

8 Scope, depth and limits of external influence: Conclusions

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Institutional change rarely satisfies the prior intentions of those who initiated it ... Change cannot be controlled precisely ... there are frequently multiple, not necessarily consistent, intentions ... intentions are often ambiguous initial ... intent can be lost.

(March and Olsen 1989, 65–66)

Introduction

Defenders of the liberal international order (Ikenberry 2006; Ikenberry and Slaughter 2007) and those who seek to support the spread and consolidation of liberal democracy around the globe are today, as perhaps never before, confronted by fundamental questions regarding the nature, extent and limitations of external influence on domestic democratic development (Burnell 2005). In the first chapter we addressed those questions. For clarity's sake let us recall them again. Do western international actors, including the EU, play a significant role in encouraging processes of institutional, legal and normative change in transitional states? If so, when and how do external incentives, financial and technical aid, supported by conditionality, international democratic socialization, diplomacy or sheer democratic example, influence national decision-makers to pursue alignment with a given externally driven model of law, practices and beliefs? What combination of domestic structural factors and agency-driven considerations, on the one hand, and external influence mechanisms, on the other, are most likely to result in convergence with European rules and practices? Does EU influence, where it exists, generate genuine implementation and internalization of reforms ('real change'), or does it only solicit shallow, formal compliance, i.e. rule adoption alone? Does EU influence, where it exists, follow the pathway of direct intergovernmental bargaining, or does it act indirectly, surreptitiously, through persuasion of epistemic communities and other non-state elites who then promote a pro-EU alignment policy internally?

The way we conceptualize and pursue these questions is important, not merely for the purpose of plugging gaping holes in comparative politics, democratization, international relations and international legal studies, but for the many thousands of policy-makers and practitioners – in national development and security agencies, multilateral institutions at the regional and global levels, as well as non-state organizations and networks – who are struggling with these very issues, with high stakes for the future of the international system (Fukuyama and McFaul 2007; Ikenberry and Slaughter 2007).

In this volume we have sought to contend with this daunting conundrum by sequentially: conceptualizing the key components of the puzzle and then proceeding to propose an integrated analytical framework containing the key variables necessary to capture the dynamics of external influence on domestic democratic development. The resulting EUCLIDA model, therefore, provides an integrated set of propositions against which the empirical findings of this research can be applied and tested. More specifically, we have approached the puzzle using the questions: whether and how a prominent international actor has influenced processes of change in a given area of substantive dimensions of democratic rule of law in countries struggling to achieve the transition from hybrid regime to fuller, higher quality democracy? To address these questions we have sought to trace evidence of external influence, as well as the interaction between domestic and external factors, in four case study countries and across five components of the democratic rule of law: (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. The five dimensions, accordingly, were analyzed through a set of indicators of changes in democratic rule of law.¹ Table 8.1 presents the different specific topics we analyzed in greater depth.

Conceptually, we have approached the puzzle armed with a number of key notions. First, we unequivocally endorse the view that even under conditions of the strongest forms of external intervention, processes of democratization are in reality an essentially domestic drama, in that they fundamentally concern the manner in which a given demos is governed – a demos which properly exists only at the national-state and sub-national (hence domestic) levels. In the arena of democratization, in other words, the domestic and the external are distinct, even though the modes of interaction between the two levels may sometimes defy neat separation (see Chapter 1).

Second, we articulated a typology by which there exist different methods of possible external influence on democratic development – control, conditionality, socialization and the more passive, diffuse, democratic example – and suggested that these varying methods may operate utilizing different logics of influence (drawing on rationalist and norm-based theories of human conduct), and may affect different domestic constituencies, both governmental and societal (see Chapter 2).

Table 8.1 The most relevant empirical sub-dimensions of rule of law, per country

<i>Dimensions</i>	<i>Countries</i>			
	<i>Romania</i>	<i>Turkey</i>	<i>Serbia</i>	<i>Ukraine</i>
Civil/political rights	Death penalty Arrests Hungarian minorities Roma minorities International adoptions	Death penalty Freedom of expression Fight against torture Freedom of association and protection of ethnic minority Gender equality	Death penalty Protection of ethnic minority Freedom of media Freedom of association	Death penalty Adopting European standards of civil and political rights Freedom of expression Prevention of torture
Judiciary/justice system	Technology in courts Increased salaries Independence of judiciary	Workload and efficiency Judicial independence Inconsistent interpretation of law	Reform of judiciary Judicial independence from executive	Enhancement of judges' independence Preservation of specialized economic courts The 'small' reform
Institutional/administrative structures	Rule by decree Civil service reform	Better quality legislation Capacity to implement policies Formulation and allocation of budget Decentralization Civil service reform	Constitutional reform Public administration reform European integration Institutional framework	Improvement of drafting, discussing and passing laws Public administration reform

<p>Combat of corruption, illegality and abuse of power by state agencies</p>	<p>Asset declarations Sunshine laws National anti-corruption department</p>	<p>Free and fair elections Parliamentary control on wrongdoing in public sector Protection of whistleblowers Ombudsman</p>	<p>Adopting anticorruption legislation, also vis-à-vis public administration Effect of GRECO membership Anti-corruption Council and special court on organized crime Conflict of interest legislation</p>	<p>Adopting anticorruption legislation Establishing effective IAC to combat corruption Effect of GRECO membership</p>
<p>Civilian control of army, police and security forces</p>	<p>Demilitarization Sanctions on abuses</p>	<p>Reform of military sector police reform</p>	<p>Conflict of interest legislation</p>	<p>Demilitarization Attempt at higher effectiveness of civil control Training of police officers</p>

Third, in an attempt to overcome the prevailing tendency among lawyers and the few comparativists and international relations scholars who have so far engaged with the topic, we posit that there are in reality different types or depths of change we should be conscious to observe in the domestic system as the result of external influence; that these types may be conceptualized as constituting three main layers of impact – formal rule adoption, rule implementation and rule internalization; that each of these changes involves different internal processes, and that the sustainability or reversibility of change depends to a considerable degree on which layer of impact is attained.

Fourth, we highlighted the need to open up the black box of external–internal interaction in democratization processes by proposing which actors, conditions and modes of interaction may explain each of our three layers of change, as well as positing an integrated framework that may help explain the relationship among all three. In doing so, we were conscious that we may find ourselves under attack on charges that the EUCLIDA model neglects one or more important variables, that it oversimplifies fiendishly complex processes of change, or any other reasonable allegations of conceptual and methodological crimes and misdemeanors. In reply we would offer only this: in outlining EUCLIDA as a model we have responded to the desperate need to unpack the proverbial black box within which external–internal interactions in democratization processes have largely taken place; to propose a model so that it can be the subject of debate; and, more immediately, to offer a concrete model against which our four case studies can be tested. It is only through such trial and error, we believe, that existing theoretical expectations can be checked, rejected, refined, and ultimately improved.

Fifth, we have been mindful of the temporal dimension and the need to build into our analyses clearer expectations regarding sequencing and durations of change through the notions of ‘cycles’, or phases of change, in which the true significance of a given shift (the passage of legislation which the existing government has no intention of fully implementing, the signing of a treaty, or even the emergence of public discourse on a given topic) is manifested only later, sometimes in unexpected ways.

Finally, differently from the ‘spiral model’ of human rights change, aimed at establishing causal mechanisms in the process of change within that domain with specific attention to the dominant actors and the dominant mode of social interaction (see Risse 1999, 537–9; Risse and Sikkink 1999, 1–38), EUCLIDA was developed to offer an integrated framework drawing on both interest- and norm-based theories of external influence on domestic change. Moreover, the topics covered concern the five components of the rule of law mentioned above and empirically analyzed in the country chapters. In a nutshell, EUCLIDA serves different purposes in largely different domains. As we also will see in these conclusions, the model of ‘membership conditionality’ (Schimmelfennig 2005a, Schimmelfennig and Sedelmeier, 2004; 2005a) has also been very useful both in the development of EUCLIDA and in singling out variables and the empirical mechanism of conditionality

detected in the empirical research. That model, however, is more effective for rule adoption rather than rule implementation and internalization. Moreover, in our complementing in pragmatic way (see Chapter 2 and Fearon and Wendt 2005) the rationalist approach and the constructivist one as well as the agency dominated literature on comparative democratizations, the net gain of tracing empirically the 'chain of anchoring' should stand out in these conclusions (see below).

At this point we can summarize the essential findings across the different dimensions of the democratic rule of law in Table 8.2. More descriptively and analytically, let us turn to highlight and examine the most salient findings.

Conditionality works for rule adoption! Sometimes ...

Our findings support the assertion articulated by a number of recent studies (Kelley 2004b; Schimmelfennig and Sedelmeier 2005a; Vachudova 2005) that the credible promise of large material and symbolic benefits – particularly the 'golden carrot' of full EU membership, as Romania displays – is generally effective in persuading national governments formally to adopt rules and institutions they would otherwise resist. Conversely, where determinate, credible, positive EU conditionality has been absent or weak – as is generally the case in Serbia and Ukraine – and where only lesser material incentives are on offer, such as financial aid without market access and institutional links, the achievement of formal compliance with externally mandated rules has proven generally more difficult and less complete.

