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Tereza Novotna*

Dilemmas of Transition: Three Institution-Building Lessons from Central and Eastern Europe

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**Boston University & Visiting Researcher at
Stiftung Wissenschaft und Politik Brussels*

Ludwigkirchplatz 3-4
10719 Berlin
Phone +49 30 880 07-0
Fax +49 30 880 07-100
www.swp-berlin.org
swp@swp-berlin.org

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Politicians¹ and academics² have been comparing the peaceful revolutions of 1989 in Central and Eastern Europe (CEE)³ with the “Arab Spring” of 2011. Whilst acknowledging the differences between the Arab and CEE uprisings, a look at the detailed CEE experiences of transition to democracy and drawing lessons for the Arab world today, and for Egypt and Tunisia in particular, is logical. After all, the CEE countries performed a similar exercise in the late 1980s and 1990s, learning from earlier transformations in Southern Europe and Latin America. Such historical analyses enjoy the benefit of hindsight, allowing us to assess the choices and their consequences better. What perhaps appeared sensible back in 1989/90 might not look so good given the passage of time.

Introduction

The first steps towards any democratic society involve creating political systems with checks and balances.⁴ There were multiple options available in CEE two decades ago and will likely be so in Tunisia and Egypt in the coming months and years. This paper will therefore look at the political dilemmas of institution-building in CEE in three key areas:

1. Choosing between presidential and parliamentary systems
2. Deciding on different electoral rules and party systems
3. Preventing governmental instability

The paper will summarize what options were on the table in CEE and what preferences the CEE countries had and why. It will indicate what advantages and disadvantages each alternative holds and what consequences particular choices can bring. Lastly, the article will point out what lessons

¹ See e.g. Barack Obama’s remarks during his trip to Poland in May 2011, praising the country as a model for transition, http://www.huffingtonpost.com/2011/05/28/obama-poland-democracy_n_868434.html (as of 12 October 2011); Catherine Ashton’s speech in Lithuania, relating democratic developments in Central and Eastern Europe with the events in North Africa, <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/493&format=HTML&aged=1&language=EN&guiLanguage=en> (1 July 2011); a comparative piece by Czech Ambassador to the UK, Michael Zantovsky (2011). "1989 and 2011: Compare and Contrast." World Affairs, July/August, <http://www.worldaffairsjournal.org/articles/2011-JulyAugust/Zantovsky.html>.

² For instance, blog contributions by Joshua Tucker (NYU) http://themonkeycage.org/blog/2011/01/26/will_2011_be_1989/ and http://themonkeycage.org/blog/2011/02/01/what_eastern_europe_teaches_us/; Marc Morjé Howard (Georgetown) <http://themonkeycage.org/blog/2011/05/30/similarities-and-differences-between-eastern-europe-in-1989-and-the-middle-east-in-2011/>; Ognyan Minchev (August 2001). Modernization: The Forgotten Strategy of Social Transformation: Post-Communist Lessons for the Arab Revolutions. Policy Brief. Washington, DC: The German Marshall Fund of the United States.

³ I use the term Central and Eastern Europe as including the ten new member states of the EU.

⁴ On importance of the right timing and sequencing of constitutional reforms, see Jason Gluck (2011). Constitutional Reform in Transitional States: Challenges and Opportunities Facing Egypt and Tunisia. United States Institute of Peace Brief. Vol. 29. Washington, DC: United States Institute of Peace.

Tunisia and Egypt can learn from the CEE experience and how they can avoid repeating mistakes.

Farewell to Old Regimes: A Presidential or Parliamentary System?

As soon as the old regimes are on their way out, the new leadership has to decide what role and powers a president should be accorded. This is a particularly sensitive issue if former regimes were authoritarian systems based on the personal power of the presidents and their closest allies. But there is a more fundamental question about the advantages and disadvantages of a presidential (and semi-presidential) system as opposed to a parliamentary one. With the notable exception of Romania, which has built its semi-presidential system around the French model, CEE countries opted to implement parliamentary systems with a weak president, choosing to place the government in the hands of a prime minister. Apart from Romania, all other CEE presidents have in effect ceremonial or symbolic functions. This is so even in countries such as Slovakia and Poland where the president is elected in a direct popular vote (as distinct from the indirect elections by their parliaments in other CEE countries).

