Change of Systems as a Double Transformation: Formal and Informal Rules. 
A new Approach to Conceptualizing Transformation Theories.

ECPR Glasgow 03-06.09.2014
Section 039 New Approaches to Political Science and Public Policy
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Abstract

The fundamental change of systems in Eastern Europe is a complex process. Until now, transformation theories have focused on formal institutions. Despite these apparent formal transformations, however, it is obvious that these formal rules do not completely describe life in these societies. A substantial part of political behavior follows informal rules. What are these informal rules, how do they emerge, and how strong are they?

The paper will deal with these questions by discussing the concept of informality, informal practices and informal institutions (such as corruption, clientelism and networks). Also the origins of informal rules will be analyzed. Another topic concerns the impacts of informal rules on the formal structures. These reflections should underscore my basic assumption that the transformation in Eastern Europe, its rise, its distortions and its dynamics can only be appropriately understood with the inclusion of informal structures. Transformations theories have to be reframed in this direction.

INTRODUCTION

In 1989, one of the greatest transformations of the last century started. The Soviet empire lost its dominance over its allies and collapsed in the following years definitely. The transformation proceeded along different lines. Inside the old Soviet empire, new states emerged. This also happened in the former Republic of Yugoslavia sometime later. Other states – like CSSR – agreed to separate. This transformation of states was accompanied by complete revolutions inside the states. These were more present in the states of Central Europe than in the Eastern European countries. Claus Offe spoke of at least three transformations which had to be done.

The first transformation affected the political system and with it, the change from dictatorship to democracy. New democratic constitutions had to be created and enforced. This included the separation of the powers, as well as the organization of participation and freedoms. The second transformation occurred in the economy. Central-planned systems were closed and market economies started. This involved not only the rules of the game, but also the distribution of property. New social disparities arose. A third transformation occurred inside society itself and manifested itself in the slow emergence of civil society and a more rapid change in political culture. New democratic values and attitudes could be observed.
The first two transformations (political and economic system) have one central feature in common. Both of them changed the formal rules. This implied the introduction of a new law system, which was meant to express the rule of law and no longer the rule by law.

These far-reaching transformations of law were supported by international and external forces; mainly the European Union, which made a further adjustment of the law system in line with European standards (acquis communautaire) attractive. Mostly, the results of the transformations were controlled by monitoring the passing of formal rules. By doing so – it was hoped – the big transformation would be successful.

We know today, that that was an error. What was overlooked? Despite these apparent formal transformations, it is obvious that these formal rules do not completely describe life in these societies. A substantial part of behavior follows informal rules, even in the political and economic sphere, where new formal rules had been adopted. What are these informal rules, how do they emerge, and how strong are they?

To answer this question, it is necessary to clarify certain concepts:
Firstly, there is a need for definitions of formal and informal institutions so that both can be clearly distinguished from one another.
Secondly, it is necessary to clarify the differences between informal rules and informal practices.
Thirdly, it is important to debate the relationship between formal and informal institutions. In doing so, we should distinguish between different types of informal institutions and their varying complexities.¹
Fourthly, it is important to understand the implications of formal and informal institutions for the regime type (autocracy vs. democracy).
Finally, the talk will address some questions of institutional origins, the stability of institutions, and institutional change.

The starting point of the following considerations is the finding by Helmke/Levitsky (2004, p. 726) that “informal structures shape the performance of formal institutions in important and often unexpected ways”.

¹ For example, corruption constitutes a simple set of rules. Clientelistic networks are already more complex. Neopatrimonial states are even more complex and require sophisticated analysis. These types of states constitute a specific combination of formal and informal rules. To examine neopatrimonial states, an entire set of formal institutions has to be analyzed – outlined in the constitution of a state – in conjunction with a set of informal institutions.
1. Institutions

Since Aristotle, comparative analyses of institutions have focused on the structures outlined in the constitutions of the countries being studied. Scholars have not explicitly distinguished between organizations (such as parliament or government) and systems of law (such as the electoral system or the constitution itself). The classic studies of institutional research focus on the interests that gave rise to legal structures and rules.

This does not mean that informal rules were irrelevant to these studies. J. Friedrich’s reference to ‘living constitutions’ clearly demonstrates that informal rules also received some attention. Even while scholars were attempting to demonstrate how constitutions worked in reality, institutionalist approaches fell short of incorporating informal rules and institutions in a coherent theoretical manner. This only began to change in the 1980s and was part of the wider debate about the discussion of neo-institutionalism (Peters 2005, p. 3-21).

Critiques of the classical institutional approach offered numerous possibilities for developing institutional research further. The following aspects deserve particular attention: Scholars began to regard institutions as dependent and not just as independent variables. Scholars also began to engage in comparative analyses to a much greater extent. Finally, scholars also started to examine those institutions that did not have a legal and formal background, and incorporated these institutions into their analysis.

Definition

The starting point of the definition of institutions is similar in all neo-institutionalist approaches. Like Douglass North (1990, p. 3), I regard an “institution as a norm or set of norms that have a significant impact on the behavior of individuals” (concerned by or included in the institution). Institutions thus constrain the actions of individuals. Although North did not emphasize the role of sanctions, in the neo-institutional debate, one can find different interpretations of constraints that are linked with them.