Examples of the two halves of this basic dynamic abound throughout our case studies, lending empirical credence to the external incentives, rationalist bargaining-based theory of external influence methodology (Schimmelfennig and Sedelmeier 2005a). For instance, where the EU did not place pressure for reform of the Romanian civil service in the early to mid-1990s, practically no progress on legislation in the field was achieved, despite the fact that later on² the topic was flagged as an area of concern in the Commission reports. In a bid to improve Romania's shaky stance vis-à-vis the EU and NATO, a draft law was prepared in the aftermath of the first post-Communist coalition government in 1997, but was consistently obstructed in the legislature until its sudden passage by the same parliament on 8 December 1999 – days ahead of the Helsinki European Council, which was to decide whether or not to open accession negotiations. The 2006 revisions to anti-corruption laws, long lobbied for by the Council of Europe and the Commission, were similarly enacted barely two months prior to the Commission's scheduled verdict on whether to invoke the delay clause that would have pushed back Romanian accession by a year, from 2007 to 2008.

In the sensitive area of civil freedoms and political rights in Turkey, an analogous pattern emerges. It was only following the December 1999 decision of the Helsinki summit to grant Turkey candidate status and the publication of the first Accession Partnership reform program in March 2000,

Table 8.2 Conditionality, rule adoption, implementation and internalization: sectors and results (2005–06)*

Sectors	Country	Conditionality			RA			RImp			RIn**		
		Sr.	We.	Ab	Com	FInc	LInc	Com	FInc	LInc	Com	FInc	LInc
Civil freedom and political rights: death penalty	Romania			X	X			X					
	Turkey	X			X			X					
	Serbia		X****		X			X					X
	Ukraine	X			X			X					X
Civil freedom and political rights: minority rights	Romania					X		X					X
	Turkey	X				X		X					X
	Serbia	X			X			X					X
	Ukraine***	-				X		X					X
Civil freedom and political rights: freedom of press, speech and association.	Romania		X		X			X					X
	Turkey	X				X		X					X
	Serbia	X			X			X			X		X
	Ukraine	X****			X			X					X
Independence of judiciary	Romania	X				X		X				X	
	Turkey		X				X		X			X	
	Serbia		X						X			X	
	Ukraine	X			X			X				X	
Justice System: modernization and growth of effectiveness	Romania	X			X			X				X	
	Turkey		X		X			X				X	
	Serbia		X			X		X				X	
	Ukraine	X			X			X			X		X
Constitutional reform	Romania	X			X			X				X	
	Turkey	X				X		X					
	Serbia				X			X					
	Ukraine	X			X			X					X

that no less than 34 constitutional amendments were pursued by the Turkish government (with the overwhelming blessing of the legislature) in October 2001; reforms that were followed by a series of 'EU harmonization packages' adopted in the immediate aftermath of the December 2002 Copenhagen European summit, which set December 2004 as a target date for the opening of accession talks, subject to compliance with EU rules.

Another important effect of the conditionality method of influence, and one that has so far attracted less systematic attention (see Jacoby 2005; Jones 1999) relates to its constraining, as opposed to enabling, role. In evaluating the impact of democratic conditionality, in other words, we ought to be ready to detect instances where the threat of external sanctions (either through the imposition of punitive measures or the withholding of a benefit that would otherwise have been provided) limits the range of policy options – producing a “bounded rationality” effect (Jones 1999) – which is perceived by domestic decision-makers as being realistically available to them. The Turkish military's hesitant warning that it might intervene over the perceived threat to the secularity of the state caused by the nomination of Abdullah Gül to the presidency by the Islamist Justice and Development Party (*Adalet ve Kalkınma Partisi* – AKP) in April 2007, serves as a case in point, with the military's response seen as circumscribed by fear of international opprobrium, notably by the EU.

In contrast to the two membership-track case-study countries, we found generally weak rule adoption in Serbia, and even more so, in Ukraine – suggesting again the existence of a robust correlation between both the size and credibility of EU rewards and the relatively insufficient power of alternative sources of external influence, notably US aid, the Council of Europe and the OSCE, to achieve large scale adoption of formal reforms. The allocation of financial aid, in particular, proved to be a poor predictor of formal rule adoption. As Tables 3.2, 3.3 and 3.18 clearly demonstrate, although since 2000 Serbia has been by far the largest recipient of financial assistance among the four countries (and the second largest recipient in rule of law sectors specifically), even with regards to formal rule adoption alone, levels of aid appear to be a poor predictor of positive external influence. Indeed, contrary to the assertions of a recent impact assessment of USAID funding (see Finkel, Perez-Linan, and Seligson 2006), we find little correlation between levels of financial assistance and progress in rule of law development, suggesting that financial aid may well be a relatively fringe factor in the totality of external influence mechanisms.

Just as importantly, perhaps, the granting of 'potential candidate' status to Serbia appears to have only moderately empowered change agents in the country; insufficiently at any rate to solicit the higher rates of formal rule adoption identified in Romania and Turkey. In the field of fundamental freedoms, for instance, EU, Council of Europe and OSCE pressure on Serbia, from 2003 onwards, to reform its media and broadcast laws, produced the adoption of legislation that was only partially in line with prescribed standards. Similarly, despite the

fact that both the Council of Europe and the EU have made the adoption of new legislation on associations a priority for Serbia, with technical expertise and financial support provided by the Council of Europe for this specific purpose, the Koštica government has for years failed to legislate in this area,³ and a similar pattern is evident in other policy areas, including the reform of the judiciary and civil service. Moreover, unlike the Turkish case, the risk of international sanctions did not appear to delimit effectively the range of policy options perceived to be available to the Serbian government at a moment of crisis. Following the assassination of Prime Minister Zoran Djindjić in Belgrade in March 2003, rather, the state of emergency declared by the government was in practice used to justify widespread score settling with political rivals and a host of extra-constitutional actions, including the firing of 35 judges by the legislature, without the legally mandated requirement that the Supreme Court consider and approve such a move.

On the whole, until 2005 the EU attitude towards Serbia was ambiguous. The prospect of EU membership was too remote and the attitude of Brussels officials toward Serbia was inconsistent: at times tolerating Serbian non-compliance and at other times severely punishing it through strict implementation of conditionality. As a consequence, there was a basic lack of credibility that made political actors and people more and more sceptic on the possibility and meaningfulness of the EU integration process. When negotiation on the Stabilization and Association Agreement started (2005), that was five years later than the initial granting of the status of 'potential candidate', the EU's promises gained more credibility with a partial improvement of compliance. But this actually took place in the domains where European requests fitted into the political designs of the incumbent leaders (see chapter on Serbia). Thus, the end result was an unstable, provisional one, and it could even be reversed as stressed by the negative consequences of 2007 elections,⁴ characterized by the success of the anti-European Radical Party (28.6 percent and 81 seats) and several months of non government.⁵ Here, ultimately, the role of party elites and their electorate, closely bound up by the sovereignty claims on Kosovo with the Russian support, largely accounts for those negative results.

The lack of a membership horizon and weak incentives offered to Ukraine under the Partnership and Cooperation Agreement (PCA) framework were, similarly, correlated with weak rule adoption and a negative example supporting the principles of rationalist-bargaining models of external influence. Throughout the period of study what sparse evidence of formal rule adoption there is – notably the Judiciary Reform Concept of 2001, and the 2006 ratification of the Council of Europe's criminal and civil law conventions on corruption – appears to have been driven by Ukraine's membership of the Council, rather than the result of EU conditionality. Indeed, out of the four case study countries examined, Ukraine is undoubtedly the one where EU influence has been weakest. It remains to be seen whether the ratcheting up of incentives promised in the framework of the European Neighborhood Policy (ENP) would produce any concurrent shifts in EU influence (Magen 2006).

Two years into the ENP, it appears, however, that the lack of a membership perspective, coupled with ill-defined alternatives of sufficient allure or credibility, is matched by generally disappointing reform outcomes in targeted states, even at the level of formal rule adoption.

Rationalist theories of external methods of influence are supported by our findings regarding dynamics of change and resistance to change in low and high cost areas of policy. Where costs of adaptation for potential veto players were low or negative, i.e. where such actors perceived a net gain from change, a quick cost-benefit analysis appears to have been made, and reforms easily endorsed. A case in point is the raising of judicial and court staff salaries in Romania and Turkey. Where the perception of the need for reform existed prior to the advent of EU conditionality, and where no significant veto players coalesce to prevent reforms, similarly, we find evidence that mild conditionality or even the mere presence of specific externally supplied recommendations for reform, can be sufficient to galvanize internal reform constituencies, particularly where institutional capacity is strong. Concrete examples of this dynamic are found in Turkey's reorganization of courts and introduction of case management modernization with Council of Europe and EU guidance in 2004.⁶ Indeed, observation of this area of Turkish justice system reform suggests an impressive degree of positive "under the radar" change, which can be readily missed against the background of more controversial, "high politics" issues – such as freedom of expression and Kurdish rights. In "low politics" policy areas, normative pressure alone (Kelley 2004a; 2004b), coupled with the absence of overt political sensitivity, Ministry of Justice bureaucrats and court administrators have been able to coalesce around Council of Europe and EU promoted standards and drive rule adoption and implementation in seemingly technocratic, efficiency enhancing areas.⁷ More interesting, of course, are the hard topics where, for a variety of reasons, internal costs of adaptation are high and powerful elites are strongly resistant to the direction or degree of change sought by external actors. Several findings emerge from our analysis in this context.

