

Hybrid regimes, the rule of law, and external influence on domestic change

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1 Hybrid regimes, the rule of law, and external influence on domestic change

Amichai Magen and Leonardo Morlino

Introduction

At the beginning of the twenty-first century, two sets of phenomena are challenging our understanding of democracy and democratization. First, transition from authoritarian regimes into some form of democracy is no longer understood to constitute the most prevalent or important change in worldwide democratization processes. Second, contemporary processes of domestic political change are unfolding within a radically transformed international environment compared to even two decades ago (Gershman 2005; Whitehead 2004).

As the *Freedom House* organization has been underlining in its reports over the last decade,¹ the stable, closed authoritarian regime has become something of a rarity. While in 1974 – the year that heralded the launch of the “third wave” of global democratization with the Portuguese *Revolução dos Cravos* (Huntington 1991) – the number of democracies on the planet stood at a mere 39, at the end of 2006, out of 193 independent countries, 123 ranked as electoral democracies (Freedom House 2006). Thus, for the first time in human history, democracy had become not only a universal aspiration, but the predominant form of government in the world, and the only form enjoying broad international legitimacy (McFaul 2004; Gershman 2005; Sen 1999). The triumph of democracy, moreover, has (so far at least) proven steadier than many would have expected, with cases of outright breakdowns and reversions to autocracy, and fears of a “reverse wave” to autocracy, largely held at bay (Diamond 2000; 2005).

Yet a serious reservation is attached to this seemingly sanguine story. For as overtly authoritarian regimes have disappeared from many parts of the world, they have typically been replaced – particularly since the end of the Cold War – not by high-quality, liberal democracies, but by hybrid regimes that combine democratic and authoritarian elements. Sandwiched on a continuum between liberal democracy, on the one side, and closed authoritarian regimes, on the other side, these “grey zone” entities (Carothers 2002) – which today (2006) number as many as 58 countries, roughly a third of the world’s total – represent both the new frontiers of democratization theory and

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a novel challenge for local and international reformists concerned to promote the consolidation of free and effective government in transitional countries. The uncomfortable co-existence in so many countries around the world of, on the one hand, formally democratic procedures and, on the other hand, abuse of fundamental civil and political rights, high levels of criminality and violence, endemic corruption, and floundering socioeconomic structures, in other words, is beginning to motivate scholars to consider explicitly the substantive, non-electoral dimensions of democracy. Indeed, some of the most salient contemporary questions for students of democratization, development and international affairs – whether academics, aid practitioners or policy-makers – no longer have to do with electoral breakthroughs, or the consolidation of the bare procedural rules necessary for the existence of electoral democracy. Rather, the new questions are focused on the content of democratic government, understanding the nature of hybrid regimes, the dynamics of their endurance or change and, from a more practical perspective, the conditions and dynamics that could encourage the transformation of hybrid regimes into substantive democracies of reasonably high quality (Diamond and Morlino 2005).

These new questions in democratization studies, moreover, are today addressed against an international backdrop radically different from the one that guided the transitologists of the 1970s and 1980s and, to a lesser degree, the consolidationists of the 1990s. Indeed, in hindsight of two decades at most, our analytical models of democratization have been challenged not only by the proliferation of hybrid regimes – a phenomenon that highlights the absurdity of conceptualizing democratization as a short, unidirectional interval between two clearly defined, stable regime types – but by a radically transformed international environment, and a parallel recognition of the importance of the international dimensions of democratization (Pridham 1991; Whitehead 1996a; Burnell and Calvert 2005).

Twenty years ago democratic transitions were relatively infrequent, bipolarity discouraged the risk of instability inherent in democratic experimentation, and the notion that steady authoritarian rule helped to foster the conditions of stability necessary for economic modernization still carried a substantial following (Whitehead 2004). The end of the Cold War not only expanded democratic practices into the former Communist world, it also eliminated a chief rationale for tolerating autocracies in the non-Communist one, as the withdrawal of western support for Apartheid South Africa demonstrated. With the number of new democracies growing rapidly in the 1980s and 1990s, democratization not only began to be perceived as the international norm rather than the exception, it also precipitated an unprecedented surge in democracy promotion activity by the main western powers (Smith 1994; Carothers 1999; Youngs 2004). At the hard edge of the spectrum of intervention – in countries from Haiti to Sierra Leone, from Bosnia-Herzegovina to East Timor and Afghanistan – weakening norms of state sovereignty, coupled with the growing linkage made by the United States (US) in

particular between freedom and security, have led to the proliferation of the use of military force and the establishment of new forms of international trusteeship to remove authoritarian rulers and install democratically elected and run governments, even under the most difficult post-conflict conditions. The deployment of non-coercive mechanisms to protect and promote democracy has also exploded over the same period. World Bank figures indicate a tenfold increase in international democracy promotion expenditure between 1991 and 2000 – an annual increase of approximately US\$3 billion (World Bank 2004). Institution building for democratic governance now accounts for 40 to 45 percent of the United Nations Development Programme (UNDP) worldwide budget (Dervis 2006), and more regional organizations, NGOs and transnational networks now wield more resources than ever before in order to protect and promote good governance and democracy through sanctions and positive incentives, socialization techniques, monitoring and reporting (Slaughter 2005; Russett and Oneal 2001).

Not surprisingly, contemporary democratization scholarship displays a growing interest in both western democracy promotion policies and the international dimensions of democratization more broadly (Burnell 2005; Levitsky and Way 2005; Pevehouse 2005; Carothers 2004; Youngs 2004). Still, critical questions of theory, conceptualization and measurement abound in the field. Do international factors, including the democracy promotion policies of western actors, play a significant role in encouraging or discouraging democratic development in domestic systems? If so, when and how do different strategies – external incentives, financial and technical aid, socialization techniques, diplomacy or demonstration effects – influence domestic decision-makers to improve freedom, democratic accountability, equality and responsiveness? How can the influence of external actors be conceptualized and evaluated? What combination of domestic conditions and foreign ‘interventions’ is most likely to lead to the transformation of illiberal, ineffective and corrupt procedural democracies into freer, fairer and better governed democracies? What are the pathways of external influence on domestic change, and what does the nexus of interaction between external and domestic variables look like in reality?

This volume approaches these complex questions using new theoretical insights and empirical data. To engage with the themes outlined above in a conceptually and methodologically informed manner, we trace the dynamics of change in a central dimension of liberal, substantive democracy – the rule of law – and on the interaction between external and domestic structures, agents and processes shaping such change. In order to get as near as is possible in social science to tracing causal links between domestic and external factors, we consciously focus on the interaction between a defined international actor that seeks to promote rule of law reforms in third countries, the European Union (EU), and four countries with a different, yet comparable, history of structured interactions with the EU and basic domestic political transformations – Romania, Turkey, Serbia and Ukraine – in the period since

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the end of the Cold War (see below). Empirically, the volume presents the results of original research on the influence of externally driven rule of law promotion strategies in a group of subject countries where: (1) the strategies deployed emanate from the same external actor; (2) similar reform goals are sought; but (3) the strategies differ substantially in key features – the force of conditionality, opportunities for elite socialization and immediacy of incentives for compliance. Thus, we supersede the existing literature on EU influence on candidate countries (Kelley 2004a; Linden 2002; Pridham 2005; Sadurski, Czarnota and Krygier 2006; Schimmelfennig and Sedelmeier 2005a; Vachudova 2005), going ‘beyond enlargement’ to compare membership with non-membership EU strategies. In doing so, we seek to unpack the still poorly conceptualized and poorly understood notion of external influence on domestic democratic reform processes; to ascertain where and to what extent, if at all, such influence has in fact occurred; to ascertain under what conditions external influence is more likely, and with what consequences for democratic quality in the case study countries. By asking these questions vis-à-vis four examples of ‘hard cases’ targeted by the EU for transformative engagement (Youngs 2005), we seek to derive lessons of broader application for scholars (of democratic development, comparative politics, international relations theory and international legal studies), as well as practitioners (in national aid agencies, NGOs, security and multilateral development organizations).