General agreement exists that institutions restrict individual behavior to some extent (Peters 1999, p. 18). The extent and the mechanisms through which this occurs vary. Some authors (March and Olson 1984) highlight the internalization of norms during processes of primary or secondary socialization (family, kinship – school, military, companies). In this case, not following the rules causes a guilty conscience and deviations are sanctioned by an internal mechanism. External sanctioning mechanisms also exist (social discrimination or exclusion, loss of status, arrest, etc.). Rational-choice perspectives include the latter, as rational choice approaches have included the possibility of suffering from disadvantages when rules are not followed. In this case, actors violating the institutions will not benefit from incentives linked to the institution.
Common to all types of enforcement mechanisms is that defecting from the rules set by informal institutions implies losses for rule-breaking individuals. To avoid a catch-all category which includes all sorts of inconveniences (caused by a particular sanction mechanism), it seems convincing to consider as institutions only when they maintain (their own) external sanction mechanisms (which can be introduced by third parties). This obviously applies to formal institutions.\(^2\)

Although this conceptual restriction allows for a closer analysis of institutions, one point is still debatable: Could non-action be perceived as a sanction by third parties? This applies to situations in which actors do not receive benefits associated with compliance with informal rules. If we can observe significant disadvantages for such actors who are not respecting the informal rules, the answer should be obvious.\(^3\)

Even if sanctions are a defining feature of institutions, they are not the only reason why actors follow institutions. Actors follow institutions because they regard them as given or ‘natural’. Actors also follow institutions because they display a legal character or because they regard them as legitimate. In accordance with North, these reflections on sanctions and the reasons why actors follow rules relate to the main purpose of institutions: “Within an institutional perspective, a core assumption is that institutions create elements of order and predictability” (March/Olson 2006, p. 4).

**Summarizing all of the above, institutions are defined as follows:** Institutions constitute a set of rules. The set of rules implies rights and responsibilities. The set of rules also creates and shapes a social order in such a way that the behavior of all actors involved in that social order is predictable. Institutions affect performance by voluntarily following the rules or being motivated by the threat of sanctions.

### 2. Formal vs. Informal Institutions

To differentiate between formal and informal institutions, the following serves as a useful point of departure (Lauth 2000; Helmke/Levitsky 2002 and 2006; Giordano/Hayoz 2013): *Informal institutions* are institutions that are not *formally codified* in official documents (in constitutions or laws). *Formal institutions* are officially codified in written documents. Thus, regulations are included which have the status of constitutional clauses and laws, but also standing orders and norms that have legal consequences. According to this line of thought, all

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\(^2\) This does not mean that internal sanctions have to be absent. They can also exist in the case of formal institutions (not obeying the rule of law can create such internal mechanisms). The meaning here is simple: internal sanctions build no defining characteristic of an informal institution.

\(^3\) For example, all individuals who use bribery receive their official permission (needed for vital transactions), but not those who do not use bribery.
private contracts or rules of associations, which are protected by the state, are formal institutions.

Formal institutions are guaranteed by state agencies and deviations from these institutions are sanctioned by the state. In contrast, the existence of informal institutions is the result of the emergence of social or political practices and the effectiveness of these practices. Informal institutions also have sanctions in place. These sanctions include either mechanisms of social exclusion or mechanisms that restrict access to much-needed goods and services. Informal institutions are known and recognized publicly; however, they are (often) not set in writing. Instead, their authority stems from various sources.

Firstly, informal institutions are socially accepted, which provides them with a basic degree of legitimacy. The fact that these informal institutions are socially acceptable also serves as a major source of motivation for actors when they follow these patterns of social conduct prescribed by these informal institutions. Actors pursue different purposes when they enter these patterns of conduct; purposes can be defined either narrowly or broadly. These purposes can be linked to outputs as well as to certain patterns of behavior. Institutions facilitate interaction between individuals and groups. They foster stability by creating known and accepted behavioral structures that cannot be changed by individual people. Even if actors disagree with these structures, they obey them because, in accordance with rational calculation, the costs involved in rejecting them can only be offset when behavioral alternatives are available.

In contrast to formal institutions, which receive legitimacy through the state and – at least in democratic regimes – through the sovereignty of the people, informal institutions emerge mainly without steering (that is, quasi self-enactment and subsequent self-assertion). While the nature of formal institutions can be shaped and changed by actors with rule-making authority (Mayntz and Scharpf 1995), this is not the case with informal institutions. They (mostly) do not possess a center that directs and coordinates their actions. If informal institutions are no longer recognized as such, they cease to exist. By contrast, ineffectual formal institutions continue to be in demand and, formally at least, continue to remain in place.

These considerations correspond with the proposed definition by Helmke/Levitsky (2004, p. 727): “We define informal institutions as socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels.”

Although institutions constitute social phenomena at the macro-level, they cannot be understood properly without an understanding of what happens at the micro-level. Informal norms exist only if they are rooted in the beliefs and/or attitudes of individuals. Their acceptance is not necessarily based on a positive normative assessment. The existence of an informal institution merely indicates that the institution is expected to function. Whether or
not the institution and its output are regarded as good is irrelevant. We find informal institutions in the beliefs and attitudes of individuals. If not found there, they do not exist. The individual foundations of informal institutions help explain their slow transformation. While formal institutions can be changed solely by state authorities, the process of change within such socially based institutions is extremely lengthy, as informal institutions are internalized by the participating actors and reproduce themselves by shaping future behavioral expectations (Luhmann 1972, p. 71).

Despite their unofficial nature, informal institutions can be understood and described precisely at the analytical level, as they manifest specific functioning logics and rules of identity that distinguish them from others. As stated by Zintl (1993, p. 89): “We are dealing with systems which have a clear difference between the internal and external perception of actors as well as in terms of the type and density of interactions, not simply with statistical aggregates”.