Although the specific issues of contention varied somewhat from one country to another, all 'high cost' subject areas in the four case study countries shared important underlying characteristics. In Romania, Serbia and Ukraine it was the tasks of ending political control of the judiciary, reforming the civil service, and fighting public sector corruption, which encountered the greatest resistance to change. In addition, the establishment of effective civilian control over a myriad of security forces represented an extremely difficult area of reform in Serbia. For Turkey, in contrast, Kurdish minority rights and freedom of expression – notably the use of Article 301 of the Penal Code to punish "insults to Turkishness" – proved the most contentious topics.⁸

What united all areas of special resistance to change can be summarized in the two notions of 'legacy' and 'executive control'. In all three post-Communist countries the persistence of elites, formal institutions, socioeconomic networks and political culture constructed under the previous, non-democratic

regimes, translated into the most stubborn, reform recalcitrant veto players. In Romania and Serbia, legacies were generally temporal in nature (with old elites controlling key positions in post-transition state institutions), whereas in Ukraine an additional spatial legacy hampered change, with the country divided geographically into regions generally EU-oriented, and others firmly controlled by Russia-oriented elites. Where no such legacies existed, as in Turkey, areas of contention were different. Indeed, both of Turkey's topics of greatest resistance to change are attributable to the 'Sèvres Syndrome' – a legacy of the Kemalist world view.⁹ Moreover, legacy barriers to change were notably severe where predatory elites of the old regime remained essentially intact – as in the case of Serbian security forces, and to a lesser degree in the Romanian civil service – or where a symbolically charged collective memory was popularly perceived to be reflected in a contemporary threat – as in the instance of Turkish fears over Kurdish separatist ambitions.

Persuading national executives to abandon or otherwise reduce their stranglehold over other branches of government emerged as a second prominent pattern. Whereas the goals of modernizing courts and improving the efficiency of case management encountered little opposition from national governments, the strengthening of judicial independence through removal of executive control of appointments, promotions or the finality of judgments, met with potent resistance across all four case study countries. In Romania, Serbia and Ukraine, moreover, legislatures were found routinely to obstruct legislation and institutional development that threatened vested interests, notably in the areas of the judiciary system and the fight against corruption.

More crucial than the variable cost of adaptation, however, has been found to be the related, and in some respects a priori, factor of the nature of domestic decision-makers themselves. The degree to which the EU has been able to affect rule adoption in targeted countries, more specifically, relates closely to the constellation of political parties in the country, and at the more micro level the presence or absence of 'change agents', which can sometimes be small groups or even individuals opportunely positioned within state institutions.

Regarding political party constellations, our findings support Schimmelfennig's expectations that the effects of EU membership incentives on compliance with liberal-democratic norms will depend in large part on the party constellation of the target country (Schimmelfennig 2005). Therefore, in countries with mixed party constellations – where no elite consensus on liberal democracy exists but where liberal parties or coalitions have been able to gain electoral power, often alongside superficially constructed communist, nationalist or populist parties – we should expect to see the most powerful EU incentives, at least, achieve effective influence, albeit at a more protracted rate and with 'fits and starts' patterns of change, as compared to countries with a liberal party constellation (such as the Czech Republic, Hungary, and Poland). In contrast, countries with illiberal party constellations – ones dominated by communist, nationalist parties reliant on anti-liberal ideologies or authoritarian practices of power retention – would be expected to be

non-responsive to EU membership incentives.¹⁰ The interplay between external incentives (their objective and subjective attractiveness, credibility and immediacy), on the one hand, and the constitution and conduct of domestic party constellation, on the other hand, remains a subject in need of more detailed inquiry. Nonetheless, our findings shed further light on the topic.

Our findings extend essentially the same logic beyond enlargement cases *per se*, to Serbia and Ukraine, suggesting that the essential dynamic holds even where the prospect of EU membership is shaky, though not entirely absent; EU leverage may still empower those we call change agents, i.e. elite reformists, operating within a mixed party constellation. In Serbia therefore (as in Romania) we observe that the replacement of illiberal party constellations with mixed party ones, under both the Djindjić and Koštunica governments, resulted in the predicted pattern of response to external incentives. In fact, two such patterns can be detected. Formal rule adoption (as well as internalization and implementation) proved quicker and smoother than under more illiberal party rule. Furthermore, areas of policy in which little or no progress could be made under an illiberal party constellation – notably civil service and police reform, and the adoption of rules improving judicial independence and attacking corruption – achieved breakthroughs, at least in terms of formal rule adoption. The relative weakening of veto players¹¹ and relative empowerment of change agents specifically in the executive and legislative spheres, in other words, not only increases the pace of rule adoption, but also opens up new possibilities for progress in areas deemed too costly for adaptation under the old regime. Conversely, as the frustrating experience of Serbian constitutional reform efforts in the period 2000–06 starkly demonstrates – with weak liberal forces contending with powerful anti-reformist veto players able to win substantial support in the ballot box – despite strong external pressure, basic changes to the Milošević era anti-democratic Constitution have proven slow and limited.

Significantly, the same dynamic appears to hold in the case of Ukraine, although here the picture is somewhat murkier, on account of the short duration since the Orange Revolution and the chaotic struggle for power between competing liberal and illiberal elites unfolding in the country since December 2004. With these reservations in mind, however, it appears that both the pace and boldness of rule adoption have increased slightly since the replacement of the Kuchma regime, as the January 2006 decision by the Yuschenko government and Verkhovna Rada to anchor Ukraine to the Council of Europe GRECO anti-corruption monitoring system attests. It remains to be seen whether the new Action Plan for Ukraine, in the framework of the ENP, leads to faster, smoother alignment of Ukrainian legislation and policies with those of the European bloc, and, if so, under what domestic party conditions.

A possible challenge to the liberal/mixed/illiberal hypothesis in explaining the propensity of liberal external actors to influence domestic reform dynamics successfully is posed by the experience of Turkey. Commentators are ambivalent

about how to classify the moderately Islamist AKP, which gained a near-absolute majority in the Grand National Assembly in November 2002, better results in the local elections of 2004, and an even greater success in the general elections of July 2007. This party has pursued faster and costlier domestic reforms than were imagined possible under the more secular and classically liberal coalition government led by the Democratic Left Party (*Demokratik Sol Parti* – DSP) since 1999 (Çarkoğlu 2002; see also Özbudun 2007). What the Turkish experience seems to reveal instead – and what emerges as a consistent theme in our findings – relates to the degree of stability of the ruling government, rather than its composition *per se*.

Thus, with the singular exception of the crisis that involved the pro-European integration G17+ party credibly threatening to bring down the Serbian government over a lack of Constitutional reform, we find that political volatility (whether caused by a fractured coalition or state of national emergency) significantly hampers the pace and scope of rule adoption. The clearest case in point here is found in the experience of Ukraine from the aftermath of the Orange Revolution onwards, where despite the popular election of a pro-European bloc headed by Victor Yushenko and Yulia Tymoshenko, incessant intra-coalition squabbles and prolonged constitutional crises have largely paralyzed even formal reform. Unlike the conditions that may precipitate democratic transition in the first place, in other words, the development of rule of law conditions, pushing hybrid regimes in the direction of liberal democracy, are best served by conditions of macro-political stability, rather than a sense of crisis. It is where a reformist single-party government or, to a lesser but still sufficient degree, liberal or mixed constellation party coalition, meet the credible incentives of a powerful external liberal actor, that the pace and scope of rule adoption in rule of law reforms proceeds best.

At a more specific level, we find evidence suggesting that meaningful progress in rule adoption (as well as implementation) can be attained in some sectors when external stimuli are matched by the presence of ‘change agents’ within a given arena of ministerial or bureaucratic power. Hence, in Turkey, for instance, the prescription of justice system efficiency reforms, coupled with the provision of financial and technical assistance, has spurred court administrators and Ministry of Justice officials to adopt significant modernization reforms. More interestingly perhaps, despite powerful veto player opposition, a former human rights lawyer, Monica Macovei, managed to leverage the threat of Romania’s exclusion from accession, as well as civil society support, to push through substantial legislative changes in the composition and control of the country’s judiciary, in her capacity as newly appointed Minister of Justice in 2004–05.

