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Claus Offe



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Designing Institutions for East European Transitions

Claus Offe*

* Professor of Sociology and Political Science
Center for Social Policy Research
University of Bremen
IAS Visiting Professor October 1994

Abstract

This paper is divided in just two main sections. The first section of this paper serves conceptual purposes. I lay out a dualist concept of institutions and contrast it to related concepts such as organization, norm, and convention. The second part looks at institutions in a longitudinal perspective. What happens to them over time, how can we explain what happens, and how can we intentionally determine what happens to institutions and, as a consequence, to those living under these institutions? In this preliminary draft version, the reference to East and Central European transitions from communist regimes is still casual and unsystematic, but in a later version I intend to fill in more complete and specific references to the institutional design problems of these countries as they pertain to liberalization, democratization, and privatization.

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I. The Dual Nature of Institutions

Let me start with the proposition, widely shared in the sociological, but not so in the economic literature on the subject, that institutions embody normative intuitions or principles of those who live in or under the institutions in question. The relationship between institutions and moral norms is, however, not unilateral, but reciprocal and cyclical. Moral agents generate and create institutions, and these institutions, in turn, generate moral agents: at least, they establish standards, both normative and cognitive, as to what is to be held to be normal, what must be expected, what can be relied upon, which rights and duties are attached to which positions, and what makes sense in the community or social domain for which an institution is valid. Institutions accomplish a socializing function in that they serve as examples and reminders of how people “ought to” behave and relate to each other¹, and what they legitimately can expect from each other. They play a “preceptorial” role, as Lindblom has called it. Thus, good citizens make good institutions, and good institutions are “good” to the extent they generate and cultivate good citizens, or the “better selves” of citizens, who at least get “used to” and “feel at home” in those institutions, develop a sense of loyalty, and come to adopt the cognitive expectations and moral intuitions from which are invested the institutions. The presence or absence of this feedback loop is the first test by which we can determine whether a given social arrangement is an institution or not.

There is also a second test concerning the quality of institutions: institutions must not just perform the task of what we might term “congruent socialization,” but they must also function properly, i.e., accomplish the task or mission set for them, or be compatible with the supply of resources they must extract from their environment. It is exactly in order for an institution to be able to accomplish its (more or less specified and defined) imagined function or mission that the predominant concern with this outcome must be bracketed or suspended. It may even help if these instrumental concerns are displaced by a healthy dose of ritualism and conservatism, or an emphasis upon the intrinsic value of complying with established and familiar rules.

It is thus easy to see that the two standards of the quality of institutions that I have distinguished are not synonymous. Even if institutions (such as the business firm, the university, the hospital, the military, the

¹ From Aristotle on, and not ending with Rousseau, many political theorists have believed that institutions, such as the law, the constitution, or, for that matter, the socialist collective farm, are capable of “perfecting” human beings, e.g. by turning “ordinary” citizens or workers into “good citizens” or workers.

church, parliamentary government, marriage, the profession, or social security) do generate the most solid support and loyalty of those who belong to them (as well as of outside observers), they may still fail in successfully coping with the problems they are supposed to cope with, or in extracting the resources needed for the implementation of their goals. And conversely, such manifest failure does not necessarily undermine the moral support that an institution enjoys, as such failure may positively lead to an attitude of doctrinaire over-identification on the part of actors with the rules, values and routines embodied in the institution that fails.

Thus both dimensions are conceptually necessary as criteria of the viability of institutions, internal socialization and external effectiveness, or the consolidation of beliefs, on the one hand, and the implementation of goals or the control over resources, on the other. These dimensions do obviously correspond to famous pairs of concepts such as Lockwood's "social integration" vs. "systems integration," or Lipset's (1981: 64 – 70) legitimacy and effectiveness, or Habermas' (1981) "life world" vs. "system." Using a simpler language, we might also say that an institution in the full sense of the term (as opposed to institutional ruins, or degenerate or deficient version of it) does survive the dual test of "making sense" and "being fit" for its mission.

Institutions in this sense can be located somewhere in between social norms and norm-oriented action, on the one hand, and purposive rational or strategic action, on the other. Or rather, they contain elements of both of these modes of action, doing things "the right way" and "getting things done." March and Olsen (1989: 23f.) refer to the same dualism when locating action and the rules that govern it on a time axis. They suggest that institutionalized action combines backward looking ("obligatory") and forward looking ("anticipatory") motivational forces, the first being informed by some "logic of appropriateness" and the second by instrumental or strategic rationality ("logic of consequentiality," 160). Particular instances of institutionalized action may differ as to the relative weight of these two motivational components as well as the reflective awareness of the actors, but neither of the two is, by definition, completely absent. Closely related, if not identical instances of this sociological dualism are represented by distinctions and pairs of concepts such as rules vs. decisions, status vs. contract, or necessity vs. preference, order vs. choice, boundaries vs. contingency. Institutions are "bridges," or synthetic arrangements which allow for the coincidence of such apparent opposites. To illustrate this synthesis, we can think of the institution of private property, which is the status right to make contracts according to preferences. Similarly, the institution of money generates an enormous range of choices that is contingent exactly on the fact that the range of these choices and the value of the currency remains exempt from contingent choices.

Institutions, in a word, inculcate duties and generate outcomes. In order to generate the outcomes, they must rely on cognitive and moral resources which in their turn, however, are not to be created by administrative fiat. "There is no administrative production of meaning." (Habermas 1975: 70; emphasis in original) Consequently, whoever wishes to advocate, design, construct, change, or criticize institutions will have to bear in mind this dualism and the inherent limits of potential control over meaning.

