



**Constitutional Politics, Constitutional Texts and  
Democratic Variety in Central and Eastern  
Europe**

**Paul Blokker**

*p.a.blokker@sussex.ac.uk; paulus.blokker@eui.eu*

*University of Sussex*

SEI Working Paper No 105

The **Sussex European Institute** publishes Working Papers (ISSN 1350-4649) to make research results, accounts of work-in-progress and background information available to those concerned with contemporary European issues. The Institute does not express opinions of its own; the views expressed in this publication are the responsibility of the author.

The **Sussex European Institute**, founded in Autumn 1992, is a research and graduate teaching centre of the University of Sussex, specialising in studies of contemporary Europe, particularly in the social sciences and contemporary history. The **SEI** has a developing research programme which defines Europe broadly and seeks to draw on the contributions of a range of disciplines to the understanding of contemporary Europe. The **SEI** draws on the expertise of many faculty members from the University, as well as on those of its own staff and visiting fellows. In addition, the **SEI** provides one-year MA courses in Contemporary European Studies and European Politics and opportunities for MPhil and DPhil research degrees, as well as an MSc in Comparative and Cross-Cultural Research Methods (Contemporary European Studies).

First published in September 2008  
by the **Sussex European Institute**  
University of Sussex, Falmer,  
Brighton BN1 9RG  
Tel: 01273 678578  
Fax: 01273 673563  
E-mail: [sei@sussex.ac.uk](mailto:sei@sussex.ac.uk)

© **Sussex European Institute**

### ***Ordering Details***

The price of this Working Paper is £5.00 plus postage and packing. Orders should be sent to the Sussex European Institute, University of Sussex, Falmer, Brighton BN1 9RG. Cheques should be made payable to the University of Sussex. Please add £1.00 postage per copy in Europe and £2.00 per copy elsewhere. See page 36 for a list of other working papers published by Sussex European Institute. Alternatively, **SEI** Working Papers are available from our website at: [www.sei.ac.uk](http://www.sei.ac.uk).

## **Abstract**

*In the paper, it is argued that democratization in Central and Eastern Europe involves important forms of differentiation of democracy, rather than merely convergence to a singular – liberal-democratic, constitutional - model. One way of taking up democratic differentiation in post-communist societies is by analysing the constitutional documents of the new democratic orders, and the constitutional politics leading to the foundational documents. In a first step, the paper analyses constitutional politics and the major actors involved in three countries (Hungary, Poland, and Romania), emphasising the symbolic conflict over perceptions of democracy and emerging dominant discourses on democracy in constitution-making. In this, the paper argues that the drafting processes and debating over constitutional forms did not only entail struggles over political power and institutional set-up, but also involved symbolic struggles over the meanings of democracy. The importance of such meanings is revealed in a second step, when the constitutional documents themselves are looked at. It is shown that the constitutions of the respective societies portray significant differences in the codification and hierarchization of rights and the rule of law, citizenship and identity, civic participation, and - to a somewhat lesser extent - distributive justice. It is argued that the constitutions put different emphases on a number of what will be called ethics of democracy, which can be related to different democratic political cultures.*

# **Constitutional Politics, Constitutional Texts, and Democratic Variety in Central and Eastern Europe**

**Paul Blokker**

*p.a.blokker@sussex.ac.uk; paulus.blokker@eui.eu*

*University of Sussex*

## **Introduction**

All the former communist countries adopted new constitutions in the early 1990s or profoundly amended the old ones so as to change their original shape and content (as in the case of Hungary). It can be argued that the late 1980s constituted a ‘constitutional moment’ - even if not in Bruce Ackerman’s full sense of popular inclusion (see Ackerman 1992: 14-18) - in that a profound rupture was brought about with the pre-existing political structures, and a decisively new set of political norms and values was entrenched in constitutional documents. In this regard, the new constitutions performed at least two tasks. First of all, the new constitutions constituted foundational documents of the emancipated new order, and in this sense contained norms and values that were radically opposed to those of the immediate past, and, at the same time, they formed a kind of safeguard against any return to the totalitarian past. Second, the constitutions reconstituted national sovereignty to the post-communist societies after 40 years of Soviet domination (Elster 1998: 63).

The general coincidence of the trajectories and the shared characteristics of the post-communist societies resulted in a comparable constitutional outlook and perception of the role of the constitution in democracies amongst the (political) elites involved, regarding the role of rights, the rule of law, and democratic pluralism. At the same time, and this forms the main argument of this paper, the constitution-making trajectories and their eventual outcomes in the form of constitutional documents show significant variety in both the dynamics of the constitution-making process, and in terms of emerging understandings of constitutionalism and democracy. It will be argued below that such variety has become visible in the ultimate codification of constitutional values and democratic ethics in the constitutions.

The paper will, first, briefly analyse the constitution-making process, looking at the political context and procedures, the main actors involved, and the perceptions of the constitution and its role in democracy endorsed by major actors. The paper will proceed by means of a textual analysis of the constitutional documents of Hungary, Poland, and Romania, following the idea of different democratic ethics (see Blokker 2008). Four such ethics will be distinguished. First, the ‘ethic of rights’. This ethic is about the priority of rights and the rule of law, and an identification of democracy with the liberal model of constitutional democracy in its emphasis on natural rights, legal procedures, and the equality of citizens before the law. A second ethic is the ‘ethic of identity’, based on a priority of identity as defining identity or group boundaries and a related understanding of the common good. This ethic of identity is invoked when a shared ‘thick’ identity, and its continuous preservation and flourishing, is understood as the main aim of a democratic polity. A third ethic is the ‘ethic of self-rule’, based on a priority of the idea of substantive participation. In the active, substantive conception of participation, popular sovereignty or democratic self-rule does not mean the transfer of sovereignty to an administering state, but self-rule is rather grounded in society and seen as an

end itself. Finally, the fourth ethic, the ‘ethic of distributive justice’, understands substantive, socio-economic equality as a priority in democracy.

## **Constitutional Politics in Comparative Perspective**

### *Hungary*

The Hungarian constitution-making process was a relatively drawn-out process that started as early as 1987 (Bozóki 1992). The relatively mild form of communist regime that was established in Hungary in the wake of 1968 created opportunities for the emergence of opposition groups that operated in a kind of second public sphere. The significance of such groups became such that, when at the end of the 1980s the economic and financial crisis became untenable, the reformist elements in the communist party perceived negotiation and compromise with the opposition as the best solution, which ultimately took the form of Roundtable Talks (Ripp 2002: 3-4).<sup>1</sup> It can be argued that the approach of both communist reformers and opposition converged around a form of self-limitation, i.e., the radical reform of the existing system from within, without a violent rupture (cf. Arato 2000). Even if the participating opposition had more radical ideas on democratic reform than its Polish counterpart (see Renwick 2006), the idea was that such radical changes could best be enacted within existing constitutional structures. Such a piecemeal, reformist approach meant that constitutional change was to be based on the gradual amendment of the communist Law XX of 1949, rather than a restorative return to the revolutionary tradition of 1848 and 1956, or even the century-long tradition of customary law or the ‘historical constitution’ (cf. Körösenyi 1999; Arato 2000). The strong emphasis on the rule of law, and the liberal and ‘transnational’ form of constitutionalism that became the predominant vision in Hungary in the 1990s has, however, been in continuous tension with a ‘counterconstitution’ that is endorsed by those forces that seek a return to the constitutional tradition of the Hungarian monarchy (Scheppelle 2000).

In the late 1980s, however, a vision of gradual constitutional reform predominated on the scene of constitutional politics, in contrast to any ideas of complete revision or revolutionary rupture. In fact, the Hungarian ‘revolution’ consisted in a ‘constitutional revolution’<sup>2</sup> (Paczolay 1993a), i.e., the regime change was brought about by legal means rather than by means of political violence (as in the Romanian case). The Hungarian transition thus took the form of an incremental revision of the constitution by means of regime-opposition negotiations, even if the idea at that time was that of a ‘constitution for the transition’ which was to eventually be replaced by a fully new constitution matching the new social and political order (Bozóki 1992: 68). A new document could not be adopted right away, since according to the opposition the incumbent parliament (elected in 1985) did not enjoy the necessary popular legitimacy.

It can therefore be argued that the most conspicuous feature of Hungarian constitutional politics is that it proceeded under the imaginary of a strictly legal basis, an emphasis on the rule of law that regarded both the procedures of the political transition itself and its ideated end result (a constitutional state) (Halmai 1998: 155; Scheppelle 2000). The guiding model for

---

<sup>1</sup> For the emergence of the Roundtable Talks in the Hungarian context, see Bozóki 2002.

<sup>2</sup> In Paczolay’s terms, ‘scrupulous attention was paid to ensure that changes were carried out within the constitutional and legal systems’, in other words, the changes were not only ‘legally prepared, but were also based on an existing Constitution and emphasis was placed upon the continuity of the legal system’ (Paczolay 1993a: 561).

Hungarian constitutional change was clearly the German model, with an emphasis on liberalism, the *Rechtsstaat*, and a ‘corporatist concept of technocratic self-administration’, rather than on the ‘Rousseauist principle of popular sovereignty’ (Körösenyi 1999: 146).

In the Hungarian regime change - that lasted roughly from 1988 until 1990 - three moments of constitutional politics can be identified (cf. Küpper 2007).<sup>3</sup> The first of the three moments was the drafting of a constitutional reform by the minister of justice and a number of legal experts in 1988-9 (see Tökés 2002). The second moment regarded the formation of a National Roundtable comprising the communist party, the so-called opposition roundtable (comprising most importantly, but not only, the radically liberal Alliance of Free Democrats and the moderately nationalist Hungarian Democratic Forum),<sup>4</sup> and social-corporatist auxiliaries, the latter often, even if not entirely accurately, seen as supporters of the communist regime (cf. Szikinger 2001: 410-11, fn 5). The Round Table, even if not set up to have constitutional prerogatives, eventually produced a constitutional amendment – Act XXXI - in late 1989. The third moment of constitutional politics can be identified in a number of successive constitutional amendments carried out by the first freely elected parliament in 1990.

The first moment of constitutional politics consisted in the drafting of a new document by the Ministry of Justice, as asked for by the Communist party, in 1988-9. The drafting was an expression of the reformist intentions of the Communist part, ‘a product of the old regime’s enlightened legal experts’ vision of a “law-governed” post-communist state’ (Tökés 2002: 126), seeking through legal reform to remediate a profound lack in legitimacy, to save the viable parts of the old regime while discarding the non-viable ones, and to reform the communist system from within. This can be characterized as an attempt at ‘self-renewal’, in that ‘[t]he crowning achievement of the regime’s internal reform forces was the annotated text of a revised constitution submitted by the Ministry of Justice, first to the Politburo, then to the Central Committee HSWP in January-February 1989’ (Tökés 2002: 135: fn 18). The objective of the revision of the constitution, which was a one-sided revision in the sense that no oppositional forces were involved, was to bring about two changes, i.e., a reform of state institutions (introducing the presidency and a Constitutional Court) and the bringing into conformity of Hungary’s first law with international agreements on human rights (and supplemented by a list of social and economic rights) (Tökés 2002: 117, 121-2)<sup>5</sup>.

The second moment of constitutional politics initiated when the parliamentary debate and ratification of the constitutional revision was interrupted because of the protests of extra-parliamentary oppositional forces gathered in the Oppositional Roundtable (EKA). The withdrawing of the draft from parliamentary debate and the transfer of the debate to the National Roundtable, combining reform forces within and without the communist party, signified the beginning of political pluralism and of regime-opposition negotiations on the revision of the constitution. The National Roundtable could be seen as a kind of ‘ad hoc constituent assembly’ even if its mandate was not purely constitutional (Tökés 2002: 118). The eventual outcome of the National Roundtable that was held from June until September 1989, was an agreement over a ‘self-limiting’, peaceful transition grounded in legality. The

---

<sup>3</sup> This is not to say that a ‘constitutional moment’ - in Ackerman’s sense of brief but intense widespread public engagement - ever occurred in Hungary. Arguably, one could add a fourth moment of constitutional politics that consists in the amendments in 2002 in the light of EU accession. In contrast to the Romanian case, it can, however, be argued that the Hungarian amendments had a rather minimal impact on the overall constitutional structure (cf. Albi 2005).

<sup>4</sup> For a sociological-genealogical analysis of the participating parties, see Bozóki and Karácsony 2002.

<sup>5</sup> Significantly, Tökés characterizes the reforms submitted by the Ministry of Justice as the ‘Reform Socialist’ constitutional model (Tökés 2002: 119).

agreement formed the basis for the so-called Act XXXI, which constituted a profound revision of the old, Communist constitution of 1949. The Act XXXI was anyhow for an important part based on the draft constitution as devised by the Ministry of Justice, making it hard to assess the revisions that can be contributed to the latter and those that resulted from the National Roundtable. In this sense, Tőkés argues that some three quarters of the draft constitution appeared in Act XXXI (2002: 123).

Arguably the most important point of consensus among the parties deliberating in the Roundtable Talks was the emphasis on the rule of law and the necessary legal nature of the transition. Imre Poszgay, spokesman for the communist party, for instance, argued at the time that ‘the Hungarian Socialist Worker’s Party believes that the ideal form of government of government for Hungary at the end of the 20<sup>th</sup> century would be a government based on the rule of law and constitutional guarantees...’ (Bozóki 2002: 316). Gyorgy Szabad, the spokesman of the Opposition Roundtable, emphasised that the main aim was ‘making sure that democratic rights are respected’ and that the opposition was ‘trying at these talks to promote an agreement to be enshrined in law...’ (Bozóki 2002: 316-7).