Nevertheless, the actual exercise by the president of his powers (the extent to which he intervenes in political life and uses his veto powers) largely depends on the personalities elected to the post. The Czech and Slovak Republics are a case in point. Although the Czech President is appointed by the parliament and his powers are limited, the Czech presidents have enjoyed much more leeway due either to high public esteem (Havel) or regular attempts to usurp more powers (Klaus) at the expense of other constitutional players. On the other hand, Slovakia shows that even personalities directly elected to the post of president can be ineffectual, as has been the case with both presidents Schuster and Gasparovic after the introduction of a direct vote in 1999. Moreover, in Slovakia, political conflicts between president and prime minister were much more frequent in the 1990s between Prime Minister Meciar and President Kovac who was selected by the Slovak parliament.⁵

The CEE model of a parliamentary system and the rather symbolic nature of presidential powers would make sense for transition countries with experience of power concentration and personal dictatorships. If transition states choose to follow it, the method of electing the president will not make much of a difference. On the key issue whether any tensions between the presidential and prime-ministerial offices arise, it is personalities that play a key role. If politicians of high stature are elected as heads of state, it will be their personal imprint rather than the institutional set-up which will shape future presidencies.

⁵ Tim Haughton (2003). "Facilitator and Impeder: The Institutional Framework of Slovak Politics During the Premiership of Vladimir Meciar." *Slavonic and East European Review* 81, 2, 267-90.

Representation versus Effectiveness: How Many Political Parties and What Electoral Rules?

The next question which constitution-makers in transition countries will need to ask is what type of parliamentary electoral system (and thus party system) they prefer. Following the classic tenets of political science,⁶ majoritarian or plurality electoral systems (primarily the British “first-past-the-post”, and, to some extent, the French absolute majority systems) will produce two-party systems, while proportionately representative electoral laws will lead to multiparty systems. In addition, there are different kinds of mixed and alternative systems.

Leaving technicalities aside, electoral and party systems have a crucial impact on the stability and effectiveness of governments. Hence the constitution-makers will face dilemmas: what type of government and parliament do we want to see in the future? Do we accept that by accommodating as many factions (political, religious, ethnic...) as possible the formation of a stable government might be a long-drawn and difficult process? Or, do we prefer effective governments able to quickly implement much needed reforms, but which might not reflect the needs and wishes of all groups?

The CEE countries provide quite a rich field for investigation in this area. Mainly because they wanted to avoid any system which could lead to ‘winner-takes-all’ outcomes, none of them went for a variant of the majoritarian system. Should they have concerns about the one-man or one-party rule, new governments in transition states might also want to prioritize political representation (proportional and multiparty systems) over expediency (majority and two-party systems). The CEE countries experimented with different versions of proportional systems as well as with mixed systems which combine proportional and majority elements. Transition countries can draw lessons from the CEE experience – not least to avoid the same mistakes.

Even though the impact of mixed electoral systems depends on the exact cocktail of majoritarian and proportional features, their pros and cons are relatively straightforward and predictable. Most importantly, mixed systems are complex and the majority of voters do not usually understand what actually goes on with their vote. If voters want to feel as though they are having their voices heard, mixed systems might not be the best solution. Moreover, in the mixed systems, voters have a hard time to “throw the scoundrels out.” If they decide to do so, an absolute majority might be required, as the Hungarian situation proved both in 2006 (when the socialist government remained in power thanks to the mixed system) and in 2010 (when elections brought about a constitutional majority for the winning coalition, Fidesz-KDNP).⁷

⁶ E.g. Maurice Duverger (1951). *Les Partis Politiques*. Paris: Armand Colin; Giovanni Sartori (1997). *Comparative Constitutional Engineering. An Inquiry into Structures, Incentives and Outcomes*. Second Edition. New York: NYU Press.

⁷ Nick Sitter and Agnes Batory, ‘Europe and the Hungarian Elections of April 2006’,

On the other hand, a system of pure proportional representation might cause disproportionate political fragmentation as occurred in Poland in 1991 when 29 political parties were propelled into the Sejm and none of them with more than 13% of votes. Introducing a simple electoral threshold (5% in the Polish case) results in “mechanical effect”⁸ that reduces the number of elected parties (to 7 in Poland in 1993), albeit the “psychological effect” takes a bit longer (the Polish Solidarity camp underestimated the threshold effect and failed to get into the Sejm. No less than one third of the Polish votes got “lost” by “diluting” them for this camp).⁹

The choice transition legislators need to make is not an easy one, but some recommendations can be made. As experience from CEE shows, it is easier to accommodate various factions in society using proportional representation. However, since the quick implementation of economic reforms requires swift decision-making, the inclusion of majoritarian aspects (such as a higher voting threshold, smaller constituencies, voting formulas distributing all the votes in one scrutiny) can be seriously considered. In addition, creating a second chamber based on different electoral rules and the timing of its elections might be a good idea. Even though political scientists¹⁰ claim that bicameralism is appropriate for federal states, even unitary states, such as the Czech Republic, Romania and Slovenia, benefitted from having an upper chamber as an extra check into their balance of institutions.