This analysis, however, still does not reply to the subsequent, obvious key questions. They are: where do the liberal-democratic parties or mixed coalitions come from and where does stabilization originate? Liberal parties or, in our terminology, change agents do not come out of the blue; likewise, a process of a party system or electoral stabilization is not without

its own roots. But before dealing with these questions, other considerations have to be added. First of all, the experience of all four countries confirms that highly legalized, detailed external rules are more likely to be adopted by domestic decision-makers than less legalized or vaguer standards (Abbott *et al.* 2000; Goldstein *et al.* 2000). Although we should not discount the possibility of selection bias (i.e. that compliance with highly specific rules is more easily detectable than are broader, looser norms), the superiority of more determinate reform demands made by external actors runs as a consistent theme in our findings. We see this across a range of thematic issues, from the abolition of the death penalty in Turkey¹² and Ukraine, to the ban on inter-country adoptions in Romania, to the specific changes required by the EU of Turkey in the area of civilian control of the military (such as the powers of the National Security Council, the presence of military representatives on public bodies, and the transparency of the military budget). The ban on the lucrative business of providing orphaned children for inter-country adoption, passed into Romanian law in 2004, is a case in point. EU pressure on Romania to halt the supply of orphaned children for adoption worked, despite contrary pressure from the USA and, more curiously, from a number of EU member states, including France, Italy, and Spain.

Of course, highly determinate rules are by no means a panacea that guarantees success of rule adoption, as is starkly shown by the still unreformed Article 301 to the Turkish Penal Code, which the EU has long demanded be reformed. Yet such rules strengthen external influence by at once bolstering conditionality and providing a concrete roadmap, which change agents or domestic reformists can rally around and domestic governments find harder to eschew. In contrast to a generally weak picture of rule adoption in Serbia, therefore, the presence of the relatively comprehensive, detailed and institutionalized rules against corruption embodied in the Council of Europe's civil and criminal law treaties and GRECO peer monitoring mechanisms, appear to have significantly contributed to the speed and substance of the anticorruption legal framework in the country, especially from 2003 through 2005.

Conversely, where specifically framed international rules are absent, where the EU has applied less specifically framed conditions – as has been the case with standards on the judiciary in the 2004 European Partnership set by the EU for Serbia (see Chapter 6) – or where the core of change sought lies not in specific legal rules, but in changes to the spirit of the law and normative modes of conduct, positive developments are far fewer, or at least far more difficult to detect. Thus, on the whole we find greater progress in rule adoption in the areas of civil and political rights and technical reforms to the administration of justice, than the more diffuse, normative independence of the judiciary, institutional and administrative capacity, and civilian control of security forces. An operative conclusion that can be drawn from these findings pertains to the need for a broader range of detailed regional and international rules on key issues of democratic quality and good governance, similar to the Council of Europe's two treaties on corruption and GRECO monitoring mechanism.¹³

Moreover, when credibility is considered, its importance to the EU's ability to pressure targeted countries into rule adoption – in terms of capabilities, costs and consistency of reward or sanctions – has been conceptualized elsewhere (Schimmelfennig and Sedelmeier 2004, 661; 2005b, 13), requiring no lengthy discussion here. Suffice to say that our findings support the hypothesis that the external influence on rule adoption increases with the credibility of conditional promises and threats. This is clearly manifested in the changes in Romania's conduct, where relatively weak EU credibility (in the sense that throughout the 1999–2004 period Romanian elites generally assumed their accession would go through regardless of full commitment to reforms) were partially replaced by the insertion of the suspension clause into the 2004 Treaty of Accession. This suggests a degree of 'wasted leverage' in EU–Romania relations through most of the last decade. In contrast, popular and elite perceptions in both Europe and Turkey, regarding the reluctance of a number of member states to accept Turkish membership have paradoxically added a degree of seriousness to EU insistence on Turkish reforms. Yet the maintenance of credibility through the stretching out of conditionality in the Turkish case may well prove a delicate balancing act, with signs that EU enlargement fatigue, rising cultural bias against the inclusion of a populous, predominantly Moslem country, as well as French President Nicolas Sarkozy's blunt opposition to Turkey's membership, may already be undermining the pace of and commitment to reforms.

A further dimension of the credibility factor, and one less commonly recognized, is illustrated in the conduct of Turkish prosecutors and judges when confronted with the decision whether to bring forward and convict on charges relating to freedom of expression, under Article 301 of the Penal Code. Betting on the rise of anti-EU forces over the short to medium term, and fearing professional retribution when such elements do come to power, prosecutors and judges opt to defy the spirit of EU-mandated, liberalizing requirements. Hence the perception of a lack of credibility in the long-term prospects of accession is undermining conformity with externally driven norms at the level of the prosecution and lower judiciary.

An example of EU conditionality acting indirectly came in Romania in 2000, when the EU cajoled the newly elected Social Democratic Party (PSD) majority party into abandoning the option of including two extreme nationalist parties in the planned coalition – easing the inclusion of the Hungarian minority party (Democratic Alliance of Hungarians in Romania – UDMR) instead – by signaling that the alternative route would undermine accession prospects. On several occasions, particularly in Romania and Turkey, civil society organizations have been able to coalesce around externally proposed models for change, or even bypass their national governments by urging Brussels to include criticism and concrete reform demands in annual monitoring reports.

Another important aspect relating to formal rule adoption, which deserves special mention, is the phenomenon of establishment of new institutions in the domestic sphere in response to external demands. Two species of the phenomenon emerge from our four case study countries. In the two countries

targeted for transformation via pre-accession, EU requirements that candidates develop regulatory and administrative capacities in preparation for membership have led to the creation of new specialized agencies either within or alongside existing ministerial structures. In Romania, for instance, the National Agency for Civil Servants (ANFP) was established as part of the 1999 Civil Servants Statute, but quickly marginalized through understaffing and non-cooperation on the part of the established bureaucracy. Similarly, under intense EU pressure, a National Anti-corruption Prosecutor's Office (PNA) was created in September 2002, subsequently to become a battleground on which successive reformist and obstructionist governments sought, respectively, to expand or restrict investigative capacity and powers of prosecution. A further example of this species of rule adoption can be found in the 2003 establishment of a new Justice Academy in Turkey – a measure recommended by the Commission and designed to bolster in-service training for judges and public prosecutors, notably in EU law and the European Convention on Human Rights.

Examples of a more overt form of imposition of institutions (Owen 2002), where external actors appear to seek the establishment of new institutions in targeted countries as a means of bypassing, rather than supplementing national ones, is found in Serbia and, to a lesser degree, Ukraine. Indeed, in Serbia, where state ministries in the post-Milošević era continue to be plagued with poor administrative capacity and endemic corruption, the 2003 European Partnership document made the establishment of a Serbian European Integration Office (SEIO) a specific priority, as the EU did for all the countries involved in the enlargement. SEIO, which was established in March 2004 in cooperation with the Commission (in Brussels and the Belgrade Commission office) performs as a sort of implant within the Serbian state, driving the day-to-day management of the Stabilization and Association Process, progressive harmonization of Serbian legislation with the *acquis communautaire*, and coordination with Serbian ministries. A different model of institutional adoption, but one which, like SEIO in Serbia, blurs the distinction between domestic and foreign institutions can be found in the Ukrainian formulation of the November 2005 Judiciary Reform Concept. Here, in response to mounting external pressure that Ukraine “continue the reform of the judiciary in order to ensure its independence and effectiveness”, President Yuschenko entrusted the task of formulating the proposed reform to a National Commission comprising OSCE, Council of Europe and Commission officials, as well as Ukrainian government representatives. These examples demonstrate the difficulty of drawing sharp lines of distinction not merely between purely external modes of influence and domestic decision-making in the area of rule adoption, but equally between conditionality and control.

The establishment of new institutions in the domestic sphere at the behest of the EU represents a form of external influence amounting virtually to a form of direct imposition. We observe two distinct forms of such institutional transplants. On the one hand, the specialized anti-corruption agency created

in Romania, for example, constitutes a permanent professional agent introduced into the domestic system as part and parcel of legislative reform, in an area judged by external actors to require a high degree of technical specialization and ongoing monitoring and implementation. In this sense the insertion of a new institution can be seen as an integral part of alignment with modern regulatory practices. In contrast, SEIO constitutes a very different kind of externally driven domestic institutional development; one motivated by the EU's need for a competent domestic partner, coupled no doubt by a deep sense of frustration with the functioning of the established government machinery. In this context, the specialized agency created is intended not for the purpose of implementing a substantive policy area (anti-corruption, trade or competition), but as a surrogate decision-making institution, able to pool administrative capacity into a single functioning institution from generally weak state ministries for the primary purpose of acting as a liaison institution vis-à-vis the external actor.

In both cases the externally mandated establishment of new institutions creates at least new opportunities for domestic change agents. In the former, with the establishment of a new specialized agency, at a minimum a new policy discourse is created. Where the government does not completely obstruct the action of the new institution – allocating staff, funding and allowing a degree of political clout – opportunities for implementation and internalization greatly increase, at least within the substantive area of policy for which the new institution is responsible. Indeed, coupled with strong, credible conditionality and continued external monitoring, the insertion of specialized professional agencies into the domestic system may prove to be the most potent promoter of progressive rule adoption, implementation and internalization. On the other hand, institutions such as SEIO, although they also provide a forum for the development of domestic knowledge and change agent constituencies, run the risk of further disempowering existing state institutions and increasing local dependency on external actor capacities. However, here, a sort of socialization mechanism has a greater and better effect than the contracts and twinnings we mentioned in Chapter 3, but was disregarded in the empirical analysis of the countries as irrelevant for the actual development of the rule of law.