**Table 1: Formal and Informal Institutions**

<table>
<thead>
<tr>
<th>Categories</th>
<th>Formal Institutions</th>
<th>Informal Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Formally Codified</strong></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>State Sanctions</strong></td>
<td>Yes</td>
<td>No (social sanctions)</td>
</tr>
<tr>
<td><strong>Legitimation</strong></td>
<td>Sovereignty of the people (Democracy) or state authority</td>
<td>Self-creation (social acceptance)</td>
</tr>
<tr>
<td><strong>Modus of Change</strong></td>
<td>Action of political decision makers</td>
<td>Change of incentives / public discussions</td>
</tr>
<tr>
<td><strong>Timing of Change</strong></td>
<td>Short-term</td>
<td>Long-term</td>
</tr>
<tr>
<td><strong>Coordinating Centre</strong></td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

**Differences between informal institutions and related concepts**

This short discussion has emphasized the differences between formal and informal institutions. Regarding their ideal types (on the methodological level), the difference is not only in degree, as noted by North (1990, p. 46). The reflections also demonstrate that informal institutions are more than a residual category, including all non-formally codified patterns of behavior. To highlight this further, informal institutions are distinguished from other concepts in the following discussion.

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4 The understanding of ‘functioning logic’ or ‘rule of identity’ is based on the idea that the following criteria are present in a specific form and inner connection. Firstly, they must be recognized by certain symbols or elements that indicate their existence. Secondly, there are specific forms of interconnection or interaction. Thirdly, each institution is linked with a special purpose, which allows its functional description. These criteria mark clearly identifiable and classifiable action patterns.
Informal institutions are more than ‘regularities’ (in the sense of habits or routines, like the specific sequence of the United States primaries) or structures (like patterns of social stratification) or fashions and trends (if most people wear the same style of clothes during a particular season, we do not speak of an informal institution).

Structures are different to rules. Structure refers to the permanence of patterns and the relationship between entities. A social structure is a pattern of relationships. Structure here refers to factors such as social class, religion, gender, or ethnicity. Similar to informal rules such patterns seem to limit or influence individual opportunities. Structures, however, do no specify rules of behavior. Take the cast system in India as an example. This system structures the Indian Society, but only the formulation of the respective rules make this system decisive for societal and political actions. Regularities and structures are important aspects of informal institutions, but these do not constitute sufficient characteristics.

In many neo-institutional approaches, cultural patterns and routines are treated as informal institutions. It appears there seems to be no difference between informal institutions and culture. Equating informal institutions with culture, however, would mean ignoring important particularities. Informal institutions and culture are never identical. Although it is very difficult to find a generally accepted definition of culture, all existing definitions share two features.

Firstly, culture indicates a broad concept including rules, values, traditions, and customs. Together, these indicate patterns of a collective identity, which in turn provide a specific interpretation (or construction) of the world and motivate the adoption of common lifestyles (or frame the horizon of possible actions) to a certain degree. But culture as a whole does not determine individual actions in the same (concrete) way that informal institutions do.

Secondly (and closely linked to this first point), while informal institutions can be enforced through sanctions, cultural patterns lack sanctioning mechanisms. Even when actors do not act in accordance with their respective cultural patterns, they are not sanctioned for their deviations by the cultural norms in place.

A third aspect must be included: the distinction between values and expectations. In the words of Helmke and Levitsky (2002, p. 38): “Informal institutions reflect shared expectations, but not necessarily shared values”. In this sense, informal institutions denote the cognitive side of culture.

Culture and informal institutions are overlapping concepts. Informal institutions can be understood as an integral part of cultural patterns. Some social phenomena, such as customs, include both. Not all types of customs should be understood as institutions, however. In some cases, customs relate to the routine behavior of individuals or small groups. They have no specific meaning for others. Customs can also include the routines of very large groups. This
does not mean that these customs constitute informal institutions (for example, ‘many people are used to participating in elections’ or ‘many people are used to going on vacation’). Such customs can be changed easily because the transaction costs of doing so are rather low. On the other hand, customary law definitely indicates a type of informal institution.

Informal institutions are also not the same as informal politics, although some authors use the concepts interchangeably (Eisenstadt 2003). Informal politics include different sets of actions, which must not necessarily be linked to institutions. Informal actions can be based on rules, but they can also have a spontaneous or erratic character. Examples of informal politics are coalition meetings, corporatist meetings, or private talks behind closed doors – or communication of the short way, which does not follow the formal communication structure. Similar to cultural patterns, informal politics have no noteworthy sanctioning mechanisms in place. This is different whenever informal politics correspond to institutions. The same holds true for ‘organized practices’, which March/Olson (2006, p. 3) include in their definition of institutions, which is not very convincing.

Informal institutions are only one part of the world of informality. As the considerations about other expressions of informality have shown, the differences between informal institutions and these other expressions are significant but not substantial. In this regard, it is possible that regular practices, informal practices and politics can be transformed into powerful informal institutions. When we deal with informality in transformation, we should focus on informal rules, but should not ignore the other forms of informal practices.

**Political institutions**

Both formal and informal institutions constitute political institutions. They are expressions of informal governance. Both shape decisions that actors are obliged to follow. These decisions are backed by the exclusive, legally-constituted authority of the state. Accordingly, informal rules indicate forms of political participation that are linked directly to the political process. Alternatively, informal rules can influence the formal institutions indirectly. This does not mean that institutions take action. Institutions themselves never act; actors are always individuals or organizations that use informal institutions.

Political influence affects various phases of the decision-making process. This occurs during the implementation phase, in which an attempt is made to foster, hinder, or at least modify the administrative ‘enactment’ of a political decision. Attempting to exert political influence on the appropriate authority, in the hope of reducing the amount of taxes you have to pay, would be an example. Political decision-makers and state agencies charged with the implementation of political decisions – the executive – are the targets of actors that try to gain influence for their own benefit. The informal manner and logic that actors apply when trying to influence decisions depend on the kind of participation prescribed by institutions.
3. Relationship Between Formal and Informal Institutions

The relationship between formal and informal institutions varies significantly. Informal institutions and formal institutions may a) compete with each other b) reinforce each other or c) maintain a neutral relationship. Only the first two cases are scholarly relevant. Relationship type b indicates a case common in many established democracies, where formal and informal rules reinforce each other. Informal institutions provide guidance in situations where the existing framework of formal institutions does not apply. Informal institutions can also mitigate the rigidity of formal institutions. In cases where formal and informal institutions compete with each other (relationship type a), formal institutions are weakened. Informal institutions change, weaken or undermine the rules laid out by formal institutions. Whenever this occurs, formal institutions no longer have the capacity to influence the behavior of actors significantly. Thus, formal institutions can no longer guarantee the desired behavior of actors.

