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## Crafting Democracy through Constitutional Change: Comparing the Recent Cases of Romania and Serbia in the Context of EU Incentives

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Second Mentor: Rudra Sil; Winner: Leo S. Rowe Prize for Best Thesis in Comparative Politics/International Relations

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# Crafting Democracy through Constitutional Change: Comparing the Recent Cases of Romania and Serbia in the Context of EU Incentives

## Abstract

Current trends in the enlargement process of the European Union offer a virtual laboratory through which to gain insight into the mechanics of constitutional change. In particular, the Central and Eastern European countries, including Romania and Serbia, serve as great lenses through which to view the processes involved in consolidating democracy through constitutional dynamics. Even though EU accession may offer a set of incentives to these and other recent candidate countries, pro-democracy constitutional change aimed at meeting EU standards still requires a push from domestic coalitions *within* national political systems. By establishing a comparative framework by which to examine domestic coalitions in case studies of Romania and Serbia, this thesis offers three claims regarding constitutional change toward democracy: Firstly, that countries enacting constitutional change from *within* existing, consolidating democratic systems are dependent on a core group of political elites forming a coalition and embracing the cause of constitutional reform. Second, that message framing and communication on intra-governmental and public levels makes a difference in the outcome of constitutional referendums, an issue that is especially relevant in countries looking to reform constitutions to align their governance with EU standards. And finally, that institutional openness to change is indispensable to countries looking to reform constitutions in line with the Copenhagen Criteria within existing, consolidating democratic systems.

## Keywords

EU, European Union, Romania, Serbia, Constitutions, Coalitions, Social Sciences, Political Science, Henry Teune, Teune, Henry

## Disciplines

Comparative Politics

## Comments

Second Mentor: Rudra Sil; Winner: Leo S. Rowe Prize for Best Thesis in Comparative Politics/International Relations

# **Crafting Democracy through Constitutional Change:**

**Comparing the Recent Cases of Romania and Serbia  
in the Context of EU Incentives**

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Undergraduate Honors Thesis in Political Science  
University of Pennsylvania  
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March 30, 2009

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### *List of Abbreviations*

CDR	Romanian Democratic Convention
CEE	Central and Eastern European
CeSID	Centre for Free Election and Democracy (Serbia)
DOS	Democratic Opposition of Serbia
DS	Democratic Party (Serbia)
DSS	Democratic Party of Serbia
EU	European Union
FRY	Federal Republic of Yugoslavia
FSN	National Salvation Front (Romania)
ICTFY	International Criminal Tribunal for the former Yugoslavia
NATO	North Atlantic Treaty Organization
NGOs	Non-governmental Organizations
PD	Democratic Party (Romania)
PDSR	Party of Social Democracy of Romania
PNL	National Liberty Party (Romania)
POS	Political Opportunity Theory (Ruzza)
PRM	Greater Romania Party
PSD	Social Democratic Party (Romania)
SPS	Socialist Party of Serbia
UDMR	Hungarian Democratic Union (Romania)
UN	United Nations
USD	Social Democratic Union (Romania)

## **I. Introduction**

Current trends in the enlargement process of the European Union (EU) offer a virtual laboratory through which to gain insight into the mechanics of constitutional change. In particular, the Central and Eastern European (CEE) countries, including Romania and Serbia, serve as great lenses through which to view the processes involved in consolidating democracy through constitutional dynamics. Even though EU accession may offer a set of incentives to these and other recent candidate countries, primarily in the form of economic benefits, political clout, and hope for stability, pro-democracy constitutional change aimed at meeting EU standards still requires a push from domestic coalitions *within* national political systems. Incentive structures that emerge from external sources, such as the EU, are not quick, automatic ways to enact democracy. Indeed, utilizing the rule of law toward sustainable democratic consolidation requires at least a minimum amount of support from within a country – such is the nature of democracy.