There are two competing approaches in the social sciences which both fail to appreciate this dualism of institutions. On the one hand, "culturalists" and some sociological and philosophical "institutionalists" fail in that they advocate and explain certain institutions solely in terms of the social norms and values that institutions embody and manage to spread in their social domain, while ignoring the systemic "fit" between the institution and its

environment.² On the other extreme, utilitarians notoriously also fail to conceptualize institutions in a balanced way, as they place one-sided emphasis upon the instrumental aspect of institutions. They advocate or defend institutions (such as the market, property rights, or the business firm) in terms of their efficiency-enhancing and hence utility maximizing effect, and they even explain the presence of certain institutions in given societies in terms of their evolutionary superiority, e.g. as to their capacity of economizing on transaction costs.³ Methodologically similar is the structure of some Marxist arguments, to be found in the writings of Bowles, Gintis, Korpi and many others, as they conceptualize at least some institutions as the direct and intended outcome of ruling class strategies to achieve exploitative distributional outcomes.

Apart from other problems, what the utilitarian, evolutionist and Marxist approaches amount to is a denial of the crucial conceptual difference between an "institution" and an "organization." The latter, but not the former, can and do actually subordinate (in accordance with Weber's notion of "purposive rationality") "duties" to (expected) "outcomes." In organizations duties are assigned so as to achieve optimal outcomes. To an extent, it is thus entirely a matter of the formal authority of the boss over the employee which task the latter will have to perform this afternoon. But only to an extent, because the duty assigned affects the role of the employee, not the employee as a person; and it is more or less narrowly constrained by numerous institutional rules, e.g., the employee's status rights associated with the work contract and his citizen rights, that limit the range of duties the boss is actually entitled to assign.

The difference between an organization and an institution can thus be summed up in three points. (1) Organizational duties are dyadic, while institutional rules are triadic, i.e. established and enforced by "third parties" who are not part of the institutionalized interaction. (2) Duties are subordinate to intended outcomes in organizations, but stand at least on the same logical plane in institutions. (3) Organizational duties are much more restricted in their scope, validity, and impact upon the person involved; they are restricted to the range of discretion that institutions (such as property rights, marriage, political parties, the business firm) grant the agents in their domain for the pursuit of their purposes.

To illustrate, the university as an institution does not allow you to concoct the data base of your research or to plagiarize the work of other scientists (although that can be highly purposive-rational!), but a given university as an organization encapsulated in the institution permits certain incumbents of certain offices to change the curriculum, if only according to certain non-contingent rules.⁴

The "triadic" nature of institutions bears elaboration. Institutions depend for their viability and survival upon the knowledge and at least tacit consent

2 "The propensity to social change arising from the functional incompatibility between an institutional order and its material base has been ignored by normative functionalists because of their concentration on the moral aspects of social integration." (Lockwood 1964: 256)

3 "The bulk of the literature appearing under the label of 'New Institutional Economics' seems to rest on the assumption that institutional change occurs primarily in an efficiency enhancing form." (Grosser 1993: 23)

4 Meyer and Rowan (as reprinted in Powell and DiMaggio 1991) have provided a powerful argument to the effect that the balance between internally assigned duties and rules extracted from the institutional environment of the organization, or between organizational and institutional functions, is actually shifting towards the latter, as organizations, partly for their lack of utility-maximizing algorithms of their own, come increasingly to rely on institutionalized rules they adopt from their environment. To the extent this hypothesis is valid, the utilitarian view of institutions is further discredited.

of “third parties” that are not directly involved in the particular interaction the institution regulates. “Working rules⁵ must be common knowledge and must be monitored and enforced. Common knowledge implies that every participant knows the rules, knows that others know the rules, and knows that others also know that the participant knows the rules.” (Ostrom 1992: 20) Institutions – in sharp distinction to conventions⁶, which are strictly self-enforcing – are social arrangements which are designed to settle potential conflict. For that, they need to be endorsed by “third parties.” If they are endorsed in this way, the phenomenon of second-order expectations (or “expected expectations,” in Luhmann’s parlance) emerges: What those involved in an institutional interaction can and cannot expect from each other is itself expected by third parties or outside observers. As they allocate privileges, licenses and duties to actors, institutions – in contrast to unquestioning habits, routines and traditions – establish an order that is always potentially contested and hence needs to be tolerated, supported and enforced by external actors.

This potential for conflict is particularly evident in those institutions that deal with the jurisdiction over the production and distribution of core values such as health, peace, power, knowledge, truth, love, prosperity, mobility, esthetic beauty, security (both military and social), friendship, justice, jobs, salvation, punishment, education, and the like. The relationship between the shape and distribution of procedural rules, restraints, resources, and licenses, on the one hand, and these reference values, on the other, can be found in implicit theories, ideologies and justifications institutions cultivate about themselves which are often enshrined in an institutional “charter.” It ultimately depends on the quality, i.e. the compelling power, or immunity to critique, of these theories whether or not a particular institution will manage to suspend open conflict over the licenses, privileges and rules of which it consists.

Other institutions are less directly and less obviously related to such core values, but they still help to establish rules in the absence of which friction would occur. Many of these institutions regulate the social use of space and/or time, as is the case with parks, markets squares, vacation trips, carnival, bank holidays, birthday parties, sports stadiums, party conventions, bars, and many others. They have in common that they evoke certain themes, routines, and orientations and thus facilitate the interaction (or economize on the transaction costs) of those involved, and restrict this interaction to a particular range of themes, practises, and premises. The strength of these thematic, spatial, status-related, and temporal demarcation rules becomes evident in the sentiments of comicality, embarrassment, shame, and protest that are aroused if the “wrong” persons do the “wrong” things at “inappropriate” places or times.