But mind the gap...

Thus, were we to limit our inquiry into the ability of the EU to affect the adoption of legislation and the establishment of formal institutions, our conclusions would be partial and possibly misleading. Such an inquiry would rightly leave open the question (at least for non-lawyers) of how 'real' is the change? Are rules adopted implemented? Do the norms and standards to which national governments subscribe taken seriously, even internalized and believed in by ruling elites? As the summary of our findings on these questions in Table 8.2 plainly demonstrates, in all four case study countries, and

across practically every dimension tested, there exist substantial gaps between the formal commitments adopted by targeted states, and the reality of implementation and internalization found to have taken place.¹⁴

Although in our codebook and then in the fieldwork we paid special attention to the assessment of the implementation of various laws on the issues we were considering in greater depth (see Table 8.1), we accept a bias in the possible amplification of the gap, due to the inherent methodological difficulties of coding implementation (in the end we have to trust the evaluation of the interviewees, complemented by the expertise of the researchers) and, even more so, of assessing internalization (when is civilian control of the military sufficiently internalized?). However, even if we account for such an amplification, the pattern that emerges is stark. It provides both empirical support to Hathaway's suspicion of a yawning gap between a country's formal international obligations, on the one hand, and degrees of normative attachment to and implementation of those commitments, on the other (Hathaway 2002), as well as added impetus for policy-oriented research into the means of narrowing the gap (Chayes and Chayes 1995).

On the whole, even if we consider only the last periods of our research (2005–06), complete or fairly complete rule adoption has been achieved only in relation to the death penalty and the modernization of the justice system, while minority rights, independence of judiciary and civil service reform are still problematic. When implementation is assessed (see Table 8.2), the death penalty is the only sector where implementation has been fairly easily carried out, with the exception of Ukraine. The worst sectors in this respect are independence of the judiciary, civil service reform and policies to improve administrative capacity and to combat corruption. The comparisons among rule adoption and rule implementation show that the worst sectors in the first layer are also usually the worst in the second, but at the same time there are policies, such as anticorruption ones, especially those at bureaucratic level, where the gap is even more marked. That is, it is impossible to declare openly that those policies are actually refused or that refusal appears clearly at the moment of implementation. Internalization is the last, most difficult step, and in some cases it was also very difficult, if not impossible, to assess it adequately in the different sectors; it was out of public view.

Accordingly, we also find considerable evidence of deliberate “emptying of content” – the practice of national governments, or veto players within government and the bureaucracy, proceeding to dilute the effects or otherwise subverting the intended goals of legal reforms following rule adoption – particularly in Romania, Serbia and Ukraine – though, interestingly, relatively less so in Turkey.¹⁵ A telling case in point is the passage of the National Agency for Integrity (ANI) law submitted to the Romanian Chamber of Deputies as part of the country's specific commitments to the EU in the immediate post-accession period in 2007. Rather than reject the rule outright, which the four parties that opposed the law had the votes to do, amendments were introduced into the law at the last moment, which effectively obliterated

the planned independent status of the ANI and took the sting out of its ability to carry out asset declaration investigations of public officials, including parliamentarians. Similarly in Serbia and Ukraine, coalition governments seeking to weather a coalition crisis, alleviate international pressure or gain a short-term reward, rushed to endorse a high visibility law or institution, and then proceeded quietly to subvert or dilute its implementation. In some instances a measure of formal rule adoption designed to improve the functioning of the justice system was subsequently utilized to undermine key rule of law principles. Thus, the establishment of specialized economic courts in Ukraine in 1992 was hijacked by predatory elites in an effort to enable them to gain and hold on to privatized state assets.

Not surprisingly, perhaps, such “subversive compliance”, as well as the more benign instances of “fake compliance”, tend to occur in the nexus between strong international pressure and areas of high adaptation costs for ruling elites – in our cases, notably the independence of the judiciary and measures to fight political corruption. In such circumstances, the domestic elite wishing to avoid the high costs of outright rejection of externally mandated reforms, accepts rule adoption and then proceeds to avoid the high costs of implementation by diluting the rules adopted or otherwise hampering implementation. Theoretically, the pattern lends credence to rational-choice explanations of agency conduct, displaying the workings of a “logic of consequence”, rather than a logic of “appropriateness” (March and Olsen 1998) in domestic decision-making, while in operational terms it highlights the need for careful monitoring and other follow-up enforcement and implementation assistance mechanisms, particularly where domestic costs of adaptation are high (Chayes and Chayes 1995).

Existing substantial gaps between formal rule adoption, on the one hand, and implementation and internalization of rules and norms, on the other hand, do not suggest that we find no evidence of the latter. What emerges from a comparative reading of the cases (see Chapters 4–7) suggests that in those countries where transition to democracy took place a decade ago or more, and with which the EU has engaged using pre-accession strategies for a similar length of time, we find evidence of not insubstantial implementation of reforms, and to a lesser (but still significant degree) signs of habituation, perhaps even identity type of internalization.¹⁶ So, for instance, the Romanian police force stands out as an institution that has experienced a significant shift in culture, as reflected in recent polling data, in which 50 percent of respondents expressed the view that police reform was heading in a positive direction – a higher ranking than those accorded by the public to the judiciary, healthcare and educational systems. In Turkey, similarly, instances of torture in police detention and prisons have dropped dramatically since 2002 (aided at least in part by strict EU conditionality, funding for training of forensic investigators and a large-scale twinning program for police, medical professionals, judges and prosecutors); courts have begun to apply reforms in the areas of fundamental freedoms, albeit only partially, and have undergone significant

modernization; and there is credible evidence to suggest a genuine weakening of the military's control of civilian government, at least in the period 2002–06.

When internalization is considered, in all four case study countries, but particularly in Turkey and Romania, these rather weak effects are at least partially mitigated by the evidence of “discourse diffusion” – characterized by recurrent liberal concepts and themes (the value of freedom of expression, the equity of minority rights, policing as a protective service to the citizenry rather than an instrument of state repression, the prevention and avoidance of corruption and so forth). In Turkey, especially, an intense public debate has emerged over the last several years over some of the most sensitive issues supporting liberal-democratic consolidation in the country – notably the treatment of Moslem and non-Moslem minorities, gender equality and the role of the military in public life – with both official and civil society actors using the language of European integration and supranational European norms (notably the European Convention on Human Rights) to justify and promote reforms.

In contrast, we find fewer indications of genuine implementation or induction into liberal norms in Ukraine, and even less so in Serbia. One area where financial and technical aid appears to have contributed to civil and political freedoms in Ukraine is that of freedom of the media, where in 2004 only 514 claims against journalists were submitted to the courts, compared to 2,258 such claims submitted in 1999. On the whole, however, the gaps between the limited rule adoption achieved in Ukraine and Serbia, and effective implementation appear to be larger than for Turkey in particular, but also Romania.

What accounts for these patterns? Under what conditions do we find more extensive, deeper forms of compliance involving genuine implementation and internalization? While the conceptual and methodological challenges of providing reliable answers to these questions are considerable, particularly on account of the psychological element involved in evaluating internalization, several important considerations can be proposed in this context.

As Table 8.2 demonstrates, the relationship among rule adoption, implementation and internalization is a weak one. That is, in spite of a stronger conditionality in terms of determinacy and credibility there is an incomplete or largely incomplete rule adoption and consequently poor implementation, and even poorer internalization.¹⁷ For Romania, this is the case with minority rights, independence of judiciary, civil service reform, and anticorruption policies; for Turkey, with minority rights, independence of judiciary, constitutional reform, and police reform; for Serbia, with civil service reform and civil control of the army present the weakest links; finally, for Ukraine, with constitutional reform, civil control of the army and police reform.