The remainder of this chapter addresses the notion of hybrid regimes, drawing on O’Donnell’s insight that a major factor missing from flawed democracies is the “democratic Rule-of-Law” (O’Donnell 1998; 2005). Having laid these conceptual foundations, we identify the gaps in existing analyses of external influence on democratic development in national systems, explain our focus on the EU as a rule of law promotion entity, and justify our case study selection. Chapter 2 of this volume then sets out in greater detail the analytical framework uniting this collaborative comparative study.

Hybrid regimes: definition and challenges

That the distinction between non-democracy and democracy could be conceptualized in terms of gradations, rather than as a dichotomy, and that in reality there always existed a gray area between non-democratic stable regimes of different sorts (see e.g. Linz 2000, and Brooker 2000) and consolidated, liberal democracy, was already evident to political comparativists in the late 1960s (Finer 1970; Dahl 1971) and later (Collier and Adcock 1999). The magnitude and spectrum of that gray area, however, have both greatly expanded since the advent of the “third wave” of democratization in 1974 (Huntington 1991). At that time democracies were few, but they were largely liberal democracies – characterized not only by free, fair and competitive elections, but by protection of civil and political freedoms, a reasonable degree of accountability and responsiveness to citizen needs, and the rule of law. Democracies were concentrated in western Europe, North America and a number of their former colonies; they

were a clear minority, but they were nearly all “good democracies” (Morlino 2004; Diamond and Morlino 2005).

One of the most striking characteristics of the third wave, particularly in its late period in the 1990s, has been the unprecedented growth in the number of hybrid regimes: political regimes that adopt the form of electoral democracy (with regular, seemingly or actually competitive, elections), but fail to fulfill the substantive content of consolidated, liberal democracy, or do so only ambiguously (Karl 1995; Diamond 2002; Levitsky and Way 2002). As Diamond (2002) observes, the term ‘hybrid regime’ is itself a generic category containing at least four distinct subtypes of regimes. The category of non-democratic regimes that contain some form of electoral competition can itself be divided into competitive (variously described as “competitive authoritarian” or “electoral authoritarian”) or uncompetitive (“hegemonic authoritarianism”) (Diamond 2002; Schedler 2006). This leaves electoral (illiberal or minimal) democracy as a third subtype of diminished forms of democracy, and a residual category of “ambiguous regimes” positioned on the fuzzy border between electoral authoritarian and electoral democracy.

Whereas recent scholarship has focused primarily on conceptualizing and explaining the proliferation of electoral authoritarianism (Brownlee 2007; Schedler 2006), we are chiefly concerned with the latter two subtypes of hybrid regimes. Clearly, these partial democracies are morally and practically pernicious. They give democracy a bad name by failing to deliver on people’s legitimate expectations for effective participatory government, blur the distinction between genuinely free societies and authoritarianism, and help bad rulers endure in power by semi-legitimizing them. Their democratic content is at best weak, and at worst they display serious problems of corruption, inequality, abuse of civic and political freedoms, and state ineffectiveness. But it is the sheer rapidity and scale of their proliferation that has brought the problem of hybrid regimes to the forefront of policy and academic attention:

While the ‘transitologists’ of the 1970s and 1980s investigated the conditions and modes of transition from dictatorship to democracy, the ‘consolidologists’ of the 1990s concentrated on inquiring into causes, conditions and models of the consolidation of young democracies. Most recently, the questions of whether democracy is working, how ‘good’ or ‘bad’ a democracy is, and of the conceptual issue of diminished sub-types of democracy (illiberal democracies, defective democracies and so on) have begun to become the new predominant trend in democracy theory and democratization studies.

(Merkel and Croissant 2004, 1).

If we now know what hybrid regimes are, and how widespread they have become, the next question is: what determines whether such regimes evolve into fuller, higher quality democracies, remain stuck in a gray zone of illiberal, minimal electoralism, or backslide into outright authoritarianism?

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What, in other words, is the “democratic substance” missing from what has been variously referred to as “democracy with adjectives” (Collier and Levitsky 1997) - “illiberal” (Zakaria 1997), “delegative” (O’Donnell 1994), “clientelist” (Kitschelt 2000), or simply “pseudo” (Diamond 2002) democracy? What accounts for the emergence, retardation or wilting of such substance? And finally, from a democracy promotion point of view – what action can and should be taken by domestic and external reformists to best encourage transitions from hybrid regimes to substantive, higher quality democracy?

In approaching these questions we encounter a gap in knowledge that we hope, at least in part, to fill in this volume. As Epstein *et al.* assert:

[Partial democracies] account for an increasing portion of current regimes and the lion’s share of regime transitions ... [but] ... we have little information as to the factors that would lead partial democracies to either slide down to autocracy or move up to full democracy ... the determinants of the behavior of the partial democracies elude our understanding ... the factors affecting transitions out of partial democracy remain poorly understood.

(Epstein *et al.* 2006, pp. 556 and 564–5).

To approach the double conundrum of understanding the dynamics of change away from hybrid regimes, and the role that external actors may play in such transformation, we first identify a key dimension of democratic substance that is missing from hybrid regimes – the ‘democratic Rule-of-Law’ – and then proceed to begin addressing the topic of international influence on domestic democratic development.

Democratic substance and the rule of law

Transitions from hybrid regimes to more substantive, higher quality democracy can be explored along several theoretical axes (Morlino 2003, Whitehead 2002). Impressed by the violence, inefficiency, ineffectiveness, inequality, corruption and frequent violation of civil freedoms that characterize many formally democratic states – in Latin America, Asia, Africa and the former Soviet bloc – scholars have recently shifted the focal point of democratic theory in an attempt to identify what is missing from such regimes. At the same time, the growing interest of development economics over the last decade in issues of public voice and accountability, political stability, government effectiveness, the rule of law, regulatory quality and control of corruption (all under the notion of ‘good governance’, rather than the more overtly political ‘democracy’) are also focusing new attention on the non-electoral dimensions of democracy (Kaufmann, Kraay and Mastruzzi 2006; Jomo and Fine 2006; Drury, Krieckhaus and Lusztig 2006). The quest has led democratic theory to expand the discussion of democratic substance, or quality, and

to critique older conceptualizations for confusing ‘real’ democracy with mere electoralism (Karl 1995; O’Donnell 1998).

At a bare minimum democracy requires: sovereign elected institutions; universal adult suffrage; free, competitive, fair and recurring elections; multiple serious political parties and a plurality of sources of information (Dahl 1971; Schmitter and Karl 1993). The basic conditions for democracy, in other words, involve institutionalized guarantees for participation in public contestation for power. In contrast, when we approach the issue of democratic substance – what makes a good democracy – we can identify eight dimensions on which an empirical determination of quality can be made: (1) the rule of law; (2) Participation (3) Competition; (4) Electoral Accountability; (5) Inter-institutional Accountability; (6) Responsiveness to the needs, interests and expectations of citizens; (7) Freedom (consisting of political, civil and socioeconomic rights); (8) Equality/solidarity (Diamond and Morlino 2005).