Such complex codes concerning who is supposed to do what, when, and where, and in what relation to what reference values, help to relieve all members of society from decision loads and conflicts – provided that these codes are known and serve to shape attention and cognitive expectations beyond the group of people directly involved in the institutionally patterned activity. In this sense, institutions can be compared to an exoskeleton of social life. If – and only to the extent that – such demarcation rules are common knowledge, institutions perform the function of “saving energy” – the energy and costs, that is, that would otherwise have to go into the cognitive

5 “Working rules” is a synonym for the term “institution” introduced by J.R. Commons (1961)

6 Standard examples are the convention to drive on either the right hand or left hand side of the street, or the distribution of characters on the typewriter keyboard.

assessment and moral evaluation of what is going on and how “I” should relate to what “everyone else” is doing. Institutions unburden action because they relieve us from much of the need to generate ad hoc judgements. Institutions can also be thought of as a repository of our second-order preferences, i.e. the preferences concerning the preferences that we would like to have and pursue and with which our unstable and fleeting first-order preferences are typically in conflict. Experience shows that it absorbs a lot of cognitive as well as moral effort to evaluate the appropriateness of our own preferences in the absence of institutions which alleviate this effort.⁷ Due to their “energy-saving” features, institutions are not just constraining, but also enabling, and much beyond their function of economizing in transaction costs that is highlighted by economists. (North, Williamson, Schotter, Coase) They are commonly known frameworks of regulation that help us to develop the “right” understanding of situations and to anticipate what is likely or unlikely to happen. Moreover, the constraint is often only marginal, as institutions can be employed for a variety of purposes, without any of them being prescribed as the all-dominant one, like in an organization. It is this commonly shared knowledge about demarcation rules and the expectations based upon this knowledge that provides institutions with a measure of counterfactual validity and stability. It is important to distinguish between institutions proper and individual cases, instances or realizations of the rules that make up the institution. If an organization fails, it fails and is no longer there. If an institution fails in a particular instance (a marriage, a political party, a state), that does not by itself affect the institutional order of which it has been an embodiment.

Such stability of institutions, and the functions performed due to its stability, come at a price. This price is rigidity. On the one side, institutions such as the market, the university, the party system, general elections, or the business firm make an almost unlimited range of choices available which can be selected by combining and recombining the resources and interactions possible within them. On the other side, this option-generating arrangement itself must be immune from choice. There seems to be a correspondence between the range of choice made available within an institutional arrangement and the requisite rigidity of the arrangement itself. To reiterate, the institution of money can mediate, as it does, innumerable transactions only because none of the participants in these transactions can intentionally affect the value of money. Similarly, democracy as a preference aggregating machinery can only work under a framework of rights that is protected by independent courts and at least relatively immune from democratic contingencies; for it would be the end of democracy if majorities had, for instance, the right to decide that minorities are no longer entitled to vote or organize. In both of these and many other cases, the uncertainty of outcomes is matched by the certainty of procedures, rules, and parameters.

⁷ This “unburdening” effect (Entlastungseffekt), as it has been called by the German philosophical anthropologist Arnold Gehlen, becomes evident if we have to relate to a situation in which we cannot rely upon the assistance of institutions. One could think of a situation when a serious traffic accident has occurred and the police and ambulance do not come for some reason. Similarly, we can think of a distributional conflict the solution of which cannot be provided by an institution because the nature of the conflict is so new that no institution for processing it has yet been installed. This is the single most important theme in German domestic politics right now. Whereas the usual distributional conflict between labor and capital is quite solidly institutionalized, the new distribution conflict between the former West and East German Länder is still to be resolved not only in substantive, but also in procedural and institutional terms. Until it is, the political system as a whole is suffering from an extraordinary cognitive and moral burden of determining legitimate and acceptable ad hoc solutions of this distributional conflict.

The problem of East and Central European transition is that there is too little of what I would like to call requisite rigidity of this kind, as the regime which could enforce such rigidity has broken down, and therefore too little choice. The action that takes place is not under institutions, but about institutions: it is all discretion, and no rules governing and constraining discretion.

II. Modes of Institutional Stability and Change

In this section I want to review the ways in which institutions do – or do not – change. As it will turn out, “design” is a rare and unlikely mode of change, and even less likely is it that the activity of “designing” is recognized, acknowledged and remembered as such. The modes that affect the continuity of institutions are discussed under the headings of “stability,” “founding,” “breakdown,” and “critique.”

1. Stability as a Process

Institutions are not “natural,” but man-made. At the same time, they have a nature-like longevity. The first thing we associate with them is stability, as do Goodin and Brennan in their introductory paper to our conference: “Institutions are entrenched, well-established, relatively stable. They change little: only rarely, only at the margins.” (3) Hegel has captured the dual aspect of institutions (of being doubtlessly man-made, but of being at the same time also nature-like and often as impossible to change as the law of gravity) by the term “second nature.” A popular, though, I submit, deeply misleading mechanical metaphor for the stability of institutions is the notion of “inertia.” To account for the stability of institutions, it is much more helpful to rely on biological rather than mechanical analogies, and to compare institutions to “identical reproduction” rather than “inertia.” Such biological metaphor highlights the fact that identical reproduction is a process rather than a steady state, and that the “identicalness” of the reproduction of a species is well compatible with virtually unlimited variations of individual specimens, depending upon the complexity of the genetic pool of the species. Identical reproduction is, however, itself not unlimited. It can come to an end at a point where either identical reproduction stops (cf. the “dying out” of the dinosaurs) or where identical reproduction stops (through mutation and selection), both of which is also true of social institutions.

A less metaphorical understanding of the stability of institutions is “path dependency.” My interpretation of this rather powerful explanatory intuition is this. Path dependency is a mechanism of identical reproduction of institutions due to either or both of the two features mentioned above. Not only are institutions man-made, but also men institution-made – they are socialized by the educational or “hidden curriculum” effect of institutions into the values, norms, and rules embodied in them, and as a consequence they know, expect and anticipate that institutions can be relied upon and reckoned with (almost like the objects of nature). This curriculum, incidentally, must not be so “hidden.” Institution generate vested interest in their own preservation, sometimes to the extent that the endogenous rise for an alternative arrangement becomes virtually inconceivable. Just think of the likelihood that within simple majority, “winner-takes-all” electoral systems a coalition emerges that favors proportional representation, whereas a transition in the opposite direction appears much more likely. Secondly, as

long as institutions function properly and continue to generate tolerable levels of outcome, there is no perceived need to think about, and even less to try to implement the potentially costly process of innovating institutions or of introducing institutional alterations. In short, the stability of institutions is based upon a social process of identical reproduction that is driven by an institution's socialization effect and its functional viability.