The third moment of constitutional politics took the form of a series of nine amendments in 1990 that were the outcome of a compromise (the Antall-Tölgyessy Pact) between the Hungarian Democratic Forum, part of the governing coalition, and the Alliance of Free Democrats, the opposition, the two largest parties in the newly and freely elected Hungarian parliament. The amendments led, amongst others, to the complete elimination of any references to socialism (Paczolay 1993b: 24), thereby eliminating an important part of the old regime’s symbolic and ideological baggage from the constitutional text, and the introduction of the so-called constructive no-confidence vote and the abolition of individual parliamentary responsibility of ministers (Arato 2000: 210, 219). It should be noted, however, that the amendments were not the outcome of an all-inclusive, cross-party consensus, but were rather concluded between the two parties mentioned (Tőkés 2002: 130). Throughout the 1990s, various additional amendments were adopted (until 1997, thirteen in total), including a reformulation of the conditions for referenda and civic initiatives (see, for an overview, Küpper 2007: 112; Rácz 1998). Also, attempts were undertaken to adopt an entirely new constitutional text, but the latter ultimately failed to be adopted (Arato 2000; Küpper 2007). Enduring problems of legitimacy and a contention over the role of national identity, history and constitutional traditions have led to the increasing prominence of challenges to the rights-based constitution since the second half of the 1990s, and currently the Hungarian political scene seems a stand-off between political forces endorsing a liberal-democratic, legalist political culture on the one hand, and those that adhere to a nationalist political culture grounded in an ethic of identity, on the other (cf. Bozóki 2008).

### *Poland*

The protracted contention between regime and opposition in Poland - with as most significant historical moment the rise of *Solidarnosc* and the subsequent imposition of martial law in 1981 - ultimately led to the regime change in 1989. The inescapability of reform was one of the principal factors that ultimately led to the famous Roundtable Talks between reformist elements in the communist party and the opposition forces, mostly gathered in *Solidarnosc*. Poland, as one of the most open and least repressive communist regimes in the East-Central European region, had allowed for a substantial opposition to emerge, which also meant that a forceful counter-hegemonic discourse could emerge during the 1980s. At the moment of regime change at the end of the 1980s, this counter-hegemonic discourse comprised two

major alternative visions that had emerged from opposition to communism, and that competed over the establishment of the dominant vision of the post-communist political and economic order that was to retrieve the long-lost independence of Poland: on the one hand, a collectivistic and nationalist vision, and often related emphasis on Christianity as a crucial element of Polish identity, and on the other, a civic-liberal understanding with a strong emphasis on the rule of law (cf. Ekiert & Kubik 1999).

The Polish process of constitution-making started with a number of far-reaching amendments that initially culminated in the adoption of the interim Little Constitution in 1992. Polish constitutional politics proved to be of a protracted, evolutionary kind, continuing until the latter part of the 1990s, and combined in its gradual approach older and modified, with completely new elements, only to adopt a formally new constitution in 1997 (Spiewak 1997). The Polish experience with constitution-making can be characterized as a process that was to a significant extent based on a symbolic conflict over fundamental, substantive values, in particular along the lines of the duality in oppositional discourse sketched above, but ultimately ended in a fairly widely endorsed compromise over the new constitution. Particular in its later phase the constitutional debate was characterized by a highly conflictive dialogue between various political and societal forces over the nature and substance of the constitution, and, in this, the nature of democracy itself. In general, it can be argued that the civic-liberal forces endorsed a prospective and Europeanist outlook of a democratic polity whereas the patriotic-religious side argued for a polity grounded in Polish tradition, for the explicit constitutional codification of Polish national identity, in particular its religious component, and against the ‘negotiated revolution’ of 1989 and its principle of radical self-limitation.

Arguably, three moments of constitutional politics can be identified in the Polish constitution-making process. Constitutional politics essentially started with the Roundtable Talks, held in February-April 1989, even if these talks were of a primarily political rather than a constitutional nature, as the Roundtable did not constitute a constituent assembly (comparable to the subsequent Hungarian Roundtable) (Kurczewski 2003: 165; Wyrzykowski 1999: 7). At the same time, the Roundtable agreement did lead to a fundamental revision of the electoral law and the constitution in the ‘April Amendments’ (Brzezinski 1998: 83-7), adopted by the still communist-dominated parliament, that consisted in an alteration of the electoral system by introducing limited political pluralism, a basic restoration of the separation of powers (e.g., creating a relatively independent judiciary), and the (re-)introduction of the institutions of the Presidency and the Senate (Cole 1998; Jasiewicz 2000). The reformed electoral law provided the framework for the subsequent ‘non-competitive’ (Lewis 1990) or ‘limited’ (Davies 2001) parliamentary elections in which the Solidarity-opposition participated and achieved an unexpected victory. The Roundtable Talks were held between representatives of the communist party and communist-dominated state institutions, representatives of the independent trade union Solidarity (that had been outlawed in 1981), and representatives of the pro-communist trade union OPZZ, while church officials were present as observers (Osiatynski 1996: 33-7). In contrast to the later Romanian experience with a Roundtable (that was significantly held after the regime breakdown), the Polish ‘original’ Roundtable Talks of early 1989 can be seen as a more authentic form of deliberation and negotiation between the incumbent communist party and the opposition embodied by Solidarity, even if it did not enjoy full legitimacy. The Roundtable’s results were a series of amendments of the constitution that paved the way for limited political pluralism.

In December 1989, the newly elected parliament, which included Solidarity, adopted a number of additional, rather radical amendments to the 1952 Communist constitution (the



‘December Amendments’, which had already been agreed upon during the Roundtable Talks (see Brzezinski 1998; Winczorek 1999: 17), while also instituting a Constitutional Committee that was to draft a veritable new constitution. The amendments cancelled the pre-amble of the 1952 Communist constitution, its first two chapters on the communist political and socio-economic system, and reference to the Party’s leading role, allegiance to the Soviet Union, and collective property (Cole 1998). The new article 1 established the attachment to the rule of law of the new Polish Republic, closely following the German understanding of the *Rechtsstaat* (Brzezinski 1998: 88). The parliament that had been elected in the first free elections in Poland since the advent of communism was only partially democratic, in the sense that the Roundtable Talks had led to a compromise that stipulated that 65 % of the seats in the Sejm (the Lower House) was to go to the communist party, while the remaining 35 % was open to oppositional forces as well. The newly instituted Senate (the Upper House) was entirely open to the opposition. The compromise was clearly based on the communist party’s reluctance to allow for full political pluralism, and was to institute a limited pluralism compatible with reform socialism.

The second moment of constitutional politics consisted of the establishment of a constitutional committee and the parliament’s adoption of the so-called Little Constitution.<sup>6</sup> The latter was to counter the constitutional crisis that had resulted from challenges between the government and the President over the latter’s political prerogatives, but was regarded as provisional and partial (Winczorek 1999: 18). The Little Constitution focussed exclusively on issues of the separation of political powers, and did not entail any codification of civic rights, leaving *de facto* the chapter on rights and liberties of the 1952 Communist constitution in force (Brzezinski 1998: 105; cf. Cole 1998). The new interim constitution clarified the relations between the institutions of the presidency and the parliament, requalifying the status of the Sejm as the dominant legislative power,<sup>7</sup> resulting in a compromise between presidential and parliamentary democratic systems (Brzezinski 1998: 98-9). The actual elaboration of a new constitutional draft had been equally subject to conflict and postponement, not in the last place because of the parallelly operating constitutional committees of the Sejm and the Senate. The Constitutional Act of April 1992 was to resolve this by creating the legal framework for the adoption of a new constitution, to be enacted by a single constitutional committee of the combined National Assembly. Importantly, the act allowed for constitutional initiative also outside of the constitutional committee, including social forces, and, in an attempt to enhance the legitimacy of the final constitution, stipulated a national referendum to adopt the new constitution (Winczorek 1999: 18-20).

The third moment of the protracted constitution-making process, which comprised a number of years (1994-97), and which a number of contemporary commentators thought to only end in the early 2000s (Kurczewski 2003), included the whole period of drafting of the new constitution from 1992 onwards, and culminated in the final adoption of a new text in 1997. The Constitutional Commission formally responsible for the draft constitution consisted of the members of parliament in the 1993-1997 period. This parliament was the outcome of the 1993 general elections (which were based on new, highly exclusionary electoral rules) that had brought victory to the post-communist coalition, and included only a small minority of

---

<sup>6</sup> Its official name was ‘Constitutional Act on Mutual Relations between the Legislative and Executive Institutions of the Republic of Poland, and on Local Self-Government’.

<sup>7</sup> As stated in the news account of the *East European Constitutional Review* (1992: 12), ‘the Sejm (the lower house of parliament) ceases to be the supreme office of state and becomes, jointly with the Senate, merely the national legislature’.

centre-right parties (most importantly, the Freedom Union)<sup>8</sup> while excluding Solidarity and rightist and religious forces (comprising one-third of the electorate). Therefore, the legitimacy of the new parliament in its role as constitution-making body was questioned. In reaction, the extra-parliamentary opposition submitted the so-called ‘citizen’s draft’, and demanded to put this draft, together with the constitutional committee’s draft, to the referendal vote.

The constitutional debate, that came to a climax in early 1997, focused for an important part on the preamble, and on its definition (or lack thereof) of Polish democracy. The initial proposal for a preamble by the Constitutional Commission did not contain a reference to the Polish nation (understood as a historical community with distinct traditions, value patterns, and a collective identity based on Catholicism), which added a further substantive reason for a strong critique by the extra-parliamentary right-wing parties and the church. Other points of contention were the lack of an *invocatio Dei*, and the lack of a clear grounding of the rule of law in natural law (cf. Brier 2006; Halas 2005; Zubrzycki 2001). The latter constitutes a particularly interesting point of contention, in that the claim was made that only in this way a true respect for human and minority rights was possible (Halas 2005: 56). It was argued that the Commission’s draft was ultimately an ideological and political draft, elaborated by political parties that did not represent the entire Polish nation. The general critique was then that ‘the preamble was constructed in such a way that it could be valid in any state of the world and in any value system, even in the most relativist one’ (as argued by one participant in the constitutional debate, Brier 2006: 126-7).

The Constitutional Commission countered such arguments by referring to the ideologically pluralist nature of the Polish population, and therefore the impossibility of constructing anything other than a neutral state (this had been a reason to not include a preamble in the constitutional draft in 1993, see Halas 2005: 55). It was argued that the critique on the draft by right-wing forces added up to the endorsement of a ‘confessional state’, detrimental to the establishment of any kind of modern and neutral *Rechtsstaat* (Zubrzycki 2001: 646).

The National Assembly – the Sejm and the Senate – passed the Constitution in April 1997, while a national referendum adopted the final text in May, although with a rather low voter participation (43 %). The 1997 constitution was a clear compromise (Wyrzykowski calls it indeed a ‘constitutional compromise’, 1999) between secularised, civic-liberal forces (as gathered, for instance, in the Freedom Union) and socialist forces (e.g., the post-communist Alliance of the Democratic Left). It also constituted a compromise in that elements of critique by the right and the church were incorporated in the text, especially the preamble, even if the extra-parliamentary right-wing parties continued to criticise the text. The 1997 constitution can be seen as a hybrid, dialectical interpretation of democracy, in that it refers both to a rights-based and to an identity-based understanding of the political community (I will elaborate on this in the textual analysis below).

### *Romania*

The Romanian regime change had a character decisively different from the ‘negotiated revolutions’ in Hungary and Poland (cf. Arato 2000: 159). Whereas in the latter countries reforms had been introduced since at least the 1980s, and, even if with difficulty, a dialogue had emerged between the communist party and oppositional forces (the most conspicuous case is obviously the role of *Solidarnosc*), in Romania virtually all forms of political or economic reformism had been suppressed by the Ceaușescu-regime, while hardly any

---

<sup>8</sup> In all, the parliamentary ‘constitutional coalition’ consisted of the Democratic Left Alliance, the Polish Peasant Party, the Labour Union, and the Freedom Union (cf. Wineczorek 1999; Roszkowski and Kofman 2006).

oppositional forces had managed to organize in the decade that preceded the collapse of the communist regime. The ostensibly profound rupture – in terms of a violent revolutionary change - with the preceding communist regime (which culminated in the execution of the Ceaușescu on 25 December 1989), consisted in reality in deep continuity, not only in terms of the continuity of holders of political power (i.e., a political coalition dominated by the ex-communist *nomenklatura*), but also in terms of political outlook, and, as I will elaborate below, the perception of the political community. It can be convincingly argued that the specific type of regime change had a significant impact on the development of the constitutional state and democratic political form that developed in its wake (see Gabanyi 1998: 205; Elster 1998).

As argued by Iulia Huiu, three moments of constitutional politics can be identified in the post-communist history of Romania, the first moment in December 1989 and the beginning of 1990 with the effective regime change, the second moment with the debate on and adoption of the new constitution in 1991, and the third with the revision of the constitution in 2003 (Huiu 2003). The political transformation started in December 1989 with popular uprisings in, among others, the cities of Timișoara and Bucharest. When the Ceaușescu-regime fell, the moment of vacuum in political power was quickly seized by the self-declared transitional political council of the National Salvation Front (NSF<sup>9</sup>). This council absorbed the political sovereignty of the preceding regime, and instituted the so-called Provisional Council of National Unity (PCNU), which some observers have understood as a Romanian version of roundtable talks (see Gabanyi 1998; Tudor & Gavrilescu 2002). The PCNU was to produce an electoral law as well as a political party statute. Its make-up was, however, hardly conducive to the dialogical and compromise-based logic of a political roundtable, not in the least because it was dominated by the post-communist forces that had taken over political power. The president of both the NSF and the PCNU was Ion Iliescu, a figure who would dominate the first decade of Romanian political transformation, in particular in the position of president of Romania, while membership of the Council consisted for almost for 50 % of NSF members (112 out of 255 members) (Tudor & Gavrilescu 2002: 98). The PCNU even went beyond its official mandate as a preparatory institution, i.e., establishing the procedural conditions under which the form and substance of the future polity was to be chosen, by anticipating the codification of a number of aspects related to the future political form in the Electoral Law of March 1990 (Gabanyi 1998: 213). The ‘acts of a constitutional nature’ adopted early on by the NSF and later by the PCNU regarded foundational issues, which were later included in the constitution, such as a republican form of government (in contrast to calls for a restorative return to the monarchic constitution of 1923), political pluralism, and the inviolability of human (individual) rights (Muraru and Tănăsescu 2005: 99). Not all of these foundational principles were, however, of an uncontested nature.