Prima inter pares among the dimensions of democratic quality is the rule of law (O’Donnell 1998; Bratton and Chang 2006; Thier 2007). As Linz and Stepan’s seminal work on democratic consolidation indicates, the degree to which the rule of law exists in a given polity reflects the entire democratic quality of that regime (Linz and Stepan 1996). Indeed, the rule of law may be understood as the foundation upon which every other dimension of democratic quality ultimately rests (Diamond and Morlino 2005). Hence, the study of rule of law reform dynamics reflects deeper and broader processes of domestic democratic development, and an inquiry into the influence of international actors on changes in the quality of the rule of law moves the research agenda beyond the procedural, macro-democracy nexus of inquiry ~~of the lion’s share of the democracy promotion literature.~~

Anyone concerned to uphold the ‘rule of law’ at home or to promote it abroad, however, is confronted with an a priori challenge of conceptualizing the term. Conceptualization involves the identification of the attributes that are constitutive of the concept under consideration. Such definition is a critical task, since the specification of the meaning of the concept forms the epicenter around which all subsequent decisions regarding theory, data collection and analysis are taken. Accordingly, the attributes that are constitutive of the concept under consideration have to be defined carefully, which means neither minimally nor with such overburdened detail as to make the concept synonymous with “all things bright and beautiful”, thus rendering it of little analytical use.²

Yet, to a degree perhaps unparalleled in social science phraseology, the term ‘rule of law’ is vulnerable to overreaching and abuse. More so than the term ‘democracy’ even – which itself has gained hegemonic international endorsement – the ideal of the rule of law is advocated nearly universally and, just as importantly, never seriously rejected. Amidst a host of deep cleavages – between east and west, north and south, Islamic and non-Islamic, liberal and non-liberal societies – as Tamanaha observes: “there appears to be widespread agreement, traversing all fault lines, on one point, and one point alone: that

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the “rule of law” is good for everyone.” (Tamanaha 2004, 1). Notwithstanding its pervasiveness as an ideal, however, the term is afflicted by an extraordinary divergence of understandings. Often, it seems “there are almost as many conceptions of the rule of law as there are people defending it.” (Taiwo 1999, 152).

Does this mean, as some theorists would have it, that the concept of the rule of law has been rendered meaningless by “ideological abuse and general over-use”? (Shklar 1987, 1). We submit that it does not. But neither does it mean that anything goes, and that any given definition is as good as another. Rather, because conceptualization is both intimately connected with theory and is a legitimately open-ended, evolving activity that is ultimately assessed in terms of the usefulness of the theory it helps to formulate, scholars are at liberty to determine what attributes must be included in a definition of the rule of law, while observing the methodological sensibility of avoiding the extremes of including too little, or too much, relative to their theoretical goals (Kaplan 1964, 51–3).

Identifying the constitutive attributes of the rule of law represents a challenge, less so because of the term’s “essentially contested” nature than by virtue of its evolving one, and the loose use made of it by practitioners and scholars from different disciplines (Radin 1989).³ For Dicey, who coined and popularized the phrase, the concept represented one of the two legs upon which the constitutional order of England consistently rested since the Norman Conquest of 1066 (Dicey 1908). For Neumann, a Weimar Republic jurist and member of the Frankfurt School writing in the 1920s, it stood for one of the two defining characteristics of the modern nation-state; the rule of law being in perpetual, irreconcilable struggle with the modern state’s other basic characteristic – sovereignty (Neumann 1986). Whereas in the middle of the twentieth century Hayek (1944) perceived the rule of law as the essential safeguard against the totalitarian tendencies of state socialism, by the late 1980s Hayek’s disciples invoked the rule of law in their assault on Keynesian economics and as part and parcel of their calls for the US and the International Financial Institutions (IFIs) to pursue liberal market economy and development policies.⁴

In contemporary use, as Kleinfeld (2006) observes, the phrase is commonly brandished by politicians, practitioners and scholars to imply at least five meanings that are in fact distinct, but seldom clearly differentiated by those who invoke the term: (1) government bound by law; (2) equality before the law; (3) law and order; (4) predictable, efficient justice, and (5) public power respectful of fundamental rights. The definitional challenge is further compounded by the deep disconnection between the different communities now making use of the phrase, and the intellectual contexts from within which they operate.

Taking a step back from this confusion, we can divide conceptions of the rule of law into two broad types: thin and thick. This basic typology corresponds roughly to what Craig (1997) calls “formal” and “substantive”,

Selznick (1999) “negative” and “positive”, and Dworkin (1985, 11–13) terms “rule-book” versus “rights” conceptions of the rule of law.

Thin, formal, or negative conceptions of the rule of law demand the essential separation of law from politics (or “autonomous law”), and focus on the minimal conditions necessary for law to restrict sheer arbitrariness in the ruler’s use of power.⁵ Restraining, if not actually taming, Leviathan has been the historically original context within which the concept of the rule of law emerged. Hence for Dicey: “the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint”, so that no individual could be lawfully punished by the state “except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land” (Dicey 1908, 188). Restraining discretionary use of power is similarly at the heart of Hayek’s definition of the concept. “Stripped of all technicalities” as Hayek’s powerful formulation puts it:

this means that government in all its actions is bound by rules fixed and announced beforehand – rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one’s individual affairs on the basis of this knowledge.

(Hayek 1944, 54).

Such a conception – sometimes dubbed “government by law, not by man” – stems from the historic struggle to curb the coercive force of the strongest in human society, and is thus chiefly concerned with the “negative” goal of shackling coercive authority. The constitutive attributes of a thin conception, therefore, stress formal or procedural aspects of the rule of law: laws must be open and public so that they can act as a guide to people (there should be no secret laws); the meaning of laws must be reasonably clear so that ordinary people can be guided by them; laws should be relatively stable, so that people can plan their lives by them; laws must be prospective, not retroactive; and the making of laws themselves must be governed by known, clear and relatively stable rules.

In contrast, a thick, substantive or positive (though anti-positivist) conception of the rule of law, accepts all the constitutive attributes of the thin definition, but at the same time insists that the rule of law cannot be divorced from fundamental elements of political morality and institutional practicality. In a substantive conception, laws enshrine and protect political and civil liberties, as well as procedural guarantees. It assumes that all those wielding public power must themselves be embedded in a comprehensive legal framework, so that individuals can enforce their rights against the state as a whole. Since government itself is ruled by law, corruption and other forms of illegality are prohibited. The requirement that rights should be actually defensible means that the central institutions of the justice system, including lawyers,

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courts, the police and prosecution are at least reasonably fair, competent and efficient. This assumes a reasonably effective structure of state institutions, wielding a degree of administrative capacity adequate to carrying out the functions of the state. It further means that judges ought to be impartial and independent of the remainder of the state apparatus – otherwise the ability of individuals to uphold their rights before them would be endangered by political dependence and manipulation.

A substantive democracy, accordingly, is characterized by ‘democratic Rule-of-Law’ which itself embodies five main dimensions: (1) protection of civil freedoms and political rights; (2) independent judiciary and a modern justice system; (3) institutional and administrative capacity to formulate, implement and enforce the law; (4) effective fight against corruption, illegality and abuse of power by state agencies; and (5) security forces that are respectful of citizens rights and are under civilian control.⁶ These five dimensions, accordingly, are our main indicators of changes in democratic quality.

Though the two concepts are not synonymous, the affinity between the democratic rule of law and liberal democracy is clearly profound and multi-dimensional. Even a minimal, electoral democracy cannot exist unless rulers comply with at least one rule – that which regulates who should occupy the position of ruler given the results of elections. More broadly, the virtues of the rule of law are substantially the same as those of the democratic process, in three key respects: the rule of law upholds the political rights of a democratic regime; it protects the civil liberties and rights of the entire population (including minority and other disadvantaged groups); and it establishes “horizontal accountability” – networks of responsibility “which entail that all public and private agents, including the highest state officials, are subject to appropriate, legally established controls on the lawfulness of their acts” (O’Donnell 2005, 7). Indeed, as Carothers suggests, properly conceived the interrelation between the rule of law and liberal democracy goes beyond democratic processes to permeate institutions and spheres across society:

The rule of law makes possible individual rights, which are at the core of democracy. A government’s respect for the sovereign authority of the people and a constitution depends on its acceptance of law. Democracy includes institutions and processes that, although beyond the immediate domain of the legal system, are rooted in it.