Furthermore, some institutions become stable by reflectively providing for their own stability by institutionalizing what has been called "ultra-stability." This happens in either of two ways. The first concerns the degrees of freedom that they leave to individual behavior and choice. Institutions provide just a framework within which purposive choice remains possible. They must be distinguished from rituals where such choice is maximally reduced. The more liberal the regime that institutions impose upon agents, the less vulnerable they will probably become to disloyalty or attempted institutional innovation⁸ – at least up to a point at which "excessive" liberalism will begin to negatively affect the socialization, or preference forming, effect upon which the continuity of institutions normally depends. Also, institutions protect themselves, as it were, from being strained not only through their "framework" character, but also through the possibility they provide to actors to switch to other institutional codes in case their behavior can no longer be accommodated within the rules of one institution.

The other stability enforcing mechanism that some institutions provide for consists in institutional rules for changing (lower-order!) institutional rules. Thus institutions defined by statutory law can be altered according to constitutional rules governing the legislative process, and even most constitutions contain procedural rules (such as articles 79 – 81 of the German Basic Law) which specify which parts of the respective constitution can (or conversely cannot) be changed in which way.⁹ Both of these allowances – built-in scope for discretion on behavior (including the switch to "neighboring" institutional patterns) and built-in scope for discretion on part of the institutional rules themselves – help to (and are explicitly designed to) preserve institutional stability through provisions for flexibility in the face of changing circumstances and preferences. In these cases, institutions are designed to re-design themselves – and through this two-tiered structure to escape the need to be explicitly designed anew.

Within such two-tiered arrangements, very much scope can be opened for reform and revision of institutions. As long as some features of the institution remain in place, others may be exchanged. In this way, social order can be re-negotiated by the agents which are institutionally charged with the license and mandate to do so. The most radical case of institutionally regulated institutional change is "transición pactada" or "round table talks," as they have occurred in the Spanish and East European transitions from authoritarianism. In such cases, actors which are charged with political functions within the old regime coopt and admit other actors with no such previous function in order to negotiate new rules and new issues. The implication of such cooptation of new actors in regime transitions may be, as it has been, for instance, in Poland 1989 or in East Germany 1990, that the presence of the old, formerly monopolistic actors

8 "Defensive liberalization" is the apt term that Batt (1991: 387) employs to describe the desperate last-minute maneuvers of Czechoslovak and East German leaders to benefit from this self-stabilization mechanism in late 1989.

9 The institutionalized doctrine of papal infallibility and ultimate authority is another case in point, to which Roman Catholicism owes much of its ultra-stability, whereas the recent Fujimori-coup in Peru is not, as presidential authority to suspend the constitution is not provided for by the constitution of that country.

serves just as a temporary face-saving device without any substantive significance. The least radical and most routine case is when both institutional actors and institutional rules remain unchanged and just new substantive issues are admitted to the agenda.

2. The “Founding” of Institutions: The Problems of “Hyper-Rationality” and “Mental Residues”

Diametrically opposed to stability, identical reproduction, path-dependency, and ultra-stability are those rare cases in which institutions are actually created at a certain point in time and then succeeded to actually perform as institutions vis-à-vis both their constituents and their resource environment, rather than remaining short-lived blueprints imposed upon agents or simply new names for – or new actors in – old institutions.

The rare conditions that can give rise to the conscious and intentional design of institutions – as opposed to the mere design of designs or names or facades – are partly well known, at least as far as political institutions are concerned. First, the existing institutions that are to be replaced¹⁰ by the newly designed institutions must be both thoroughly discredited (i.e., have failed to perform a congruent socializing function) and, perhaps partly as a consequence of that loss of credit, must also have lost their ability to cope with functional problems in their environment. Thus economic crises and wars, as well as the thorough loss of legitimacy of the regime that has to take responsibility for these events, will typically give rise to intentionally attempted institutional innovations. To say this is just paraphrasing Lenin’s definition of a revolutionary situation as a condition in which the rulers cannot continue to rule and the ruled resist the continuation of the rulers’ rule.

But a further condition must also be present in order for this situation to transform itself into one of newly designed and created institutions, as opposed to mere breakdown and chaos. This second condition is the presence of a model of the new institutional order that is typically not invented on the spot, but “imported” and suitably adapted from more or less remote points in time or space. Institutional designs are typically copies, and they are frequently advocated as such.

For an illustration of this point, let me dwell for a moment on the German case of the post-World War II rebuilding of political and economic institutions in both East and West Germany. The first condition of total military defeat plus total moral discrediting of the Nazi regime was certainly fulfilled. But the second condition for institutional reconstruction was also there, namely the ready availability of a positive reference model. As far as West Germany was concerned, the reference model was a combined replica of the “better past” of the Weimar Republic and its democratic institutions plus certain features of the Anglo-Saxon democracies, which were adopted in order to immunize the second German republic from the dangers to which the first had fallen victim. Moreover, the implementation and enforcement mechanism of the new institutions created was “imported”¹¹ as well, consisting as it did in the occupation forces of the Western allies. The same

10 The unique feature and facilitating condition of the American Revolution – and all the institutions it created, such as federalism – is probably that it did not really have to replace anything, as the new order to be erected was to be built on a terrain that was both physically and institutionally “empty space,” and as the location of the “old regime” was geographically distant.

11 Cf. Rousseau’s recommendation that the legislature should be a foreigner, as he is less likely than any domestic agent to take partisan views in the process of law-making and institution building.

applies of course to the very different process of institution-building that unfolded in East Germany after 1945 and in which the “invented tradition” of the Weimar Communist Left played the same role as did the adopted institutional models of Social Democratic and Christian political forces of Weimar and their institutional legacies in West Germany.

The designing of new institutions occurs through the replication of old or spatially distant ones. Before designers can start their job, they will typically seek inspiration and legitimacy in a construed model of the past of their own society. This past is often schematically subdivided into a rejected, though immediate “dark” past and a more distant but celebrated “golden” past. 19th century European risorgimento-nationalism and the institutions created by it, most importantly the nation state, is a case in point. Others are looking around for foreign models to be replicated.¹² Sometimes it is rather easy to distil a workable synthesis of models that are being found in the “golden” past and the “golden” West, but sometimes the respective models imported from the “past” and the “West” are diametrically opposed to each other, as it appears to be the case in much of present-day East Central Europe.