In this, the first constitutional moment was dominated by the post-communist NSF and their particular vision of an ‘original democracy’ (based on the idea of a national consensus, see Pasti 1997), in the elaboration of the political, procedural framework that was to inform the drafting and adoption of the new constitution. The post-communist NSF defended above all a vision of the national unitary state, which was informed by a ‘discourse of limited change’ (Blokker 2004), and built on traditions of Romanian particularism as well as the national communism of the second half of the communist period. This nationalist discourse served in a

---

<sup>9</sup> The name in itself seems to indicate a predilection for the values of the Romanian majority and national unity that were conspicuous in Romanian national communism. The name National Salvation Front was first attributed to an oppositional movement, associated with the six prominent party members that in March 1989 wrote an open, critical letter to Ceaușescu, the so-called ‘letter of six’.

strategic sense to defeat the voices of change that emerged from the side of the Hungarian minority (which had played an important role in the anti-communist protests) as well as from that of the democratic opposition in formation, both of which endorsed a Western-oriented, civic and rights-based discourse.

The second moment of constitutional politics began with the election of the constituent assembly. In May 1990, the constituent assembly was elected (as a proto-parliament), one of whose main tasks it was to draft a new constitution. The constituent assembly was equally dominated by members of the NSF, i.e., of the 521 members of the assembly, 355 were part of the NSF. The Constitutional Commission that was responsible for the writing up of the draft text consisted of 28 members, of which 13 belonged to the NSF, while Antonie Iorgovan, the head of the drafting team, was formally independent but had a communist past and was considered close to the NSF. The debate over the new constitution consisted of a political cycle involving: the publication of the draft constitution, a debate and vote over the constitution's articles, the re-editing of the constitution by the commission on the basis of the vote, the receipt and selection of amendments by the commission, the debate and vote over the amendments, and a final vote over the full constitution (Preda 2002: 398). In spite of this elaborate process, the constitution as drafted by the constitutional commission remained largely unchanged. Of the 1019 amendments only 68 were taken into consideration for debate, and in general the constitutional debate can be seen as having involved the affirmation of the majority's constitutional view, rather than a genuine pluralist dialogue (Lungu 2002; Preda 2002: 399-400).

In the constitutional debate held between February and December 1990, the post-communist majority showed a clear predilection towards what I have called an 'ethic of identity' or what Lungu has identified as a form of 'constitutional nationalism' (Lungu 2002). The role of the constitution was interpreted as primarily expressing a recovered, homogeneous Romanian identity, and the fact that the Romanian state 'belongs to a single ethnic, and that it is a national and unitary state' (as stated by a participant to the talks, cited in Preda 2002: 401). The symbolical dimension of the constitution received explicit and ample attention in the debate, in particular with regard to its role as vehicle of Romanian traditions and culture, in this sense taking the overhand over the functional dimension of explicating rights and institutional prerogatives and limitations. While the constitution embodied the demands of the 1989 revolution, these demands were particularly interpreted as the right to national self-determination of the Romanian majority.

This also became clear in debates between the political majority and representatives of ethnic minorities, in particular the Hungarian minority. The post-communist party as well as a party from the radical right dismissed any proposal for a multi-ethnic state. The constitution was interpreted as the expression of the traditions and sovereignty of a homogeneous cultural entity, and its principal source and subject the Romanian people. One of the main issues of contestation was, therefore, the formulation of the first article of the constitution, in which the unity, national, and indivisible nature of the Romanian state is codified. Any expression of a more multi-cultural and divided form of sovereignty was dismissed by the political parties belonging to the Romanian majority. As expressed by Antonie Iorgovan: '... now when we are fighting to create a state of law and when we are strongly promoting the principle of equal rights, to argue that the minorities are still a problem is a shameless exaggeration' (cited in: Lungu 2002: 404).

The final constitutional text was adopted by the parliament on 21 November 1991, and popularly approved of by means of a national referendum on 8 December of the same year. The adoption of the new constitution meant the definite and entire abrogation of the communist constitution of 1965 (Muraru and Tănăsescu 2005: 105), and its formulation had been inspired, among others, by the French Constitution of 1958 (Gabanyi 1998: 215-6). The main principles codified in the text included the institutionalization of a constitutional, democratic and social state, a republican form of government and a bicameral parliamentary system, and political pluralism (cf. Muraru and Tănăsescu 2005; Verheijen 1995).

The domination of constitutional politics by NSF did not mean, therefore, that standard references to human rights and constitutionalism were not present in the final text (as will be shown in the textual analysis below), but rather that these principles alluding to internationally diffused standards were in tension with, and sometimes clearly re-interpreted through, a constitutional-nationalist lens. As argued by the then president Ion Iliescu in a radio address to the Romanian people prior to the national referendum on the constitution: 'Establishing the republic as the form of government, the Constitution proclaims the sovereignty of the people and sanctions the popular legislative initiative. It affirms the supremacy of the law, and the fact that no one can be outside the law. It sanctions political pluralism, private property, and a market economy. It proclaims and guarantees – in an institutionalised framework – fundamental rights in accordance with the Universal Declaration of Human Rights'. A few sentences before, he had, however, stated '... Romania's Constitution represents the fundamental charter for the existence of the Romanian state, it is Romania's *identity document*. This Constitution contains principles and provisions at the level of the most advanced constitutions in the world. It defines the essence of the Romanian state as a state of law, a democratic, social, *national* state, a sovereign and independent and a *unitary* and *indivisible* state' (emphasis added; BBC, 11/12/1991).

The constitutional text that had been devised mostly according to the preferences of the post-communists of the NSF was not amended until the early 2000s. Even if the anti-communist, pro-democratic coalition – gathered in the Democratic Convention - gained in strength during the 1990s, and in November 1996 won the parliamentary and presidential elections, the 1991 constitution was not revised until 2003. By then, the political situation had changed considerably in that the contention between the Romanian majority and the Hungarian minority had for a good part resided, and explicit forms of nationalism with it. The political agreement on revising the constitution was widely shared by the political parties, including both the post-communist-turned-social-democrats and the centre-right parties,<sup>10</sup> and was deemed necessary on two general grounds.

On the one hand, the adoption of the *acquis communautaire* and imminent membership of the European Union called for modifications of the 1991 constitution (in particular in terms of the relation between national, European, and international law, as well as regarding the status of minorities) (Duculescu and Adam 2006). On the other hand, the 1991 constitution was deemed to contain a number of ambiguities that needed to be resolved in order to clarify relations between political institutions, strengthen the rule of law, and accelerate the legislative and judicial process, as well as strengthen the institutional and constitutional guarantees of fundamental liberties and rights (cf. Duculescu and Adam 2006; Huiu 2003; Muraru and Tănăsescu 2005). To this end, a constitutional commission with the task to draft

---

<sup>10</sup> The only party not endorsing constitutional revision was the right-wing extremist party *Partidul România Mare* (PRM).

amendments for a revised constitution was established in 2002 on the basis of a political agreement between the parties in parliament.

The commission contained a significant part of members of the primary governing party at the time, the Social Democratic Party (PSD), i.e., the former post-communist FSN,<sup>11</sup> but the revision debate, public discussion and process of constitutional politics as a whole can be seen as significantly more consensus-based and participatory than the process of constitution-making in 1991. One significant example of this is the development of a Constitutional Forum, in order to include various components of civil society and of singular citizens into the constitutional debate, on initiative of the parliament and in collaboration with the civil association *Asociației Pro Democrația*.<sup>12</sup>

The constitutional revision entailed in a number of important respects a shift away from the relatively nationalist and centralistic outlook of the 1991 Constitution, towards a more pronounced emphasis on the ethic of rights, in particular visible in a clear reference to the separation of powers (art. 1) and the emphasis on the equality of citizens, access of citizens to public institutions, the right to a fair legal process, as well as the right to the free access to culture and the right of minorities to participate in local government (Muraru and Tănăsescu 2005: 109).

In the debate, there was a relatively clear-cut consensus among the participants for the need for amendment, and thus the importance of constitutional politics as a means of updating and revising the constitution. Adrian Nastase, the prime minister and member of the PSD, argued, for instance, ‘The Romanian Constitution, approved by national referendum on 8 December 1991, was the expression of the victory of the Romanian revolution of 1989... No constitution is eternal and therefore unchangeable... The revision of the constitution and of legislation in general has become a practice of nearly all democratic states today, corresponding to the exigencies of the *Rechtsstaat*. The supremacy of the constitutional norms in the frame of the legal system of a state imposes the necessity that this corresponds with historical-social evolution, in themselves consolidating the capacity to innovate and modernize a society’. Only the PRM did not share this consensus and argued from the perspective of foundationalism: ‘The constitution represents a juridical bible of a country. And, in this quality, it is the principal guarantee of democracy, but not by itself, but through respect and stability’ (member for the PRM in the constitutional debate). The speaker went on: ‘Our problem is not to revise the constitution, but to respect it’.<sup>13</sup>

## **A Comparative Analysis of Constitutional Texts**

In the wake of the revolutions of 1989, the processes of ‘constitution-making’ or ‘constitution-amending’ were of primary importance for the establishment of an imaginary and political break with the past. Communist regimes had been only formally constitutional in that constitutions had been adopted, but these were reduced to a democratic façade for voluntaristic political practices and an abuse of rights. At most, these first laws served the purpose of a statement of intent of the party, and a summary of ideal-typical behaviour for the ‘citizens’. The constitutionalization of politics had therefore been one of the most important

---

<sup>11</sup> 10 of the 25 members of the commission were PSD members (Huiu 2003: 7, fn 5).

<sup>12</sup> See for the final amendments proposed by the *Forumul Constituțional*, ‘Forumul Constituțional. Raport final’, available at: [http://www.forumconstitucional.ro/raport\\_final.pdf](http://www.forumconstitucional.ro/raport_final.pdf).

<sup>13</sup> *Dezbateri Parlamentare* 18 June 2003, at: <http://www.cdep.ro/pls/steno/steno.home?idl=1>.

demands of the dissidents in the regime change. The actual implementation of the constitution was deemed essential for the irreversible democratisation of the political system. In this, the emphasis was clearly on the protective nature of constitutions and the function of the constitution as a limiting, negative one, in its arranging for – by means of a ‘set of principles, manners, and institutional arrangements’ - the limitation of government or majority rule in order to prevent the state from subjecting individuals (Sajo 1999: xiv). The constitution in this view stipulates the inviolability of a set of rights enjoyed by individuals as well as the idea of separation of powers as fundamental principles that prevent political power from being abused and turned against society in general or minorities in particular.

In this sense, some have argued that the revolutions of 1989 were predominantly ‘rights revolutions’ that (re-)installed the rule of law (see Priban and Sadurski 2006: 202). This post-1989 emphasis on the institutionalisation of a constitutional state, grounded in an ethic of rights, was further visible in a diffused attention for institutional devices that prevent the influence of democratic politics on constitutions, in particular in the form of constitutional courts. It can be argued that the ‘rights revolutions’ occurred in a historical moment in which ‘rights foundationalism’, i.e., the idea that constitutions enshrine a set of universal and non-negotiable rights, and the juridification of constitutions, i.e., the idea that constitutions should not be the object of everyday politics, were on the rise (cf. Bellamy and Castiglione 1997).

But even if the legal, rights-based dimension of a constitution undeniably forms its primary *raison d’être*, other dimensions of equal importance should not be lost sight of. These include a participatory dimension (pertaining to the enabling components of constitutions), and a symbolic, integrative dimension invoking a substantive or symbolic rationality of constitutionalism. In partial contrast to the idea of ‘rights revolutions’, some observers have indeed argued that the distinguishing factors of constitutions in Central and Eastern Europe are not so much their emphasis on a liberal, rights-based vision of constitutionalism, but rather that they consist of a ‘substantive’ type of constitutions. This substantive aspect is seen as including teleological aims in terms of economic and social rights (Preuss 1995), a strong ‘souverainist’ dimension (a strong safeguard of the sovereignty of the new state) (Albi 2005), and/or forms of ‘constitutional nationalism’ or ‘communitarian constitutionalism’ in which the safeguard of cultural identity plays a primary role (Hayden 1992; Preuss 1995).

While in general these elements can be found to important extents in some (if not all) of the constitutions - distinguishing the region as a whole - it can at the same time be argued that the constitutional documents in the region show significant variety in terms of their interpretation of the rule of law, their codification of collective identities (*demos* - *ethnos*) and the relation to external and internal heterogeneity, the codification of forms of participation and local government, and of social and economic rights. I argue below that the constitutional documents of three countries (Hungary, Poland, and Romania) reveal the codification of different (combinations of) democratic political cultures and perceptions of democracy and constitutionalism.