(Carothers 2006, 4–5).

At the turn of the twenty-first century, in sum, the rule of law is most appropriately conceptualized not merely as a check on naked tyranny, an elixir for sustainable economic growth, or a set of institutional attributes, but as a key dimension (arguably *the* key dimension) of democratic quality. Such a conception taps into advances in legal philosophy, development economics, and democratic theory, in a manner that facilitates an analytically useful understanding of the rule of law as democratic substance, and its development as indicative of progress in democratic quality.



External influence on domestic democratic development

From their inception in the late 1960s through to the immediate aftermath of the Cold War, the predominant explanatory models of democratic development perceived the process essentially a domestic drama, took the individual nation-state as the unit of analysis, and largely screened out international factors.⁷ Indeed, until the early to mid-1990s, the role of the international context was correctly described as the “forgotten dimension” (Pridham 1991; Burnell 2005) in the study of democratization. While some political comparativists continue to examine processes of political, institutional and legal reform at the national and sub-national levels in isolation from the broader international environment (Elster, Ofee and Preuss. 1998; Geddes 1999), since the end of the Cold War growing attention is being placed on the tasks of identifying, conceptualizing and, most recently, evaluating the role of external factors in domestic democratization processes. Along with rising recognition of the role of international factors in democratic transitions and consolidation, moreover, we have been witnessing growing interest – particularly in the US and Europe after the 11 September 2001 attacks – in examining the deliberate promotion of democracy abroad (Burnell 2005; Carothers 2004; Crawford 2003; Cox, Ikenberry and Inoguchi 2000; Ottaway 2003; Youngs 2004; ~~see also~~ Fukuyama and McFaul 2007). Still, as a five-year, joint American–European research project on the state of the art regarding international democracy promotion concluded, although democracy promotion has become an increasingly prominent feature of the foreign policies of leading western actors, the “international dimension of democracy promotion nonetheless remains at best understudied and poorly understood” (Schraeder 2003, 22). We identify four main gaps in knowledge ~~as follows.~~

First, the study of international democracy promotion necessitates piercing the domestic–international membrane, opening up the ‘black box’ of the state and developing both theoretical and empirical knowledge on external–internal linkages of democratization. In practice however, for a variety of historical, intellectual, methodological and institutional reasons, theories of comparative politics, international relations, institutionalism and international law have constructed largely separate, independent and self-contained spheres of inquiry, with distinct actors and research questions. Just as political comparativists have screened out international factors, international relations theorists concentrate on international outcomes and have been insufficiently prepared to research causal linkages between international agents and domestic actors.⁸ Researching external dimensions of democratization, moreover, must involve the insights of both academics and practitioners. Yet the separation between the two worlds remains profound. In attempting to explain exogenous influences on domestic political developments, academics have tended to gravitate towards history (often going back several centuries) (Moore 1966; Tilly 1975, 1990; Greif 2005, 2006) rather than grapple with the messy history of the present. For their part, practitioners borrow few insights from academics, and the two groups are generally “engaged in dissimilar enterprises” (Carothers 1999, 94).

Second, the existing literature on international democracy promotion tends to be descriptive, focusing on the democracy promotion motives, strategies and instruments (the “supply side”) of individual countries, primarily the US, rather than attempting to get at the experience of countries targeted for change or, even more so, the interaction between external actors and domestic change processes.⁹ In reality, it is never the case that international factors alone, whether a unitary  or a host of them, play an independent causal role in the development of democratization within a given domestic setting. If until the mid-1990s international actors were screened out altogether, in the more recent literature it appears that the pendulum has swung to the opposite extreme, whereas what is required is more empirical knowledge regarding when and how external actors have managed to promote internal reforms, as well as far greater attention to understanding the interactions between external and domestic factors.

Third, just as democracy promoters have tended to adopt a ‘one size fits all’ template to their work (Carothers 1999; Boerzel and Risse 2004), evaluators of domestic democratic change tend implicitly to homogenize external influence on domestic reform processes. In reality, however, the same set of independent variables (whether internal or external) may have a different influence on democratization outcomes depending on the kind of outcome being analyzed. The mix of independent variables that generate political liberalization in an autocratic regime, for instance, may not be the same forces that trigger a successful transition. Likewise, the factors that cause an electoral breakthrough may be of little relevance to the flow of democratic content post-transition – the protection of political and civic rights, accountability, responsiveness and effective rule of law – necessary for high-quality, liberal democracy. Countries trying to build democratic institutions after a war or a collapse face a different set of challenges than democratizing regimes with effective states. Since to date there has been little contiguity between scholars of democratic transitions, consolidation and post-conflict state-building, it is less surprising perhaps that we have not yet differentiated between what are in reality radically different contexts and processes of change, and the varying roles of external actors in each category. Historically, scholarly and policy emphasis has gravitated towards dramatic events of transition from authoritarian rule and, more recently, post-conflict political reconstruction efforts. By exploring the nature and limits of external influence on the quieter processes of shifts in the quality of democracy, we hope to draw attention to the phenomenon of variety, where external factors play different roles in different types of domestic political outcomes.

Indeed, our need to attend to the less visible, messier travails inherent in efforts to improve democratic quality in imperfect  democracies, is explained, in part at least, by the intellectual history of democratization studies as a field. Whereas the ‘transitologists’ of the 1980s (focusing on southern Europe and Latin America as their case studies) saw democratization as a short interlude between one stable regime type and another -democracy to

democracy – we have come to understand democratization as a more complex, multilayered, long-term and open-ended process. Especially where the goal is the eventual establishment of a high-quality democracy, democratization has come to be understood as a multi-faceted, potentially reversible process lasting decades rather than years (Whitehead 2004). Accordingly, new analytical models are required to conceptualize international actor influence on regime development in the spheres spanning the aftermath of electoral breakthrough, all the way to the entrenchment of high-quality democracy. Instances of reversals, hurdles and even outright failure, must be included in the analysis not only to avoid selection bias and to isolate the causal mechanisms that were ultimately necessary for democratic change, but equally to capture the ebbs and flows that characterize ongoing, often non-linear, processes of democratic development.

Finally, the strong incentive for multilateral development banks, state aid agencies and other donor organizations, is to document success stories, where the wisdom of investment in aid for democracy can be showcased before budget allocating legislatures and taxpayers reassured that democracy promotion ‘works’. This is partly a reflection of the political economy of the growing post-Cold War, post-9/11 democracy promotion ‘industry’. Thus, for example, a large cross-national quantitative report on the effects of US foreign assistance on democracy promotion – compiled with the participation of the United States Agency for International Development (USAID) and published in 2006 – contends that US\$10 million invested in USAID democracy assistance between 1990 and 2003 produced, on average, a 0.25 point improvement in the Freedom House score of the recipient state (Finkel, Perez-Linan and Seligson 2006). Are these felicitous findings matched by the experience of transitional countries struggling to improve the quality of accountability, clean government, and protection of civil and political rights? Does this aggregate level, quantitative report and others like it – which can tell us very little about causality or the pathways of connections between external influence and domestic change processes – reflect the reality of post-Cold War international actor influence on democratic development? Or does the picture that emerges from a close qualitative examination of external influence on domestic change suggest a different conclusion? Chapter 2 in this volume sets out an analytical framework specifically addressing these puzzles. But before that, we need to justify our focus on the EU as an agent of rule of law promotion, and explain our case study selection.

Why the European union? Why these cases?

The EU is not the sole international actor currently engaged in the promotion of rule of law reforms in developing and transitional countries (Carothers 2006; Jensen and Heller 2003). Neither was it the first to have become involved in this field of international activity. Indeed, although since the end of the Second World War four main ‘waves’ of rule of law promotion movements

have taken place – where leading western states have sought, either directly or through multilateral development organizations, to promote legal and judicial reforms in transitional countries – the EC/EU can only be said to have become a significant promoting actor in the last wave, which commenced in the immediate aftermath of the Cold War (Jensen 2003; K. Smith 2003a; Youngs 2001).

