Changing Europe

Volume 8

Zdenka Mansfeldová, Heiko Pleines (eds.)

Informal Relations from Democratic Representation to Corruption

Case Studies from Central and Eastern Europe

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CHANGING EUROPE

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2 *David Lane, György Lengyel, Jochen Tholen (eds.)*
Restructuring of the Economic Elites after State Socialism
Recruitment, Institutions and Attitudes
ISBN 978-3-89821-754-5

3 *Daniela Obradovic, Heiko Pleines (eds.)*
The Capacity of Central and East European Interest Groups to Participate in EU Governance
ISBN 978-3-89821-750-7

4 *Sabine Fischer, Heiko Pleines (eds.)*
Crises and Conflicts in Post-Socialist Societies
The Role of Ethnic, Political and Social Identities
ISBN 978-3-89821-855-9

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Trade Unions from Post-Socialist Member States in EU Governance
ISBN 978-3-89821-857-3

6 *Sabine Fischer, Heiko Pleines (eds.)*
The EU and Central & Eastern Europe
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ISBN 978-3-89821-948-8

7 *Sabine Fischer, Heiko Pleines (eds.)*
Civil Society in Central and Eastern Europe
ISBN 978-3-8382-0041-5

8 *Zdenka Mansfeldová, Heiko Pleines (eds.)*
Informal Relations from Democratic Representation to Corruption
Case Studies from Central and Eastern Europe
ISBN 978-3-8382-0173-3

9 *Leonid Kosals, Heiko Pleines (eds.)*
Governance Failure and Reform Attempts after the Global Economic Crisis of 2008/09
Case Studies from Central and Eastern Europe
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Contents

List of Figures

List of Tables

Preface

This book presents a selection of the papers discussed at the Changing Europe Summer School on 'Informal Networks, Clientelism and Corruption. Case Studies from Central and Eastern Europe' held in Prague at the Institute of Sociology of the Academy of Sciences of the Czech Republic in August 2010. Organised since 2006 by the Research Centre for East European Studies (Forschungsstelle Osteuropa) at the University of Bremen, the Changing Europe Summer School has every year invited twenty to thirty young academics from different disciplines of the social sciences and the humanities to share their research on Central and Eastern Europe. Our main goal is to give them a chance to present and discuss their research projects as well as to help them become more integrated into the academic community. Participants are selected by means of an anonymous review process that is kindly supported by the members of our international review panel (for more information on the Changing Europe Summer Schools, see www.changing-europe.de). The results of each Summer School are published in this book series.

It goes without saying that this book would not have been possible without ample support. First of all, our thanks go to the participants themselves, whose enthusiasm and knowledge made the Summer School a truly worthwhile event. We would also like to thank all the referees who aided us in the selection process for appropriate participants. We are additionally grateful to all those who helped to organize the Summer School and the book production, namely Hilary Abuhove (language editing), Nozima Akhrarkhodjaeva (bibliography), Alzbeta Bernardyova (organizational support), Christopher Gilley (language editing), Petra Guasti (organizational support), Judith Janiszewski (style editing), Matthias Neumann (layout), Ksenia Pacheco (organizational support) and Pavla Vamberova (organizational support).

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Prague and Bremen, February 2011
The Editors

Heiko Pleines

1. Introduction

Informal relations have been one of the major research topics of the social sciences since the 1990s. Above all in the non-Western context, informality has been seen as a negative, pre-modern phenomenon which explains the failure of societies to develop modern democracies and market economies. In line with the distinction by Max Weber, the Western legal-rational model of the organisation of state and society has been contrasted with the pre-modern patrimonial model based on personal relations of a clientelistic type, kinship and arbitrary rule. As today's transforming societies cannot simply be described as pre-modern, the concept of neo-patrimonialism has been developed in order to describe a hybrid system, where the formal rules are based on Western legal-rational principles, while, at the same time, patrimonialism determines many interactions in politics and society informally.

However, the range of informal relations categorized in the context of neo-institutional concepts is much wider than the usual research suggests. In the neo-institutional understanding, informal practice refers to acts which are not regulated by formal rules, where formal rules are those supported by the state's monopoly of power. However, informal rules are not necessarily illegitimate or illegal; they may just complement the formal rules. As formal rules cannot cover every aspect of life, and are not intended to do so, informal rules are common in functioning democracies, too.

In this context, Helmke/Levitsky distinguish four types of relations between formal and informal rules:

> Our typology is based on two dimensions. The first is the degree to which formal and informal institutional outcomes converge. The distinction here is whether following informal rules produces a substantively similar or different result from that expected from a strict and exclusive adherence to formal rules. […] The second dimension is the effectiveness of the relevant formal institutions, that is the extent to which rules and procedures that exist on paper are enforced and complied with in practice. […] Where formal rules and procedures are ineffective, actors believe the probability of enforcement (and hence the expected cost of violation) will be low.[1]

These two dimensions produce a fourfold typology. In the case of effective formal institutions, the informal ones can be complementary (in the case of convergence) or accommodating (in the case of divergence). In the case of ineffective formal institutions, the informal ones can be substitutive (in the case of convergence) or competing (in the case of divergence).

According to this understanding, informal practices are only illegitimate when they challenge the proper functioning of the formal rules, i.e. when they are competing,

1 Helmke, Gretchen/ Levitsky, Steven: Informal Institutions and Comparative Politics: A research Agenda, in: Perspectives on Politics, 2004 (vol. 2),pp. 725–740, here: p. 728.

although they are only illegal when the law covers the form of behaviour in question. This perspective facilitates an integration of the research on informal relations into broader social science theories.

The negative side of informal relations is linked to theories of clientelism and corruption. In the analysis of modern societies, the research focuses on the perversion of constitutional (often democratic) and law-based regulation by informal relations. This negative concept of informal relations, which sees them as influential, traditional and perverting the formal rules of democracy, also prevails in studies on the post-socialist societies of Central and Eastern Europe, particularly in those focusing on the former Soviet Union and the Western Balkans.