### *Hungary*

Despite the ‘negotiated revolution’ in Hungary in the spirit of self-limitation and ‘new evolutionism’ (cf. Arato 2000: 173; Tőkés 2002),<sup>14</sup> and the legal continuity in the process of

---

<sup>14</sup> The Hungarian Constitutional Court articulated the change *within* rather than *of* the system as a ‘revolution under the rule of law’, which entailed so much as the creation of a new political order by means of extensive amendment and reinterpretation of a previously non-respected legal order (cf. Dupre 2003: 30). Thus, the Court argued that ‘one cannot create a rule of law state with methods other than the rule of law’ (Arato 2000: 183).

‘constitution-making through amendments’ or ‘permanent constitution-making’ (Halmai 1998: 189), it can be argued that the current Hungarian constitution (which ultimately consists of a profoundly revised version of the 1949 constitution) has developed into one of the more liberal and civic documents - with a mostly prospective rather than historical outlook (Priban 2007) - that has been adopted in the ECE-region. As argued above, the constitutional text that emerged in the early 1990s reflects the dominant political culture of that time, which perceived democracy as a regime grounded in an ethic of rights, and the constitution as an expression of a prospective, legalist, and Europeanist perception of the Hungarian democratic polity. Elements of a more explicit symbolic, integrative dimension and references to the past were mostly removed in the early 1990s, while no other references came in their place.

On the one hand, the ‘constitutional revolution’ in Hungary, grounded in a tradition of legal revolutions, can be understood in a formalistic sense as portraying a fundamental continuity with the preceding legal order, but, on the other, in a political-sociological sense, the profound changes enacted through amendments from 1989 onwards ultimately added up to a clear break with the past (Paczolay 1993b: 28-29). In the words of Istvan Szikinger:

Hungary has a formally old, substantially new constitution which was the result of the amendments passed by the outgoing communist parliament following the decisions made at the Roundtable Talks. The 1989 amendment (Act No. XXXI) changed not only an overwhelming majority of positive rules in the basic law, but also its spirit. The party-state regime enshrined in the 1949 communist Constitution was thus transformed into one structured along the principles of division of power and the liberal values of human rights and public power (Szikinger 2001: 407).

A political-sociological interpretation of the legal changes in post-communist East-Central Europe is indeed more compatible with the argument that is made here, which holds that the changes of 1989 constituted a fundamentally different political regime which cannot be disconnected from the emergence of a set of fundamentally different political cultures, in themselves based on political ethics that were not formally part of the preceding communist regime. Of primary importance in terms of constitutional change is evidently the ethic of rights that refers to the equality of individuals before the law, a set of fundamental rights, and proceduralism or the rule of law. In the Hungarian process of constitution-making, the old constitution was given a completely new meaning by discarding of the references to socialist values and prioritizing rights in an absolute sense (cf. Paczolay 1993b: 24). This completely changed the substantive value and status of the constitution.

In this respect, the Hungarian constitutional text contains a number of very clear statements regarding the rule of law and the constitutionalist nature of the new, post-communist Hungarian state (cf. Dupré 2003: 28-38). The preamble articulates the originally transitory nature of the document:

In order to facilitate a peaceful political transition to a *constitutional state*, establish a multi-party system, parliamentary democracy and a social market economy, the Parliament of the Republic of Hungary hereby establishes the following text as the Constitution of the Republic of Hungary, until the country's new Constitution is adopted (emphasis added).

The first, and therefore prominent, articles of the constitution indeed ground the rule of law in a constitutional state and popular sovereignty:

The Republic of Hungary is an independent and democratic constitutional state. (article 2 (1))

The Constitution not only refers to the conventional foundation of the democratic state on the recognition, and respect and protection for fundamental rights (art. 8 (1)), and the equality of



all individuals before the law (art. 57), but also explicitly argues against any legal limitation of fundamental rights (art. 8 (2)):

In the Republic of Hungary the law contains rules on fundamental rights and obligations, but must not impose any limitations on the essential contents and meaning of fundamental rights. (article 8 (2))

Thus, in the light of the democratic ethics that underpin conceptions of democracy, the Hungarian constitution clearly invokes and gives priority to the ethic of rights, as the main objective of the state lies in its negative function of guaranteeing the protection of individuals' subjective rights. This is so, even if the fundamental personal, and civil and political rights chapter has remained in its original position at the end of the constitution (i.e., chapter XII, as in the original 1949 constitution), rather than having been put in a more prominent position at the beginning, as in most constitutions (Dupré 2003: 33).

The emphasis on the rule of law is further underpinned by the institution of the Constitutional Court (chapter IV), which was established during the first constitutional moment in 1989 and constituted one of the constitutional novelties in the post-communist constitution. The Constitutional Court has an exceptionally wide mandate (Körösenyi 1999: 164), and clearly has interpreted its role as the active safeguarding of constitutional principles and the Hungarian *Rechtsstaat*.

A further, relatively original, feature of the Hungarian constitution is the fundamental democratic guarantee that political power belongs to no one (except for to the people at large), and is grounded as such in the rule of law. The first chapter of the constitution, regarding general provisions, can be said to convey an anti-totalitarian spirit in the original reference to the avoidance of any domination of the political system by a singular political force:

The parties may not exercise public power directly. Accordingly, no party may control or direct any State organ. In order to ensure the effective separation of the parties from State power, the law determines the social and public offices that cannot be filled by any member or officer of any party. (article 3 (3))

The emphasis in the Hungarian constitution on the ethic of rights is further confirmed by an almost total absence of any reference to the ethic of identity. Indeed, the Hungarian constitution can be distinguished from other post-communist constitutions (for instance, from the Polish and Romanian constitutions) by the absence of any invocation of the nation, national history, or cultural traditions (either in the preamble or the substantial constitutional text itself). In this sense, the spirit of the constitution is mostly prospective and based on a notion of civic or state nation (Pribean 2007; cf. Majtényi 2005). As article 68 (1) with regard to the balance between the Hungarian nation and national minorities states:

The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State. (article 68 (1))

At the same time, though, the constitution does invoke a (singular) reference to the cultural nation made up exclusively of ethnic Hungarians, thus invoking the ethic of identity, in the article related to the status of Hungarians living outside of the Hungarian state (a similar article can be found in the Polish and Romanian constitutions):

The Republic of Hungary bears a sense of responsibility for the fate of Hungarians living outside its borders and shall promote and foster their relations with Hungary. (article 6 (3))

This invocation has been understood as invoking a logic of citizenship as based on *ius sanguinis* and therefore contradicting the overall civic nature of the Hungarian constitution. It can be related to the political culture of political forces on the centre-right that see democracy as based on an ethic of identity, which understands the Hungarian nation as a cultural nation. In particular in concomitance with the so-called Status Law of 2002, this article has invoked the negative reactions of both the Romanian and Slovakian governments as extending Hungarian jurisdiction beyond its formal borders (Prihan 2007: 87-8). And while the constitution does not formally stipulate the criteria of Hungarian citizenship, the statutory law that arranges for citizenship (1993) is based on the principle of *ius sanguinis* as enshrined in the ethnic logic of article 6 (3) (Prihan 2007: 87).

In terms of the ethic of participation, the constitution is, on the one hand, relatively restrictive regarding civic participation in the change of constitutional rules, while, on the other hand, it provides for a number of instruments regarding direct democracy. The latter set of rules was constitutionalised in 1997 through a constitutional amendment and can be regarded as at least partially the outcome of initiatives ultimately related to the democratization movement of the 1980s (Prihan and Sadurski 2006: 218). The Hungarian constitution stipulates the conventional rights of political participation (passive and active political rights) (articles 70 (1 and 4), while residing non-citizens can participate in local elections and referenda (art. 70:3):

All adult Hungarian citizens residing in the territory of the Republic of Hungary have the right to be elected and the right to vote in Parliamentary elections, local government elections or minority self-government elections, provided that they are present in the country on the day of the election or referendum, and furthermore to participate in national or local referenda or popular initiatives. (article 70 (1))

In terms of participation in constitutional amendment, the Hungarian constitution is relatively restrictive. The rules for amendment are laid down in article 24(3), which applies the ‘two-thirds’ rule to constitutional amendment, meaning that only two thirds of the parliament can introduce a constitutional change. The constitutional right to the holding of referenda on citizens’ initiative does not apply to the amendment of constitutional rules. Even though the constitution does not explicate this, this became clear in a ruling of the Hungarian Constitutional Court (Arato 2000: 154; Deszo and Bragyova 2001: 75-6).

Regarding non-constitutional, legislative issues, the constitution contains a detailed elaboration of the conditions for holding national referenda in articles 28B-E. Referenda can be initiated by popular initiative (a minimum of 100,000 voting citizens for facultative referenda, 200,000 for compulsory ones) as well as by the president or members of parliament. Regarding local issues and local government, Hungarian citizens have the right to participate through local elections and local referenda (art. 44(1)).

The Hungarian Constitution further invokes a social, distributive dimension. Beginning with its preamble, it states that the transition to a constitutional state is also about the ‘conversion to a socially alert market economy’. In itself, such an invocation can be interpreted, following Wojciech Sadurski’s argument, as a ‘constitutional anchor for social welfare programmes’, even in the absence of widely constitutionally codified socio-economic rights (Sadurski 2002: 7). The Hungarian Constitution seems to acknowledge both public and private initiative in the economy in its reference to the fact that ‘Hungary has a market economy in which public and private property are to receive equal consideration and protection under the law’ (art. 9). In terms of catalogues of socio-economic rights, it can be argued that the Hungarian Constitution contains a relatively modest catalogue (cf. Sadurski 2002: 16). It contains a

reference to the ‘right to social security’ in article 70/E, to the right ‘to the highest possible level of physical and mental health’, which shall be implemented ‘through arrangements for labour safety, with health institutions and medical care’ in article 70/D (1-2), while there is no reference to free health care, to ‘free education’ up to primary level education in article 70/F, to the ‘right to work’ in article 70/B(1), and the ‘right to equal pay for equal work’ in article 70/B(2). With regard to the latter, it can be argued that in terms of socio-economic rights related to working conditions, the Hungarian Constitution contains a ‘very broad list’ (Sadurski 2002: 15).

### *Poland*

The ‘belated’ adoption of the Polish Constitution in 1997, the constitution that replaced the provisional, so-called Little Constitution of 1992, provides an extraordinary example of the codification of (at least) two quite clearly defined political cultures or systems of democratic meaning-giving in one constitutional document. In particular the preamble to the Constitution can be seen as expressing two different interpretations of democracy and nationhood, entailing both the ‘ethic of rights’ and the ‘ethic of identity’, and has as such been a relatively frequent object of interpretations of the symbolic side of the Polish constitution (see Brier 2006; Halas 2005; Priban 2007; Zubrzycki 2001).

The Polish Constitution of 1997 reflects two distinct and relative coherent visions of democracy and the constitutional order (Zubrzycki 2001: 636). One perception of democracy that has been clearly codified in the Constitution is based on a civic, secular, and Europeanist vision of the Polish constitutional order, while the contrasting vision is relatively more complex in that it is based on an ethno-cultural and nationalist vision, and thus includes ideas of a historically rooted and culturally homogeneous Polish nation while simultaneously invoking a strongly Catholic definition of the Polish nation.

In particular, the preamble reveals a struggle or ‘cultural war’ between the two main visions of democracy in Poland. This becomes clear in the hybrid or dual nature of many of the provisions of the preamble. The first sentence seems to unequivocally refer to an identitarian understanding of a Polish cultural community that is connected by its past and future:

Having regard for the existence and future of our Homeland...

The following words seem to confirm an ethic of identity by means of the formulation ‘We, the Polish Nation’. This confirmation is, however, immediately amended, and actually connected by a hyphen, by the statement ‘all citizens of the Republic’. In this, the second part clearly invokes a political, rights-based, rather than a pre-political, culturally-based understanding of the individual members of the Polish democratic polity. Such formulations of compromise many a time reflect concessions made by the constitution-making majority to the extra-parliamentary forces of the centre-right.

The dual nature of the preamble consists therefore in its rights-based and value-based nature, or, in other words, in the attempt to define the political community simultaneously in civic, rights-based and universal terms, and in terms of a particular Polish community with strong roots in the past (including references to the struggle for survival of the nation at the times of absence of the Polish state) as well as in Christianity (cf. Zubrzycki 2001). Whereas the first can be detected in the invocation of civic values and a secular understanding of the Polish polity, the second, value-based ‘spirit’ comes to the fore in the articulation of a cultural, historical, and religious understanding. In some instances, the constitution clearly reflects a

compromise between secular and cultural-nationalist ideas, as in the following sentence that was suggested by Tadeusz Mazowiecki:

Both those who believe in God as the source of truth, justice, good and beauty, As well as those not sharing such faith but respecting those universal values as arising from other sources...

Similar statements of a dual nature can be found throughout the preamble:

for our culture rooted in the Christian heritage of the Nation and in universal human values...

Recognizing our responsibility before God or our own consciences...

A number of statements have a clear invocation of a past-oriented and cross-generational attachment to the Polish nation:

Poland, Beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice...

Recalling the best traditions of the First and the Second Republic...

Obliged to bequeath to future generations all that is valuable from our over one thousand years' heritage...

Other statements are clearly evoking a singular ethic of civic equality and of universal rights:

Equal in rights and obligations towards the common good...

Aware of the need for cooperation with all countries for the good of the Human Family...

Mindful of the bitter experiences of the times when fundamental freedoms and human rights were violated in our Homeland...

Desiring to guarantee the rights of the citizens for all time, and to ensure diligence and efficiency in the work of public bodies,

Hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of subsidiarity in the strengthening the powers of citizens and their communities. We call upon all those who will apply this Constitution for the good of the Third Republic to do so paying respect to the inherent dignity of the person, his or her right to freedom, the obligation of solidarity with others, and respect for these principles as the unshakeable foundation of the Republic of Poland.