Competition between formal and informal institutions can lead to displacement or the elimination of formal institutions. It can also cause a precarious coexistence between the two. In situations where they coexist, informal institutions depend upon the existence of formal institutions. Informal institutions exist at the expense of formal institutions and exploit formal institutions for their own purposes. Informal institutions either partially occupy formal institutions or penetrate them completely. Thus informal institutions are parasitic institutions. Corruption is an example of such an informal institution. Informal institutions should be understood as ‘penetrating’ environments (Powell and DiMaggio 1991, p. 13). They evade any quantitatively oriented empirical analysis to a considerable degree, as they do not change the letter of law of formal institutions. In this way, informal institutions are also often invisible.

Helmke and Levitsky offer an alternative distinction between formal and informal institutions (2004, p. 728). They differentiate between four types of informal institutions: i) complementary, ii) substitutive, iii) accommodating, and iv) competing. It is not entirely convincing to distinguish informal institutions on the basis of their relationship with formal ones, as this makes any classification dependent on a particular context (a point to which I subsequently return). Two of the four types conceptualized by Helmke/Levitsky correspond to the relationships outlined above. When formal and informal institutions are mutually reinforcing, they are complementary. When informal and formal institutions compete with one another, they are in a competing relationship. Helmke and Levitsky’s substitutive type corresponds to a situation where formal and informal institutions complement each other. In that case, it is not clear whether formal institutions are merely ineffective or whether they are missing.

Helmke and Levitsky’s accommodating type is intriguing. Here, informal rules do not impair formal rules directly, but alter the outcome of the formal rule in place. As stated by Helmke/Levitsky (2004: 729), p. “they contradict the spirit, but not the letter, of the formal rules”. However, the examples chosen by the authors to illustrate the accommodating type indicate that this type can be classified as the complementary type when we differentiate
between two levels of abstraction (governance vs. regime type). In the concrete example, coalition presidentialism contradicts the spirit of presidentialism (as form of governance), but as a democratic Institution not the democratic spirit. So the accommodating type only equals the complementary type when the intention of the informal institution (such as coalition agreements) aligns with the normative intention of the formal institution. Other forms, like ‘perverse elite agreements’ (Thiery 2011, p. 17) and ‘clientelism’, which can also a part of the system of coalition presidentialism (see Brazil), may not always constitute illegal acts, yet they clearly are not in accordance with democratic spirit.\(^5\) In cases where the intention of these institutions does not align with democratic ideals, informal institutions must be classified as competing ones. A deeper examination of Helmke and Levitsky thus reveals that the normative character of informal institutions should not be ignored. A typology of informal institutions should be based on the internal features of institutions and not on the relationship between formal and informal institutions.

4. Types of Informal Institutions

To structure the world of political informal institutions, categories are necessary. The social science literature provides many examples of informal institutions. Some are characterized by a high level of abstraction, such as trust or distrust (Putnam 1993). The existence of such basic norms (dispositions of conduct) has a significant effect on actor behavior in various areas.\(^6\) Others are linked to special circumstances (low level of abstraction), or express a very specific meaning in certain situations. An example would be the manner in which ordinary citizens greeted each other during the Third Reich.\(^7\) Vendetta (a blood feud) is another example of this type of informal institution, which determines a specific reaction of a family or clan to a capital crime. All of these behavior traits are embedded in a particular context. These informal institutions have no relevance beyond a specific context. A third type of informal institution (located at the meso-level of abstraction) constitutes informal rights systems or systems of corruption. These institutions are more specific than the first type, but cover a broader spectrum of action than the second type.

Informal, as well as formal institutions can also be identified on the basis of their level of aggregation. For example, a constitution can be understood as one single institution, even though it consists of different rules, all of which can be identified as separate rules. The same is true regarding the rule of law and the rules of the market. This differentiation – high and low

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\(^5\) ‘Perverse elite agreements’ – i.e. elite agreements on political rules that do not accord with or even transgress the constitution – supplement the role of other informal institutions. Such agreements allow for an elite conduct that leaves transgression of basic constitutional rules unchecked (Thiery 2011, p. 17).

\(^6\) ‘Basic norms’ or ‘basic codes’ are effective in the sense of general norms or general dispositions of perception and behavior. They structure the system of interaction of the entire society and its subsystems.

\(^7\) Another example of a specific institution is the Islamic headscarf. It serves not only as an expression of fundamentalist conviction, but also as a cultural custom or even a fashion accessory. The numerous meanings attached to these symbols make their precisely interpreting very difficult.
levels of aggregation – partly overlaps with the abstract, specific distinction of institutions outlined above. Abstract and aggregated institutions do not correspond with specific norms. In contrast to aggregated institutions, basic norms (or abstract institutions) entail no specific rules (although they can structure multiple forms of individual actions). Aggregated institutions can be perceived as abstract institutions in the sense that their content is not laid out in detail. They cover a broad spectrum of actions – although the spectrum is narrower than the spectrum of basic norms. In an empirical sense respecting a constitution means following each norm at its specific level.