The positive side of informal relations is linked to theories of social capital. Generalized (interpersonal or social) trust and institutional trust are seen as major factors contributing to the establishment and maintenance of efficient democratic political systems. The former refers to trust in unknown people and is assumed to be the foundation for collective political activity for the public good (as opposed to lobbying for the interests of narrow and closely knit circles). The latter refers to trust in the major institutions[2] of the state and civil society, which are vital for the functioning of the democratic system, most notably state organs (such as the government, parliament, courts, state administration and police), collective representatives of society (for example, political parties and different types of associations) and the channels of information (most notably mass media). As democratic decision-making relies on participation and compromise, trust in the relevant actors is vital for the functioning and legitimacy of the political system. With regard to informal relations, the argument is that generalized trust leads to open and transparent informal networks and collective action focused on the public good, while a lack of generalized trust promotes the formation of closed circles focused on narrow interests.

One of the best known and most concise versions of the claim that generalized trust creates both social capital in the form of an active civil society and high levels of institutional trust, which in turn promotes democratic development, is presented by Putnam[3], who analysed Northern and Southern Italy. Similarly, for example, Belson

2 It is important to note that in this context institutions refer to state bodies or organizations as collective actors and not to rules (as in the neo-institutionalist concepts). However, in democratic societies, the respective collective actors are strongly embedded in specific rules regulating their behaviour. Accordingly, it can be argued that institutional trust refers not only to the specific persons representing the collective actors, but at least as much to the system of rules governing their behaviour. Trust in parliament or, even more obviously, trust in the police does not just emerge from trust in a specific deputy or policeman, but from trust in the correct functioning of parliament or the police.

3 Putnam, Robert: Making Democracy Work: Civic Tradition in Modern Italy, Princeton: Princeton University Press, 1993.

and Loncko[4] state, based on an analysis of popular attitudes in new democracies, that there is a positive relationsip between trust and democratic consolidation. Rothstein[5] in a volume on social trust in transition states holds that such trust is a precondition for the establishment of efficient institutions.

Following this line of argument, several authors have pointed to low levels of trust in order to explain a perceived democratic deficit in the post-socialist countries of Central and Eastern Europe nearly two decades after the end of socialism. However, the causal direction is not obvious, as it can also be argued, as do e.g. Fidrmuch and Gërxhani,[6] that the poor performance of institutions leads to (justified) low levels of institutional trust.

Accordingly, low levels of trust and the low quality of public institutions can be mutually reinforcing and thus create a vicious circle. At the same time, high levels of trust and high quality of public institutions can also be reinforcing and thus stabilize democracies. This means that trust has a relatively high predictive power concerning democratic development as it takes a long time to build (or destroy) high levels of generalized and institutional trust in a society. Trust levels are, therefore, at least from a theoretical perspective, long-term explanatory factors for democratic development.[7]

The negative and positive perspectives on informal relations are clearly separated in academic research as they are integrated into different theoretical concepts and look at different actors and institutional settings. However, the rationale of this book is that, from an empirical point of view, the distinction is not so clear-cut and that it is, therefore, important to bring the two perspectives together. This can be demonstrated using the issue of democratic representation.

The normative aim of democratic representation is to allow all interested groups in society equal access to democratic decision-making processes in a transparent way.[8] At the same time, decision-makers should be authorized by the relevant constituencies and should be held accountable for their decisions and actions. Next to this for-

4 Belson, Molly/ Loncko, Lukas: Trust and Democratic Consolidation: A Comparative Analysis of Post-Communist Europe and Latin America, Paper presented at the Annual meeting of the International Studies Association, Hilton Hawaiian Village, Honolulu, Hawaii, March 05, 2005, available at http://www.allacademic.com/meta/p72171_index.html, accessed 23 November 2010.

5 Rothstein, Bo: Social Trust and Honesty in Government: A Causal Mechanisms Approach, in: Kornai, Janos/ Rothstein, Bo/ Rose-Ackerman, Susan (eds.): Creating Social Trust in Post-Socialist Transition, N.Y.: Palgrave Macmillan, 2004.

6 Fidrmuch, Jan/ Gërxhani, Klarita: Mind the Gap! Social Capital, East and West, William Davidson, 2007, Working Paper 888 (Ann Arbor, MI).

7 See, for example, the discussions in Mishler, William/ Rose, Richard: What are the Origins of Political Trust? Testing Institutional and Cultural Theories in Post-Communist Societies, in: Comparative Political Studies, 2001 (vol. 34), no. 1, pp. 30–62 and Dimitrova-Grajzl, Valentina/ Simon, Eszter: Political Trust and Historical Legacy. The Effect of Varieties of Socialism, in: East European Politics & Societies, 2010 (vol. 24), no. 2, pp. 206–228.

8 The relevant analytical framework is developed in the chapter by Petra Guasti in this volume.

malistic aspect of representation, Hanna Pitkin also points to the descriptive, symbolic and substantive aspects, which refer respectively to the resemblance between constituency and representative, the subjective belief in the representative link and the actual actions by the representative in support of the constituency.[9]

If we now look at the role informal relations and institutions can play in democratic representation, we can see a continuum where open and transparent civil society networks involved in democratic decision-making processes are placed at one end and corrupt insider deals perverting democratic norms are placed at the other. However, in-between there are relatively closed networks engaging in lobbyism on the basis of formal democratic rules and political parties acting not only according to democratic principles but also based on clientelism. In the terminology of Helmke/Levitsky, one end of the continuum would be characterized as informal institutions complementing democratic representation (with those accommodating or replacing it further down the line), while informal institutions competing with democratic representation (and thus manipulating or perverting it) would be at the other end of the continuum.

In order to allow for meaningful comparisons between different combinations of the positive and negative effects of informal relations on democratic representation, all the chapters in this book focus on post-socialist Central and Eastern Europe as a particular region where formal democratic rules have been established but competing informal rules are still strong. The first section discusses a broad spectrum of related analytical concepts from different perspectives and from different academic disciplines. The second part then goes on to analyse empirical cases of the relationship between informal relations and democratic representation. The contributions span the whole continuum, as we perceive it, from civil society networks seen as supporting democratic representation to the perversion of democratic representation through political corruption. The final part of the book then takes a closer look at corruption through four case studies from Russia which allow a broader examination of the negative effects of informal relations in different social settings within the same country.