The two democratic discourses that emerge from the preamble are in many instances clearly in tension, and invoke different ethics of democracy in their propositions of what the finalité of the democratic community should be. While an ethno-cultural definition of the nation does not necessarily need to go against a civic, liberal understanding of democracy (as in a 'liberal nationalist' perception, see Auer 2004), i.e., when both religious and universal, civic values are acknowledged, the ethno-cultural definition is sometimes formulated in a mutually exclusive sense, thereby obstructing an inclusive reading of the nation:

Bound in community with our compatriots dispersed throughout the world...

The exclusivist reading of a national identity is further reinforced by the above-mentioned references to 'ancestors', their 'great sacrifice', and 'future generations' that invoke a closed community with common ethno-cultural characteristics that are stable over time (cf. Zubrzycki 2001). Such exclusivist renderings of an ethno-cultural understanding of the Polish nation are further legally emphasized in some of the articles of the actual constitutional text. Thus, article 3 argues against forms of divided sovereignty:

The Republic of Poland shall be a unitary State (Article 3).

In this, it a priori excludes any form of local, territorial autonomy of a federal type. And, in a similar way as the Hungarian and Romanian constitutions, the Polish constitution refers to the necessity of safeguarding Polish cultural heritage also in the extra-national context:

The Republic of Poland shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage (Article 6 (2)).

The communitarian, identity-based dimension of the constitutional text is clearly in some tension with the predominant rights-based nature of the 1997 constitution. The latter becomes evident from the relatively few articles in the main text that invoke a symbolic, identity-based dimension (art. 3, 6(2), 34, and 82) and the strong grounding of the Polish republic in law. The rights-based nature becomes clear from article 2 of Chapter I, entitled ‘The Republic’, which clearly founds the Polish republic as a ‘democratic state ruled by law’ (as confirmed in the articles 31(1,2), 37, and 38), while article 7 grounds the functioning of institutions in law, and article 8 establishes the constitution as the supreme law. Article 10 explicitly stipulates the division of power between the legislative, executive, and judiciary powers, while article 25 arranges for the state-church relations: the state ‘shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression with public life.’

The articles 30 and 31 provide the basis for the ultimate sources of the constitutional law, even if article 31(3) seems formulated in less strong words than in its equivalent in the Hungarian text (article 8(2): ‘the law... must not impose any limitations on the essential contents and meaning of fundamental rights’). It should be noted that the reference to human dignity is based on a compromise with those (religious) social forces that sought to include a reference to natural law in the Polish constitution, and by some has taken to mean an invocation of an extra-legal ‘jus-naturalistic conception of human rights and liberties’ (see Sadurski 2003: 1):

The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities (Article 30).

Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights (Article 31(3)).

The Polish constitution invokes an ethic of self-rule or participation already at the beginning, in article 4(2): ‘The Nation shall exercise such power *directly* or through their representatives’ (emphasis added), as well as in the preamble, which argues that the basic law of the state is grounded in ‘the principle of subsidiarity in the strengthening the powers of citizens and their communities’. The constitution of 1997 codifies the citizens’ right to direct participation through referenda in constitutional matters, national referenda regarding ordinary legislation, and referenda on the local level (cf. Gebethner 2001). In contrast to the Hungarian constitution (and the Constitutional Court ruling on the issue), the Polish constitution grants the possibility of a popular referendum on constitutional amendments, even if such a referendum is not obligatory, can only be initiated by the parliament or the president, and only in case of an amendment dealing with particular chapters:

If a bill to amend the Constitution relates to the provisions Chapters I, II or XII, the subjects specified in Paragraph (1) above may require, within 45 days of the adoption of the bill by the Senate, the holding of a confirmatory referendum. (Article 235 (6)).

In addition, citizens have the possibility to appeal to the Constitutional Court in case they presume that their constitutional rights and freedoms have been infringed by statutory law or decrees (art. 79; cf. Arato 2000: 225). In the case of ordinary legislation, article 125(1) stipulates that '[a] nationwide referendum may be held in respect of matters of particular importance to the State', but only on initiative of the parliament or the president (art. 125(2)). A citizens' initiative is allowed by a law on referenda of 1995, but is subject to the approval of the Sejm (Gebethner 2001: 134). It is a political decision what matters are considered of 'particular importance to the State'. In addition, and rather significantly from the point of view of participation, Polish citizens have the right to legislative initiative according to article 118(2):

The right to introduce legislation shall also belong to a group of at least 100,000 citizens having the right to vote in elections to the House of Representatives (Sejm). The procedure in such matter shall be specified by statute.

In terms of local participation, the constitution gives local communities the possibility to engage in referenda: 'Members of a self-governing community may decide, by means of a referendum, matters concerning their community, including the dismissal of an organ of local self-government established by direct election. The principles of and procedures for conducting a local referendum shall be specified by statute' (art. 170). In the light of the importance of the notions of subsidiarity and local self-government in the Polish context, partially the result of the influence of dissidence on the shape of the post-communist regime (see Poplawska 2002; Sadurski and Priban 2006), it can be argued that direct participation on the local level is a relatively important dimension in the definition of democracy of the Polish constitution. At the same time, it should be acknowledged that the references to self-rule and direct democracy mostly have an 'auxiliary' function to representative democracy, rather than a free-standing significance (cf. Gebethner 2001: 138).

With regard to the ethic of distributive justice, the Polish Constitution invokes in article 20 the notion of a 'social market economy':

A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland.

In article 33(2), the right to social security as well as to equal compensation is referred to:

Men and women shall have equal rights, in particular, regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honours and decorations.

In article 67, the 'right to social security' is guaranteed for those unable to work or in material need, while the scope and form of this right is to be specified by statute. The right to health care is stipulated in article 68, while 'special health care' is to be provided to 'children, pregnant women, handicapped people and persons of advanced age'. The Polish Constitution further stipulates free education in public schools and up to university level in article 70, while article 20 invokes the safeguarding of working conditions in that '[w]ork shall be

protected by the Republic of Poland. The State shall exercise supervision over the conditions of work’.

### *Romania*

The post-communist Romanian Constitution was adopted by the Constituent Assembly (*Adunarea Constituantă*) on 21 November 1991, and approved by a national referendum on 8 December that same year. The document is without a pre-amble and codifies all the essential civil and political rights of citizens of the Romanian state as well as a distinct national identity. The 1991 Constitution formed a clear break with the totalitarian past by instituting the rule of law. At the same time, the 1991 Constitution can be seen as constituting continuity in its codification of the Romanian ethno-cultural identity and the nation as the foundation of the Romanian state. Because of this strong emphasis on the nation by the constitution-makers, I will argue that the 1991 Constitution reflects a predominance of a political culture based on an ‘ethic of identity’, that is, the idea that the Romanian state is primarily to protect and further the interests of a rather narrowly defined ethno-cultural group, the Romanian nation, in (partial) detriment to the interests of various national minorities as well as in tension with the equally codified rule of law and ‘ethic of rights’.

As Cristian Preda has argued, in somewhat exaggerated terms, ‘[d]ans les faits, tout comme dans les discours, la transition roumaine est plus liée au passé de la nation qu’au présent de la démocratie’ (Preda 2002: 390). The Romanian Constitution has, therefore, also been understood as reflecting a form of ‘constitutional nationalism’ (see Lungu 2002). Constitutional nationalism refers to the ‘tendency of treating the dominant ethnies in a privileged manner, that is formalized in the legal and constitutional framework of a society’ (Lungu 2002: 398). The idea of constitutional nationalism can be related to that of ‘communitarian constitutionalism’, which considers individuals as members of a particular community, their goals and values shaped by such a community, and the constitution an expression of such shared goals and values (cf. Preuss 1995).

The Romanian Constitution of 1991, even if only explicitly invoking the notion of ‘nation’ twice (see Preda 2002), contains numerous references to a national community. The latter is regarded the inheritor of the state and its sovereignty forms the foundation of the new post-communist, democratic state. The first article, art. 1(1), articulates the idea of such a national community in an outspoken way:

Romania is a sovereign, independent, unitary, and indivisible National State.

The article stipulates the sovereignty and independence of the post-communist Romanian state, which is defined as a ‘national’ state representing the Romanian nation. In principle, the constitution grounds state sovereignty in the ‘majority ethno-nation’ and not in individual citizens regardless of their ethnic origin. Such a definition of the nation as an ethno-cultural understanding of the nation, grounded in shared traditions and history, can be reconstructed by means of various relevant articles:

National sovereignty resides with the Romanian people (Article 2(1))

No foreign populations may be displaced or colonized on the territory of the Romanian State (Article 2 (3))

The territory of Romania is inalienable (Article 3 (1))

The State foundation is laid on the unity of the Romanian people (Article 4(1))

Any defamation of the country and the nation... shall be prohibited by law (Article 30 (7))

As argued, among others, by Renate Weber, these articles express a unitary, majoritarian vision of the Romanian nation, and its principal ethical outlook was not shared by various national minorities, who had reservations about consequentially reinforced tendencies towards assimilation by the national majority (see Weber 2001: 233-4).<sup>15</sup> Article 50, stipulating ‘faithfulness towards the country’, can also be found in many other constitutions, but in the Romanian constitution, where there is a diffused conflation of the notions ‘people’, ‘nation’, and ‘country’ (see Preda 2002: 393; Lungu 2002: 402), the reference to the country seems not necessarily as neutral as might be the case in other constitutions.

Other articles are more ambiguous in that they invoke both an ‘ethic of rights’ and an ‘ethic of identity’ (cf. Lungu 2002). For instance, article 6(1) states that ‘The State recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural and religious identity’, articulating a civic idea of individual, cultural rights. But, in contrast, article 6(2) immediately compromises such cultural rights by stating that such rights need to ‘conform to the principles of equality and non-discrimination in relation to the other Romanian citizens’. Cultural rights of minorities can, therefore, be overridden by a reference to the endangered equality of other citizens, notably the majority.<sup>16</sup> Similarly, while article 16(1) codifies the equality of citizens before the law and public authorities, article 16(3) stipulates that ‘Access to a public office or dignity, civil or military, is granted to persons whose citizenship is only and exclusively Romanian, and whose domicile is in Romania’.

The 2003 amendment of the constitution modified, but also perpetuated, a number of the articles relevant to constitutional nationalism and the ethic of identity. The much debated article 1 that states that ‘the Romanian state is a national, sovereign state, and independent, unitary, and indivisible’ was subjected once again to critique by the Hungarian minority. Once again, as in 1991, the critique of the national character of the Romanian state as an ‘obsolete characteristic’ was dismissed in the constitutional debate, and the reference has remained as before (Constantinescu *et al.* 2004: 4).

However, at the same time, a number of concessions to minority rights and participation have been included in the amended constitutional text. The articles 120(2) and 128(2) contain a significant extension of the usage of the mother tongue of minorities in interaction with public institutions (the public administration and judiciary institutions). In addition, article 33 on the right to access to culture has been introduced. This right refers to access to national culture, and the promotion of Romanian culture in the world (33(3)), and could in that sense be seen as emphasising an ethic of identity, but this right is also extended to national minorities, stipulating an individual right to access to culture, and therefore expanding the available set of rights (Constantinescu *et al.* 2004: 70-1).

---

<sup>15</sup> Weber further underlines this identitarian perception of the Romanian nation – as historically and ethno-culturally bound - by pointing to the statement of six experts of the Drafting Committee that invokes a vision of a ‘common ethnic origin, language, culture, religion, psychological characteristics, life, traditions, desires, and above all the history and aspiration to last on its territory’ (cited in Weber 2001: 235; see also Preda 2002 for the constitutional debate).

<sup>16</sup> As mentioned earlier, the majoritarian bias in the 1991 constitution was deemed unsatisfactory by some of the ethno-cultural groups, in particular the Hungarian minority in Transylvania (cf. Durandin 2000: 73-104), and contestation of the essentially unitary definition of the state informed enduring constitutional conflict in the 1990s and early 2000s between those political parties that claim to rule in the name of the Romanian majority and the political party of the Hungarian minority.



In partial contrast to the communitarian ‘ethic of identity’ that is found in the articles portrayed above, the 1991 constitution extensively codified the ‘ethic of rights’ in Title II regarding ‘Fundamental rights, freedoms and duties’. Similarly, various articles in Title I employ the concept of citizenship rather than that of member of the nation: ‘Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin’ (article 4 (2)). Clear-cut invocations of the ethic of rights - in the form codifying a *Rechtsstaat*, and individual civil and political rights – therefore constituting a strong counterweight to the predominant, exclusionary ethic of identity, can be found, among others, in the following articles that codify the foundational principles of the Romanian political community, the equality and rights of its citizens, and the acknowledgement of international standards:

Romania is a democratic and social State governed by the rule of law, in which human dignity, the citizens’ rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values and shall be guaranteed. (Article 1 (3))

Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin. (Article 4 (2))

All citizens enjoy the rights and freedoms granted to them by the Constitution and other laws, and have the duties laid down thereby. (Article 15 (1))

Constitutional provisions concerning the citizens’ rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to. (Article 20 (1))

In all, what seems to emerge in the 1991 constitution is, as argued by Barbu (1999: 143), a dual conception of citizenship, i.e., a pre-political one that is based on ethnic identity and serves as the basis for popular sovereignty, and a second one, based on a political conception of citizenship in which all those residing on the territory enjoy distinct rights and have distinct obligations.

As suggested above, the ethno-national dimension to citizenship in the 1991 constitution attenuated importantly with the extension of minority rights in the 2003 amendment as well as with the right to access to culture. The ethic of rights can be detected in a number of other modifications as well. One instance of this is the inclusion of the right of citizens with dual citizenship to hold public office (art. 16(3)), whereas before public office was only open to those with exclusive Romanian citizenship. A further instance is the inclusion of the political rights that come with European citizenship (for instance, the right for European citizens to vote and stand in local elections) (16(4)). The most clear-cut case of an explicit codification of the ethic of rights and the constitutional state can, however, be found in article 1(4), in which the implicit reference to the division of powers has been modified into an explicit adherence to this principle.