Needless to say, what actually happens in the process of institution building is often a far cry from the mere replication of rules that have been in operation at other places or times. What interests me in this imaginary transplantation of institutions across time and space is not whether such transfer has actually taken place, but the function played by the presentation of the activity of designing and building institutions as an activity that mainly consists in imitating institutions. It looks as if the designers of institutions shy away from accepting responsibility in public for what they are really doing, and that they tend to hide instead behind the often rather fictive notion of imitation or transplantation.

Imitation, both across national as well as sectoral boundaries, is a powerful device of institutional innovation. The rhetoric of “learning from others” or “learning from successful examples” is employed in order to play down the differences that may exist between sectors and countries, to create a deceptive clarity about some evidently and easily acceptable superior solution, to mobilize support, and to disguise the creative alterations that the supposed “imitation” is likely to involve. Trans-sectoral imitation follows the suggestive analogy that what has worked in one sector is bound to work in other sectors as well. In this way, the German social security system (which is based on mandatory income-graduated contributions plus inter-class parity plus self-government of public corporations) has spread through continuous imitation from health to old age to unemployment to (right now) care for the elderly in the course of more than 110 years.

If I am right in generalizing that institution designers, whatever their creative contribution, tend to be reluctant to confess to their authorship, this tendency might follow from an important intuition on their part. This intuition can be captured in the following way: It does not help the viability and operative success of newly designed institutions if they are perceived by others as actually being newly designed. The designer, if seen as such, will unavoidably come under the suspicion of trying to impose his particular interest or normative point of view upon the broader community, and that suspicion alone, unjustified though it may be in some cases, may invalidate the recognition and respect of the new institution. It is as if the man-made and hence contingent nature of institutional change must be denied and artificially “forgotten.” Otherwise, the example of the designer will invite others

12 Cf. the statement by former Polish Finance Minister L. Balcerowicz (quoted in Neuber 1992: 20): “Poland is too poor to experiment. We will therefore follow working models.”

to attempt a different design, the consequence being an overload of contingency, complexity, and uncertainty which contradicts the essence of what we mean by an institution.

This skepticism about the “designing” of institutions is of course most explicitly argued in conservative political and economic philosophies, such as the Hayekian critique of “constructivism” or Oakshott’s critique of political rationalism¹³. The very activity of institution-building, if visible as such, could thus easily end up in the hyper-rationality trap (Elster) of “willing what cannot be willed.” It cannot be willed because if it is seen as being willed, rather than “inherited” or “replicated,” it will be more controversial and less binding than if it is seen as a legacy or imitation. Conversely, if newly designed institutions can be depicted as being not so new after all, but rooted in some respectable past, that may add to their obligatory and preference-forming power flowing from that past, as the trust in their capacity for performing the functions that they are supposed to perform can be strengthened by the pretense that they are just replicas of demonstrably successful models imported from elsewhere.

This intuition is also reflected in the discourse that institutions cultivate about their own history and origin. In the rare cases where individual persons are credited with the design and creation of institutions, these authors are also attributed charismatic and extraordinary qualities: they are depicted as heroes, prophets, saints, founding fathers, pioneers, great statesmen (Napoleon, Bismarck, Lenin), or “classical” thinkers who have been active at exceptional junctures of history. But more often, reflective discourses about the origin of institutions seem to avoid the notion of intentional creation. Instead, they rely on subject-less categories by describing the coming-into-being of institutions as driven by “tradition,” a creeping process of experimentation and imitation. In this perspective, institutions just “evolve,” “develop,” “emerge,” are “discovered,” or “spread,” or their coming into existence is thought of as the process of a “vitalistic” emanation of a subjectless *idée directrice* (Hauriou 1925), all of which is to obscure their origin in intentional action of concrete individuals and groups.

At any rate, too much “tinkering” with institutions, an excessive effort to design or redesign them in order to make them turbulence-proof and fit for their mission, as well as other visible indications of “designer activism” will almost certainly have the unintended effect of both undermining trust and committing the authors of such innovations to ever more and ever hastier readjustments. Too rapid and too comprehensive institutional reforms may easily overtax the support of those affected by them, or it will frustrate the expectation generated by the reform process itself that rapid transformation also means rapid success. This is the paradox of “designer capitalism” (Stark 1992), or capitalism by decree, that we see unfolding in East Central Europe and the former Soviet Union. The paradox is compounded if this discretionary design of new economic institutions coincides with the introduction of democracy by decree and the redefinition of territorial states by decree (Offe 1991). If anything, the success and the survival capacity of the newly built institutions is likely to depend more on people’s trust, compliance, and patience in enduring the transition costs involved than in the quality of the design of these institutions themselves. The paradox is also exacerbated if it is generally (and probably rightly) understood that the institutional choices that are now being made are of the greatest significance

13 The object of Oakshott’s critique is that “the consciously planned and deliberately executed is being considered (for that reason) better than what has grown up and established itself unselfconsciously over a period of time.” (1962: 26)

for the future power and economic positions of virtually all kinds of actors¹⁴, and that therefore hardly anyone can be expected nor trusted to make these choices in a fair, non-partisan and disinterested way. Nor can anyone among the actors who see themselves as potentially negatively affected by newly designed institution be expected to keep silent in the process, given the vastly expanded opportunities for raising their voice through the means of the newly established democratic process¹⁵.

The paradox would thus seem to boil down to the painful contradiction that it is exactly at the moment when the rapid introduction of new political and economic institutions is most urgently needed, there is, for systematic reasons, no one who could possibly be entrusted with the responsibility to design them – and neither is there some external agent who could effectively impose them from the outside¹⁶ nor a widely accepted model in some “better past” of post-Communist societies that could be revived.