The fact that the EU has been a relative latecomer to an area of activity historically shaped primarily by the Americans (Ikenberry 2000; T. Smith 1994) has in several respects hampered both theoretical and empirical inquiry into its role as an international democracy and rule of law promotion actor. Since the institutional and intellectual prism within which EU thinking about democracy promotion originally developed in the post-Cold War era has primarily been the enlargement of the regional organization itself (K. Smith 2003a) – a prism radically different from that of the US, or the World Bank and the UN for that matter (Jomo and Fine 2006; Newman and Rich 2004) – the American-dominated democratization literature has long neglected the European experience. In reality, EU enlargement processes in the Central and Eastern European countries (CEECs), and later Turkey and the Balkans, have been, as Whitehead (2001a, 415) observes: “a major, but under-theorized, component of the post-cold war drive for ‘democracy promotion’ in those parts of the world that were until recently not organized into liberal democratic regimes”, yet even in the case of post-Communist transformations, as Dimitrova (2002, 174) laments, the enlargement and democratization literatures have until very recently tended to “not only pass each other as ships in the night, but they rarely even sail in the same sea”. Indeed, until the turn of the Millennium, studies on Eastern enlargement were almost entirely either descriptive or focused on accounting for individual Member States’ policy preferences, as well as the EU’s collective decision to assume the risks and costs of expansion (Maresceau 1997; Mayhew 1998; Henderson 1999; Ott and Inglis 2002).

The dearth of careful attention to the external influence on domestic change puzzle imbued in pre-accession processes can be explained with reference not only to the lingering insularity of European studies from broader questions in comparative politics and international relations theory, but to a number of additional factors including: the wider screening out of international dimensions from earlier generations of democratization scholarship; the incremental and fragmented manner in which EU policies have developed since the inception of the first pre-accession process in 1994; the highly technocratic, often cryptic nature of accession negotiations, which made the topic inhospitable to non-EU experts; and finally, the perception among scholars of democratization and democracy promotion that the EU’s *sui generis* nature as an international actor, as well as the temporally and spatially limited nature of enlargement, offered few lessons of broader utility to the field (Magen 2004).

This latter point deserves further elaboration, since the focus on enlargement as a self-contained phenomenon has also afflicted to a considerable

extent those scholars who did eventually turn to examine the EU expansion–democratization nexus of inquiry (Dimitrova 2002; Haughton 2007; Kelley 2004a; Kubicek 2003; Pridham 2005; Sadurski 2004; Schimmelfennig, Engert and Knobel 2003; Schimmelfennig and Sedelmeier 2004 and 2005a; Vachudova 2005). Although a number of commentators have pointed out that the dynamics created by EU expansion in the last decade constitutes a set of conditions as close to a laboratory experiment in external influence on domestic democratic development as is likely to occur in social science (Falkner 2000; Pridham 2002), rigorous comparative analysis on the EU expansion–democratization nexus has remained sparse and fragmented. Studies in the area typically analyze single enlargement rounds (Kelley 2004a; Pridham 2005; Vachudova 2005), single country cases, or single policy areas (Jacoby 2004; Linden 2002; Schimmelfennig and Sedelmeier 2005a). Within this picture, several studies are dedicated to democracy generally (Kubicek 2003; Pridham 2005; Sadurski, Czarnota and Krygier 2006) and human rights (Fierro 2003), but the subject of rule of law has attracted little systematic attention, remaining to a great extent the ‘forgotten Copenhagen Criteria’.¹⁰

Moreover, it is now high time for scholars and practitioners alike to look beyond enlargement and onto a broader canvas of EU engagement strategies meant to exercise transformative power abroad and in particular to undertake systematic, comparative studies of enlargement and non-enlargement strategies so as to gain a better understanding of the nature, extent and limitations of external actor influence. Evidence of what a number of observers variously describe as “external Europeanization”, “EU external governance”, “transformative engagement” and “transformative power” (Grabbe 2006; Lavenex 2004; Schimmelfennig and Wagner 2004; Youngs 2005) – all involving the projection of EU rules, institutions and governance processes to non-member, non-candidate states and other international organization – can be found globally (Grugel 2004; Horng 2003; Szymanski and Smith 2005), but the phenomenon is most pronounced in the European peripheries. Regions surrounding the EU “attract attention from policy-making institutions of the EU and, over time, become targets of significant ‘policy export’ from the Union”. (Christiansen, Petito and Torna 2000, 410).

~~Indeed~~, EU efforts to affect transformation in neighboring regions have not been confined to the hope that the Union’s liberal-democratic example would somehow infect neighboring regions through some passive form of diffusion (Kopstein and Reilly 2000; Simmons, Dobbin and Garrett 2006; Skrede Glenditsch and Ward 2006). On the contrary, the perception that enlargement has been the most successful foreign policy instrument the EU has ever wielded, new security imperatives, path dependence, and turf battles over the making of EU foreign policy have, over the past several years, prompted EU actors – notably the Commission and the Council – to adapt the methodologies used to promote democratization and marketization in the CEECs and apply these first to the Balkans, and later to Ukraine, the South Caucasus, North Africa and the eastern Mediterranean (Magen 2006). EU efforts at

transformative engagement, exercised through bilateral agreements and regional frameworks – notably the Stabilization and Association Process (SAP) in the western Balkans, the Euro-Mediterranean Partnership (EMP) and now the European Neighbourhood Policy (ENP) – involves the establishment and progressive development of formal comprehensive ties incorporating regularized cooperation, dialogue and monitoring (bolstered by financial assistance, technical aid and conditionality) on a broad range of subjects (trade, competition, standards, transport, environment, justice and home affairs, human rights, democracy and so forth) with the aim of affecting far-reaching economic, political and social change in targeted countries.¹¹

As chapter 3 in this volume explains in detail, the incentives deployed by the EU in an attempt to affect such changes in the CEECs, Turkey, the Balkans and the ENP countries vary in certain critical respects, and are comparable in others. Most importantly, the “golden carrot” of full EU membership credibly present in the case of Romania, has, at different times over the last decade been less or more uncertain in the case of Turkey. In a third category, western Balkan countries included in the SAP, such as Serbia, have since 2000 been made “potential candidates” – offering a more distant and tenuous prospect of full inclusion – whereas ENP countries, such as Ukraine, have so far been completely excluded from a membership horizon, and instead offered the prospect of a still vaguely defined form of partial integration into the EU system (Magen 2006).

At the same time, the methodologies used by the EU in an attempt to affect democratic rule of law development across these different categories of engagement share common assumptions about modes and instruments of external influence, creating new opportunities for comparative analysis. In essence, all four categories are characterized by: (1) a top-down mode of engagement, focusing on intergovernmental bargaining and bureaucratic exchange rather than more diffuse, bottom-up support for civil society; (2) a legalistic, technocratic approach to reform-promotion, drawing on the *Acquis Communautaire* for standards and benchmarks of reform; (3) the use of “reinforcement by reward” type of conditionality, rather than punitive measures or *ex ante* conditionality;¹² (4) regular monitoring and reporting on progress in meeting reform benchmarks; (5) financial and technical assistance to help fund reforms; and (6) the progressive establishment and development of ‘socialization forums’ – such as technical committees and subcommittees, secondment of bureaucrats in ‘twinning’ programs, and selective third-country participation in EU programs and agencies.