The first two chapters in this book introduce concepts which cover the full range of positive and negative aspects related to informal relations. Eelco Jacobs looks at the governance of public services. He argues that

> by definition, the governance of public service delivery in those states where the government is not able or willing to deliver basic public goods and services […] does not conform to [the] legal-rational ideal type. In fact, in such cases the social contract is broken. This does not imply that governance in the wider definition ceases to exist but rather that informal and often more particularistic governance institutions play a stronger role.

Accordingly, actual governance mechanisms are a hybrid combination of formal and informal elements and the performance of, for example, public services depends on

9 See the chapter by Andreea Carstocea for an elaboration of this concept.

their interaction. As the formal institutions are weak in such circumstances, Jacobs argues that the informal institutions often compete with them—to use the terminology of Helmke/Levitsky—because

> in these cases, neo-patrimonial forms of rule dominate, which reproduce societal inequalities in the public sphere. Clientelist relations and other personalistic modes of governance become essential for access to education, health care and clean water.

Whereas Jacobs looks at the interplay between the formal and the informal in public service provision and, therefore, focuses on governance mechanisms and power relations at the macro level of states and societies, Piotr Stankiewicz and Stanislaw Burdziej investigate the individual, thereby adding a micro perspective. Their presentation of the concept of conflict of interest offers an analytical framework for a normative, legal and sociological analysis of situations where the individual can either follow the formal rules in support of the public good or pursue personal interests in violation of such rules.

Next, Marco Zanella and Mi Lennhag examine typical competing informal institutions in more detail. The chapter by Zanella offers a broad overview of criminal provisions for corruption in Central and East European states. He demonstrates that despite the European efforts towards harmonization, the legal definition of the illegality of informal rules still differs between countries even within the EU. Thus, his contribution offers, on the one hand, a concise summary of different forms of competing informal relations which are deemed illegal and, on the other, demonstrates that an informal act that is defined as illegal corruption in one country can be legal (though still informal) in another. The problem of different legal definitions thus poses a considerable challenge to comparative research beyond the legal realm. The chapter by Lennhag, therefore, presents sociological approaches to informal relations, which focus not on legal regulations but on established routines, path-dependent developments and informal norms. In doing so, she returns to the neo-institutional analytical framework sketched out above.

The second part of the book then presents empirical cases of the impact of informal relations on democratic representation in a declining order from the supportive best cases to the perverting worst scenarios.

Petra Guasti discusses the contribution by civil society networks to the legitimacy of the EU polity. She offers an introduction to the academic debate on whether the involvement of civil society actors can reduce the perceived democratic deficit of the EU. She then goes on to describe the methodological approach to the related network analysis and illustrates the theoretical and methodological aspects with a case study of the role and strategies of civil society actors in the political communication about Europe in the case of the failed Treaty Establishing a Constitution for Europe. Although the involvement of civil society is seen by many as improving the democratic

credentials of the EU, Guasti points out that the lack of formal procedures related to the participation of non-state actors in political decision-making processes at the EU level leads to a lack of transparency and unequal access, which in turn result in unequal democratic representation. This means that even in the best cases of informal relations in a democratic setting, a tension emerges between the importance of participation by organised civil society and the normative desire to ensure transparent proceedings and the fair representation of all relevant interests in democratic policy-making processes.

Tomasz Gabor continues this theme with a quantitative analysis of the capacity for cooperation of civil society organisations in three Central East European countries. He concludes that

> large, professionalized organizations that have received the biggest share of EU Structural Funds tend to maintain collaborative ties exclusively with higher tiers of government. Since these organizations are not accountable to other nonprofits, their intensive involvement in regional governance bears the risk of clientelism.

Further down the continuum running from informal institutions complementing democratic representation to those competing with it, Veronika Pasynkova, looks at the informal relationship between those socialist political parties and trade unions that are successors to communist organizations. In her view, the socialist legacies are still shaping this relationship, which is aimed at cooperation in the political field. The successor parties recruit the trade unions for their election campaigns and in return offer preferential treatment in labour and social policy-making. However, whereas this relationship has been formalized in some countries through electoral alliances and the establishment of a social dialogue, it has remained informal in other countries. In the latter case, clientelistic links exclude other participants and thus restrict democratic representation intentionally.

The case of some political parties claiming to represent small ethnic minorities in Romania shows a clear and intentional perversion of the basic rules of democratic representation. As Andreea Carstocea demonstrates in her chapter, these parties were exploited by political entrepreneurs who wanted to gain access to power. Carstocea explicitly links her empirical results to Hanna Pitkin's concept of representation in order to categorize the substantial impact of the strategies of these political entrepreneurs on democratic representation.

But, whereas the minority parties studied form only a small part of the Romanian political system, the analysis of Bosnia-Herzegovina and Kosovo presented by Maja Nenadović looks at two countries where informal relations have perverted the formal democratic political system on a large scale. She also demonstrates that international administrations have approached corruption in a half-hearted manner and have even taken advantage of it for their own policy aims, because

> in Bosnia-Herzegovina, those willing to cooperate with the international community could do as they pleased, while those opposing the international administration's policies invited investigation.

However, competing informal relations do not only have an impact on democratic representation, but also on all spheres of society. The third part of the book, therefore, looks at examples of the role which corruption—as an informal institution—plays in business, education and the administration of condominiums.

Elena Denisova-Schmidt demonstrates that informal practices have a fundamental impact on businesses in Russia and have been standardized to a large degree. At the same time, the formal rules are enforced selectively, not only as a result of weak governance structures, but also partly as a conscious strategy by state actors to put pressure on specific companies.

Eduard Klein and Elvira Leontyeva then examine informal relations and corruption in Russian universities, which they describe as omnipresent. Both highlight the routine aspect of bribing university teachers. Though individual informal relations between students and teachers change regularly as students advance to other courses, the informal rules governing the relationship between student and teacher are quite stable.