As can be seen in Table 8.3, the sectors where conditionality has the weakest effect are characterized by the presence of relatively weaker change agents who are challenged by powerful veto players and can only be undermined by the protracted action of the external actor, such as the EU. Thus, for Romania

Table 8.3 Conditionality, change agents and veto players: sectors and results (2006)

Sectors	Country	Conditionality*			Change Agents		Veto Players	
		St	We	Ab	Yes	No	Yes	No
Civil freedom and political rights: death penalty.	Romania			X	Civil society immediately after 1989			X
	Turkey	X			Large acceptance			X
	Serbia Ukraine	X		X	Opposition in legislature, civil society, NGOs and President of Ukraine after 2004 Orange Revolution		Legislature and executive, President Kuchma and members of judiciary	
Civil freedom and political rights: minority rights.	Romania	X			For Hungarian minority and Hungarian ethnic party		Communist successor party plus communist legacy (Background cultural attitudes)	
	Turkey	X			Domestic NGOs and civil society		Background cultural attitudes: Sevres Syndrome	
	Serbia	X			President Tadić and NGOs		No explicit veto players, but active ultranationalist party	
Civil freedom and political rights: freedom of press, speech and association.	Ukraine	X			Low salience			X
	Romania		X		Domestic NGOs		(Background cultural attitudes, complemented by poor quality of legislation)	
	Turkey			X	Catalyst crisis: the Pantea case Domestic NGOs and civil society		Background cultural attitudes in sectors of Turkish judiciary: Sevres Syndrome (public prosecutors and judges) (Cultural legacy of communist years)	
	Serbia	X			Note: problematic legislation (Article 301) President Tadic and NGOs			X

Continued

Table 8.3 Conditionality, change agents and veto players: sectors and results (2006)—cont'd

Sectors	Country	Conditionality*		Change Agents		Veto Players		
		St	We	Ab	Yes	No	Yes	No
Independence of judiciary	Ukraine	X			Opposition in legislature, civil society, NGOs and President of Ukraine after 2004 Orange Revolution		Legislature and executive, President Kuchma and members of judiciary	
	Romania	X			Minister of Justice, civil society, President of Romania and government		Conservative Superior Council of Magistracy, Constitutional Court and successor Communist Party SDP	
	Turkey		X			X	Ministry of Justice Ideological discrepancies between present AKP government and judicial establishment	
	Serbia		X		Few and weak change agents, esp. Judges Association		Strong veto players: incumbent parties in Serbian National Assembly	
Justice System: modernization and growth of effectiveness	Ukraine	X			Opposition in legislature, civil society, NGOs and President of Ukraine after 2004 Orange Revolution		Strong veto players: members of legislature and executive, President Kuchma and members of judiciary	
	Romania	X			(Favors traditional veto players)		Bureaucratic inertia	
	Turkey		X		(Improved economic conditions in aftermath of 2001 economic crisis)		(Poor institutional capacity)	X

Serbia	X	Few and weak change agents: Judges Association.	Strong veto players: incumbent parties in Serbian National Assembly and conservative members of judiciary.
Ukraine	X	Opposition in legislature, civil society, NGOs and President of Ukraine after 2004 Orange Revolution	Strong veto players: members of legislature and executive, President Kuchma and members of judiciary
Constitutional reform	X		Reduced administrative capacity of parliament (some inherent contradiction between different EU-set objectives)
Turkey	X	Government and civil society	Ideological divisions on interpretation of constitution (primarily between government and presidency) (-) Participatory culture at citizen level
Serbia	X	Few change agents: some opposition parties	No veto players but, strong influence of incumbent parties and Prime Minister Košunica
Ukraine	X		Parties in Verkhovna Rada
Romania	X	NGOs	Parties in government
Civil service reform			Bureaucratic inertia
Turkey	X		Deeply entrenched mechanisms of patronage
			Low administrative capacity

Continued

Table 8.3 Conditionality, change agents and veto players: sectors and results (2006)—cont'd

Sectors	Country	Conditionality*		Change Agents	Veto Players	
		St	We		Ab	Yes
Anticorruption policies	Serbia	X		Few change agents: PA functionaries with western training and local research centers		X
	Ukraine	X		Opposition parties during President Kuchma regime and NGOs	Executive and parties in Verkhovna Rada (Bureaucratic inertia)	
	Romania	X		Minister of Justice, NGOs, government and liberal MPs	MPs cross-cutting political parties (Bureaucratic inertia)	
	Turkey		X		Government (Low administrative capacity)	
	Serbia	X		Djindjić government, international and local NGOs	Weak veto players: Socialist Party, Radical Party and some incumbent parties (Bureaucratic inertia)	
Improving AC to combat corruption	Ukraine	X		Opposition parties during President Kuchma regime and NGOs	Executive and parties in Verkhovna Rada (Bureaucratic inertia)	
	Romania	X		Minister of Justice and NGOs	Constitutional court and Communist successor party	
	Turkey Serbia		X		Minister of Justice, incumbent parties and parties in National Assembly (Bureaucratic inertia)	X

	Ukraine	X	Opposition parties during President Kuchma regime and NGOs	X	Strong veto players: executive and parties in Verkhovna Rada (Bureaucratic inertia)	X
Civil control of army	Romania Turkey	X	NGOs, civil society, government and military with its general pro-EU orientation (Weakening of PKK terrorism, souring relations between USA and Turkish military.) Few domestic change agents	X	Certain segments of media (societal widespread attitudes)	
	Serbia	X			Strong groups within armed forces (reduced administrative capacity) Executive, parties in Verkhovna Rada and groups within army (Reduced IAC)	
	Ukraine	X	Orange coalition political parties and NGOs		Strong groups within police (Low administrative capacity and insufficient funds) Groups within police Executive, parties in Verkhovna Rada and groups within police (Reduced IAC)	
Police reform	Romania Turkey	X X	NGOs NGOs, civil society and government Djindjic (until 2003) Orange coalition political parties and NGOs	X		
	Serbia Ukraine	X X				

Note: *See Table 8.2.

we find in the sectors just mentioned: Hungarian ethnic party versus the Communist successor party strengthened by the rooted cultural attitudes of the old communist legacy; the Minister of Justice and the cabinet versus the Conservative Superior Council of Magistracy and the Constitutional Court; the unopposed incumbent parties complemented by bureaucratic inertia; again, the Minister of Justice and the cabinet versus a number of MPs from different parties. For Turkey, domestic NGOs differentiated by widespread cultural attitudes, additionally strengthened by the Sèvres Syndrome; an unopposed Ministry of Justice in a context where there is an ideological division between the incumbent AKP (see above) and the judicial establishment; the government supported by civil society versus the conflicts between cabinet and presidency; cabinet supported by civil society, but blocked by a weakly effective bureaucracy. For Serbia, the weakness of change agents and the strength of groups within the armed forces is enough to explain the weak links. Finally, for Ukraine the contrast between the Orange coalition, as change agent, and other parties in parliament and groups inside the army and the police accounts for those weak links.

An additional litmus test can be carried out. From Tables 8.2 and 8.3, combining the qualitative analyses for the four countries, we can detect that conditionality is more effective, that is, the links between the impulse coming from the EU and the outcome are stronger, when either there are no veto players or they are weak or very weak, or, alternatively, when the topic is relatively minor in the country in the presence of change agents. Thus, for example, the first hypothesis applies in the case of minority rights in Serbia and the second in Ukraine; on freedom of press, speech, and association, in Serbia no veto players are manifest; on modernization of the justice system, in Turkey the first hypothesis applies, while in Serbia it is the second that explains the stronger influence and results; on civil control of the army, in Romania the first hypothesis applies.

This analysis helps us to make a first set of concluding remarks. The first one concerns the importance of institutional and administrative capacity for effective implementation. Unlike rule adoption, which entails governmental consideration and an official act of decision whether to accept, amend or reject a formalized idea, rule implementation requires the exercise of governmental command, often involving the coordination, instruction, mobilization and monitoring of large bureaucratic organizations. Even where few barriers to formal rule adoption exist and a genuine normative commitment to change on the part of all critical stakeholders prevails, implementation may be blocked or, at least severely hampered, by either bureaucratic inertia or sheer lack of institutional and administrative capacity on the part of agencies charged with implementation. Among the factors that may explain the relatively smaller gap between formal rule adoption, on the one hand, and implementation, on the other in Turkey, is the stronger institutional and administrative capacity of the Turkish state. In contrast, poorer implementation in Romania and Serbia, especially, seems at least partially attributable to

weaker implementation capability. Where reformists detect that the effective implementation of formal legal and institutional changes is blocked by factors other than governmental veto player subversion, therefore, careful analysis should be undertaken of possible means to reduce bureaucratic inertia and strengthen the capacity of implementing agencies. At the same time, we should expect in advance that rule of law reforms requiring substantial mobilization of human and other resources – such as civil service modernization and the implementation of new anticorruption measures – would encounter greater bureaucratic difficulties, require heavy investment in resources, monitoring and lesson drawing, and take longer to implement than clear legal prohibitions (such as the abolition of the death penalty and the removal from the law books of criminal provisions used to sanction journalists). However, we should emphasize that in its action the EU has been laying particular stress on the need for civil service reform to improve administrative capacity, as can be seen in Tables 8.3 and 3.12, although the results have been fairly modest.

Second, more so even than in formal rule adoption, the a priori presence of domestic agents committed and powerful enough relative to veto players to affect change is a robust indicator of the chances of successful implementation and internalization. Change agents may not be able to implement all the formal commitments undertaken by the targeted country (i.e. we would expect a gap to exist between formal adoption and implementation even where powerful change agents do exist), but without their presence the gap between formal adoption and implementation will be larger, the propensity for fake compliance will be higher, and internalization will be practically nonexistent. The composition of party constellations, in particular, is a key factor shaping the implementation of reforms, as state bureaucracies, let alone civil society organizations and mass elements, are practically unable to implement rule of law reforms without the active support of governmental actors.