As the leaders of post-Communist societies emphasize again and again, they “have no time” to argue about principles. The urgency of the economic condition forces them to adopt an instrumental and outcome-oriented perspective. However, if from this perspective they select Western institutional models (political parties, social policies, a banking system, local self-government, or whatever), they actually copy something that is different from the original. For no Western political, economic, or social institution has been invented for the purpose of extricating an entire group of societies from the conditions of state socialism and its ruins. The original of the institutions that are now being copied has rather come into being for other or at least additional reasons¹⁷ than the functions it has eventually turned out to perform, these reasons being the rights, traditions, and principles embodied in these institutions – “political” arguments (Hirschman). The identities and arguments on which institutions were originally based in the West have helped to shape the political and economic culture on which

14 The crux of the situation is the coincidence of high levels of transparency and salience. Whatever institution choice is made (concerning, for instance, the mode of privatization or electoral law), there is no “veil of ignorance” that would allow to decide these questions on their own merits rather than in the light of immediate consequences that are easily anticipated. For instance, whatever the merits of early elections vs. late elections, proportional representation vs. pure majority, local government autonomy vs. centralization, private vs. public television, or presidentialism vs. parliamentary government, it is evident in most cases which alternative will benefit whom. Whoever advocates either of these and many other alternatives will almost automatically be suspected, whatever his arguments are, to do so in the service of one particular interest.

15 A conclusion from the observation that democracy might stand in the way of the designing market and property institutions – a conclusion that appears as consistent in its logic as it is cynical in its consequences – is that “capitalism” must take precedence over “democracy” if the “healthy” path of institutional innovation, such as it has been chosen in South Korea and Chile, is to be accomplished. Cf. for this argument Schwarz 1992.

16 Such an external agent would have to have, in order to effectively impose an institutional design, either unquestioned intellectual authority and expertise or be in a position of unchallenged political, economic, or even military power. Neither the members of various international advisory commissions that have become active in East European countries nor the IMF can lay claim to either of these qualities.

17 The locus classicus of this argument is of course Max Weber’s demonstration in his Protestant Ethic that the “spirit of capitalism” was not inculcated for the sake of gain, but for the sake of spiritual salvation, and that its “real” functions were as much by-products as its intended functions were failures. A parallel argument, this time not concerning salvation but concerning peace, order, and freedom was made by Albert Hirschman (1977: 130) who argues that the case for capitalism in the 17th and 18th centuries was made not for the sake of material prosperity, but for the political “virtue of imposing restraints on princely caprice, arbitrary government, and adventurous foreign policies.”

institutions depend for the sake of performing their functions. The “copying” of institutions approach tries to bypass, or at any rate shorten, this period of gestation and slow maturation. While certainly being anti-Stalinist in substance, this instrumental approach to institution building comes often close to being Stalinist in method. That is not to suggest that institution designers in post-Communist societies could actually afford to wait. They rarely can, given the pressing economic needs and the lack of legitimate political authority in their countries. It is only to suggest that “copied” and transplanted institutions that lack the moral and cultural infrastructure on which the “original” can rely are likely to yield very different and often counter-intentional results, in which case ever more hectic and short-breathed further designs (with all the familiar pathologies of overshooting, stop-go-cycles, short lived governing elites, and an oscillation on the mass level between extreme forms of political expressivism and an apathetic disdain for politics) must be expected as a consequence.

Hyper-rationality is just one of two weaknesses inherent in the idea of institutional design. The other weakness has to do with the fact that in the modern world “designed” institutions are almost always “successor” institutions. They are not built on a tabula rasa. Successor institutions are affected by the long arm of their predecessors. These predecessors may have failed in one or both of the two senses in which institutions may fail, failure of socialization and preference formation or failure of performing their function. But there may still be traces and remnants of the old institutional arrangement in the presence of which the new institutions cannot function properly. In spite of the fact that state socialist institutions have clearly failed to generate socialist preferences (to say nothing about “socialist man”), they have generated a state of mind, a set of expectations and assumptions that turn out to be inimical to the growth of democratic capitalist and civil institutions. This state of mind, regardless whether it has been cultivated by the last fifty years of experience of state socialist institutions or the experience of the last five hundred years of precarious and often failed political, economic and cultural modernization processes, is described by many authors (e.g. Morawski, Schöpflin, Sztompka) as a combination of apathy, depletion of communal bonds, passivity, unwillingness to accept responsibility, atomization, lack of respect for formal rules, and a pervasive “grab and run attitude” toward economic gain (Neuber 1992: 10). Furthermore, economic attitudes are shaped by zero-sum-assumptions as well as the expectation that success must be due to patronage and cooptation, not effort.

Such elements of the cultural infrastructure on which institutions must rely are not only time consuming to consolidate (as Dahrendorf and many others have argued), but equally time consuming to abolish. This infrastructure can perhaps fruitfully be compared to a computer software, with the formal rules, jurisdictions and licenses of the institution itself being the hardware. But in the case of institutions, the software on which they depend for their operation is not easily exchanged and replaced, as it is generated by the hardware itself in the process in which people “get used to” and “make sense of” or “cope with” the institutions, thus adopting a set of standards, obligations, and expectations that in Weber’s terminology is referred to as the “spirit” (“Geist”) of institutions. This includes, in addition to moral commitments, familiarity with the institutions, codes of appropriate conduct, a reasonable measure of trust in their proper functioning, and the like.

Let me illustrate this point by distinguishing three variants of the operational meaning of “equality.” In a liberal polity, it emphasizes equality before the law: no one should be denied the rights that everyone else enjoys.

In a more social democratic version it shades into a distributive meaning that also looks at, in addition to rights, material conditions or outcomes. More specifically, it is a “downward-looking” notion of equality akin to Rawls’ difference principle which highlights the moral intuition that those below “us” should be granted priority in having their condition improved. What seems to prevail in post-Communist societies, however, is an upward-looking variant of distributive concerns, which is itself derived from the political culture of the old regime. What this semantic of “equality” boils down to is the envy-driven notion that “they” are evidently richer than “we,” and the state should therefore prevent them from getting ahead even further – the authoritarian conclusion. But the same semantic can also give rise to an ultra-libertarian reasoning: Unless the state does so, “we” are entitled to use every means available (including illegal means) to get ahead as well.¹⁸ At the very least, the tolerance for distributional differences is extremely limited.