Informal institutions such as clientelism or corruption possess characteristics of both abstract and aggregated institutions. On the one hand, they are abstract because they engage in a variety of actions that are not specified by the general understanding of the institutions. On the other hand, informal institutions such as clientelism and corruption incorporate different subtypes of informal institutions, as illustrated in the following. Each of these specific subtypes has a specific meaning. This is illustrated in the case of clientelism, where we can distinguish between (I) Kinship, (II) Mafia, (III) autocratic cliques and clientelistic parties, and (IV) Nepotism.

In the case of corruption, we can distinguish between two subtypes. The subtypes are based on the different characteristics corruption can assume. In one instance, societal actors try to influence political decisions by offering a material contribution (bribe). In another instance, state officials ask citizens to provide financial resources, and in return, the state official fulfills an administrative task he would otherwise be required to fulfill anyway (extortion).

In addition to subtypes, it is possible that such institutions – like clientelism and corruption – form common patterns at a higher level of abstraction. Such informal institutional combinations can extend up to the level of a hidden constitution; they can structure a system of rent-seeking or cronyism, or a neo-patrimonial system.8

Because of the difficulty in distinguishing between ‘abstract – specific’ and ‘aggregated – non-aggregated’, it is sufficient to start with the ‘abstract-specific’ category, as it includes the phenomenon of aggregated institutions to a significant extent. The degree of abstraction of an institution is determined by the variety of actions the institution enables. The higher the levels of abstraction, the more different actions are covered. The scope of different actions shrinks with the declining degree of abstraction.

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8 “Neopatrimonialism is a mixture of two co-existing, partly interwoven, types of domination: namely, patrimonial and legal-rational bureaucratic domination. (...) Formal structures and rules do exist, although in practice the separation of the private and public sphere is not always observed. In other words, two role systems or logics exist next to each other, the patrimonial of the personal relations, and the legal-rational of the bureaucracy. (...) The patrimonial penetrates the legal-rational system and twists its logic, functions, and output, but does not take exclusive control over the legal-rational logic. That is, informal politics invades formal institutions. Informality and formality are intimately linked to each other in various ways and by varying degrees; and this mix becomes institutionalized” (Erdmann/Engel 2007: 105).
Besides their level of abstraction, one can differentiate informal institutions by their connection to *civic traditions*. The latter find their expression in the defense of universal rights that are assigned to all human beings. By contrast, non-civic traditions maintain the idea of difference and with it, particularistic patterns, as O’Donnell (1996) highlights. In general, an ongoing dispute exists between universalism on the one hand and particularism on the other. Trust, solidarity, tolerance and fairness are basic codes engrained in long-held civic traditions. The particularistic view is marked by distrust, egoism,9 intolerance or unfairness (at least vis-à-vis unfamiliar and foreign groups). The former is called ‘civic pool’ (CP), the latter ‘anti-civic pool’ (ACP). More specifically defined institutions can be linked with either one of them.

Beyond the already mentioned informal institutions, one can include additional examples of both the civil pool and the anti-civic pool. Inside the CP, we find elements such as unwritten constitutional conventions that can be observed in Great Britain. Although this example is widely used in the literature and is viewed as an exceptional example, informal rules (as expressions of an informal constitution) can be observed in other political systems as well. The consociational systems of Austria and Switzerland or the coalition-presidentialism in Brazil and in Chile come to mind.

At the same time, it is possible to observe a larger number of specific informal rules that affect the legislation and the administration of a country. These specific and informal rules coexist productively with formal institutions. They adjust the content of the formal rules that are designed to structure the administrative procedure. The actual legislative power of the American president and a coalition agreement of governmental parties (as in Germany, for example) are two examples among many. Another informal institution in the civic tradition is civil disobedience. This institution is a special case: Although its legitimacy is strongly based on civic values and norms, it is by definition illegal.

A further example is customary law, which is compatible with the rule of law. Certain customs, however, can be incompatible with the principle of the rule of law. Customary law includes all non-codified rules and modes of behavior that the state or private tribunals can sanction. This includes traditional, secular and religious systems of law, such as Islamic law (sharia). This encompasses a very broad field with hundreds of various (sub)types. Several of the informal institutions associated with these systems of law are compatible with the rule of law; several are in conflict with the rule of law or contradict their central principles. Folk traditions continue to belong to customary law, the adherence to which can even be enforced in non-state or even

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9 To regard ‘egoism’ as part of the anti-civic pool seems surprising because keeping one’s own interests in mind is one of the basic beliefs of the liberal tradition. Free markets rely on many of the views Adam Smith outlined. According to the liberal tradition, however, ‘egoism’ is limited by sympathy for other human beings, while from the perspective of non-civic traditions, egoism is unlimited and serves as a synonym for greed.
partially state-controlled tribunals, as can be observed in various West African countries (Bierschenk and de Sardan 1999).  

An important new area has developed in the field of business relations, especially at the international level where conflict arbitration is conducted by private entities. These arbitration mechanisms have created business law, well known in the self-regulation of the bank system (Basel Accords). Informal systems of law can also be observed in neighborhood networks, where these systems regulate specific aspects of social security (self-help networks, saver and migrant clubs, or burial societies). Such networks exist in many third world countries. Self-help networks constitute informal institutions that, in terms of their understanding of the law, correspond to arrangements made under the rule of law (or that imitate this understanding).

Violence as a means of influencing the political process is another tool the ACP offers political actors. For violence to qualify as an informal institution, it need not be applied on a permanent basis. It is sufficient if actors threaten to use violence whenever political decisions are about to be made. As is the case with other institutions, different variants of violence can be identified. They differ in terms of their aims, their modus operandi and their effect. The following situations can be defined as ‘identifiable forms of violence-based participation’: the threat of a coup (d’État) – which Valenzuela (1992) refers to in his brilliant discussion of ‘perverse institutions’ – riots and organized crime.