The divergent experiences of the Hungarian and Roma minorities in Romania serve as an illuminating example. Despite considerable normative pressure from Hungary, the OSCE and the Council of Europe, in the early to mid-1990s, the endorsement of minority rights norms was consistently resisted by the Romanian Social Democrat Party (PDSR) government. It was only after new elections, the subsequent change to a mixed-party constellation government in 1996, and the entry of the Hungarian minority political party UDMR into the coalition itself, that substantial policy, as well as legislative progress, was made in the treatment of Hungarians by the state. In contrast, where vocal, persistent external pressure to improve the lot of the Roma minority was met by poorly organized domestic constituencies, lacking effective political representation, change was slower and very limited. Whereas UDMR was able to pursue linkage politics to win advances for its minority constituency, in the absence of a politically organized Roma change agent (in particular a political party able to wield coalition votes) progress on Roma rights was significantly hampered. At the same time, the Romanian case

suggests that a degree of ‘spillover’ in the field of minority rights did take place over the past 15 years. The voluble discourse over the issue, UDMR’s presence in government, as well as the maintaining of the issue on intergovernmental and NGO agendas by persistent external pressure, have resulted in greater societal awareness and commitment of state resources to the integration of minorities, and not merely to the Hungarian sector.

A third, related theme pertains to the ability of veto players to block implementation. The experience of our case study countries demonstrates the fact that veto players populate different sites of power, at different levels of government, in different countries, highlighting the need for reformists, both domestic and external, to identify pockets of veto player concentration in the planning and execution of attempted reforms. In Romania and Serbia, for example, the most powerful veto players have tended to be in the legislature and senior civil service (with, in addition, the security forces acting as powerful retardants to the implementation of rule of law reforms in Serbia). In contrast, the AKP’s overwhelming dominance of the Turkish legislature since 2002 has meant that governmental veto players have been relatively weaker, with parts of the judiciary and public prosecution service surfacing as centres of opposition to liberalizing reforms. Indeed, the role of the Turkish judiciary is instructive in this context, since it represents an example of a split institution, with the top echelons displaying greater openness to democratic rule of law developments (even a degree of internalization attested to by an increased use of EU law discourse in the pronouncements of the upper courts), while the lower courts and prosecutors adopted anti-EU rhetoric and assumed a more nationalist stance.¹⁸

At the same time, as in the area of rule adoption, we find some evidence of “internal diffusion” of norms with cross-issue spillover taking place within a given country. In Turkey, for example, the strengthening of general civil freedoms and human rights legislation, coupled with the proliferation of civil society organizations and intense public discourse on these subjects since 1999, has also facilitated the promotion of Kurdish minority rights, as the dissonance between the two realms of rights became more visibly jarring. This would suggest that the promotion of broad systemic reforms, rather than narrow sectoral ones, could well produce positive externalities and unexpected synergies across different issue areas.

The fourth aspect to stress is how the different sectors of rule of law are interrelated. The most obvious set of considerations are those that stress the salience of an independent judiciary for the effective implementation of civil and political rights, for the policies against corruption or even the civil control of the police, once the related rules have been adopted. But an important additional point can be made explicit, by giving a closer look at Table 8.3 and keeping in mind the different analyses on the four countries, it becomes clear that change agents and veto players are often the same in the different sectors of rule of law. More precisely, the same change agents and veto players are found in different sectors and at the same time there are specific groups who

are most directly affected by the change in the different sectors. Thus, among the recurrent actors involved, we find in Romania, on the one hand, domestic NGOs, parties, and government and, on the other hand, the Communist successor party and other incumbent parties, and bureaucracy. In Turkey there are domestic NGOs, government versus opposition parties, sectors of the judiciary, and patronage mechanisms. In Serbia, there are domestic NGOs, some opposition parties versus incumbent parties; in Ukraine, NGOs, the Orange Revolution parties or, previously, opposition parties versus components of the judiciary, members of parliament, members of the cabinet, complemented by bureaucratic inertia. An additional consequence of this is the presence of mutual influence among sectors. That is, progress in one sector can imply progress in another.

Moreover, veto players are sometimes not explicit and what prevents democratic change by giving a common background to governmental and non-governmental actors in the various countries is the persistence of widespread cultural attitudes. The Turkish case is very telling on this: what in the end prevents this country from changing are those attitudes manifest in the Sèvres Syndrome, in gender bias and in the other attitudes mentioned in the chapter on this country (see Chapter 5). Of course, those attitudes can eventually change, as has happened in other countries and at various points in time, but the process takes time. This line of reasoning brings us to the last brick of our theoretical building.

Times of change

Finally, what can we say about the temporal dimension of change – cycles of change – and the issue of sequencing? These are questions which are increasingly occupying scholars of democratic development (Carothers 2007). A substantial correlation emerged in the timing between periods where EU membership conditionality is at its most credible and phases of rapid rule adoption, and to a lesser degree implementation, in targeted countries. In Romania the confluence of the two occurred most strongly in the interim between the announcement of the suspension clause and the decision whether or not to invoke the clause and suspend the country's accession for a year. Similarly in Turkey, the period of greatest rule adoption activity took place during times when domestic elites were persuaded that the EU meant business, that is, in the immediate aftermath of the Helsinki European Council in 1999, but even more so in the period between the December 2002 Copenhagen summit and the 2004 decision to open accession negotiations with Ankara.

In Romania in particular, moreover, we see instances where initial 'lip service' reforms formally adopted by governments unable or, more often, unwilling to implement them, were utilized as bases or inspiration for more detailed, involved reforms several years later, by successor governments that were more liberal in their party constellations. Thus, for instance, the 1999 law

on civil service reform, which was adopted only under intense EU pressure in the run up to the Helsinki European Council summit that year, and which failed to address a range of problems – including transparent recruitment mechanisms, poor wages for civil servants and lack of transparent rules for promotion – became the subject of civil society criticism and renewed EU pressure four years later, leading to the law's partial revision under the PSD government in 2003, and then further revisions that finally brought Romanian legislation into alignment with EU standards in 2006. Similarly, the weak 1996 legislation concerning asset declarations passed, but never implemented under the fractured Romanian Democratic Convention (CDR) coalition, strengthened on paper under intense EU pressure in 2003 and again in 2004, was seized upon in 2005 by a reformist Minister of Justice in an attempt to strengthen substantially legal mechanisms on asset declarations.¹⁹ Although Romania was a laggard in this respect too, compared with those Central and Eastern European countries that acceded in May 2004, these examples illustrate the generation of a 'virtuous cycle' dynamic observed in other candidate states, with external pressure and reformist governments able to achieve a cyclical momentum of rule adoption and implementation, followed by another round of more demanding reforms.

A similar, though perhaps weaker, dynamic is present in Turkey, yet virtually absent in Serbia and Ukraine, suggesting that the 'virtuous cycle', where it exists, has so far been limited to pre-accession cases. At the same time, we do find evidence for a somewhat different version of sequential change in both enlargement and non-enlargement countries, one where discursive and activist constituencies emerge following rule adoption, coalescing around new topics or institutions. Although these groups are rarely able to achieve short-term implementation of reforms, they are occasionally able to keep the specific issue (freedom of expression, corruption, judicial independence, police reform and so forth) on the agenda, and leverage the earlier acceptance of the principles in legislation to further reforms when a relevant policy window emerges. Interestingly, instances of rule adoption which are then frustrated by lack of implementation or the perceived duplicity of the government that formally committed to them, may act as a galvanizing factor for domestic reformists. As the number of formal commitments to reform the 'Soviet judiciary' mounted in Ukraine during the 1990s, for instance, the gap between the Kutchma government's reform rhetoric, and the reality of its inaction attracted growing opprobrium from Ukrainian opposition groups, contributing to the drive for judicial reform in the immediate aftermath of the Orange Revolution.

When the time factor is added, our 'building' is completed and we can finally summarize the main elements of our empirical analysis and stress how it also enriched our EUCLIDA model. In different ways and to a different extent there has been a process of anchoring in all four cases. When the mist of membership is cleared, in Romania as well as in the other countries

where this perspective was more distant, if present, the key mechanism of conditionality remains relevant for the beginning of the process. Conditionality brings rule adoption, but rule implementation to a much lower degree, and only when some reform of the civil service has been successful.

