

neither improved living standards nor the genuine enjoyment of democracy or basic freedoms. On the contrary, Roma poverty has worsened dramatically during the transition from Communism.

Moreover, he fears that in some accession states, with the hurdle of membership now jumped, the situation of the Roma might worsen. Indeed, Pogany observes, "it may seem as if the *territorial division* of the continent has been replaced by the erection of new 'borders' that are essentially social, cultural and economic in character, rather than geographical." This claim is echoed by a number of authors who have other subjects than the Roma in mind.

Rigo, Olgiati and Zagato each stress that "joining Europe" is not simply a matter of warm inclusion. Zagato argues that

it is the Commission itself that seems willing to take upon itself a policy of dramatic closure towards the planetary migrations of desperate hordes, in pressing for the creation of a European immigration agency, requiring new Member States meanwhile to incorporate in their laws the full weaponry with which the historical Member States are endowed: readmission agreements, etc. There is a strong impression that the 'archangel' approach within the Union and at its immediate borders counterbalances an extreme carelessness verging on cynicism on the part of the Unionist institutions in handling relations of a global character. Nor would this be for the first time.

Rigo agrees and argues further that the exclusory distinctions now insisted upon do not merely (if that is the appropriate word) stay at the border. Rather, the "transformation of European borders creates a system of 'differentiated' memberships which questions the normative assumption that post national communities are potentially inclusive". New distinctions are drawn between individuals who are members, "semi-members" and never-to-be members of the new Europe. These distinctions are no longer confronted just at borders, though they are rigorously enforced there too, but

borders are dragged into the core of Europe because they follow the biographies of the individuals whose mobility is limited . . . The enlargement process challenges the theory and practice of defining European membership exactly because it brings into light how the deterritorialisation and relocalisation of the EU polity's borders leads to a fragmentation of the legal subjectivity of the *citizen*. In other words, any eastern border of Europe is a border drawn within Europe itself.

The European project is a monumental one. It promises to affect every aspect of the life of its members. This book attempts to examine some of the early effects and their likely consequences. As we have seen, controversies are plentiful, and criticisms

Part I: Democratic Institutions and Practices

Copenhagen summit of 1993, which established, as the political conditions for the new entrants, the “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.” Nevertheless, in the period of 1993–1997 the principal focus of conditionality was on the internal market *acquis*, with the main pre-accession strategy in this domain determined at the Essen European Council in 1994. Political conditionality acquired real bite after 1997, when the Commission began evaluating the progress of all candidates in the annual reports, which included sections on “Democracy and the rule of law” (with sub-sections on the parliament, the executive, the judicial system, and anti-corruption measures) and “Human rights and the protection of minorities” (with sub-sections on civil and political rights, economic, social and cultural rights, and minority rights and the protection of minorities).

To what extent was the consolidation of democracy in CEE the result of EU conditionality? Lately, there has been a lively scholarly debate mainly among political scientists concerning the nature and relative importance of the transmission of democratic and liberal norms to the candidate states: whether it was largely voluntary or involuntary, driven mainly by external or internal forces; whether the most efficient measures were those that operated through the mechanisms of conditionality (with the coercive element inherent therein), or rather “lesson drawing” and “social learning” by the candidate states, which voluntarily adapted to the models they saw as dominant among EU member states.⁴ There is no room here to enter this debate but a few observations may be helpful for the purpose of reflecting upon how membership in the EU will affect the consolidation of democracy, human rights and the rule of law in the future.

To begin with, one must acknowledge that some of the most important institutional innovations, especially in the first period of democratic change, were taken predominantly under *domestic* public pressure. There have been some obvious demands made from the outset: for free elections to the parliament, independence of the judiciary, free press, etc. They coincided with what was perceived as the “normal” democratic system, and the elites of the CEE states more often than not found it perfectly natural to model their own systems on Western European institutions that they saw to be functioning successfully. This emulation had often been pre-configured by dissident elites before the fall of Communism. In addition, some (although admittedly not many) institutional innovations *preceded* the transition and had been installed, albeit in a carefully limited way, by the old regimes, as was the case of the Constitutional Tribunal in Poland. Also, in terms of the self-perception of the motives for reform by the elites in CEE, there has been a strong *noblesse oblige* type of view under which it was improper to accord too high importance to EU conditionality. Many institutional changes that occurred at a later stage

⁴ See the papers presented at the workshop convened by Professor Frank Schimmelfennig *The Europeanization of Eastern Europe: Evaluating the Conditionality Model* (The Robert Schuman Centre for Advanced Studies at the European University Institute, 4–5 July 2003).