The contrast between CP and ACP institutions in Table 2 is somewhat exaggerated. As customary law indicates, certain institutions can be found in both categories. Or at the very least, some subtypes straddle the zone between both (for example, clientelism in the middle or the headscarf at the lower level). It is also debatable whether the basic codes (i.e. institutions with a high level of abstraction) should be understood as institutions. They have external enforcements in place (sanctions by a third party) but these sanctions do not always apply. For this reason, the term ‘basic codes’ seems more appropriate than ‘institutions’ (although neo-institutional approaches refer to them as institutions). To distinguish the world of informal institutions alongside the two dimensions outlined in Table 2 is only one way in which to classify informal institutions.

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10 The archaic custom of the blood feud (vendetta) can only be included under custom law to a limited extent, as the roles of plaintiff and judge are normally embodied in one person. What can be included more easily, however, are ‘kangaroo courts’ or ‘mafia courts’, whose basic concern is the violation of an unwritten ‘code of honor’. Such institutions are to be understood as political ones, not because they can be classified as part of the political system, but rather because through their violation of the exclusive authority of state they combat the central feature of the political system, thus forming at least partial opposition to the state.
Table 2: Map of Informal Institutions

<table>
<thead>
<tr>
<th>Level of abstraction</th>
<th>Civic Pool Universalism</th>
<th>Anti-Civic Pool Particularism</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>High</strong> basic codes</td>
<td>Trust / solidarity</td>
<td>Distrust / egoism</td>
</tr>
<tr>
<td></td>
<td>tolerance / fairness</td>
<td>Intolerance / unfairness</td>
</tr>
<tr>
<td><strong>Middle</strong></td>
<td>Conventions</td>
<td>Hidden constitution (delegative code)</td>
</tr>
<tr>
<td></td>
<td>Informal parts of constitutions</td>
<td>Customary Law in tension with the rule of law</td>
</tr>
<tr>
<td></td>
<td>Customary law compatible with the rule of law</td>
<td>Corruption, clientelism, Power threat / threat</td>
</tr>
<tr>
<td></td>
<td>Civil disobedience</td>
<td>perception (organized crime)</td>
</tr>
<tr>
<td><strong>Low</strong></td>
<td>Workplace (administration rules)</td>
<td>Vendetta</td>
</tr>
</tbody>
</table>

An additional category of informal rules constitutes so-called meta rules (Waldmann 2002; Ledeneva 2006). They indicate when and how actors switch from formal to informal rules and vice versa. Of course, such meta rules are also informal. An analysis of the relationship between formal and informal institutions requires an identification of such meta rules, which in turn helps to specify dominance structures.

5. Regimes Types, the State, the Rule of Law and Informal Institutions

Regime types – like democracies and autocracies – constitute special institutional arrangements, which regulate the access, distribution and organization of political power. The respective regulations constitute formal institutions, which clearly have a strong impact on citizens (Fishman 1990, p. 428). In all regime types, formal and informal institutions can have different relationships with each other, as indicated above. It is possible to distinguish between the complementary type, the substitutive type, the accommodating type and finally, the conflicting type.

Scholars examining the relationship between formal and informal institutions should note that these relationships differ regarding the regime type. In democracies, informal institutions such as clientelism and corruption constitute the conflictive type.

In autocracies they can be classified as complementary, as the study of neopatrimonial and sultanistic regimes demonstrate. In totalitarian regimes, however, clientelism and corruption oppose formal institutions, as they challenge the control of the ruling class over the political system. The same reasoning applies once we create subtypes of clientelism and corruption, and we relate them to different subtypes of democracy and autocracy. Important to note is that the relationship between formal and informal institutions is not always the same but
depends on the regime type in place. The same institution can lead to very different outcomes in different government systems.

This finding is particularly relevant for the study of transition processes. Whenever political transitions occur, formal institutions change. As a result, the relationship between formal and informal institutions changes accordingly. Informal institutions such as clientelism are central pillars of authoritarian rule. During and after the transition process, the same informal institutions may hamper democratization. Other informal institutions – such as violent intimidation by organized crime – have the same effects as prior to the transition. The transition phase will also give rise to new informal practices and institutions whose implications are ambivalent.

To know whether informal rules support or hinder democracy requires a nuanced analysis. The impact of informal institutions on democratic institutions – institutions that ensure and regulate the three defining features of democracy, namely freedom, equality, and political and judicial control – is key to the analysis. All of the informal institutions inside the ACP affect democracy in a negative manner. Other informal institutions (such as coalition presidentialism or civil disobedience) can improve the quality of democracy; they serve as functional equivalents of (distorted) formal participation channels (Lauth 2000). Thus informal institutions do not always diminish the quality of democracy. The impact of informal institutions on democracy varies to a certain degree. As the example of customary law has shown, informal institutions can actually support democratic institutions. Clientelistic participation can express a positive defensive reaction by allowing more popular political participation than in formal democratic institutions controlled by elites.

Thus, the struggle for democracy is not located on the grounds of distinction between formal and informal institutions, but rather inside the informal arena itself. Due to the many ways in which informal political institutions function and the inability of a democracy to escape their influence, it is necessary to emphasize that without the inclusion of informal institutions, an analysis of the functioning of a democracy remains incomplete. The same reasoning applies to autocratic regimes.

While the situation is more straightforward when informal institutions undermine democracy, informal institutions that belong to the CP undoubtedly support formal democratic institutions or serve as a safeguard against the rigidity of formal institutions. To understand democratic consolidation processes and to understand how defective democracies work in practice, it is necessary to study informal institutions. The study of fledgling democracies

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11 The negative impact of cooperation among various forms of clientelism and corruption on democracy has been explained by O’Donnell (1993, p. 1359f) in the ‘brown areas’ theorem and through the concept of ‘delegative code’ (1996), which is similar to Croissant and Merkel’s (2004) ‘illiberal code’. The mafia is another example of a combination of different types of informal institutions (corruption, clientelism, and threat of violence).
requires an equally thorough analysis of all informal institutions. Empirical research needs to start by identifying the complete set of institutions of any given political system.

