disposing of state assets. The HZDS, which nurtured the links between privatizing investors and top politicians, made privatization bids contingent on party contributions, and the contracts themselves went to party allies (Freedom House, 2000). It was only after 1998, and the HZDS’s exit from power (it won the plurality of the votes but was unable to form a coalition), that civil service, regional, oversight, and depoliticization reforms began in earnest.14 For example, only in July 2001 could the NIK again audit and control all economic subjects with state funds.15

The importance of robust competition is further illustrated by Latvia. Ostensibly, its party system is highly competitive, with high turnover and fragmentation. However, no robust opposition arose in the early years of the transition: All parties after the communist collapse categorically ostracized the main opposition party, the pro-Russian PCTVL (Par Čilveka Tiesībām Vienota Latvija), which held an average of 20% of the seats. The communist party dissolved, leaving no successor. Voters had confusing choices, and little criticism of the governing parties developed. Latvian “cabinets often tend to be formed by the same parties, they also tend to feel limited responsibility for promises and decisions made by previous governments” (Tisenkopfs & Kalniš, 2002). One party, Latvia’s Way, stayed in government after 1990 and controlled critical ministries such as Foreign Affairs and Transport (in charge of the profitable oil pipelines).

Without a plausible threat of replacement and held hostage by a key coalition party, governing parties had little incentive to build formal institutions of monitoring and oversight: All but one were implemented after 1997. A law on state civil service was adopted in April 1994, but its main goal was to ensure that Latvian speakers predominate in the administration. The reform never achieved its goal, due to limited resources (which meant many employees could not take the civil service exam) and loss of political backing. In
1995, the Ministry of State Reform (established in 1993) was abolished at the instigation of Latvia’s Way, and “the focus on administrative reforms came back only as recently as 1999 largely due to criticism from the European Union” (Tisenkopfs & Kalninš, 2002). Market oversight institutions, civil service laws, anticorruption offices, and an ombudsman were all established only in 2000 to 2002. Thus, where governing parties faced little robust opposition, they had no incentive to constrain themselves by establishing formal oversight institutions. Relatively certain of returning to office and continuing as the chief beneficiary of state resources, these parties could either delay the creation of formal institutions or build them to their own benefit.

In more competitive systems, parties had greater incentives to limit their own discretion. Given the constant monitoring and oversight by opposition parties, no party could delay formal institutional development or retain discretion to seek private benefits. Thus, in Hungary, Slovenia, Estonia, Poland, and Lithuania, the postcommunist and the postopposition camps were clearer, more critical, and plausible, and such competition created the incentives to build in formal constraints as soon as possible, so that no party (including the governing one) could benefit from discretionary access to state resources. These were the deliberate responses of governing parties to the uncertainty of holding office and a way of building in guarantees for themselves as the future (and inevitable) electoral losers.

In Hungary, the communist party exited from power and transformed itself into a moderate democratic party that was the fulcrum of the robust opposition: It was both the chief target of political criticism and the main critic of other governments. All Hungarian governments faced constant criticism, ranging from the extraparliamentary radicals’ “choleric arguments . . . to the systematic analysis provided by the opposition” (Keri, 1994, p. 85). Parties had clearly differentiated themselves, and only one party was ostracized in parliament: the extremist MIEP (Hungarian Justice and Life Party), which held less than 1% of the seats. Facing their likely successors in parliament, governments anticipated discretionary extraction. Informal constraints also developed: As early as 1990, parties agreed that parliamentary committees would be filled and led by opposition parties in proportion to their votes. These committees then expanded their oversight activities, “subjecting the Finance Ministry’s reports to line-by-line scrutiny” (Bartlett, 1997, p. 65). After 1994, a special investigative committee category arose, which could be set up at the written request of a fifth of parliament, and “the opposition groups used these new committees to scrutinize the government more extensively” (Ilonszki, 2002, pp. 23-24). As one newspaper editorial commented, “The opposition is there day in and day out, with access to much the same information as the Government, and ready to pounce on any wrong-
doing—slight or major, actual or perceived—that can be used to political
advantage.”