More often than not, however, the influence of conditionality was not in the form of suggesting very specific institutional solutions and devices—perhaps for the simple reason that there is no single model of democracy and rights-protection in the EU—but rather through general templates or thresholds. Those thresholds had the form of certain minimal conditions to be fulfilled rather than of specific institutional designs to be installed. The very fact, however, of the generality of these templates or the minimalistic nature of the thresholds renders it very difficult to trace the “emulation” to one specific source—or even to determine whether it was indeed emulation in the first place. To be sure, the degree of specificity of EU political conditionality varies from one domain to another, and so political conditionality might have been much more effective where there was a determinate set of rules that the candidate states were expected to observe than in cases in which the criteria laid down could at best be characterized as a vague template.⁵ The credibility of the conditionality varied depending upon whether they corresponded to the seriousness and determination with which the EU has held *its own* member states to those standards. When the EU set certain political conditions that were not part of the EU legal system and *in addition* were not actually shared by the current members states themselves (such as minority rights), the credibility and hence effectiveness of this area of conditionality must have been suspect. Apart from the legitimacy and “double standards” problems, candidate states could not know what exactly was expected from them.

But what will happen to conditionality now that the “candidate states” have become “new member states”? The formal measures of conditionality have, of course, expired: there is no more political *acquis*, no more annual Commission Reports, no more scrutiny for membership eligibility towards new member states. A rich body of expertise and advice stored in, among other things, the annual Commission Reports will ostensibly retain only a historical value.⁶ New member states will be judged—alongside the others—on their continued compliance with the existing EU rules rather than on their suitability to join. This may mean a

⁵ Compare, for example, the conclusions by Antoaneta Dimitrova who found high effectiveness of conditionality in the area of civil service reform (“Conditionality meets post communism: Europeanisation and administrative reform in Central and Eastern Europe”, paper presented at the workshop “The Europeanization of Eastern Europe: Evaluating the Conditionality Model”, The Robert Schuman Centre for Advanced Studies at the European University Institute, 4–5 July 2003, p. 33) with the conclusions by Martin Brusis who claims that if conditionality had been an important factor, we would not be able to explain the significant differences in the regionalization policies between the Czech Republic and Slovakia (“Instrumentalized conditionality: regionalization in the Czech Republic and Slovakia”, paper presented at the same workshop, pp. 13–14).

⁶ See Bruno de Witte, “The Impact of Enlargement on the Constitution of the European Union,” in Marise Cremona (ed.), *The Enlargement of the European Union* (Oxford: Oxford University Press 2003), p. 240.

compared to the pre-accession circumstances. One may speculate that these changes will have at least two forms, leading in two opposite directions. On the one hand, the burden of argument will shift even more to those seeking to *resist* the adoption of the rules or institutions presented as in compliance with EU standards: if such a characterization of a particular measure is credible, there will be a strong presumption in favour of its adoption, and resistance to this will be more difficult. On the other hand, however, those supporting the adoption of such a rule or institution will not benefit from the argument about the *other* gains of accession to the EU: the argument, “We have to adopt this rule, otherwise we will not be admitted,” will no longer be valid. In the situation of lowered sanctions for non-adoption, what could have previously been represented as part of a non-negotiable package that on balance is good for the candidate state, will from the moment of accession take on a much more discretionary character for each new member state.

Naturally, the alteration of the pattern of incentives and of the calculi of costs and benefits will affect much more than the discursive assets on both sides of any future domestic controversy over rule adoption. There will be also a very substantial alteration of control in terms of knowledge of the relevant facts, of which the most important will be: to what extent a proposed rule or an institution is indeed part of the EU *acquis*, part of the “EU model”, part of the “common constitutional traditions” of EU Member States, or part of any other such formula that suggests that membership in the EU *commits* a Member State to adopt a given rule or institution. Once in the EU, some elites in new Member States will be able to claim a better expertise in what the EU *really* requires than others: they will be able to gain public and political support for their knowledge-claims based on proximity to the EU centres of power, due to the much higher level of interaction between national governing elites and the “Eurocracy” than was the case during the accession negotiations. One can speculate that the governing parties, which will all have extra incentives to be “pro-European” regardless of their official positions pre-2003, will acquire this asset of inside knowledge and be able to use it more effectively against the “anti-European” oppositions, with the knowledge-claims of the latter suffering from lower credibility, and thus less potency in resisting the claims for the adoption of any given rule.

3. THE ROLE OF PARLIAMENTS

Both the very process of managing the preparations for accession by a *candidate* state, and the dynamic of participation in the EU decision-making process by a *member* state, inevitably strengthen the powers of the executive branch of government to the detriment of the legislature. The former phenomenon has already left its imprint upon the government-parliamentary relationships in CEE, and with good reason; with only minor exaggeration it has been stated that conditionality “can be seen as the functional equivalent of war: [it] give[s] the executive more