“Designed” institutions suffer from a dual handicap: They have an architect and they are successors. Two conclusions can be drawn from the discussion of this dual liability from which the activity of “founding” institutions suffers, hyper-rationality and the long arm of the past. As far as the first of these liabilities is concerned, the ideal situation for the “founding” of institutions seems to be one in which no explicit “engineering” is called for, but where there is a rich vegetation of inherited institutional patterns which already enjoy the allegiance of relevant actors – an allegiance that can be further cultivated by the activity that has been described as “institutional gardening.” But as far as the second of these liabilities is concerned, namely the “long arm of the past,” it is just the opposite conclusion that must be drawn: the more the situation conforms to a notion of *tabula rasa*, the more readily and easily will the newly designed set of institutions win the loyalty of constituents and unfold its beneficial functions. Would-be institution designers certainly cannot have it both ways.

3. Challenges, Breakdowns, and Survival Responses

The breakdown of institutions can occur in response to either of three challenges. First they may fail to inculcate the norms and preferences that condition the loyalty of members. In this case, institutions stop to “make sense” to members and to be “taken seriously” by them or by the wider social domain for which an institution claims validity, and consequently the institution loses support and recognition. Scandals and cases of corruption in which representative leaders of an institution become seen as betraying core values are particularly powerful causes of the sudden loss of an institution’s credibility. The same effect can be caused by slow cultural changes, which are often referred to as “secularization” in the case of religious institutions.

Second, institutions may decay because alternatives emerge which allow for the satisfaction of those needs and the fulfillment of those functions over which the institution used to hold a monopoly. An example is the institution of the dues collector in trade unions and other working class organizations who would visit members at home, provide information, social control, and advice, and also would symbolize the faithful, committed and loyal example of a “good” union member and of working class values in general. This institution has disappeared a long time ago, as the payment of dues (as many other payments) is increasingly processed through bank accounts without the use of cash. The same applies to the institution of the

¹⁸ Needless to say, both the authoritarian and the libertarian conclusion will give rise to what Rose (1992) has aptly termed an “uncivil economy.”

local athletics club as it is being marginalized through commercial fitness centers, on the one hand, and events of professional spectator sports, on the other. The rise of new opportunities must be distinguished from the rise of opportunity costs. The institutions of downtown vegetable markets or, for that matter, department stores, have become questionable, given the boom in central city real estate prices and transportation problems, as well as the availability of the alternative of large peripheral shopping malls.

Thirdly, institutions may break down because of their manifest failure in performing the functions with which they are charged. For instance, the state is an institution whose existence is contingent upon its capacity to protect and control territorial borders, and marriage is an institution that prescribes the exclusion of third persons from sexual and other interactions. Failure to perform these functions will thus lead to the breakdown of particular instances of institutions (i.e., particular states and marriages), as opposed to the institution itself. A case of the latter is the disappearance of guilds which regulated all aspects of particular trades in medieval European cities (including the personnel admitted, the quantity, quality and price of the goods produced, conditions of sale, codes of conduct etc.). Other cases of defunct institutions are those regulating political prerogatives of the nobility or, perhaps (and hopefully) at some point soon, the Italian Mafia.

It is worth stressing that the three types of causes that I have specified may lead to the breakdown of an institution, but that such breakdown is by no means a necessary consequence of the presence of one or even all of these causes. In cases it is not, institutions adopt survival strategies which are themselves an major mode of institutional change, as captured by the Lampedusa-principle: "If things are to stay as they are, everything must change." Instances of such survival strategies are goal displacement (e.g., the NATO adopting new missions in the field of academic research and environmental protection), change of constituencies (churches and religious sects targeting on young people) or change of institutional means (as in the case of extreme acts of violence that occurred on the Square of Heavenly Peace in Peking on June 4th, 1989).

But these survival strategies might be seriously self-defeating in their outcome, which I think can be shown to have been the case with the breakdown of the Communist regime in the Soviet Union and the other CMEA-countries. Why has communism failed? Although we are still far from understanding the causes and consequences of this momentous breakdown, I submit that explanations of the breakdown itself can be grouped in several broad categories.

Two of them suffer from the slight embarrassment that, at least ideally, today's explanatory hypotheses should have been the basis of yesterday's predictions, and that hardly anyone predicted what now must be explained. This embarrassment can be dealt with by claiming that the breakdown of Communist regimes was caused by external forces (such as hostile military, economic, political, or communication strategies of Western countries) and that it had little or nothing to do with institutional structures of the regime itself. This is clearly an unpromising approach as it begs the question why the institutional structures of the regimes itself were so weak and vulnerable as to become incapable of dealing with these externally generated challenges. Second, we might argue that the breakdown was ultimately caused by a single person (the only conceivable candidate being Michail Gorbatshev) or a small group of his followers. In spite of considerable evidence that is available in support of this reading of history, it ultimately must fail because it, too, ignores the question of which institutional arrangements and rules made this kind of person(s), as well as their rise to top positions of power, at all possible.

Again, we are back to an institutional approach, of which two variants are available. One starts with institutional failures of social integration, the other with failures of system integration. Let us consider them in turn.

The first type of explanation claims that the failure of state socialism is due to the failure of its institutions to generate congruent motivations, or at least to check incongruent ones. A famous battle cry of 19th century Italian risorgimento nationalism was Massimo d'Azeglio's dictum that "We have made Italy, now we have to make Italians." In other words, a condition of stability of the new regime is seen in its ability to inculcate a sense of loyalty, faithfulness and obligation towards the rules of the institutional regime. Similarly, "the feasibility of socialism must rest on the assumption that socialization of the means of production causes individuals to adopt socialist preferences" (Przeworski 1991: 116). If it can be shown that there is a systematic and incurable incapacity of state socialist institutions to generate congruent motivations among its strategic core agents such as planners, managers, workers, and households, all of which will impair the necessary level of cooperation and may even breed cynicism as a prevailing outcome of endogenous preference formation. Furthermore, the undemocratic and repressive means by which socialist institutions try to compensate for this deficiency will usually add to the problem rather than alleviating it. If all of this can be shown to be true for systematic reasons, this pathology of social integration is the key to explaining the system's breakdown.