Finally, the chapter by Dilorom Akhmedzhanova looks at collective action challenges in the case of responsibility for common goods. In her case study of condominiums with a huge number of flat owners, she demonstrates that the formal rules fail to provide sufficient governance mainly due to a lack of participation. As a large proportion of the owners stays away, minorities can not only dominate decision-making, but they can also engage in manipulations of the formal rules and outright corruption because they are unsupervised.

The contributions in the third section demonstrate that the different spheres of society face similar challenges from the presence of competing informal institutions. Formal governance mechanisms are perverted and, as a result, they fail to deliver common goods, be it democratic decision-making, a law-based business environment, knowledge-based education or efficient housing management. In all cases, actors profiting from the informal institutions develop routines which make related interactions predictable and reduce the moral hurdle for engagement in such interactions.

Although competing informal institutions by definition violate the formal rules, some actors even succeed in getting formal approval for their actions. For this, the formal rules are either intentionally enforced only selectively, thus granting some actors implicit immunity from the application of formal rules, or the formal rules are used to create a situation in which the competing informal rules are not legitimized as such, but the respective actors are locked in. A good example is the political entrepreneurs exploiting ethnic minority rights in Romania. Although their practices are not in line with the ideal of democratic representation, they have changed legislation on ethnic

minorities in a way which ensures that they remain the only political representatives of the ethnic minorities, as Andreea Carstocea details in her chapter.

If we finally return to the idea of a continuum running from informal institutions complementing democratic representation to those competing with it, then the case studies in this collection provide ample evidence that any sustainable change in situations marked by high degrees of manipulation and corruption is unlikely to occur overnight as a result of one reform; instead, it is more likely to take place gradually as either the formal rules are strengthened, so that the informal ones become increasingly accommodating, or the informal rules are gradually brought in line with the spirit of the formal ones, so that the former become substitutive.

Part I. Concepts

Eelco Jacobs

2. Basic Public Services and Informal Power: An Analytical Framework for Sector Governance

2.1. Introduction

Since the 1980s, increasing awareness of the severe governance challenges that exist in the public sectors of many developing countries and their effect on human development have thrust state capacity into the spotlight as a new sphere of interest in research.[1] This has provided new ideas of *what* is required to strengthen basic service delivery[2] in specific areas in terms of information transparency, expenditure tracking, management capacity and oversight control. However, the question of *why* these improvements frequently fail to appear, even when seemingly straightforward solutions are available, needs to be further explored. Often these shortcomings are attributed to the black box of political will, but what precisely constitutes this *will*, i.e. the power context[3] that affects public sectors, needs further research in relation to sector governance. This article will seek to offer analytical tools to study this power context with explicit consideration of the role of informal institutions and networks.

This paper argues that informal dimensions of power need to be included in the analysis of sector governance, especially—but not exclusively—in developing countries. An exclusive focus on state structures and bureaucracy, based on the classical Weberian[4] framework of governance with its strict distinction between public and private spheres, cannot address many of the challenges facing the delivery of basic public services. In many developing countries, states lack the institutional and operational

1 Evans, Peter B./ Rueschemeyer, Dietrich/ Skocpol, Theda (eds.): Bringing the State Back in. Cambridge: Cambridge University Press, 1985.

2 This paper is concerned with basic services that are partly or wholly delivered, financed or regulated by public agencies. The theory and methodological tools provided therefore mainly, but not exclusively, apply to the water, education and health sectors, which are commonly understood to be the most crucial services for human welfare.

3 Unsworth, Sue: Understanding Pro-Poor Change: a discussion paper. London: Department for International Development, 2001

4 Based on Max Weber's legal-rational ideal type of authority, whereby the public and private realms, with their own guiding principles, are strictly separated. Weber's other ideal type of authority, patrimonialism, which is based on a pre-modern model of power, is heavily dependent on one person in power rather than officeholders. It assumes the presence of a personal, patriarchal ruler whose authority over his followers is unlimited by formal rules and procedures but based on tradition. In contrast to the legal-rational bureaucracy no distinction between private and public domains with due roles or responsibilities exists: 'the system is held together by the oath of loyalty or by kinship ties (often symbolic and fictitious) rather than by a hierarchy of administrative grades and functions'. Clapham, Christopher: Third World Politics: An Introduction. London: Routledge, 1985.

capability to consistently and effectively enforce policy decisions and, more generally, the rule of law throughout the entire national territory.[5] In these cases, there is no sharp distinction between public and private roles.[6] This is a cause for concern because not only does ineffective public, or formal, governance affect the performance of service delivery and ultimately human welfare, but the absence or poor quality of services can also undermine a state's legitimacy in the long term.[7] Given the great significance for both human welfare *and* state legitimacy, the case for a governance approach that incorporates those dimensions of power beyond the formal structures is strong.

This article uses the definition of governance put forth by Brinkerhoff and Bossert[8], who argue that 'Governance is about the rules that distribute roles and responsibilities among societal actors and that shape the interactions among them'. These rules can also be understood as institutions as defined by Douglass North: any form of constraint that human beings devise to shape interaction.[9] It is essential to understand that the rules that shape the game can be both formal(ized) and informal, public or private. Informal and formal institutions co-exist and interweave with one another in all political and bureaucratic systems, albeit to varying degrees. Based on North's definition, institutions shape power relations and their consequences, including '*will*'. This article views accountability as central to power relations. Following this interpretation, formal and informal normative frameworks, to which institutions can be reduced, provide incentives and constraints on action that influence to whom accountability is exercised.

To understand the core of what constitutes accountability, this article uses Kelsall's definition,[10] which implies a relationship between two actors in which A is accountable to B if A takes into account B's wishes, while B can hold A responsible if A ignores B's wishes. This occurs when B relinquishes some degree of power, status or resources to A, which B may withdraw in order to enforce A's responsiveness. Accountability, just like the institutions that guide it, can be formal or informal. Based on this premise, accountability within an ideal type legal-rational institutional framework can be understood along the pillars of delegation, answerability and enforceability. This can be further disaggregated by considering the adequate financing that comes with delegating

5 The World Wide Governance Indicators give a good indication of this: Kaufmann, Daniel/ Kraay, Aart/ Mastruzzi, Massimo: Governance Matter VIII: Aggregate and Individual Governance Indicators, 1996–2008. World Bank Policy Research Working Paper 4978, 29 June 2009.