The explicit codification of forms of direct democracy, pertaining to the ethic of participation or self-rule, are relatively limited in the Romanian Constitution, which includes a general and a number of specific references, while the execution is guarded by the Constitutional Court (art. 144g), but leaves the specific regulation of referenda to organic law (art. 72(3c)).

National sovereignty resides with the Romanian people, who shall exercise it through its representative bodies and by referendum. (Article 2 (1))

The codification of participatory rights is relatively limited in the Romanian Constitution, referring mostly to the conventional electoral rights (both passive and active rights) (articles 34(1), 35(1), 35(2)) (in the 2003 Constitution: 36(1), 37(1), 37(2)), whose formulation is virtually the same in all post-communist constitutions (see Sadurski 2003: 38). With regard to the passive electoral right – the right to be elected for public office – the 1991 constitution stipulated of article 16(3) according to which access to public office is only open to persons with Romanian citizenship and domicile, but in the 2003 amendment access to public office has been broadened to those with dual citizenship.

Regarding constitutional amendment, the Romanian constitution is formally more participatory than the Hungarian one, and more far-going than the Polish possibility of a referendum, in that a final ratification of constitutional revisions by the public is obligatory:

The revision shall be final after approval by a referendum held within 30 days from the date of passing the draft or proposal of revision. (Article 147 (3), 2003: 151(3))

Revisions are arranged for in article 146 (2003: 150) which argues that they can be initiated by ‘the President of Romania on the proposal of the Government, by at least one quarter of the number of Deputies or Senators, as well as by at least 500,000 citizens with the right to vote’. In contrast to the Hungarian and Polish cases, the Romanian constitution thus provides for civic initiatives at constitutional revision. At the same time, though, the amendment procedure as such is relatively rigid (according to Arato, ‘[i]ts revision rule is the most difficult in the region’, 2000: 163), thereby substantially reducing possibilities for effective public participation in constitutional politics. Not only are specific geographical-distributional criteria stipulated for the civic initiative (art. 146(2), 2003: 150(2)), and is it difficult to succeed in having the revision adopted by the various constitutional actors involved and to arrive at final ratification, but the substance of revision is also limited. Article 148(1) stipulates that ‘[t]he provisions of this Constitution with regard to the national, independent, unitary and indivisible character of the Romanian State, the republican form of government, territorial integrity, independence of justice, political pluralism and official language shall not be subject to revision’, and ‘no revision shall be made if it results in the suppression of the citizens’ fundamental rights and freedoms, or of the safeguards thereof’ (148(2), 2003: 152(2)). In addition, the ‘Constitution shall not be revised during a state of siege or emergency, or at wartime’ (148(3), 2003: 152(3)).

The constitution further allows for national referenda on ‘national problems’ on initiative of the president (art. 90): ‘The President of Romania may, after consultation with Parliament, ask the people of Romania to express, by referendum, their will on matters of national interest’. A referendum is also to be held in the case when the President is suspended by Parliament (as has occurred in May, 2007): ‘If the proposal of suspension from office has been approved, a referendum shall be held within 30 days, in order to remove the President from office’ (art. 95 (3)). Additionally, citizens are provided with the instrument of ‘legislative initiative’, similar to the Polish case:

A legislative initiative shall lie, as the case may be, with the Government, Deputies, Senators, or a number of at least 100,000 citizens entitled to vote. The citizens who exercise their right to a legislative initiative must belong to at least one quarter of the country's counties, while, in each of those counties or the Municipality of Bucharest, at least 5,000 signatures should be registered in support of such initiative (74(1))

A legislative initiative of the citizens may not touch on matters concerning taxation, international affairs, amnesty or pardon. (74(2))

In contrast to the Hungarian and Polish constitutions, in the Romanian constitution no referenda are provided for on the local level (this is arranged for in organic law, as stipulated in art. 73(3d)).

The Romanian Constitution, in a similar way as the Hungarian and Polish Constitutions, refers to the ethic of distributive justice by invoking a social market economy in article 1(3): 'Romania is a democratic and social State'. In article 43 (2003: 47), it binds the state to 'take measures of economic development and social protection, of a nature to ensure a decent living for its citizens' and provides a right to social security as well as to health care, comprising 'pensions, paid maternity leave, medical care in public health establishments, unemployment benefits, and other forms of social assistance, as provided by law'. Public education is to be provided on a free basis up until university level (article 32(1-4)). The right to work 'cannot be restricted', according to article 38 (2003: 41), while all employees have the 'right to social protection of labour', including 'safety and hygiene of work, working conditions for women and the young, the setting up of a minimum wage per economy'.

## **Conclusions**

The argument in this paper has been that while the trajectories of democratization, and in particular of constitutionalization, of the new member states (exemplified by Hungary, Poland, and Romania) can be said to consist of a convergence towards constitutional states, the rule of law, and democratic pluralism, at the same time a diversification of perceptions of democracy and democratic political cultures can be observed in the post-1989 processes of constitution-making and the actual constitutional texts adopted.

The constitution-making trajectories of Hungary and Poland portray a number of striking similarities, in particular in terms of the importance of negotiation between old regime forces and opposition, the weight of the latter in the construction of democracy and the drawing up of foundational constitutional documents, and the incremental, protracted approach towards constitution-making in both countries (cf. Arato 2000: 199). The case of Romania provides a clear contrast here, in that its revolution in 1989 was less rights-based and negotiation-oriented, much more one-sided in the predominance of post-communist forces in the construction of democracy and the formulation of the constitutional text, and the constitution-making process relatively brief, only to be reopened in 2003.

The parallel democratization trajectories of Hungary and Poland have not involved, however, the equal predominance of distinct democratic discourses, at least if one focuses on the context of the constitution-making process. Constitutional politics in Hungary and Poland in the early 1990s took a decisively different turn, in that in Hungary there was a widespread consensus on legal continuity and the rule of law in constructing democracy. Conflict over constitutional issues seemed to focus on the political legitimacy of constituent actors and the political problem of majority rule (Arato 2000), although in the debates over a new constitution in the mid-1990s conflicts regarding the historical foundations of the Hungarian state became visible (Fowler 2004: 66). However, in terms of constitutional politics, only in the later 1990s questions of national identity and relations to the past became more prominent and increasingly challenged the dominant rights-based discourse (Scheppelle 2000). In contrast, in the Polish case a profound, substantive conflict between the proponents of rights-based visions of democracy and proponents of value-based, communitarian understandings of democracy emerged already early on. Here, one could perhaps detect more similarities with

Romanian debates, where there was a similar importance, although in this case a clear predominance, of value-based, communitarian understandings of democracy, which led to an enduring tension with national minorities, a tension not completely resolved in the 2003 amendment.

The constitutional documents reveal such diverse perceptions of democracy in their different emphasis on distinct democratic ethics (see for an overview, annex 1). In the Hungarian case there is a clear predominance of the codification of fundamental rights, the rule of law, and a constitutional state, while an identitarian or symbolic dimension and value-based understanding of democracy is conspicuously absent from the text. This does not mean, however, that such value-based understandings do not play any role in Hungary, as becomes clear from article 6(3) and the Hungarian citizenship regime, and the increasing prominence of the idea of a 'counterconstitution' since the late 1990s (Scheppele 2000). The predominant understanding of the democracy in Hungary is then based on the ethic of rights, but paralleled by a residual, potentially conflictual perception based on an ethic of identity. In the case of Poland, the constitutional text displays a dual, potentially tensional, understanding of democracy, one based on a clear invocation of an ethic of rights, a neutral state, and the rule of law, the other grounding democracy in an ethic of identity, i.e., a specific community, the Polish nation, with a specific set of values, notably Catholicism. In the Romanian constitution of 1991, the predominant ethic was the ethic of identity, visible in its codification of a national, indivisible, unitary state, 'owned' by the Romanian majority. Such an ethic of identity was, however, importantly attenuated by a reinforcement of the ethic of rights in the 2003 amendment.

*Annex 1 - Democratic Ethics in the Constitutions of Hungary, Poland, and Romania*

	<b>Hungary (2003)</b>	<b>Poland (1997)</b>	<b>Romania (2003)</b>
<b>Preamble</b>			-
<i>ethic of rights</i>	constitutional state	universal values equality human rights	-
<i>ethic of identity</i>	-	homeland God, Christianity sacrifice one thousand years heritage community of compatriots	-
<i>ethic of participation</i>	-	social dialogue subsidiarity	-
<i>ethic of distributive justice</i>	social market economy		-
<b>Main text</b>			
<i>ethic of rights</i>	democratic constitutional state (2(1)) fundamental rights (8 1)) equality before the law (57) no limitation of fundamental rights (8(2)) sovereign power shared by national minorities (68(1)) exceptional mandate constitutional court (chapter IV)	democratic state ruled by law (2) institutions function within limits of law (7) supreme law (8) international law (9) separation of powers (10) state neutrality (25(2)) separation state-church (25(3)) human dignity (30) limitations (31(3))	rule of law (1(3)) division of powers (1(4)) equality of citizens (4(2)) citizens' rights and freedoms, duties (15(1)) international standards (20(1)) right to use mother tongue minorities (120(2), 128(2)) no limitation of fundamental rights (148(2))
<i>ethic of identity</i>	responsibility for the fate of Hungarians living outside (6(3))	unitary state (3) assistance Poles living abroad (6(2)) <i>ius sanguinis</i> (34(1)) loyalty to the Republic, concern for the common good (82)	national, unitary, indivisible character of state (1(1)) sovereignty of Romanian people (2(1)) no displacement of foreign people or colonization on Romanian territory (3(1)) minority rights to conform to majority

			rights (6(2)) unity Romanian people (13) prohibition defamation (30(7)) right to free access to culture and promotion culture world (33(3)) faithfulness (50)
<i>ethic of participation</i>	passive and active rights (70(1)), 70(4)) local elections (70(3)) constitutional politics, 2/3 rule (24(3)) national referenda (28B-E) local elections and referenda (44(1))	representation or direct participation (4(2)) appeal to Constitutional Court (79(1)) possibility referendum on constitutional amendment (235(6)) national referenda (125(1)) legislative initiative (118(2)) local referenda (170)	representation and referenda (2(1)) passive and active rights (36(1), 37(1), 37(2)) obligatory referendum on constitutional amendment (151(3)) initiative amendment, including by citizens (150) limitations substance amendment (152(1)) national referenda (90) referendum on suspension President (95(3)) legislative initiative (74(1,2))
<i>ethic of distributive justice</i>	public property (9) right to social security (70E) physical and mental health (70D) free education (70F) right to work (70B(1)) right to equal to pay for equal work (70B(2))	social market economy, safeguarding working conditions (20) right to social security, equal compensation (33(2)) (67) right to health care (68) free education (70)	social State (1(3)) economic development and social protection, right to social security, health care (47) free education (32(1- 4) right to work, right to social protection of labour (41)

**Note**

The author acknowledges a Marie Curie Intra-European Fellowship, held at the University of Sussex.

## References

- Ackerman, B. (1992), *The future of liberal revolution*, New Haven: Yale University Press.
- Albi, A. (2005), *EU enlargement and the constitutions of Central and Eastern Europe*, New York: Cambridge University Press.
- Arato, A. (2000), *Civil society, constitution, and legitimacy*, Lanham, Md.: Rowman & Littlefield.
- Auer, S. (2004), *Liberal Nationalism in Central Europe*, London/New York: RoutledgeCurzon.
- Barbu, D. (1999), *Republica absentă*, Bucharest: Editura Nemira.
- Bellamy, R. and S. Castiglione (1997), 'Constitutionalism and Democracy – Political Theory and the American Constitution' , in: *British Journal of Political Science*, 27, pp. 595-618.
- Blokker, P. (2004), 'Modernity and its varieties. A historical sociological analysis of the Romanian modern experience', unpublished Ph.D. thesis, Florence: European University Institute.
- Blokker, P. (2008), 'Multiple democracies: political cultures and democratic variety in post-enlargement Europe', in: *Contemporary Politics*, 14:2, pp. 161-178.
- Bozóki, A. and G. Karácsony (2002), 'The Making of a Political Elite: Participants in the Hungarian Roundtable Talks of 1989', in: A. Bozóki (ed.), *The Roundtable Talks of 1989. The Genesis of Hungarian Democracy. Analysis and Documents*, Budapest: CEUPress, pp. 71- 106.
- Bozóki, A. (1992), 'Political Transition and Constitutional Change in Hungary', in: A. Bozóki, A. Kőrösenyi & G. Schöpflin (eds), *Post-Communist Transition. Emerging Pluralism in Hungary*, London: Pinter Publishers/New York: St. Martin's Press: pp. 60-71.
- Bozóki, A. (2008), 'Consolidation or Second Revolution? The Emergence of the New Right in Hungary', in: *Journal of Communist Studies and Transition Politics*, 24:2, pp. 191 — 231.
- Brier, R. (2006), 'The Constitutional Politics of Meaning. Culture and Post-Communist Institution-Building in Poland's Third Republic', PhD-thesis, Europa-Universität Viadrina Frankfurt.
- Brzezinski, M. (1998), *The struggle for constitutionalism in Poland*, New York: St. Martin's Press.
- Constitution of Hungary (2003), available at: [http://www.servat.unibe.ch/icl/hu00000\\_.html](http://www.servat.unibe.ch/icl/hu00000_.html).
- Constitution of Poland (1997), available at: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.
- Constitution of Romania (1991), available at: <http://www.cdep.ro/pls/dic/site.page?id=256&idl=2>.
- Constitution of Romania (2003), available at: <http://www.cdep.ro/pls/dic/site.page?id=339&idl=2>.