The alternative, though by no means incompatible, explanation is that state socialism has failed, for equally systematic reasons, on the level of system integration. It simply does not function sufficiently well as an economic system. Its failure is one of coordination. The model case of this kind of failure occurs when it is simply not possible to deliver the right spare part at the right time to the place where it is needed. Generally speaking, the state socialist system of planning, allocation and distribution that abdicates the principle of "profit maximization" has been blamed for its consistent failure to minimize losses. There was simply no legal, economic, intellectual, or political mechanism to declare and render elements of the system obsolete. In spite of its claim to being based upon "scientific" knowledge, the system, lacking as it does appropriate devices of accounting and self-monitoring, simply does not accumulate enough knowledge about itself in order to cope with and correct its own inherent wastefulness.

As long as institutions suffer from just one of these complementary deficiencies, the respective other one may well be able to make up for this limited failure. For instance, if output failures are met with a strong sense of loyalty, hope, patience, heroism, and optimistic expectations, breakdown may well be avoided. (Cuba of the sixties may be an example of this extreme.) Conversely, if output is booming, loyalty may appear to a large extent dispensable. It is difficult to speculate about marginal rates of substitution between social and system integration. At any rate, the two complementary solutions of appealing to people's endurance under conditions of severe shortage and of buying a measure of self-interested loyalty by delivering an abundance of goods are each likely to fail at some point, at which the latent imbalance of the two functions of institutions becomes manifest.

In order to avoid either of these two emergencies as well as their cumulative interaction, the Gorbachev reforms of the mid-eighties seem to have relied on a reformist way out that he and his supporters believed was compatible with the overall institutional structure of the Soviet empire. He introduced, under vague labels such as "perestroika" and "glasnost," supposedly marginal institutional alterations and alternatives which, however,

in actuality turned out to be veritable explosives. Instead of instigating new optimism, trust, and loyalty, he seems to have caused panic in the economic and political elites at home and abroad. And instead of improving the mode of coordination of the Soviet political economy, the reforms created ever greater turbulence and stagnation. We thus see that not only breakdown can provoke survival strategies, but miscalculated though well-intentioned rescue operations can accelerate breakdown.

4. Critique

I have argued before that institutions depend on the meaning that is accorded to them by the actors. They must not only be known to exist, but “make sense” to actors and even oblige them. Such obligation flows from implicit theories by which the proponents of an institutional order defend it and try to cope with challenges. If these justificatory effort succeeds, a sense of loyalty is generated that will lead actors to ignore some of their own conflicting interests and submit to the obligations stipulated.

Asking the right persons the right questions in public can be a powerful device to expose the weakness of those implicit theories. Why, for instance, should the office of the priest, bishop etc. be the monopoly of the male gender? Why should German nationality (which is a precondition of the civil service status of Beamte) be a prerequisite for becoming a mailmen and cop? Critique can undermine the bindingness of obligations and ultimately demolish institutions and trigger their breakdown. This is most easily accomplished in the case that institutions are defended by reference to empirical arguments alone, such as the claim that “everyone else” is actually complying with the institutional order or that it has “always” been honored. Such claims by themselves, apart from being probably wrong in any particular instance, cannot by itself serve as the foundation of any bindingness, apart from the case of conventions, which by definition are self-enforcing and have little if any potential for conflict. Other, more demanding arguments in defense of particular institutions invoke moral obligations, widely shared values, or consequences that are generally held to be desirable. All of these claims, if questioned, must be backed up with rather elaborate and explicit theories, and the validity of these theories can again be tested and questioned by critique.

Such critique corresponds to one of the three varieties of institutional breakdown that I have just discussed. It can (a) either try to challenge the normative premises that the institution invokes, or it can (b) try to demonstrate that these normative premises, if valid, might also be implemented by alternative institutional patterns, or that (c) the consequences claimed in support of a particular institutional pattern are not, on balance, as unquestionably desirable as it is claimed in defense of an institution (or, if evidently desirable, are not actually achieved by its operation).

Let me illustrate each of these three modes of critique with an example from the field of social policy. First, most pension systems have the feature that benefits are earnings-graduated, which is usually being justified in terms of a equitable reward. If we can demonstrate, however, that most pensioners from the upper income categories derive additional old age income from sources other than pensions, namely from savings and other assets they have been able to build out of their relatively high market income, equivalence in terms of pensions becomes a less compelling normative premise, because it virtually amounts to doubling the reward for the well-to-do income categories. Second, instead of paying unemployment benefits to jobless people, the supply of labor and hence unemployment might be

reduced by the alternative of large scale anticyclical programs of mandatory continuing education and other statutory leaves from regular employed work, with the balance of budgetary costs and labor productivity being perhaps even demonstrably better than is the case with regular unemployment insurance. Third, and concerning consequences, if it could be demonstrated that there is a zero-correlation between marginal increases of the total health budget and marginal improvements of independently measured subjective or objective indicators of health, the conclusion is warranted that either what (the budgetary increments of) the institutions of the health system serve is not actually "health" or the health they do serve is not unequivocally worth serving.

To be sure, such critical counter-arguments against the claims of institutions to validity and loyalty are themselves contingent upon whether they "make sense" to those to whom they are addressed. At the very least, however, they are likely to put some learning pressure upon the institutional complex in question. As a consequence of this pressure, they may instigate some search for survival strategies on the part of the institutional elites which are being challenged by the critique. By stimulating this search, and by subjecting its outcomes to reiterated critical scrutiny, we are, on this indirect way, probably as close as we can possibly come to the hyper-rational ideal of "designing" institutions.

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