Members of government investigative committees made clear how robust
opposition was crucial to moderating rent seeking, arguing that malfeasance
was exposed in three ways: through government institutions, political party
criticism, and leaks to the press. Above all, competitors had enormous
incentives to build institutions “aimed at preventing each other from exploit-
ing state resources for political purposes” (Bartlett, 1997, p. 156). Accord-
ingly, Hungary was the first postcommunist country to institute a civil ser-
vice law and regional decentralization. The 1992 Civil Service Act made
whole sets of state positions incompatible with party membership, including
most of the civil servants. The 1990 Act on Local Government devolved
power away from the center. It was the earliest and most comprehensive local
government reform in the region. Institutions, such as the Constitutional
Court and the NAO, that had existed prior to 1989 were now given new
capacities and regularly monitored and investigated government actions.
Governments strengthened formal oversight and monitoring institutions
throughout 1990 to 1998. The Hungarian Constitutional Court was highly
activist and acted as a very strong safeguard against potential abuses (Örkény
& Lane Scheppele, 1999). The ombudsman, introduced in 1994, was a fur-
ther formal oversight innovation and strengthened considerably over the
years. Finally, thanks to heavy criticism from the opposition, the State Privat-
ization Agency and the State Asset Holding Company, which were used by
MDF (Hungarian Workers Party) politicians to politically steer privatization,
were merged in 1995 and brought under parliamentary control. The post-
communist MSzP (Hungarian Socialist Workers Party) government was
eliminating discretionary access to state resources for its competitors—and
for itself.

Although Hungary’s politicians were hardly blameless, their actions
were rapidly exposed, and the turnover limited any one party’s gains. For
example, when the MDF tried to push through a politicized Hungarian Cen-
tral Bank in October 1991, the opposition vociferously protested in the par-
liament and in the media. As a result, the Central Bank was given consider-
able autonomy and was made answerable to the parliament as a whole rather
than to the prime minister alone. Similarly, when the same coalition
attempted to pack the media oversight board, the opposition insisted on its
participation and precluded the government bill from passing. The liberal
criticism of the MDF led members of the MDF itself to “publicly indict the
leadership” (Bartlett, 1997, p. 155). Even under the 1998-2002 Fidesz gov-
ernment, which tried hard to constrain the opposition’s power, opposition
parties forced the resignation of discredited officials, such as the minister of
agriculture and several state secretaries. Leading by example, opposition politicians published their financial declarations, eventually forcing the government to follow suit.

In Poland, as in Hungary, early rules constrained discretion. As in Hungary, the communist party exited power during the collapse and rapidly remade itself into a popular democratic competitor that rapidly assumed the central role as both the target and the origin of criticism. Polish opposition parties not only questioned constantly and publically what the government was doing but also informally monitored the coalition parties’ actions (and gleefully informed the media). No one party could monopolize discretion, nor did it have the opportunity to do so: Given the likelihood of exit from power in the next elections, it made more sense to build in formal constraints that not only gained greater public legitimacy but also constrained the next ruling coalition. Finally, the fragility of the early governments meant that opposition support would be necessary to pass some legislation, which further gave the opposition power and access. Thus, the Polish Securities Commission arose concomitantly with market reforms, in 1991, and with restrictive monitoring and reporting requirements. The NIK (the national audit office) was given even more extensive powers in 1994, including the right to investigate local governments and political parties.

Some of these formal institutions were communist continuities: The Polish ombudsman was founded in late 1987, and the National Chamber of Control had existed since 1949. This leads to the possibility that the causality could be reversed—that is, that robust opposition flourished where formal institutions of oversight and monitoring had already limited discretion. However, communist-era formal institutions were only the skeletons of their democratic successors: They were given real muscle only with the rise of several robust competitors in 1990 and 1991. First, they were given new, enormous scope: The civil rights ombudsman could now investigate the actions of all political actors rather than investigating the conditions of prisons, health care, or the environment. Similarly, the NIK and the strengthened Constitutional Court were now no longer appointed by and for only the communist party. NIK was no longer controlled by the government, and instead, an informal rule rapidly developed that the NIK would be led by a member of the opposition, a practice followed from its founding. The reasoning was that “the opposition has the greatest incentive to investigate the government, so if it gives the governing parties a clean bill of health, we could all rest more easily.” Even critics of government bills acknowledged that discretion was highly limited “due to internal disagreements within the ruling coalition, criticism by the opposition parties and independent experts and the Constitutional Tribunal’s rulings” (Loś & Zybertowicz, 2000, p. 123). And both NIK
and the ombudsman were strengthened by the anticipatory mechanisms of robust competition: Newly elected democratic members of parliament immediately revised the relevant laws to depoliticize these offices and remove them from communist control (Rydlewski, 2000).