- Cole, D.H. (1998), 'Poland's 1997 Constitution in its Historical Context', in: *Saint Louis-Warsaw Transatlantic Law Journal*, pp. 1-43.
- Constantinescu, M., A. Iorgovan, Ioan Muraru, and E.S. Tănăsescu (2004), *Constituția României revizuită. Comentarii și explicații*, Bucharest: Editura All Beck.
- Davies, N. (2001), *Heart of Europe. The Past in Poland's Present*, Oxford University Press.
- Deszo, M. and A. Bragyova (2001), 'Hungary', in: A. Auer and M. Buetzer (eds), *Direct Democracy: The Eastern and Central European Experience*, Ashgate, pp. 63-92.
- Duculescu, V. and R. Adam (2006), 'Romania', in: Alfred E. Kellermann et al. (eds.), *The impact of EU accession on the legal orders of new EU member states and (pre-)candidate countries: hopes and fears*, The Hague: TMC Asser, pp. 113-42.
- Dupré, C. (2003), *Importing the Law in Post-Communist Transitions. The Hungarian Constitutional Court and the Right to Human Dignity*, Oxford/Portland Oregon: Hart Publishing.
- Durandin, C. (2000), *Roumanie. Un piège?*, Saint-Claude-de-Diray: Éditions Hesse.
- Elster, Jon (1998), 'Constitutional Politics in Eastern Europe', in: Jon Elster, Claus Offe, and Ulrich K. Preuss (1998), *Institutional design in post-communist societies: rebuilding the ship at sea*, Cambridge, U.K./New York, NY, USA: Cambridge University Press, pp. 63-108.
- Fowler, B. (2004), 'Nation, State, Europe and national revival in Hungarian party politics: the case of the millennial commemorations', in: *Europe-Asia Studies*, 56:1, pp. 57 - 83.
- Gabanyi, A.U. (1998), *Systemwechsel in Rumänien. Von der Revolution zur Transformation*, München: R. Oldenbourg Verlag.
- Gebethner, S. (2001), 'Poland', in: A. Auer and M. Buetzer (eds), *Direct Democracy: The Eastern and Central European Experience*, Ashgate, pp. 129-140.
- Halas, E. (2005), 'Constructing the Identity of a Nation-State. Symbolic Conflict over the Preamble to the Constitution of the Third Republic of Poland', in: *Polish Sociological Review*, 1(149), pp. 49-67.
- Halmai, G. (1998), 'The Reform of Constitutional Law in Hungary After the Transition', in: *Journal of Constitutional Law in Eastern and Central Europe*, pp. 153-67.
- Hayden, R. (1992), 'Constitutional Nationalism in the Formerly Yugoslav Republics', in: *Slavic Review*, 51(4), pp. 654-73.
- Huiu, Iulia (2003), 'Revizuirea Constitutiei. Radiografie parlamentara', in: *Sfera Politicii*, 104, pp. 5-8.
- Jasiewicz, K. (2000), 'Dead Ends and New Beginnings: The Quest for a Procedural Republic in Poland', in: *Communist and Post-Communist Studies*, 33:1, pp. 101-122.
- Körösenyi, A. (1999), *Government and Politics in Hungary*, Budapest: CEUPress.
- Ekiert, G. and J. Kubik (1999), *Rebellious Civil Society. Popular Protest and Democratic Consolidation in Poland, 1989-1993*, The University of Michigan Press.
- Küpper, H. (2007), *Die ungarische Verfassung nach zwei Jahrzehnten des Übergangs*, Frankfurt am Main: Peter Lang.



- Kurczewski, J. (2003), 'Parliament and the Political Class in the Constitutional Reconstruction of Poland', in: *International Sociology*, 18:1, pp. 162-180.
- Lewis, P. (1990), 'Non-Competitive Elections and Regime Change: Poland 1989', in: *Parliamentary Affairs*, 43:1, pp. 90-107.
- Lungu, I. (2002), 'Romanian Constitutional Nationalism', in: *Polish Sociological Review*, 4(140), pp. 397-412.
- Majtényi, B. (2005), 'Special Minority Rights and Interpretations of the Nation in the Hungarian Constitution', in: *Regio – Minorities, Politics, Society*, 1, pp. 4-20.
- Muraru, I. and E.S. Tănăsescu (2005), *Drept constituțional și instituții politice*, ediția 12, vol. I, Bucharest: Editura All Beck.
- Osiatynski, W. (1996), 'The Roundtable Talks in Poland', in: J. Elster (ed.), *The Roundtable Talks and the Breakdown of Communism*, Chicago: University of Chicago Press, pp. 21-68.
- Paczolay, P. (1993a), 'Constitutional Transition and Legal Continuity', in: *Connecticut Journal of International Law*, 8, pp. 559-574.
- — (1993b), 'The new Hungarian constitutional state: Challenges and perspectives', in: A.E.D. Howard (ed.), *Constitution making in Eastern Europe*, Washington: Woodrow Wilson Center Press, pp. 21-55.
- Pasti, V. (1997), *The Challenges of Transition. Romania in Transition*, Boulder: East European Monographs.
- Preda, C. (2002), 'La Nation dans la Constitution', in: *Nation and National Ideology. Past, Present, and Prospects*, Bucharest: New Europe College, pp. 390-445.
- Preuss, U. (1995), 'Patterns of Constitutional Evolution and Change in Eastern Europe', in: J.J. Hesse and N. Johnson (eds.), *Constitutional Policy and Change in Europe*, Oxford University Press, pp. 95-128.
- Přibáň, J. and W. Sadurski (2006), 'The Role of Political Rights in the Democratization of Central and Eastern Europe', in: W. Sadurski (ed.), *Political Rights under Stress in 21<sup>st</sup> Century Europe*, Oxford: Oxford University Press, pp. 196-238.
- Přibáň, Jiri (2007), *Legal Symbolism. On Law, Time and European Identity*, Aldershot, UK/Burlington, USA: Ashgate.
- Poplawska, E. (2002), 'The New Constitutional Principle of Subsidiarity and "the Diminishing State" in Poland', in: *Journal of Constitutional law in Eastern and Central Europe*, 9(1), pp. 51-95.
- Rácz, A. (1998), 'Major Phases of Constitutional Development', in: A. Harmathy (ed.), *Introduction to Hungarian Law*, Kluwer Law International, pp. 1-11.
- Renwick, A. (2006), 'Why Hungary and Poland differed in 1989: The role of medium-term frames in explaining the outcomes of democratic transition', in: *Democratization*, 13:1, pp. 36 — 57.
- Ripp, Z. (2002), 'Unity and Division: The Opposition Roundtable and Its Relationship to the Communist Party', in: A. Bozóki (ed.), *The Roundtable Talks of 1989. The Genesis of Hungarian Democracy. Analysis and Documents*, Budapest: CEUPress, pp. 3-40.

- Roszkowski, W. and J. Kofman (2006), 'Poland', in: T. Rakowska-Harmstone and P. Dutkiewicz (eds), *New Europe. The Impact of the First Decade. Vol. 2 Variations on the Pattern*, Warsaw: Institute of Political Studies, pp. 371-428.
- Sadurski, W. (2002), 'Constitutional courts in the process of articulating constitutional rights in the Post-Communist States of Central and Eastern Europe: part I: social and economic rights', EUI Working Paper Law, 2002/14, Florence: European University Institute.
- Sadurski, W. (2003), 'Constitutional courts in the process of articulating constitutional rights in the post-Communist states of Central and Eastern Europe: part II: personal, civil and political rights and liberties', EUI Working Paper Law, 2003/1, Florence: European University Institute.
- Sadurski, W. and J. Priban (2006), 'The Role of Political Rights in the Democratization of Central and Eastern Europe', in: W. Sadurski (ed.), *Political Rights Under Stress in 21st Century Europe*, Oxford University Press, pp. 196-238.
- Sajó, A. (1996), 'The Roundtable Talks in Hungary', in: J. Elster (ed.), *The roundtable talks and the breakdown of communism*, Chicago: Chicago University Press, pp. 69-98.
- Sajó, A. (1999), *Limiting government: an introduction to constitutionalism*, Budapest: Central European University Press.
- Scheppele, K. (2000), 'The Constitutional Basis of Hungarian Conservatism', in: *East European Constitutional Review*, 9:4, available at: <http://www.law.nyu.edu/eecr/index.htm>.
- Skizinger, I. (2001), 'Hungary's Pliable Constitution', in: R. Elgie and J. Zielonka (ed.), *Democratic Consolidation in Eastern Europe Volume 2: Constitutions and Constitution-Building: A Comparative Perspective*, Oxford University Press, pp. 406-31.
- Spiewak, P. (1997), 'The Battle for the Constitution', in: *East European Constitutional Review*, 6:2 & 3, available at: <http://www.law.nyu.edu/eecr/volumes.html>.
- Tökés, R.L. (2002), 'Institution Building in Hungary: Analytical Issues and Constitutional Models, 1989-90', in: A. Bozóki (ed.), *The Roundtable Talks of 1989. The Genesis of Hungarian Democracy. Analysis and Documents*, Budapest: CEUPress, pp. 107-136.
- Tudor, M. and A. Gavrilescu (2002), *Democrația la pachet. Elita politică în România postcomunistă*, Bucharest: Compania.
- Verheijen, T. (1995), *Constitutional Pillars for New Democracies. The Cases of Bulgaria and Romania*, Leiden: DSWO Press.
- Weber, R. (2001), 'Constitutionalism as a Vehicle for Democratic Consolidation in Romania', in: R. Elgie and J. Zielonka (ed.), *Democratic Consolidation in Eastern Europe Volume 2: Constitutions and Constitution-Building: A Comparative Perspective*, Oxford University Press, pp. 212-43.
- Winczorek, P. (1999), 'Axiological Foundations of the Polish Constitution', in: M. Wyrzykowski, *Constitutional Essays*, Warsaw, pp. 59-71.
- Wyrzykowski, M. (1999), 'Introductory Note to the 1997 Constitution of the Republic of Poland', in: M. Wyrzykowski, *Constitutional Essays*, Warsaw, pp. 7-13.

- Zubrzycki, G. (2001) ‘ “We, the Polish Nation”: Ethnic and civic visions of nationhood in Post-Communist constitutional debates’, in: *Theory and Society*, 30, pp. 629-68.

## Working Papers in Contemporary European Studies

- |     |  |                |
|-----|--|----------------|
| 1.  | Vesna Bojicic and David Dyker<br><i>Sanctions on Serbia: Sledgehammer or Scalpel</i>   | June 1993      |
| 2.  | Gunther Burghardt<br><i>The Future for a European Foreign and Security Policy</i>  | August 1993    |
| 3.  | Xiudian Dai, Alan Cawson, Peter Holmes<br><i>Competition, Collaboration &amp; Public Policy: A Case Study of the European HDTV Strategy</i>  | February 1994  |
| 4.  | Colin Crouch<br><i>The Future of Unemployment in Western Europe? Reconciling Demands for Flexibility, Quality and Security</i>   | February 1994  |
| 5.  | John Edmonds<br><i>Industrial Relations - Will the European Community Change Everything?</i>   | February 1994  |
| 6.  | Olli Rehn<br><i>The European Community and the Challenge of a Wider Europe</i>   | July 1994      |
| 7.  | Ulrich Sedelmeier<br><i>The EU's Association Policy towards Central Eastern Europe: Political and Economic Rationales in Conflict</i>  | October 1994   |
| 8.  | Mary Kaldor<br><i>Rethinking British Defence Policy and Its Economic Implications</i>  | February 1995  |
| 9.  | Alasdair Young<br><i>Ideas, Interests and Institutions: The Politics of Liberalisation in the EC's Road Haulage Industry</i>   | December 1994  |
| 10. | Keith Richardson<br><i>Competitiveness in Europe: Cooperation or Conflict?</i>   | December 1994  |
| 11. | Mike Hobday<br><i>The Technological Competence of European Semiconductor Producers</i>   | June 1995      |
| 12. | Graham Avery<br><i>The Commission's Perspective on the Enlargement Negotiations</i>  | July 1995      |
| 13. | Gerda Falkner<br><i>The Maastricht Protocol on Social Policy: Theory and Practice</i>  | September 1995 |
| 14. | Vesna Bojicic, Mary Kaldor, Ivan Vejvoda<br><i>Post-War Reconstruction in the Balkans</i>  | November 1995  |
| 15. | Alasdair Smith, Peter Holmes, Ulrich Sedelmeier, Edward Smith, Helen Wallace, Alasdair Young<br><i>The European Union and Central and Eastern Europe: Pre-Accession Strategies</i> | March 1996     |
| 16. | Helen Wallace<br><i>From an Island off the North-West Coast of Europe</i>  | March 1996     |
| 17. | Indira Konjhodzic<br><i>Democratic Consolidation of the Political System in Finland, 1945-1970: Potential Model for the New States of Central and Eastern Europe?</i>              | June 1996      |