Table 1.1 shows the ~~possible choices and the actual ones~~ (in bold) by giving priority in the presentation of criteria to the first one, i.e. the status of relationships with the EU. In this perspective we may have a *prospective member*, when there is already a decision on ~~the~~ accession, a *negotiating candidate*, when that decision has still to be made but negotiation has begun, a *potential candidate*, when there is no negotiation but there is the possibility of membership, ~~a virtual member, when accession is excluded but a set of other integration~~

Table 1.1 Relationships of selected regimes with the EU

Category	Countries in category/ <i>Case Study</i>
Prospective/new members	Bulgaria, Romania
Negotiating candidates	Croatia, Turkey
Potential candidates	Albania, Bosnia-Herzegovina, Macedonia, Serbia
European neighboring countries	Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia, Ukraine

~~policies can be carried out, neighbor country, when geographical proximity may imply stronger relationships of different kinds.¹⁵~~

In our choice of the countries, by going beyond enlargement and examining the interaction between EU strategies of transformative engagement, on the one side, and domestic dynamics in Romania, Turkey, Serbia and Ukraine, on the other, we can derive more general lessons regarding the mechanisms, pathways and limitations of international influence on domestic change than would have been possible where the canvas of inquiry involves candidates alone. What are our theoretical expectations concerning the scope and depth of potential EU influence across these different categories of engagement? Where, if at all, do we find evidence that EU attempts to export its rules, institutions and norms have had an influence? If we do identify evidence of such influence, where do we find it and what actually constitutes that “influence”? Where we can trace EU influence in particular, rather than the involvement of other actors such as NATO, the Council of Europe, USAID or the World Bank, how does that influence sit with our theoretical expectations about the variable power of conditionality, financial and technical aid, and socialization techniques deployed by the EU in an effort to encourage rule of law reforms across these different categories of engagement? What confluence of domestic considerations and external mechanisms are more likely to achieve compliance with EU reform demands? Does influence, where it exists, appear random, or can we identify clear patterns which can then inform future policy in Europe and beyond? By posing these questions in relation to both enlargement and non-enlargement cases, we break away from the self-contained constraints of existing inquiries into the enlargement–democratization nexus, and seek lessons of broader interest to scholars and practitioners in the fields of comprehensive security, democracy and rule of law promotion and development economics.

Useful inquiry into the role, actual and potential, of the EU as an international democracy and rule of law promotion actor in its near abroad has also suffered from generalizations and a dearth of empirical study. Commentators writing on the effects of European integration on the improvement of democracy in the CEECs, from both the supply and receiving ends of the relationship, have tended to oscillate rather wildly between awe and dismissal.¹⁴ Where it has been declared to be found, moreover, EU transformative power has largely been assumed, rather than demonstrated, and although a number of recent studies have begun to formulate finer-grained hypotheses about

conditions and modes of influence, as well as trying to locate particular influences (Haughton 2007; Kelley 2004a; Pridham 2005; Sadurski, Czarnota and Krygier 2006; Schimmelfennig and Sedelmeier 2005a; Vachudova 2005), large gaps in knowledge persist over critical questions – where, how and to what degree has the EU managed to influence rule of law conditions in enlargement versus non-enlargement countries; through what modes of interaction with domestic decision-makers and other constituencies, and with what consequences?

This study addressed these questions through qualitative empirical analysis, using structured, focused comparison of case studies (George and Bennett 2005). The method is ‘structured’ in that it identifies a set of questions that reflect the objectives of the research and then poses these questions to each of the four case studies under consideration in order to standardize data collection, thereby making the systematic comparison and cumulation of the findings of the cases possible. The method is ‘focused’ in that it is concerned with certain aspects of the cases examined (rule of law reforms) within a given period of time (from 1991 to 2006). These methodological requirements of structure and focus apply equally to all individual cases under consideration.¹⁵

This involved a two-pronged research strategy. First, detailed ‘country reports’ were compiled on each one of the case study countries. These covered the long-term domestic economic, historical and political legacies of the country, constitutional and governmental systems; as well as a host of shorter-term indicators relating to levels of economic development, political party constellation and elections, media freedom, civil society, civil liberties and political rights, state capacity, judicial independence, organized crime, civilian control of the police and armed forces, due process, corruption and governance. In addition, each country report mapped the country’s international linkages, both with the EU and other international actors in order to identify antecedent conditions, as well as domestic and external independent variables.

Second, using a detailed, structured questionnaire we posed a common set of questions to the case study authors and required that answers to the questions posed be backed by reliable data – including interviews with officials, official reports, local media materials and commentary. Using the questionnaire as a shared analytical framework, allowed case study authors to trace domestic changes in the five dimensions of rule of law conditions over the applicable period, and to analyze when and how international factors have impacted such reforms across the three levels of analysis studied – formal rule adoption, internalization and implementation. In order to minimize the risk of privileging EU impact over both domestic variables and other international actors, country experts were asked to first trace domestic rule of law reforms in the five dimensions identified, and only then zoom out to examine external influences, identifying both EU and non-EU influences.

How were the case studies selected in the first place? The first step towards specific case study selection involved a clear identification of the applicable universe of cases. This universe was shaped by three broad criteria. First, we were interested in those states that were subject to some type of EU regional

transformative engagement strategy (either enlargement or non-enlargement bound) and who were, by the time the research was launched in 2004, non-EU Member States (see Table 1).¹⁶ The pool of countries falling within this category covered a total of twenty-five countries: the remaining candidates negotiating accession (Bulgaria and Romania); the only country that was then officially recognized as a candidate but with whom accession negotiations were not yet opened (Turkey); the Western Balkan countries covered by the SAP policy (Albania, Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, and Serbia); and the fifteen states (and one non-state entity) covered by the ENP (Algeria, Armenia; Azerbaijan; Belarus; Egypt; Georgia; Israel; Jordan; Lebanon; Libya; Moldova; Morocco; Syria; Tunisia; Ukraine, and the Palestinian Authority).

Second, whereas recent scholarship has chiefly focused on transition to democracy (Bunce 2003; McFaul 2004; 2007) or the endurance of authoritarian regimes (Brownlee 2007; Schedler 2006), we were concerned with the dynamics that facilitate or hinder the transformation of these ambiguous or minimalist, electoral democracies, into more substantive, higher quality democracies, with a genuine rule of law. This meant that those countries falling within the nominal universe of cases but which were either fully consolidated liberal democracies (Israel) or, more typically, clear non-democracies (Albania, Algeria, Azerbaijan; Belarus; Egypt, Jordan, Libya, Moldova, Morocco; Syria, and Tunisia) were excluded from the pool of cases. And thirdly, we avoided cases of territories lacking full state sovereignty, thus excluding Bosnia-Herzegovina, Kosovo, and the Palestinian Authority from the pool of cases.

Apart from isolating the explanatory factor it wishes to vary – i.e. relations with the EU – and carefully defining the relevant universe of cases, the study controls (to the extent possible in country-level structured, focused comparisons) for the key independent variables that may impact rule of law development in the domestic systems of the subject countries. The choice of specific case studies, therefore, was informed by the two main explanatory theories of democratic development – the actor-based, agency-driven approach, on the one hand, and the structuralist, socioeconomic approach, on the other hand.