When the opposition grew weaker and fought internally instead of focusing on the government, as happened in the mid-1990s, the government parties still passed formal institutions, but ones that benefited their authors. Informal constraints relaxed, and the anticipatory mechanisms slackened, as the governing parties began to reevaluate their chances for election. Accordingly, the flawed Act on Civil Service, passed in 1996 by the SLD-PSL (Democratic Left Alliance–Polish Peasants Party) coalition, made communist-era experience necessary for civil servant status. Nonetheless, once in government, the anti-SLD opposition revamped and expanded the law in 2000, making the exams considerably more difficult, creating a class of public servants as a separate legal category and making merit the determinant of both pay and position. Yet even these powerful governments could be constrained; for example, the opposition UW (Freedom Union) party used subterfuge in the committees, exploited internal conflict within the coalition, and mobilized public opinion to ensure that educational reform, local government financing, and banking reform would continue.

Similarly, in Slovenia, where the same party (the Liberal Democratic Party [LDS]) governed since 1991, the clear and vociferous opposition created a plausible threat of replacement (ably demonstrated by six major coalition crises or collapses). The opposition was clear since the communist party rapidly reinvented itself into a highly popular democratic party. No party was excluded from governance, and instead, all parties at one point had governed. The opposition was also highly critical: The Social Democrats were an especially vociferous party and made frequent use of both questions and formal investigations of individual ministers and entire governments.

As early as December 1991, when the chair of government attempted to prolong the existence of the governing coalition, opposition criticism ended his attempts (Zajc, 1994). The prospect of competition “made coalition members eager to monitor each other’s moves so as to prevent any single competitor from gaining any political advantage that might later translate into a big electoral gain. The parties searched for monitoring mechanisms that would enable all the parties to learn through them and react on time” (Rus, 1996, p. 241). Accordingly, by 1994, civil service regulations, the Securities and Market Agency, the Court of Audit (the national auditing office), and a human rights ombudsman were all in place. This robust competition led to extensive regulation and constraint: The 1991 Slovenian privatization law was said to “overregulate” privatization because parties “defend
themselves against each others’ potential abuse by taking all possible contingencies into account in a series of complementary laws and regulations” (Rus, 1996, p. 234).

Finally, and briefly, Estonia and Lithuania also established ombudsmen, civil service laws, independent national accounting chambers, and securities and exchange commissions within 2 years of independence, by 1995. These institutions were given extensive scope and, in most cases, were independent of political control (the exception here is the Estonian Securities Inspectorate, which fell under the Ministry of Finance until 1997). Yet where the communist party did not regenerate but dissolved into constituent elites, the opposition was not as sharp sighted and clear as in the other cases of robust competition: Opposition parties in Estonia put up little fight for stronger securities inspectorate regulations, which did not require participants to present stock capital information in their finance reports and which left several loopholes in other corporate declarations.

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

Conclusion

The postcommunist adoption of formal institutions of monitoring and oversight has four implications for the study of institutional choice. First, principals seek discretion for themselves as much as they would like to limit it for their agents. Because political parties are both the principals of bureaucrats and the agents of voters, their discretion to extract resources for private benefit undermines their accountability to voters. Second, competition matters—but as party behavior. Fragmentation and other aspects of competition certainly affect party capacities to pass policy or represent voters. However, the competitors’ plausibility, clarity, and criticism induce constraints on governing parties. Third, despite the overwhelming importance of the European Union for these countries, its impact was mediated by political competition: The more robust the domestic competition, the more formal institutions would preempt EU demands made after 1997. Finally, postcommunist institutional choice emphasizes sequencing and simultaneity: Establishing regu-
lation in nascent domains is far more likely to be effective than imposing regulation on existing and developed domains. Thus, a securities and exchange commission that arose concurrently with stock markets could regulate property and stock-trading rules far more effectively than one that arose once murky property rights have consolidated. This is also why some state institutions are weaker across the postcommunist world—for example, civil service laws, imposed on an existing and politicized bureaucracy.