6 Rose-Ackerman, Susan: Corruption and Government: Causes, Consequences and Reform. Cambridge: Cambridge University Press, 1999: p. 91.

7 OECD DAC: Service Delivery in Fragile Situations. Key Concepts, Findings and Lessons, in: Journal of Development, 2008, (vol. 9), no. 3.

8 Brinkerhoff, Derick W./ Bossert, Thomas J.: Health Governance: Concepts, Experience, and Programming Options, Bethesda: Abt Associates Inc. 2008, p. 3.

9 North, Douglass Cecil: Institutions, institutional change, and economic performance. Cambridge University Press, 1990, p. 4

10 Kelsall, Tim: Going with the grain in African development? Africa Power and Politics Programme, 2008, Discussion Paper 1, p. 3

tasks and performance monitoring to judge responsibility.[11] Part of the social contract that defines the cadre mediating accountability between state and society is the delegation of decision-making powers and tax money to politicians with the expectation that basic services are provided. Citizens can sanction their governments—by voting them out of office or, in more extreme cases, by withholding tax payments—in the case of non-compliance.

By definition, the governance of public service delivery in those states where the government is not able or willing to deliver basic public goods and services,[12] despite citizens' expectations and promises in national poverty reduction strategies or during elections, does not conform to this legal-rational ideal type. In fact, in such cases the social contract is broken. This does not imply that governance in the wider definition ceases to exist but rather that informal and often more particularistic governance institutions play a stronger role. Understanding the influence of the accountability relationships that arise from these informal institutions helps to identify stakeholders in sector governance and can explain why people behave differently than what might be expected in ideal type formal governance settings.

An exclusive focus on institutions, however, is not sufficient to explain accountability relations. In cases where (formal and informal) normative frameworks overlap or compete, the mere existence of different institutions does not explain their degree of influence on human action. Institutional and stakeholder analysis should therefore be complemented by the analytical perspective that choice theory offers.[13] This gives insight into the motivation for the choices of norms that humans make.

The central question of this article is therefore: what is the best way to analyse accountability relations in the governance of basic service delivery while taking full account of the mix of informal and formal power that is so typical in these contexts?

To address this question, the article first sketches out the structural features of many developing countries with special reference to the concepts of neo-patrimonialism and clientelism. The role of basic service delivery, which is key to the social contract between the state and society, is given particular consideration with regard to these concepts. Second, suggestions for a model to assess the governance of public services are given. The contours of a multi-step assessment framework involving institutional and stakeholder analysis are drawn and consideration is given to the insights

11 Baez-Camargo, Claudia. Accountability for Better Health Care Provision: a framework and guidelines to define, understand and assess accountability in health systems, Basel Institute on Governance Working Paper 10.

12 OECD DAC: Service Delivery in Fragile Situations. Key Concepts, Findings and Lessons, in: Journal of Development, 2008, (vol. 9), no. 3.

13 Booth, David: Elites, Governance and the Public Interest in Africa: Working with the Grain? Africa Power and Politics Programme, 2009, Discussion Paper 6, p. 15.

that rational choice theory offers to come to a closer understanding of stakeholder behaviour.

2.2. Understanding Informal Institutions in Sector Governance

While the fields of political sociology and economy recognize the importance of informal institutions and actors, the nascent health systems literature,[14] as an example of one of the most crucial basic services, has been predominantly concerned with (good) governance, defined in terms of the formal rules and procedures that are associated with effectively carrying out health policy. The literature has provided sophisticated and detailed knowledge of the ways in which the various levels of formal governance can be analysed. With an instrumental perspective on governance mechanisms, it has refined the conceptualization of formal health governance. In addition, serious attention has been paid to the diverse manifestations of corruption that plague the sector, and possible ways to address corruption in terms of technical solutions. Brinkerhoff and Bossert[15] rightly note that the role of non-state actors needs to be considered more closely in the governance of health systems, particularly in contexts where the state fails in its task of providing, regulating or financing basic services. Nevertheless, what is often termed the *political context* (versus the technical dimension) of sector governance remains to be further explored, as an evaluation of donor good practice highlights.[16] This paper attempts to fill that void by outlining an analytical framework that explicitly considers the role of informal institutions, networks and actors in sector governance.

Understanding the importance of informal institutions and their impact on governance in developing countries requires a closer look at the historical and structural development of their states. Without delving into the various ways in which colonization took place across the world, it can be generalized that the process of decolonization in much of the developing world in the past half-century—from Ghana in

14 Ruger, Jennifer Prah: Global Health Governance and the World Bank, in: The Lancet, 2007, (vol. 370), no. 9597, pp. 1471–1474; Savedoff, William D.: Transparency and Corruption in the Health Sector: A Conceptual Framework and Ideas for Action in Latin America and the Caribbean. Inter-American Development Bank. Health Technical Note 03/2007; Lewis, Maureen: Governance and Corruption in Public Health Care Systems, Working Paper 78, Center for Global Development, Washington, 2006. Lewis M./ Pettersson, G.: Governance in Health Care Delivery: Raising Performance, Unpublished draft, July 2009; Roberts, Marc, J. et al. Getting Health Reform Right, Oxford: Oxford University Press, 2002; De Savigny, Don/ Adam, Taghreed, (eds.): Systems thinking for health systems strengthening. World Health Organization, Geneva, Switzerland, 2009; Brinkerhoff, Derick W./ Bossert, Thomas, J.: Health Governance: Concepts, Experience, and Programming Options. Bethesda: Abt Associates Inc., 2008; Vian, Taryn: Review of corruption in the health sector: theory, methods and interventions. Health Policy and Planning, 2008.

15 Brinkerhoff, Derick W./ Bossert, Thomas J.: Health Governance: Concepts, Experience, and Programming Options. Bethesda: Abt Associates Inc. 2008.

16 Vlan, Taryn. Corruption in the Health Sector. U4, 2008, no. 10, pp. 31–41.

1957 to the former Soviet republics in 1990–1991—opened up the state as a prize for domestic political competition. With either a scant industrial base or a state monopoly on much of the economy, state control became the quickest route to wealth accumulation. In this process of elite state capture and the *de facto* privatization of many state institutions, the boundary between state and society became largely blurred;[17] this nebulousness has since become a common feature in many developing countries.