For more than two decades now, the dominant (perhaps even hegemonic) theoretical approach to explaining the success or failure of democratic transition and consolidation has emphasized the role of agency, strategic-bargaining calculation, and institutional power dynamics, particularly among ruling and opposition elites. Departing from what they saw as the overly deterministic, pessimistic bent of modernization and dependency theories in the 1960s and 70s, scholars of the third and fourth ‘waves’ of democratization emphasize the role of state and societal actors in determining the outcomes of democratic development (Bermeo 1990; Berins Collier 1999; Fish 1999; McFaul 2002; Bunce 2003). Most importantly, the presence or absence of meaningful political contestation and the party constellation of hybrid regimes, represent independent variables that could strongly influence domestic dynamics of rule of law reforms, determine conformance with international norms, and so should be standardized as far as possible in comparative case study research. As Schimmelfennig argues, in a study of the effects of membership incentives

on compliance with EU demands in Central and Eastern Europe, the most important factor for successful external influence on domestic policy reforms is the constellation of political parties (Schimmelfennig 2005a). Medium- to long-term prospects of what Schimmelfennig calls “international socialization” with EU norms, not only depend on the incumbent regime but on the calculations of their major political competitors, and the ability of those competitors to gain power through elections. In those CEECs where all major parties are pro-Western and reform-minded (or “liberal party constellation”) “international socialization has been smooth and has produced stable, consolidated democracies”. (Schimmelfennig 2005a: 828). In countries with an “anti-liberal” constellation of political forces (such as Belarus, Moldova and Russia), at the other end of the spectrum, attempts at external influence by liberal international actors will fail. In contrast, all four case study countries selected for this study fall into a third category of ‘mixed constellation’ – where the major political parties in the country are split between reform-oriented and nationalist/communist-authoritarian oriented parties. Schimmelfennig contends that the “lock-in effects” of EU integration led nationalist-authoritarian parties in those countries engaged by the EU in the enlargement process to adapt to the requirements of the West so that membership incentives have been ultimately successful. By examining hybrid regimes with mixed-party constellations, across different types of EU engagement, this study helps isolate the explanatory factor we wish to vary.

Secondly, the socioeconomic requisites, or ‘structuralist’ approach, which dominated theorizing about regime outcomes in the 1960s, has remained influential throughout the past four decades (and is recently enjoying a degree of resurgence) essentially views democratization processes as most likely to take place in countries displaying higher levels of economic and social development. Strongly influenced by modernization theory, the notion that there exists a positive relationship between a society’s level of economic development and its likelihood to be a democracy was intuited for millennia, but first explicitly articulated by Lipset in 1959, and is now one of the few general and uncontroversial facts to have emerged from the study of democratic development processes (Geddes 1999). Higher levels of socioeconomic development (typically measured by the Human Development Index (HDI)) makes transition to democracy more likely, helps democracies endure (Przeworski *et al.* 1996; Przeworski *et al.* 2000; Boix and Stokes 2003), and is also associated with higher levels of civil liberties and political rights as measured by Freedom House (Rowen 1995). Accordingly, case studies were also selected from among the universe of cases, based on their similar ranking on the HDI score, to standardize levels of socioeconomic development (Table 1.2).

Comparative standardization is also increased by the fact that the study has opted for case study countries that are relatively large in terms of both geographical and population size. In order to avoid allegations of ‘cherry picking’, moreover, the study deliberately focuses on ‘hard cases’, where problems of legacy – post-communism in Romania, Serbia and Ukrainian, and religious-nationalist fissures in Serbia and Turkey – entrench anti-liberal

Table 1.2 Human Development Index (HDI) rankings of case study countries¹

Case study country	HDI rank 1990	HDI rank 1995	HDI rank 2000	HDI rank 2004
Romania	0.775	0.770	0.778	0.805
Turkey	0.706	0.729	0.747	0.755
Serbia ²	–	0.729 (1999)	0.772 (2002)	0.786
Ukraine	0.800	0.748	0.755	0.774

Sources: for 1, see United National Development Program, Human Development Report: <http://hdr.undp.org/hdr2006/statistics/indicators/15.html>; for 2 see <http://www.undp.org.yu/tareas/reports/details.cfm?id=91>).

Notes:

- 1 The HDI is a composite index measuring levels of socioeconomic development in a given territory. The index is a combined score of three indices: (1) Life expectancy at birth; (2) Combined primary, secondary and tertiary education, and; (3) Gross Domestic Product per capita (PPP US\$). All case study countries rank in the upper–medium human development countries range.
- 2 The lack of internationally recognized data collected by the Serbian authorities has meant that the UNDP has started publishing National Human Development Reports on Serbia, including the calculation of the HDI, only since 1996, and that figures were published on Serbia in 1999, 2002 and 2004. Despite the impossibility of guaranteeing the full compatibility of data on Serbia with the general HDI, the UNDP is confident that a close level of approximation exists between the Serbian human development picture and the general index.

political and bureaucratic actors in the domestic system, posing comparable challenges to democratic rule of law reforms promoted by a liberal international actor.

In order better to understand the political situation of the chosen countries, some data from the World Bank on the state of rule of law can be recalled in Table 1.3. If the minus sign means that a country is still in a poor condition as to rule of law, the situation of the four countries during the last decade is fairly gloomy. But the notion of rule of law according to the World Bank tries not to include aspects related to democracy.¹⁷ When we include our dimensions of a democratic rule of law (DRoL) the figures, shown in Table 1.4 result.

Table 1.3 Rule of law in the four countries 1996–2005 (World Bank)

Country	1996	1998	2000	2002	2003	2004	2005
Romania	–0.34	–0.35	–0.32	–0.23	–0.22	–0.23	–0.29
Serbia	–1.26	–1.06	–1.14	–0.99	–0.97	–0.78	–0.81
Turkey	–0.02	–0.01	–0.07	–0.15	+0.02	+0.02	+0.07
Ukraine	–0.73	–0.88	–0.80	–0.87	–0.84	–0.83	–0.60

Source: World Bank, *A Decade Measuring the Quality of Governance. Governance Matters 2006 Worldwide Governance Indicators*. (http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/17404791150402582357/26booklet_decade_of_measuring_governance.pdf)

Notes:

The indicator of rule of law adopted by the World Bank refers to “the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence”. Its range is from –2.5 (worst governance outcomes) through 2.5 (better governance outcomes). Until the 2006 referendum, Serbia was grouped together with Montenegro.

Table 1.4 Measures of democratic rule of law in the four countries

(A) Civil and political rights																	
Country	89-90	90-91	91-92	92-93	93-94	94-95	95-96	96-97	97-98	98-99	99-00	00-01	01-02	02-03	03-04	04-05	05-06
Romania	7	5.5	5	4	4	3.5	3.5	2.5	2	2	2	2	2	2	2	2.5	2
Serbia	4.5	4.5	5.5	5.5	6	6	6	6	6	5	4.5	4.5	4	3	2.5	2.5	2.5
Turkey	3	3	3	3	3	5	5	4.5	4.5	4.5	4.5	4.5	4.5	3.5	3.5	3	3
Ukraine			3	3	4	3.5	3.5	3.5	3.5	3.5	3.5	4	4	4	4	3.5	2.5

(B) Judicial independence and capacity									
Country	1997	1998	1999	2001	2002	2003	2004	2005	2006
Romania	4.25	4.25	4.25	4.25	4.25	4.25	4.25	4.00	4.00
Serbia	5.00	5.75	5.50	4.25	4.25	5.00	4.25	4.25	4.25
Turkey	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Ukraine	3.75	4.00	4.50	4.50	4.75	4.50	4.75	4.25	4.25

(C) Institutional and administrative capacity							
Country	1996	1998	2000	2002	2003	2004	2005
Romania	-0.88	-0.63	-0.67	-0.32	-0.16	-0.11	-0.03
Serbia	-0.71	-1.11	-0.08	-0.61	-0.50	-0.12	-0.31
Turkey	+0.10	-0.07	-0.36	-0.45	-0.27	-0.25	+0.08
Ukraine	-0.79	-0.97	-1.03	-1.01	-0.94	-0.96	-0.63

(D) Reform to combat corruption, illegality and abuse of power

Country	1996	1998	2000	2002	2003	2004	2005
Romania	-0.88	-0.63	-0.67	-0.32	-0.16	-0.11	-0.03
Serbia	-0.71	-1.11	-0.08	-0.61	-0.50	-0.12	-0.31
Turkey	-0.16	-0.38	+0.11	-0.05	+0.09	+0.07	+0.27
Ukraine	-0.87	-1.00	-0.76	-0.73	-0.58	-0.63	-0.42

(E) Police reform and civilian control over military

Country	Trend 2001–06
Romania	6
Serbia	6
Turkey	6
Ukraine	6

Sources: They are respectively: for (A) *Freedom in the World*; for (B) *Freedom House Nation in Transit*; for (C) and (D), *World Bank, A Decade Measuring the Quality of Governance. Governance Matters 2006. Worldwide Governance Indicators*; for (E), *Bertelsmann Transformation Index 2006. Political Management in International Comparison*.