This task sometimes seems inexhaustible given the complex dynamics of the institutional network that constitutes the regime (for an example, in the case of Russia, see Gelman 2003 and Ledeneva 2006). Structuring and analyzing the coexistence of formal and informal institutions is the next research step; this analysis should provide a better understanding of the dynamics of young, as well as established democracies.

Are informal institutions more important in autocracies than in democracies, as Köllner (2012) indicates? There is some evidence of this, as most definitions of authoritarian rule refer explicitly to informal rules. Yet we cannot generalize from these definitions, as we know very little about the role of informal institutions in dictatorships: Empirical findings on informal institutions are rare (Radnitz 2011, p. 354). However, we can say for sure that analyses of political transformation processes should not be confined only to formal institutions. Successful democratic transformations always also require the transformation of informal institutions. Hybrid regimes and defective democracies constitute additional and important fields of research.

6. Origins and Dynamic of Informal Rules

Now we know a lot about informal rules (and practices). It is obvious why scholars should care about informal institutions. Identifying and classifying informal rules is one thing. We have just done that. Another separate task is to understand the emergence and dynamics of informal rules. This will be my next (and last) topic.

Various reasons give incentives for the rise of informal rules. Most arguments about the emergence are already discussed regarding formal institutions and can also apply to informal ones. Examples include reduction of transaction costs, fixed expectations, and order and stability. The stability argument is closely linked to the concept of path dependence, which we will discuss soon more in detail.

Besides the mentioned reasons, there is something specific about informal institutions (as noted by Köllner 2012, p. 7). They offer attractive alternatives for political elites because they can expand the capacities of the elites to act and react. Informal institutions frequently mean little accountability and transparency. Thus informal institutions constitute mechanisms through which political elites can sustain their own power and domination.

Having these considerations in mind, we can differentiate among at least between three kinds of emergence of informal rules:
The first is related to Huntington’s concept ‘Clash of Civilizations’. Although this approach has been controversially disputed in the social science community, it offers some helpful insights into long-lasting traditions which are partly still effective. For example, traditions of clientelism and corruption survived inside the old borders of the Ottoman Empire. They are also mentioned regarding the Tsarist Russia. Weak legal traditions were present in both cases.

Such traditions were partly interrupted by communist rule, because they undermined authoritarian (and especially totalitarian) rule. Nevertheless, these communist regimes established new informal practices and rules beside their own formal framework. These new informal measures were focused in supporting the dominance of the communist parties. In combination with formal rules, they created an ideologically motivated rule by law, which signified that the formal rules were used, but only as a means of dominance and not as guarantee of citizen rights.

In communist times, a second line of ‘creation’ of informal rules or practices should not be ignored as Giordano (2012: 34) illustrates: “Being an economy of favours, acquaintances, especially during the socialist era, was a practically universal system of informal network that enabled these coalitions of friends and acquaintances (at times just temporary) to appropriate material-like common goods as well as symbolic-like state privileges via high-personalized channels”. Such behavior addresses both, elite interests, and the common’s man reaction to the bad economic situation and limited availability of everyday items. These bad conditions necessitated strategies of survival in the economic sphere. Small informal economies and the barter of goods supported the rising of informal networks, which, because of the state organization of the economy, had a political dimension. Therefore, successful strategies often involved state agencies through means of corruption. This double-structured informal sphere – from above and from below – was terminated with the end of communist rule. But does this indeed mean indeed the end of informal rule in these countries?

Now we have to consider and analyze the third kind of emergence which came with the phase of transformation. Firstly, I want to underscore that the great transformation did not end the informal legacy of the first and second line at all, but transformed and changed the very legacies to a significant degree; others aspects of the legacies were limited or even ended (s. communist rule). Secondly, and perhaps most surprising, this transformation phase creates opportunities for the creation of new informal rules. Some of them are discussed, even with attempts at state capture, others with the emergence of organized crime and the linkages to the political arena (Gherghina/Chiru 2011). Taken together the period after 1989 is shaped by a confusing puzzle of informal rules and practices.

Why did this situation arise, and what are the consequences? To a certain degree, the emergence is due to the legacy of the past and is expression of a path dependency. This argument, however, falls short in explaining the complexity of the actual situation and also the variance among the countries.
Two further arguments have to be considered. One concerns the process of transformation itself, the second, the afore-mentioned power interests of the elites.

Let me explain the first argument. Following Wolfgang Merkel, there is always a period in the core of a system change in which the old binding rules lose the force and new rules are not established yet. This is not a problem per se, but the situation aggravated, when this period extends, which happened in some countries. The central question in such a situation is: what rules should we follow when the old rules have been gone and the new ones have not arrived? In such open situation, informal rules can be created and enforced. Let me illustrate this with two examples.

The first example regards the process of privatization of the old state companies. This established new networks (of the old and new elite in differing compositions) which steered the privatization in favor of private interests. Such circles still exist and shape the actual political process in varying degrees. The other example regards the organization of political parties. In contrast to established democracies, many political parties in central Europe and even more in Eastern Europe show characteristics of personalistic and clientelistic patterns.

Generally the aspect of the change of meaning of informality has to be underlined: While – as just argued – informal practices helped to survive in the autocratic communist regimes and have some subversive character, they possessed a positive connotation inside society. This image was not really destroyed during the transformation, although now – embedded in democratic structures – these informal patterns demonstrate anew their undermining power, but with the big difference that now democratic rule (and no longer dictatorship) is affected.