To understand better such an external–internal nexus, our research brought to light the salience of the emergence of opportunities created by external actors and perceived by domestic elites, and in a few cases transmitted to citizens. Such an open, and in some cases collective, perception is easier when there is a determinate and credible conditionality. Analytically, we could make a distinction between the understanding on the part of a leader or group that there is an opportunity to exploit and the translation of the opportunity into a successful change. So the end result of the entire game is in the complex, multifaceted relationships between change agents and veto players, where the public plays an indirect role that can become a determining one at the time of elections. However, in the four countries and within the several issues we explored, there were evidently situations characterized by a variable geometry. That is, there are strongly value-motivated reformist elites who challenge powerful veto players, even paying the costs of losing, or more pragmatically interest-oriented elites who decide to engage in change actions only when they think they are playing safe and success is very probable. In all four cases there are both kinds of actors in different combinations. Thus, following the EUCLIDA model the shift of cost-benefit balance is mainly the result of the creation of opportunities, followed by different calculus done by diversified actors, but in this the creation of opportunities is the crucial point in bringing about that shift and the related origin of larger liberal parties or change agents as well as some kind of contingent stabilization. Of course, a stronger, steady stabilization is the result of other important processes that may develop later on within the process of democratic consolidation.²⁰

In this vein a negative position that affirms the failure of conditionality is not supported by our empirical research. Conditionality may be weak and at the end may even fail, but when all critiques are considered and even partially recognized as legitimate,²¹ the mechanism of opportunity creation is still there and at its core is conditionality, not with its legal aspects, but with its actual effects. Moreover, while in the long run socialization can be an effective mechanism for bringing about change in democratic rule of law, actually, such a mechanism is virtually impossible to detect empirically in the short run, that is, within the limits of research such as ours. Thus, in the end we have only two actual possibilities: an effective socialization-like mechanism, which is characterized by the imposition of an office with the specific goal of inducing adaptation and change, and the conditionality mechanism. But the first mechanism is stronger when there is an accession path, as in Romania and Serbia, but it is more difficult to set up, as in Ukraine and Turkey, and even if established, would run into problems of sovereignty (see above on this). Hence, empirically, conditionality remains the main mechanism of influence. Of course, it can be greatly strengthened by more sophisticated

monitoring practices. Moreover, in the process of anchoring, it is important to understand the necessity of continuity of action by the EU, even complemented by the Council of Europe and by other donors, as we have seen in our cases.

In conclusion, in a nutshell we found in our empirical research that the external/internal nexus is characterized by *a chain of anchoring* where, if successful, there are the following steps:

- continuous conditionality actions
- creation of opportunities
- perception of opportunities by different élites, and citizens
- weakening of veto players
- shift in cost-benefit balance
- rule adoption
- more substantive transformations
- rule implementation and related monitoring
- eventually, rule internalization when also structural or deeply rooted cultural factors (such as the presence of alternatives in Ukraine, the nationalism of Serbia and key widespread cultural attitudes in Turkey) are changed or reassessed differently.

Are there lessons to be drawn?

On the basis of such a chain of anchoring and the related experience of the research a number of lessons can be drawn. In a concise way, they include the following:

1. Anchoring takes time, or more explicitly, creating some form of democratic rule of law is often an ambitious goal that takes time and a large amount of external stimuli and resources.
2. The entire strategy of democracy promotion has to have two core complementary goals: strengthening change actors and weakening veto players.
3. These goals can be better achieved if there is a coordination of external actors, particularly of the EU and the USA, otherwise the negative consequences that took place in Ukraine (see Chapter 7) are unavoidable.
4. If there are structural reasons that give strong support to veto players, such as serious ethnic cleavages and the presence of alternative political models, a more moderate and modest strategy of promoting rule of law to stop the worst practices of suppression and, if possible, a combined action for modernization and protection of basic rights seem more appropriate.
5. As conditionality mainly brings rule adoption, the next steps such as implementation and internalization imply continuous action by the external actors.
6. In that action, continuous monitoring and flexibility at the same time are key, relevant aspects; a strictly legal approach may sound 'right' and 'clever', but can actually misconstrue the situation, with negative consequences in terms of rule of law, that is, achieving the opposite result.

7. No 'one strategy fits all'. On the contrary, there are different strategies according to the different combinations of external conditionality and the different domestic elites and citizens.
8. A close knowledge of each case is a prerequisite to develop a precisely tailored set of external actions toward that case. For this purpose EUCLIDA, which proved to be a useful integrated framework in our research, can also help us to analyze the case we are interested in. To use a metaphor EUCLIDA helps to make better X-rays or, if we prefer, a better total body CAT scan.

And more precisely:

9. The five dimensions of the rule of law we exploring can be specified as we did (see Table 8.1), and our research suggests that they are the most effective and relevant ones. Consequently, paying attention to those dimensions and more specific issues is important.
10. Those dimensions are partially or closely related. Consequently, every strategy has to take into account all five dimensions that can weaken or strengthen each other.

In sum, we are well aware that the recommendations above can only be applicable to some countries, and not to others. That is, first of all, they are applicable to hybrid regimes with groups, organizations, leaders, and movements that can be or become change agents. In all other cases of stable authoritarianisms, it would be a waste of resources and time. And we are not sure that in those cases there is actually an effective strategy of any kind.

A final point about this research. One of the main reasons for conducting it has been the belief of the editors that a wrong way to promote democracy is to promote façade democracies, where what there is behind the façade – for example, with regard to the rule of law – is ignored and only the strictly formal aspects are considered. In this case, in fact, the impact is inevitably one that delegitimizes this sort of regime as an unacceptable western product that does not solve the actual problems of the people.

Notes

- 1 The codebook developed by the first author is available upon request.
- 2 Since 1997.
- 3 Freedom of association was explicitly mentioned for the first time in the 2006 Constitutional Charter, mainly as a result of pressure by Tadić (see also Chapter 6 in this volume).
- 4 That took place when this research was already concluded.
- 5 Finally, a three party coalition cabinet with Democratic Party, Democratic Party of Serbia and New Serbia and G17+ Plus was formed in May 2007 after three months of negotiations, characterized by political scandals and clashes among those parties that upset the population. The Radical Party was finally left out, although it had gained the plurality of votes. But Kostunica introduced some of the Radical Party claims in his programme, namely the preservation of Kosovo and Metohija
- 6 These findings are in line with Judith Kelley's conclusions (Kelley 2004a; 2004b).
- 7 As Daniel Drezner (2007) demonstrates, the risk of losing sight of "under the radar" changes in democratic developments exists in other regions of the world as well.

258 *Leonardo Morlino and Amichai Magen*

- 8 Other 'high cost' areas were the Cypriot issue for Turkey, Kosovo's secession and the cooperation with the International Criminal Court for ex-Yugoslavia for Serbia, although strictly speaking Cyprus and Kosovo are not aspects of democratic rule of law.
- 9 In Chapter 5, it is recalled that the Sèvres Treaty partitioned the Ottoman Empire among the European powers.
- 10 According to Schimmelfennig, in liberal party constellations EU incentives would not only be effective, but the change achieved would also be "quick and smooth" (Schimmelfennig 2005b, 838). Writing in 2004–05, Schimmelfennig placed Romania in the mixed-party category, and Serbia-Montenegro and Ukraine in the illiberal party category.
- 11 Here, of course, we only consider those veto players who are against democratic rule of law reforms.
- 12 Although we know that it was a low cost reform, as that penalty has not been carried out since 1984 and there is low public support for retaining the death penalty.
- 13 For a detailed discussion of this topic, examining the different degrees of compliance with laws at the national, European and international levels, see Zurn and Joerges (2005).
- 14 As already discussed in Chapter 2. See there also for the bibliographical references.
- 15 In this country, however, there was an example of this kind that is worth recalling. As requested by the EU, in 2004 the courts for State Security were repealed. However, other criminal courts were created which, according to the association of lawyers and the association for human rights, are working in the same way as the previous courts, but under a different name. For example, the president of the association for human rights in Diyarbakir made this comment, adding that the president of the previous court had been also appointed as president of the new court in that same town. Apparently, according to the association of lawyers in Istanbul, the appointment of the same judges was a recurring pattern. This however, might be due to a lack of experienced personnel, as well as the intention of the government to maintain the status quo. What is more important is the claim that the decisions taken by the new organization follow those of the old one.
- 16 On the difference between different types of internalization, see Checkel (2005).
- 17 See in Table 8.2 the cases where there is at the same time strong conditionality and incomplete rule adoption, that is cases of inconsistency.
- 18 As Ali Çarkoğlu expressed in a private communication, in order to understand the actual autonomy of the judiciary, what is critical is that the judiciary looks at the party competition and veto players' signals and acts accordingly. When the EU reformers are perceived to be weak and likely to lose the next election, then the actors in the judiciary tend to play into the hands of the opposition hoping to exploit political and professional career objectives when they come to power.
- 19 A law was finally passed recently in an improved version, but it remains to be seen when the agency will be created and how effective it will actually be.
- 20 This topic will not be analyzed here. See, among others, Morlino (1998) and Diamond (1999).
- 21 The main criticisms by Kochenov (2007) are: "low threshold for meeting the Copenhagen criterion of democracy and the rule of law, making the acknowledgement that a country meets the Criterion largely meaningless";
 - "complete lack of clarity about the standards that the candidate Countries were expected to comply with, making pre-accession democracy and rule of law assessment extremely difficult, if at all possible";
 - "poor analysis quality provided by the Commission, including random choice of issues, unreliable conclusions, numerous contradictions and a curious approach to democracy and the rule of law. No serious assessment provided";
 - "lack of clarity about benchmarks to determine compliance. Consequently, no distinction was often made between genuine reforms and legislative window-dressing";
 - "unjustified differentiated treatment of the candidate countries at all stages of pre-accession process";
 - "complete lack of connection between the Commission's pre-accession monitoring and the candidate countries' progress towards accession".