Many Coalition Partners, But How Many Governments? Keeping the Governments Governing

Frequent instability is one of the main dangers of coalition governments. In addition, they tend to have unsteady majorities, are prone to being “reshuffled” and “hijacked” by smaller but decisive coalition partners and often do not survive the entire term of office. This has been the case in nearly all the CEE countries. In 2006, the Czech Republic waited for seven months for a proper government, while even the numerous and successful Bulgarian Socialists formed a series of electoral alliances with an array of minor parties from 1991 onwards. Most recently, tensions between

European Parties Elections and Referendums Network Election Briefing No 28 at
<http://www.sussex.ac.uk/sei/documents/epernhungary2006.pdf> and Agnes Batory, ‘Europe and the Hungarian Parliamentary Elections of April 2010’, European Parties Elections and Referendums Network Election Briefing No 51 at
<http://www.sussex.ac.uk/sei/documents/epern-election-briefing-no-51.pdf>.

⁸ On the role of the “mechanical” vs. “psychological” effect of electoral systems, see Duverger (1951), as above; for further discussions, cf. Erik S. Herron, (2009). Elections and Democracy after Communism? London: Palgrave Macmillan.

⁹ For similarities and differences between the Polish transition and developments in Tunisia and Egypt, see Patrycja Sasnal (2011). Shades of Grey: Poland’s Example for a Middle East in Transition. PISM Strategic File. Vol. 18: The Polish Institute of International Affairs.

¹⁰ E.g. Arend Lijphart (2004). "Constitutional Design for Divided Societies." Journal of Democracy 15, 2, 96-109.

coalition partners led to the fall of the four-party governments in Slovenia in summer 2011 and in Slovakia in October 2011, prompting early elections in both cases.

An innovation in post-War Germany, the constructive veto of no-confidence, is one of the most effective, albeit rather overlooked tools. It keeps coalition members disciplined and prevents the “blackmailing” of the larger coalition partners by the smaller ones, but also gives them freedom to team up with the opposition if their views are no longer respected. The Czech Republic has been plagued by coalitions with extremely narrow majorities (Topolanek’s cabinet 2007/9 was held by two defectors from the opposition) and suffered the fall of government due to a no-confidence vote in the middle of the EU Presidency in 2009 without opposition being able to build a new government.¹¹ The Czechs would have benefitted from introducing the constructive vote of non-confidence as much as the Hungarians and Slovenians did. Introducing the constructive veto of non-confidence into the constitutional set-up is thus the last piece in a series of institutional choices that Egyptians and Tunisians can take from the CEE experience.

Conclusion: History Rhymes

After the revolutions came to an end in 1989, the CEE countries embarked on an intricate process of institution-building. It was at the core of the initial phase of their transition to democracy. The CEE constitution-makers were confronted with sets of alternatives and, in retrospect, did not always make successful choices.

The CEE experience nevertheless offers some useful lessons to new transition states. – for instance in dealing with political parties which upheld or were heavily involved in the previous regime. To exclude or not to exclude the previous elites from further political activism is a central question which impacted democratic transition in the individual CEE countries.¹² If the (post)-authoritarian political parties are left untouched, they can keep blocking with the weight of their votes the entire political party system for years to come, as it is still the case in the Czech Republic (and has been a similar case with the PDS/Left Party in the new Bundesländer in Germany).¹³ On the other hand, if they are allowed to reform

¹¹ Cf. Tim Haughton, Tereza Novotna and Kevin Deegan-Krause (2011). "The 2010 Czech and Slovak Parliamentary Elections: Red Cards to the 'Winners'." *West European Politics* 34, 2, 394-402.

¹² Cf. Maria Spirova, (2007). *Political Parties in Post-Communist Systems: Formation, Persistence, and Change*. New York: Palgrave Macmillan; Monika Nalepa (2010). *Skeletons in the Closet: Transitional Justice in Post-Communist Europe*. Cambridge Studies in Comparative Politics. New York: Cambridge University Press.

¹³ Dan Hough and Vladimir Handl (2004). "The post-communist left and the European Union. The Czech Communist Party of Bohemia and Moravia (KSČM) and the German Party of Democratic Socialism (PDS)." *Communist and Post-Communist Studies* 37, 37, 319-39; Tereza Novotna (2007). "The 'Easternization' of Germany? The Impact of Post-communist Parties on the German and Czech Party Systems." Paper presented at the

themselves, they might have a hard time proving their true democratic credentials even years after their transformation into new parties, particularly if their new leaders come from the old establishment, as happened with the socialists in Poland and Hungary.¹⁴ However, unpalatable the worse case scenario is to disband a once dominant party as it limits the democratic options of the old elite. The most pertinent recent example does not come from CEE, but from Iraq.

The institutional choices facing new transition states are thus significant. As the CEE experience shows, decisions made in the early post-authoritarian period can have long-lasting consequences. It is incumbent on those in position of power to make choices which will assist their country's path to democracy.

European Consortium for Political Research, Pisa, Italy.

¹⁴ Anna Grzymala-Busse (2006). "Authoritarian Determinants of Democratic Party Competition: The Communist Successor Parties in East Central Europe." *Party Politics*, 12, 415-37.