Migdal's categorisation of strong societies and weak states[18] captures the seemingly paradoxical situation in many low-income countries effectively. While many states do not effectively enforce their own legislation, their societies (or elements thereof) have strongly resisted state domination or have even managed to infiltrate the state with institutions based on particularism. In effect, the situation can be described as a conflict between (elements of) the state and societal institutions. This leads to a situation characterized as 'dual governance systems'.[19] While the formal system is based on legal-rational provisions, such as judicial structures and constitutions, the informal system is 'based on implicit and unwritten understandings'.[20] Some of the characteristics of this informal system are captured by the concept of 'economy of affection',[21] which highlights the particularist and reciprocal nature of the system:

> Because governance there is extensively reliant on informal relations […] power does not stem from occupying official positions alone. It comes from the ability to create personal dependencies, from mastering a clientelist form of politics.[22]

Chabal and Daloz reason that because the state in Africa has never actually been institutionalized, 'its formal structure has ill-managed to conceal the patrimonial and particularistic nature of power'.[23] Some even contend that in some African countries the state is not only infiltrated by informal institutions that promote illegal behaviour, but

17 Clapham, Christopher: Third World Politics: An Introduction. London: Routledge, 1985.

18 Migdal, Joel S.: Strong Societies and Weak States: State–Society Relations and State Capabilities in the Third World, Princeton: Princeton University Press, 1988.

19 Brinkerhoff, Derick W. and Goldsmith, Arthur A. Clientelism, Patrimonialism and Democratic Governance: An Overview and Framework for Assessment and Programming. Prepared for USAID by Abt Associates Inc. December 2002.

20 Ibid.

21 Hyden, Goran: Informal Institutions, Economy of Affection, and Rural Development, in: Tanzanian Journal of Population Studies and Development, Special Issue: African Economy of Affection, 2004, (vol. 11), no. 2.; Hyden, Goran. Beyond Governance: Bringing Power into Development Policy Analysis, paper presented to the Danida/GEPPA Conference on Power, Politics and Change in Weak States, Copenhagen, 1–2 March 2006, online at www.geppa.dk/files/activities/Conference%202006/Goran%20Hyden.pdf; Hyden, Goran: African Politics in Comparative Perspective. Cambridge: Cambridge University Press, 2006; Hyden, Goran: Governance and Poverty Reduction in Africa, 2007, PNAS, (vol. 104), no. 43, pp. 16751–16756; Hyden, Goran: Institutions, Power and Policy Outcomes in Africa. Africa Power and Politics Programme, 2008, Discussion Paper 2.

22 Hyden, Goran Governance and Poverty Reduction in Africa. 2007 PNAS 104 (43): 16751–16756.

23 Chabal, Patrick/ Daloz, Jean-Pascal: Africa Works: Disorder as Political Instrument. Bloomington, Indiana University Press, 1999.

has itself become a vehicle for organized crime.[24] Although much of the relevant literature is centred on Africa, examples can also be found across the newly independent countries of the former Soviet Union as well as in other parts of the world. The predatory elite behaviour and the strong influence of patronage networks on governments found across Central Asia[25] are exemplary.

This brings the argument to the concept of neo-patrimonialism, or modern patrimonialism, which has become commonly used in political science over the past three decades to denote the nature of many contemporary states in the developing world, particularly in Africa.[26] Derived from Weber's ideal types of authority, the term refers to the coexistence of patrimonial and legal-bureaucratic elements constituting the state. Its manifestation can take different forms depending on the local context and is not a typology of political freedom, yet its character typically excludes most liberal democracies. Many neo-patrimonial features can also be found in the large gray hybrid zone of political systems, including many of the 'new polyarchies', but also in some long-enduring polyarchies in Asia, Southern Europe and Latin America.[27] Due to this broad applicability, the term is often criticized for being too much of a catch-all concept. However, in this framework it serves to describe a general state of politics in which informal power, often defined by clientelist relations, thrives.[28] Essentially, a

24 Bayart, Jean Francois/ Ellis, Stephen/ Hibou, Beatrice: The Criminalization of the State in Africa. Bloomington: Indiana University Press, 1999. See also: Bayart, Jean Francois: The State in Africa: The Politics of the Belly. New York: Longman, 1993.

25 Buisson, Antoine: State-Building, Power-Building and Political Legitimacy: The Case of Post-Conflict Tajikistan, in: China and Eurasia Forum Quarterly, 2007, (vol. 5), no. 4, pp. 115–147; Ilkhamov, Alisher: Neopatrimonialism, interest groups and patronage networks: the impasses of the governance system in Uzbekistan, in: Central Asian Survey, 2007, (vol. 26), no. 1, pp. 65–84; International Crisis Group 2009, Tajikistan: On the Road to Failure. Asia Report 162; Matveeva, Anna: The Perils of Emerging Statehood: Civil War and State Reconstruction in Tajikistan. An Analytical Narrative on State-Making. Crisis States Research Centre 2009, Working Paper 46; Radnitz, Scott: It takes more than a village: mobilisation, networks and the state in Central Asia. PhD Thesis Massachusetts Institute of Technology February, 2007.; Radnitz, Scott/ Wheatly, Jonathan/ Zürcher, Christopher: The Origins of Social Capital. Evidence from a Survey in Post-Soviet Central Asia, in: Comparative Political Studies, 2009, (vol. 42), pp. 707–732.

26 Bratton, Michael/ Van de Walle, Nicolas (eds.): Democratic Experiments in Africa: Regime Transitions in Comparative Perspective, Cambridge: Cambridge University Press, 1997; Brinkerhoff, Derick W./ Goldsmith, Arthur A. Clientelism, Patrimonialism and Democratic Governance: An Overview and Framework for Assessment and Programming. Prepared for USAID by Abt Associates Inc. December 2002; Clapham, Christopher: Third World Politics: An Introduction. London: Routledge, 1985; Eisenstadt, Shmuel N.: Traditional Patrimonialism and Modern Neopatrimonialism. Beverly Hills: Sage Publications, 1973.