Notes:

For (A) the ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. For (B) the set of indicators are: 1. highlights constitutional reform, 2. human rights protections, 3. criminal code reform, 4. judicial independence, 5. the status of ethnic minority rights, 6. guarantees of equality before the law 7. treatment of suspects and prisoners, and 8. compliance with judicial decisions. For (C) "Government effectiveness" is composed of 4 specific dimensions: 1. the quality of public services, 2. the quality of the civil service and its degree of independence from political pressures, 3. the quality of policy formulation and implementation and 4. the credibility of the government's commitment to such policies. For the range see Table 1. For (D) "Control of Corruption" refers to "the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests". For the range see Table 1. For (E) the indicator is "Penalties for abuse of power" and the related question is: "are there legal or political penalties for officeholders who abuse their position?". The rating is: 0-worst outcome in guaranteeing penalties for abuse of power, 10-best outcome in guaranteeing penalties for abuse of power.

While ~~these available data can give~~ some sense of the existing situation in the four countries along our definition of DRoL, there are at least two evident problems. The first is the heterogeneity of the sources – here, Freedom House, World Bank and Bertelsmann Transformation Index – and the different spans of time we have data for. But for us there is a much more relevant problem: what those figures actually say. To understand something that helps us to reply to the research questions addressed above, we need to go in depth into the qualitative analysis of those five dimensions in the four countries. But to do that we need to review and assess the existing hypotheses in the literature and then to develop a theoretical framework for the empirical analysis. The next chapter is devoted to this task, before the analysis of what have been the policies of the EU in terms of DRoL vis-à-vis those four countries (see Chapter 3), and the subsequent discussion of what has happened inside the countries (see Chapters 4–7).

Notes

- 1 See Freedom House 'Freedom in the World' surveys (available at: <http://www.freedomhouse.org>).
- 2 The identification of the attributes of the Rule of law has always been a contested issue. Indeed, because the conceptualization of the Rule of law is inherently linked with theory of the Rule of law (itself an open, evolving concept) there is no point in arguing about 'the correct' definition. We therefore follow the sage advice of Gerardo Munck and Jay Verkuilen not to insist that there exists one correct definition of a concept, but to avoid the extremes of including too little or too much in a definition relative to our theoretical goals (see Munck and Verkuilen 2002, 7–9).
- 3 In fact, the term is contested along several axes. Linguistically, the term 'rule of law' is often equated with the concepts of *l'Etat de droit*, in the French legal tradition, *Rechtsstaatlichkeit* or *Rechtsstaat*, in the Germanic legal tradition, and *Estado de derecho*, in the Spanish and Portuguese traditions, including in Latin America. However, the concepts are not synonymous. Grote (1999) concludes that the term belongs to the category of open-ended concepts which are subject to permanent debate. Substantively, too, the concept of the Rule of law has been subjected to liberal, feminist, socialist critiques. See: Sypnowich (1999); Horwitz (1977). It has also been subjected to claims that it is impossible to achieve (see: Endicott (1999); Hutchinson and Monahan (1987); McCormick (1999). We do not contend with these various critiques here, since we essentially agree with Peerenboom's point that the fact that there is room for debate about the proper interpretation of the term "*should not blind us to the broad consensus of its core meaning and basic elements*" (Peerenboom 2002, 472).
- 4 See Ungar (1976), who argues for a strong affinity between liberal market reforms and the rule of law, and McAuslan (1997). But see also the social-democratic defence of the Rule of law in Scheuerman (1994).
- 5 Nonet and Selznick (1978) used the term "autonomous law" to denote the idea of law in modern legal culture, which is distinguished from "repressive law".
- 6 The development of those five aspects involves the achievement to different extents of: the equal enforcement of the law toward everyone, including all state officials; the implementation of the principle that no one is above the law; the supremacy of legal state throughout the country, leaving no areas dominated by organized crime, local oligarchs, or political bosses who are above the law; the minimization of corruption, and where it does exist, its detection and punishment in the political, administrative, and judicial branches of the state; the development of efficiency and competency of a state bureaucracy at all levels that

applies the laws and assumes responsibility in the event of an error; the achievement of a professional and efficient police force that is respectful of individuals' legally guaranteed rights and freedoms, including rights of due process; the equal and unhindered access of citizens to the justice system to defend their rights and to contest law suits between private citizens or between private citizens and public institutions; the hearing and expeditious solution of criminal cases and civil and administrative lawsuits; the independence of the judiciary at all levels from any political influence; the respect for and enforcement of rulings of the courts by other agencies of the state; the supremacy of a constitution that is interpreted and defended by a Constitutional Court.

- 7 In the conclusions of their well-known seminal study, for example, O'Donnell and Schmitter (1986, 5) asserted that: "[O]ne of the firmest conclusions that emerged ... was that transitions from authoritarian rule and immediate prospects for political democracy were largely to be explained in terms of national forces and calculations. External actors tended to play an indirect and usually marginal role"
- 8 For a detailed discussion of the divide see Moravcsik (1993, 5–9); Yilmaz (2002). For the divide between international relations theory and international law see Slaughter, Tulumello and Wood (1998).
- 9 Leading examples include: T. Smith (1994); Carothers (1999 and 2000); Cox, Ikenberry and Inoguchi (2000); Youngs (2001 and 2004).
- 10 A partial exception is found in Sadurski, Czarnewa and Krygier (2006), which contains several papers relating to the influence of EU enlargement on constitutional and judicial systems in several post-Communist countries.
- 11 For a detailed discussion of the origin and evolution of these strategies, as well as the instruments deployed by the EU to facilitate rule transfer and internalization, see Ott and Inglis (2002); Grabbe, (2002); Phinnemore (2003); Magen (2007), Hillion (2000); Adler and Crawford (2004); Hilpold (2002).
- 12 This involves granting tangible benefits *ex post* where the targeted government complies with the conditions, and withholding the benefits where it does not. See Schimmelfennig, Engert and Knobel (2003, esp. 496).
- 13 See ch. 3 for the main features that characterize the different status of each country vis-à-vis the European Union.
- 14 Whitehead (2001, 19), for instance, asserted that the pre-accession process: "generates powerful, broad-based, and long-term support for the establishment of democratic institutions because it is irreversible, and sets in train a cumulative process of economic and political integration that offers incentives and reassurances to a very wide array of social forces. In other words it sets in motion a very complex and profound set of mutual adjustment processes, both within the incipient democracy and in its interactions with the rest of the Community, nearly all of which tends to favour democratic consolidation.". A different, though similarly general and positive, view is presented by Schmitter (1995, 524), who argues that: "more than any other international commitment, full EU membership has served to stabilize both political and economic expectations. It does not directly guarantee the consolidation of democracy; it indirectly makes it easier for national actors to agree within a narrower range of rules and practices.". For a similarly sanguine view from the CEECs see Pehe (2004). For examples of negative views see Kochenov (2007) and Raik (2004).
- 15 On structured, focused comparisons see George and Bennett (2005, 67–72).
- 16 This criteria excluded those Central and Eastern European Countries that became full EU Member States on 1 May 2004 (The Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia) as well as Cyprus and Malta.
- 17 Whether this is possible or not is a different issue. See Hiil (2007) for a position in favor of a definition of 'a democratic' Rule of law. Here we contend that today in these countries is empirically impossible to disentangle Rule of law from aspects such as civil rights and some political rights. In fact for our purposes we proposed to consider and analyze a democratic Rule-of-law.