The second argument – interest of government to use informal rules – is more convincing regarding authoritarian regimes. It has also some cogency, even in democracies, especially in defective one (look at Bulgaria or Romania). One example is the use of the anti-corruption agencies as an instrument to weaken the opposition (as was also tried in Poland).

Already, the examples show, that most of the new informal rules compete with democratic ones. A deeper systematical consideration, which includes the analysis of the dynamics and stability of the informal rules, underscores the scope of the problem, which exists in some countries. The final transition to democracy is not finished yet, as the informal world still does not correspond to democratic values, norms and practices. Influencing, even steering, the development of informal rules is one of the main demanding tasks of this transition. Some achievements – like in Poland – demonstrate that this is viable. For this reason I am eager to hear what developments will be presented in this conference.
7. Methodological Reflections

Although political science research has increasingly acknowledged the relevance of informal institutions, empirical comparative research still focuses predominantly on formal institutions. A major reason for this is the availability of data. Data on formal institutions is readily available, which makes even qualitative research possible. This is not always the case with informal institutions, where empirical data remains difficult to obtain. Moreover, the study of informal institutions necessitates laborious case studies that require sociological and ethnological research methods. Numerous empirical studies highlight the importance of informal institutions (Ganev 2007, Grzymala-Busse 2010, Thiery 2011). These studies can be combined with studies on informal governance (Christiansen, Føllesdal and Piattoni 2003; Christiansen and Neuhold 2012).

With a few notable exceptions (Helmke and Levitsky 2006), the study of informal institutions has not yet led to the emergence of theoretical constructs. A typology of informal institutions can provide a point of departure for a new research program on informal institutions. Systematizing empirical findings could also lead to an improved capacity of political actors to control or even steer informal institutions. Scholars engaging in this kind of research should not forget to identify the respective window of opportunity, i.e. the moment when informal institutions could be changed by political actors. It is also well known that political change requires a long time to manifest itself. Therefore, political strategies should be analyzed over much longer periods of time than is currently the case.

This is not the appropriate time to debate the fundamental causes of stability and change. However, one should note that such a debate must uncover a complex interdependent relationship between the two types of institutions. Formal and informal institutions should be examined as dependent and as independent variable. A change in one part of the institutional design has direct implications for the legitimacy, efficiency, and effectiveness of the political system. Formal institutions can experience change through informal institutions. Scholars have long noted that these changes differ according to the particular political context. But scholars must still identify the extent to which change – in the formal set-up of a political regime – affects informal institutions, and how informal institutions are altered by changes within the world of informal institutions that constitute themselves.

Finally, I would like to draw attention to several other methodological and theoretical implications. As outlined above, one of the major accomplishments of political science has been the systematic analysis of formal institutions. These analyses have given rise to several classification typologies: presidential vs. parliamentary and consensus vs. majoritarian systems. None of these schemes account for informal institutions. Instead, they assume that formal institutions are capable of governing the political system on their own. This assumption is not very plausible. As noted, formal and informal institutions are connected. Informal institutions have a variety of means at their disposal to affect the logic of formal institutions. Hence
scholars must examine the empirical validity of conventional political science assumptions to avoid conceptual stretching (Lauth 2013). The study of (formal and informal) institutions requires additional alternative typologies with subtypes (as types of defective democracies). It further requires an awareness of the context-specific effects resulting from the interplay between formal and informal institutions.

8. CONCLUSION

Institutions are relevant, because they shape our social order. Political actors follow the content of the rules institutions establish, be they formal or informal rules. Informal institutions are part of every political system; their relationship with formal institutions is difficult to decipher. Predicting the effects of informal institutions becomes easier by classifying informal institutions with the help of typologies and by systematically thinking through their relationships with formal institutions. But this is only a first step.

As empirical studies show, the interactions between formal and informal institutions differ from situation to situation. This is true regarding the number of institutions involved but also regarding the extent to which the institutions are capable of influencing the actors involved. Formal and informal institutions filter political action; however they are only partially able to determine the outcome of a political process (Köllner 2012, p. 15). To account for these outcomes, we need to consider the preferences, interests and ideas of the actors shaped by these institutions (and how the actors in turn shape these institutions).

No political system can survive without informal activities. Hodson (2006, p. 18) has highlighted this: “To put it differently, legal or ‘formal’ institutions that do not have strong ‘informal’ support are unsupported legislative declarations rather than real institutions. This does not mean that legal rules are unimportant but that they become important by becoming incorporated in custom and habit”. However, this statement does not mean – as his first quote at the beginning of the paper suggests – that it is impossible to separate both worlds analytically.

A separation between formal and informal institutions is urgently required to examine empirically how both interact. Informal institutions constitute only one part of the informal world, yet a decisive part. It is impossible to understand political processes without including existing informal institutions in the analysis. In some cases, the impact of informal institutions could be small; in other ones they can ‘dominate’ the game. Accordingly, an identification of strong and weak institutions should also be part of any institutional analysis (Levitsky/Murillo 2009).
The empirical findings further emphasize that informal institutions are not endangered species. Traditional institutions are still part of modern political environments, and new informal institutions continue to emerge, especially in times of transitions. This calls for additional future research into the role of informal institutions.

Such research efforts should deal with some of the following questions: What kinds of informal rules and practices exist? Where are they working – politics, business, civil society? Are they competing or supporting democratic norms? Do they work isolated or do they build an interrelated (self strengthening) structure? When and why do they emerge? Are they gaining power or become they weaker? What are possibilities to steer them? Which are successful and which are ineffective? The answers of these questions are particularly interesting in periods of transition, when the impact of informal institutions varies regarding the regime type. A complete transition to democracy includes the change of formal as well as of informal institutions.
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