27 O'Donnell, Guillermo: Illusions About Consolidation, in: Journal of Democracy, 1996, (vol. 7), no. 2, pp. 34–51; O'Donnell, Guillermo/ Schmitter, Phillipe C.: Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies. Baltimore: Johns Hopkins University Press, 1986. OECD DAC: Service Delivery in Fragile Situations. Key Concepts, Findings and Lessons, in: Journal of Development, 2008, (vol. 9) no. 3.

28 Brinkerhoff, Derick W./ Goldsmith, Arthur A.: Clientelism, Patrimonialism and Democratic Governance: An Overview and Framework for Assessment and Programming. Prepared for

neo-patrimonial state possesses the basic structures of a modern bureaucracy (albeit often partly symbolic or redundant) but is strongly pervaded by informal networks and traditional rather than legal-rational institutions. The term also helps to explain how formal rules and procedures in the public sector do not always lead to the predicted outputs relevant to human welfare. In many societies based on strong interpersonal relations, the very idea of separating public roles and responsibilities from private obligations—which involve ties of loyalty, friendship and kinship— seems unnatural and impractical.[29] Understanding this challenge is essential because it underpins one of the basic problems that characterize service delivery in many developing countries: weak formal governance.

Because the state and its institutions were originally imposed on many colonized countries from outside and mainly used for the benefit of a small elite group, no 'merging between state and society as common expressions of a set of shared values'[30] took place. The assumption that state institutions such as health systems 'are not only producers of health or health care but they are also the purveyors of a wider set of societal values and norms'[31] therefore does not hold in these contexts. Ideally, 'people value health and welfare systems both because they satisfy their own interests through them and because such systems allow them to contribute to the social good'.[32] However, in a context where the state is viewed with suspicion and (the revenues for) its institutions are regularly manipulated by private interest, entities such as health or water systems lose their role of a cherished public service. This scenario is especially common in states where the government seriously lacks legitimacy among and accountability toward the general population and service delivery is grossly inadequate.[33] These shortcomings also constitute the heart of state fragility, which 'arises primarily from weaknesses in the dynamic political process through which citizens' expectations of the state and state expectations of citizens are reconciled and brought into equilibrium with the state's capacity to deliver services'.[34] Jones, Chandran et al. argue that this social contract, i.e. the interplay between capacity, will and legitimacy, is the key to understanding state fragility. Basic services are a chief component of this social contract. It therefore stands to reason that governance concerns in this field have wider

USAID by Abt Associates Inc. December 2002, p. 6

29 Rose-Ackerman, Susan: Corruption and Government: Causes, Consequences and Reform. Cambridge: Cambridge University Press, 1999, p. 106.

30 Clapham, Christopher: Third World Politics: An Introduction. London: Routledge, 1985, p. 42.

31 Gilson, Lucy: Trust and the development of health care as a social institution, Social Science & Medicine, 2003, (vol. 56), no. 7, p. 1461.

32 Ibid.

33 Conversely, one could argue that improving basic services can contribute to state-building and the enhancement of state legitimacy. See: OECD DAC: Service Delivery in Fragile Situations. Key Concepts, Findings and Lessons. Journal of Development, 2008, (vol. 9), no. 3.

34 Jones, B./ R. Chandran, et al. Concepts and Dilemmas of State Building in Fragile Situations: From Fragility to Resilience. OECD/DAC, 2008, Discussion Paper.

implications for the resilience of states, as failing public service delivery may serve to further undermine trust in formal institutions and thus perpetuate a downward spiral of deteriorating state performance and legitimacy.

As 'clientelism is indeed the application of the principles of neo-patrimonialism to relationships between superiors and inferiors',[35] this particular phenomenon requires extra attention. The concept of clientelism implies dyadic, inherently unequal but reciprocal relationships between public office holders and followers, supporters or dependents. They may be legal or not, may involve more dynamic and complex networks with more than two actors involved, may be semi-institutionalized and strictly clan-based, or may be merely motivated by political and/or economic interests. However, according to Kaufman,[36] clientelist relations always exhibit the following characteristics:

> (a) the relationship occurs between actors of unequal power and status;
> (b) it is based on the principle of reciprocity; that is, it is a self-regulating form of interpersonal exchange, the maintenance of which depends on the return that each actor expects to obtain by rendering goods and services to the other and which ceases once the expected rewards fail to materialize;
> (c) the relationship is particularistic and private, anchored only loosely in public law or community norms.

In essence, clientelism and accountability share a strong element of reciprocity in power relations. Therefore, some clientelist relations can be considered to contain elements of informal and particularistic vertical accountability. In line with the basic definition of accountability in this article,[37] the degree of accountability in patron-client relationships depends on the degree of extortion and space for withdrawal or choice on the side of the client (the exit option in accountability[38]). Clearly, many clientelist relations that are unequal by definition, merely function under heavy intimidation and the lack of choices on the side of the client. Still, cases of competitive clientelism,[39] whereby clients 'choose' their patron and patrons compete for client support, suggest that clientelist networks can be centred around principles of accountability. Seeing clientelism as a potential form of vertical accountability can serve to explain how accountability

35 Clapham, Christopher: Third World Politics: An Introduction. London: Routledge, 1985, p. 55.
36 Kaufman, Robert: The Patron-Client Concept and Macro-Politics: Prospects and Problems, Comparative Studies in Society and History, 1974, (vol. 16), no. 3, p. 285.
37 A relationship between two actors in which A is accountable to B if A takes into account B's wishes, while B can hold A responsible if A ignores B's wishes. This occurs when B relinquishes some degree of power, status or resources to A, which B may withdraw in order to enforce A's responsiveness..
38 For an excellent conceptual analyses on accountability and its voice and exit options, see: Paul, S.: Accountability in Public Services: Exit, Voice and Control, in: World Development, 1992, (vol. 20), no. 7, pp. 1047–1060; Baez-Camargo, Claudia: Accountability for Better Health Care Provision: A Framework and Guidelines to Define, Understand and Assess Accountability in Health Systems, Basel Institute on Governance Working Paper 10.
39 Denissen, Ingeborg: New Forms of Political Inclusion: Competitive Clientelism. The case of Iztapalapa, Mexico City. MinBuZa: A Rich Menu for the Poor: Food for Thought on Effective Aid Policies Essay Series, 19 June 2009, no. 33.