18. Antje Wiener and Vince Della Sala December 1996  
*Constitution Making and Citizenship Practice - Bridging the Democracy Gap in the EU?*
19. Helen Wallace and Alasdair Young December 1996  
*Balancing Public and Private Interests Under Duress*
20. S. Ran Kim April 1997  
*Evolution of Governance & the Growth Dynamics of the Korean Semiconductor Industry*
21. Tibor Navracsics June 1997  
*A Missing Debate?: Hungary and the European Union*
22. Peter Holmes with Jeremy Kempton September 1997  
*Study on the Economic and Industrial Aspects of Anti-Dumping Policy*
23. Helen Wallace January 1998  
*Coming to Terms with a Larger Europe: Options for Economic Integration*
24. Mike Hobday, Alan Cawson and S Ran Kim January 1998  
*The Pacific Asian Electronics Industries: Technology Governance and Implications for Europe*
25. Iain Begg August 1998  
*Structural Fund Reform in the Light of Enlargement*  
CENTRE ON EUROPEAN POLITICAL ECONOMY Working Paper No. 1
26. Mick Dunford and Adrian Smith August 1998  
*Trajectories of Change in Europe's Regions: Cohesion, Divergence and Regional Performance*  
CENTRE ON EUROPEAN POLITICAL ECONOMY Working Paper No. 2
27. Ray Hudson August 1998  
*What Makes Economically Successful Regions in Europe Successful? Implications for Transferring Success from West to East*  
CENTRE ON EUROPEAN POLITICAL ECONOMY Working Paper No. 3
28. Adam Swain August 1998  
*Institutions and Regional Development: Evidence from Hungary and Ukraine*  
CENTRE ON EUROPEAN POLITICAL ECONOMY Working Paper No. 4
29. Alasdair Young October 1998  
*Interpretation and 'Soft Integration' in the Adaptation of the European Community's Foreign Economic Policy*  
CENTRE ON EUROPEAN POLITICAL ECONOMY Working Paper No. 5
30. Rilka Dragneva March 1999  
*Corporate Governance Through Privatisation: Does Design Matter?*
31. Christopher Preston and Arkadiusz Michonski March 1999  
*Negotiating Regulatory Alignment in Central Europe: The Case of the Poland EU European Conformity Assessment Agreement*
32. Jeremy Kempton, Peter Holmes, Cliff Stevenson September 1999  
*Globalisation of Anti-Dumping and the EU*  
CENTRE ON EUROPEAN POLITICAL ECONOMY Working Paper No. 6

33. Alan Mayhew March 2000  
*Financial and Budgetary Implications of the Accession of Central and East European Countries to the European Union.*
34. Aleks Szczerbiak May 2000  
*Public Opinion and Eastward Enlargement - Explaining Declining Support for EU Membership in Poland*
35. Keith Richardson September 2000  
*Big Business and the European Agenda*
36. Aleks Szczerbiak and Paul Taggart October 2000  
*Opposing Europe: Party Systems and Opposition to the Union, the Euro and Europeanisation*  
**OPPOSING EUROPE RESEARCH NETWORK Working Paper No. 1**
37. Alasdair Young, Peter Holmes and Jim Rollo November 2000  
*The European Trade Agenda After Seattle*
38. Sławomir Tokarski and Alan Mayhew December 2000  
*Impact Assessment and European Integration Policy*
39. Alan Mayhew December 2000  
*Enlargement of the European Union: an Analysis of the Negotiations with the Central and Eastern European Candidate Countries*
40. Pierre Jacquet and Jean Pisani-Ferry January 2001  
*Economic Policy Co-ordination in the Eurozone: What has been achieved? What should be done?*
41. Joseph F. Francois and Machiel Rombout February 2001  
*Trade Effects From The Integration Of The Central And East European Countries Into The European Union*
42. Peter Holmes and Alasdair Young February 2001  
*Emerging Regulatory Challenges to the EU's External Economic Relations*
43. Michael Johnson March 2001  
*EU Enlargement and Commercial Policy: Enlargement and the Making of Commercial Policy*
44. Witold Orłowski and Alan Mayhew May 2001  
*The Impact of EU Accession on Enterprise, Adaptation and Institutional Development in the Countries of Central and Eastern Europe*
45. Adam Lazowski May 2001  
*Adaptation of the Polish legal system to European Union law: Selected aspects*
46. Paul Taggart and Aleks Szczerbiak May 2001  
*Parties, Positions and Europe: Euroscepticism in the EU Candidate States of Central and Eastern Europe*  
**OPPOSING EUROPE RESEARCH NETWORK Working Paper No. 2**
47. Paul Webb and Justin Fisher May 2001  
*Professionalizing the Millbank Tendency: the Political Sociology of New Labour's Employees*
48. Aleks Szczerbiak June 2001  
*Europe as a Re-aligning Issue in Polish Politics?: Evidence from*

- the October 2000 Presidential Election*  
**OPPOSING EUROPE RESEARCH NETWORK** Working Paper No. 3
49. Agnes Batory September 2001  
*Hungarian Party Identities and the Question of European Integration*  
**OPPOSING EUROPE RESEARCH NETWORK** Working Paper No. 4
50. Karen Henderson September 2001  
*Euroscepticism or Europhobia: Opposition attitudes to the EU in the Slovak Republic*  
**OPPOSING EUROPE RESEARCH NETWORK** Working Paper No. 5
51. Paul Taggart and Aleks Szczerbiak April 2002  
*The Party Politics of Euroscepticism in EU Member and Candidate States*  
**OPPOSING EUROPE RESEARCH NETWORK** Working Paper No. 6.
52. Alan Mayhew April 2002  
*The Negotiating Position of the European Union on Agriculture, the Structural Funds and the EU Budget.*
53. Aleks Szczerbiak May 2002  
*After the Election, Nearing The Endgame: The Polish Euro-Debate in the Run Up To The 2003 EU Accession Referendum*  
**OPPOSING EUROPE RESEARCH NETWORK** Working Paper No. 7.
54. Charlie Lees June 2002  
*'Dark Matter': institutional constraints and the failure of party-based Euroscepticism in Germany*  
**OPPOSING EUROPE RESEARCH NETWORK** Working Paper No. 8
55. Pinar Tanlak October 2002  
*Turkey EU Relations in the Post Helsinki phase and the EU harmonisation laws adopted by the Turkish Grand National Assembly in August 2002*
56. Nick Sitter October 2002  
*Opposing Europe: Euro-Scepticism, Opposition and Party Competition*  
**OPPOSING EUROPE RESEARCH NETWORK** Working Paper No. 9
57. Hans G. Nilsson November 2002  
*Decision Making in EU Justice and Home Affairs: Current Shortcomings and Reform Possibilities*
58. Adriano Giovannelli November 2002  
*Semipresidentialism: an emerging pan-European model*
59. Daniel Naurin December 2002  
*Taking Transparency Seriously*
60. Lucia Quaglia March 2003  
*Euroscepticism in Italy and centre Right and Right wing political parties*  
**OPPOSING EUROPE RESEARCH NETWORK** Working Paper No. 10
61. Francesca Vassallo March 2003  
*Another Europeanisation Case: British Political Activism*
62. Kieran Williams, Aleks Szczerbiak, Brigid Fowler March 2003  
*Explaining Lustration in Eastern Europe: a Post-Communist Politics Approach*

63. Rasa Spokeviciute March 2003  
*The Impact of EU Membership of The Lithuanian Budget*
64. Clive Church May 2003  
*The Contexts of Swiss Opposition to Europe*  
OPPOSING EUROPE RESEARCH NETWORK Working Paper No. 11
65. Alan Mayhew May 2003  
*The Financial and Budgetary Impact of Enlargement and Accession*
66. Przemysław Biskup June 2003  
*Conflicts Between Community and National Laws: An Analysis of the British Approach*
67. Eleonora Crutini August 2003  
*Evolution of Local Systems in the Context of Enlargement*
68. Professor Jim Rollo August 2003  
*Agriculture, the Structural Funds and the Budget After Enlargement*
69. Aleks Szczerbiak and Paul Taggart October 2003  
*Theorising Party-Based Euroscepticism: Problems of Definition, Measurement and Causality*  
EUROPEAN PARTIES ELECTIONS AND REFERENDUMS NETWORK Working Paper No. 12
70. Nicolo Conti November 2003  
*Party Attitudes to European Integration: A Longitudinal Analysis of the Italian Case*  
EUROPEAN PARTIES ELECTIONS AND REFERENDUMS NETWORK Working Paper No. 13
71. Paul Lewis November 2003  
*The Impact of the Enlargement of the European Union on Central European Party Systems*  
EUROPEAN PARTIES ELECTIONS AND REFERENDUMS NETWORK Working Paper No. 14
72. Jonathan P. Aus December 2003  
*Supranational Governance in an “Area of Freedom, Security and Justice”: Eurodac and the Politics of Biometric Control*
73. Juraj Buzalka February 2004  
*Is Rural Populism on the decline? Continuities and Changes in Twentieth Century Europe: The case of Slovakia*
74. Anna Slodka May 2004  
*Eco Labelling in the EU : Lessons for Poland*
75. Pasquale Tridico May 2004  
*Institutional Change and Economic Performance in Transition Economics: The case of Poland*
76. Arkadiusz Domagala August 2004  
*Humanitarian Intervention: The Utopia of Just War?*  
*The NATO intervention in Kosovo and the restraints of Humanitarian Intervention*
77. Marisol Garcia, Antonio Cardesa Salzmann & Marc Pradel September 2004  
*The European Employment Strategy: An Example of European Multi-level Governance*



78. Alan Mayhew October 2004  
*The Financial Framework of the European Union, 2007–2013: New Policies? New Money?*
79. Wojciech Lewandowski October 2004  
*The Influence of the War in Iraq on Transatlantic Relations*
80. Susannah Verney October 2004  
*The End of Socialist Hegemony: Europe and the Greek Parliamentary Election of 7<sup>th</sup> March 2004*  
EUROPEAN PARTIES ELECTIONS AND REFERENDUMS NETWORK Working Paper No. 15
81. Kenneth Chan November 2004  
*Central and Eastern Europe in the 2004 European Parliamentary Elections: A Not So European Event*  
EUROPEAN PARTIES ELECTIONS AND REFERENDUMS NETWORK Working Paper No. 16
82. Lionel Marquis December 2004  
*The Priming of Referendum Votes on Swiss European Policy*  
EUROPEAN PARTIES ELECTIONS AND REFERENDUMS NETWORK Working Paper No. 17
83. Lionel Marquis and Karin Gilland Lutz December 2004  
*Thinking About and Voting on Swiss Foreign Policy: Does Affective and Cognitive Involvement Play a Role?*  
EUROPEAN PARTIES ELECTIONS AND REFERENDUMS NETWORK Working Paper No. 18
84. Nathaniel Copsey and Aleks Szczerbiak March 2005  
*The Future of Polish-Ukrainian Relations: Evidence from the June 2004 European Parliament Election Campaign in Poland*
85. Ece Ozlem Atikcan May 2006  
*Citizenship or Denizenship: The Treatment of Third Country Nationals in the European Union*
86. Aleks Szczerbiak May 2006  
*'Social Poland' Defeats 'Liberal Poland'? The September-October 2005 Polish Parliamentary and Presidential Elections*
87. Nathaniel Copsey October 2006  
*Echoes of the Past in Contemporary Politics: the case of Polish-Ukrainian Relations*
88. Lyukba Savkova November 2006  
*Spoilt for Choice, Yet Hard to Get: Voters and Parties at the Bulgarian 2005 Parliamentary Election*
89. Tim Bale and Paul Taggart November 2006  
*First Timers Yes, Virgins No: The Roles and Backgrounds of New Members of the European Parliament*
90. Lucia Quaglia November 2006  
*Setting the pace? Private financial interests and European financial market integration*

91. Tim Bale and Aleks Szczerbiak December 2006  
*Why is there no Christian Democracy in Poland (and why does this matter)?*
92. Edward Phelps December 2006  
*Young Adults and Electoral Turnout in Britain: Towards a Generational Model of Political Participation*
93. Alan Mayhew April 2007  
*A certain idea of Europe: Can European integration survive eastern enlargement?*
94. Seán Hanley, Aleks Szczerbiak, Tim Haughton and Brigid Fowler May 2007  
*Explaining the Success of Centre-Right Parties in Post-Communist East Central Europe: A Comparative Analysis*
95. Dan Hough and Michael Koß May 2007  
*Territory and Electoral Politics in Germany*
96. Lucia Quaglia July 2007  
*Committee Governance in the Financial Sector in the European Union*
97. Lucia Quaglia, Dan Hough and Alan Mayhew August 2007  
*You Can't Always Get What You Want, But Do You Sometimes Get What You Need? The German Presidency of the EU in 2007*
98. Aleks Szczerbiak November 2007  
*Why do Poles love the EU and what do they love about it?: Polish attitudes towards European integration during the first three years of EU membership*
99. Francis McGowan January 2008  
*The Contrasting Fortunes of European Studies and EU Studies: Grounds for Reconciliation?*
100. Aleks Szczerbiak January 2008  
*The birth of a bi-polar party system or a referendum on a polarising government: The October 2007 Polish parliamentary election*
101. Catharina Sørensen January 2008  
*Love me, love me not... A typology of public euroscepticism*  
EUROPEAN PARTIES ELECTIONS AND REFERENDUMS NETWORK Working Paper No. 19
102. Lucia Quaglia February 2008  
*Completing the Single Market in Financial services: An Advocacy Coalition Framework*
103. Aleks Szczerbiak and Monika Bil May 2008  
*When in doubt, (re-)turn to domestic politics?*  
*The (non-) impact of the EU on party politics in Poland*
104. John Palmer July 2008  
*Beyond EU Enlargement-Creating a United European Commonwealth*
105. Paul Blokker September 2008  
*Constitutional Politics, Constitutional Texts and Democratic Variety in Central and Eastern Europe*

All Working Papers are downloadable free of charge from the web - [www.sei.ac.uk](http://www.sei.ac.uk)  
Otherwise, each Working Paper is £5.00 (unless noted otherwise) plus £1.00 postage and packing per copy in Europe and £2.00 per copy elsewhere. Payment by credit card or cheque (payable to 'University of Sussex')