In short, postcommunist political parties attempted both to build the state and to ensure their own survival in the process. Robust competition constrained the discretion they had in pursuing these goals. These were not perfect constraints, but they influenced whether formal institutions of monitoring and oversight would develop and whom they would benefit.

Notes

1. Low levels of rent seeking can coexist with high formal discretion and vice versa. The former demands high levels of self-restraint by the relevant actors. The latter is formalized predation. Political actors and the rents they seek are isolated from domestic and international pressures. Neither set of conditions obtained in the cases is examined here.

2. Because the institutions are endogenous to the parliaments, it is extremely difficult to accurately assess enforcement. The focus on control and scope is in keeping with Huber and Shianne (2002), who also focus on policy instructions rather than outcomes.

3. Technically, the measure is a continuous one: Institutions could have arisen in each year after 1989. The observed distribution, however, is bimodal.

4. For a critique of this approach, see Bernhard (2000).

5. See Strom (2000) for the chain of accountability and delegation from voters to representatives to cabinet ministers to bureaucrats.

6. In testing this implication for postcommunist formal institution building, two caveats apply. First, the analytical focus of this literature is on the principal-agent relationship, yet political parties are both agents (of voter) and principals (of the bureaucracy). In constructing formal institutions of monitoring and oversight, these parties bind and constrain each other. Second, because the distribution of power is exogenous in the principal-agent framework, there is less focus on the circumstances that produce coercion or coordination, other than the formal institutional framework itself (Carey, 2000). If coercion tends to produce winner-take-all institutions and consensus produces institutions with more equitable distributional outcomes (Olson, 1982; Schamis, 1999; Weingast & Marshall, 1989), this is a critical aspect of institutional creation.

7. See, for example, Gazeta Wyborcza, October 9, 1993, and July 11, 2002; see also Respekt, January 22, 1996.


9. Sources are as follows: Rzeczpospolita and Gazeta Wyborcza (Poland), Sme and Narodna Obroda (Slovakia), Mlada Fronta Dnes, Lidove Noviny (Czech Republic), and Foreign Broadcast Information Service and Economist Intelligence Unit (all countries). The reasons for such exclusion ranged from ethnicity (Russian party in Latvia) to ideological extremism (the Czech Republicans) or unregenerated communist character (the Czech KSCM [Communist Part of Bohemia and Moravia]).
10. The 1998-2002 Fidesz government in Hungary attempted to scale back formal institutional constraints through appointments in oversight institutions and by scaling back the frequency of parliamentary meetings.

11. This explains why incumbency as an indicator of competition (the inverse of turnover) is the one indicator to take on a relatively high p value in Table 2, making it more difficult to reject the null hypothesis.


13. The Czech ODS (Civic Democratic Party) coalition had 105 out of 200 seats, but of the remaining 95 seats, 49 were held by parties that could not enter an alternative governing coalition. The KDU-CSL’s (Christian Democratic Union–Czechoslovak People’s Party) 15 seats, the ODA’s (Civic Democratic Alliance) 14, and the remaining opposition’s 46 equal 75.

14. Two brief departures from office, in 1991 and 1994, did little to stymie the HZDS’s (Movement for a Democratic Slovakia) dominance. Both times, the exit was the result of Mečiar supporters’ defecting rather than opposition efforts, and in both cases, the opposition was further weakened.


19. The side benefit of devolution was that opposition parties won 35% of local mandates, the largest share in the region.

20. In the Postabank scandal, the bank made numerous loans to political and society figures, costing the Hungarian taxpayers some 150 billion forints (Hlonszki, 2000).

21. See “Sprawozdanie Rzecznika Praw Obywatelskich za okres od 1 stycznia 1988 r. do 30 listopada 1988,” the last report issued by the office of the ombudsman prior to the collapse of communism. By 1993, the ombudsman was investigating political discrimination, party behavior, electoral law, political associations, local government, and so on.

22. Interview with Marek Zielinski (UW, 1993-2001 in Public Administration Reform Committee [*Fundusz ds Inwestycyjnych*]), May 7, 2002, UW headquarters, Poznan, Poland.


References


Frič, Pavol. (1999). *Korupce na český způsob* [Corruption the Czech way]. Prague, Czech Republic: G Plas G.


Anna Grzymala-Busse is an associate professor of political science at the University of Michigan. She is the author of *Redeeming the Communist Past* (Cambridge University Press, 2002).