can be skewed beyond relations that are formal, public and for all to see. The inherently unequal relationship between the (potential) user and provider makes public services especially vulnerable to the influence of clientelist networks, often described as corruption.[40] In fact, clientelist networks can so deeply pervade politics and society that they often come to be regarded as the only means to access supposedly public services. In an ethnographic study[41] on the effect of clientelism on basic service delivery in Argentina, Auyero described how urban slum dwellers depend on their clientelist relationships for physical survival. State provisions, such as the *Programa Materno-Infantil*, are interpreted as a favour granted by benefactors or a tool through which to win support rather than a rights-based service for which officeholders can be held accountable based on their position. The expectation that personal ties are indeed crucial for meeting even basic needs helps to explain the resilience of such clientelist networks.

The impact of clientelist networks on the governance of basic services can have a substantial effect at all levels. At the macro level, an example would be the allocation of more spending for basic services to a particular district in which an important official has a strong constituency or political interest. This type of clientelism, which concerns the more general implementation of policy, can distort the allocation of resources according to national poverty reduction strategies or stand in the way of public sector reform. At the micro level, clientelism could take the form of preferential access to a health facility or school as a result of good relations with the relevant doctor/teacher in exchange for support in the community. In this case, those involved aim for direct private gain and a one-on-one link between patron and client can be discerned. Taking into account these and other examples given later, it becomes clear that clientelist networks can pervade democratic procedures and negatively affect basic services' influence on responsiveness, efficiency and equity. In addition, these networks can play a crucial role in explaining specific sector outcomes that are governance related. For instance, although there have been several studies on informal payments or other manifestations of corruption in water, education and health, relatively little attention has been paid to clientelism as an underlying mechanism. Various types of informal payments could be a possible manifestation of a patron–client relationship. Because informal payments are at the discretion of the service provider, variation can take the form of who is charged and by how much. A long-term doctor–patient or student–teacher relationship may lend itself to a more subtle type of reciprocity that is common in clientelist relations. This could help to explain how those who cannot afford informal or co-payments in regular healthcare, education or water services are still able to obtain access to medical help, education or water; conversely, those who might have

40 For a good analysis of the reasons for the high corruption vulnerability of the Health Sector, see: Vlan, Taryn. Corruption in the Health Sector. U4, 2008, no. 10, p. 5.

41 Auyero, Javier: The Logic of Clientelism in Argentina: An Ethnographic Account, in: Latin American Research Review, 2001, (vol. 35), no. 3, pp. 55–81.

the financial means for treatment might lack the proper connections and thus fail to gain adequate access to the best doctors, schools or water resources because patron–client relationships are ultimately more important than money. Clientelist networks can also underlie corruption in drug procurement, tendering, payment and supply,[42] as a case study in China illustrates.[43] In education, licensing, grading, passing and even entry to schools are often dependent on informal relations.[44] Another way in which informal networks can facilitate corruption or infringe equity of access to health care for patients is through referral by health workers to benefactors within the network, as witnessed in a Kazakh case.[45] In the water sector, comparable phenomena have been observed in terms of informal payments and illegal connections[46]

Although informal institutions in neo-patrimonial states can be very influential, this does not dictate whether their aggregate effect on basic service delivery is positive or negative per se. In fact, informal institutions are oftentimes deeply rooted in local values and can be more acceptable and hence effective in reaching societal goals. Despite their shortcomings, the traditional reconciliation rituals that have followed many of the civil wars in Sub-Saharan Africa constitute cases of informal institutions offering a framework for justice, peacemaking or addressing war trauma that is often more effective and acceptable than formal channels such as the judiciary or investigative committees.[47] Donor agencies have even started to use mahallas, traditional community councils in Tajikistan, to strengthen governance of basic services at the local level from the bottom up.[48] As extensive research in anthropology suggests,[49] the custom of gift-giving can play an important role in human interactions

42 Lewis, Maureen: Governance and Corruption in Public Health Care Systems, Center for Global Development, 2006, Working Paper 78.

43 Bloom, Gerard/ Han, Leiya/ Li, Xiang: How health workers earn a living in China, Brighton: Institute for Development Studies, 2000, IDS Working Paper 108, p. 24.

44 Heyneman, S. P.: Education and Corruption, in: International Journal of Educational Development, 2004, (vol. 24), no. 6, pp. 637–648.

45 Thompson, R./ Rittmann, J.: A Review of Specialty Provision: Urology Services, in: Thompson, Ensor, Tim/ J. Rittmann (eds.): Health Care Reform in Kazakstan, compendium of papers prepared for the World Bank Health Reform Technical Assistance Project, 1995–1996, 1997.

46 Davis, Jennifer: Corruption in Public Service Delivery: Experience from South Asia's Water and Sanitation Sector, in: World Development, 2004, (vol. 32), no. 1, pp. 53–71.

47 Huyse, Luc/ Salter, Mark: Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences, Stockholm: IDEA, 2008.

48 For one of the longest lasting and most intensive projects with community development in Tajikistan, see: Aga Khan Development Network. Rural Development Activities in Tajikistan. http://www.akdn.org/tajikistan_rural.asp accessed 30 November 2010. Freizer, Sabine. Tajikistan local self governance: a potential bridge between government and civil society. In di Martino, Luigi (2004) Tajikistan at a Crossroads: the Politics of Decentralisation. Cimera: Geneva.

49 Komter, Aafke: Social Solidarity and The Gift, Cambridge: Cambridge University Press, 2004; Lévi-Strauss, Claude: The Principle of Reciprocity, in: Komter, Aafke (eds.): The Gift: An Interdisciplinary Perspective, Amsterdam: Amsterdam University Press, 1996, (Orig. pub. 1949.); Mauss, Marcel: The Gift: The Form and Reason for Exchange in Archaic Societies. London: Routledge. 1990 (Orig. pub. 1923.).