In this thesis, I will address, at the broadest level, the implications of constitutional change for democracy by exploring processes of constitutional change undertaken by nations applying for EU membership. While the EU mandates that applicant nations comply with its political and economic standards for entrance, known as the Copenhagen Criteria, the actual push for necessary constitutional change in these countries has—and must—come from coalitions of actors within the applicant nations. This distinction between analyzing policy change from the ‘top-down’ and the ‘bottom-up’ levels is crucial in appreciating the main contributions of this thesis. In fact, a majority of the literature focusing on EU applicant countries has interpreted policy change in applicant countries from the ‘top-down’ perspective over the past half century by focusing on the ways in which the EU or other international actors

have influenced domestic policies in applicant countries.<sup>1</sup> However, this thesis properly attributes agency to domestic actors and coalitions, which are indispensable in creating democratic constitutional change in any democratic society. In this context, the empirical analysis in this thesis will address three primary questions:

1. *What types of domestic coalitions* might actively pursue (or resist) constitutional change toward democracy?
2. *How* do successful domestic actors politically frame the issue of constitutional change?
3. *What influence* do differences in political opportunities and institutions have on constitutional change outcomes in the direction of the Copenhagen Criteria?

Examining these main questions of constitutional change by comparing the cases of domestic coalitions in Romania and Serbia will offer great insight into the process of democratization for current and future EU applicants. Furthermore, it provides an empirical take on the necessary combinations of factors that must be in place in order to bring about constitutional change more broadly.

### ***Case Selection: Different Paths to Constitutional Reform***

The cases of Romania and Serbia represent two very different stories of CEE countries enacting constitutional changes, only three years apart, both of which ultimately met with EU praise. On the one hand, Romania's 2003 constitutional reform came as the culmination of years of accession talks with the EU; indeed Romania's constitutional changes in 2003 paved the way to its EU membership beginning in 2007. Meanwhile, Serbia remains to this day only a prospective candidate for EU membership—not yet in the negotiating phase. In this way, Serbia's impetus for constitutional reforms came not from an immediate chance to join the EU, but rather from events that resulted in the country's need to modernize. In this way, Romania and Serbia

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<sup>1</sup> Amichai Magen and Leonard Morlino (eds.), *International Actors, Democratization and the Rule of Law: Anchoring democracy?* (New York: Routledge, 2009), 26-27.



differed fundamentally on two related issues: how far along each country was in the EU-negotiating process, and how much internal support Europeanization and Western democracy were receiving in each nation. This analysis aims to establish why domestic actors in both countries were able to attain reforms that met with EU praise and provided opportunities to consolidate democracy in line with European standards, despite the countries' differences in these crucial areas. Thus, these two cases provide a means for focused comparison in the previously mentioned key areas: *which* domestic actors coalesced around the issue of constitutional change, *how* these actors and coalitions communicated their messages in order to achieve change, and *what influence* differences in political opportunities and institutions might have had in the relative success of these cases.

Individually, the cases of Romania and Serbia are extremely significant to the EU's democratizing efforts in the CEE region due to their large populations and regional influence. Differences between the paths that each country took toward constitutional reform make the findings of this case study particularly interesting for countries both on the brink of EU accession and countries only moderately engaged in the process of EU talks. Yet the basic commonalities that I will show between the two cases suggest, in general, that domestic actors seeking constitutional change through existing political systems do exhibit a more general pattern. Thus, the lessons that can be extrapolated from a comparative study of the cases of Romania and Serbia have immediate implications for CEE countries as well as the broader subset of countries that currently seek, or might someday seek, membership in the EU. In addition, these lessons offer substantial insight into the broader processes of constitutional change and democratization that have become critical in today's global environment.

## *Preview of the Thesis*

This thesis aims to establish a comparative framework for looking at different types of domestic coalitions and the ways they play into creating constitutional change in the cases at hand. It will rely on the small set of primary sources available, including official EU communications and other materials compiled by national political elites. The bulk of its research will come from secondary sources, which include many scholarly books and journal articles as well as a diverse and informative collection of media releases. Years of foreign press articles will prove crucial in establishing the timeline of events that led to constitutional changes in these cases, where there is largely a dearth of information, and will provide invaluable insight into the ways in which political coalitions framed their messages to successfully achieve constitutional change.

In the first section of this thesis, I lay out in detail the framework that I have compiled for empirical case analysis. This framework delves further into the concepts of ‘bottom-up’ and ‘top-down’ influences on policy and incorporates one theory of political systems, which was put forth by Pridham,<sup>2</sup> as well as two theories of ways in which actors within the political system may influence policy change, which were put forth by Ruzza.<sup>3</sup> After establishing the basic conceptual groundwork and a ‘matrix’ for analysis, I move first to the case of Romania, followed by that of Serbia. I present the case analyses individually, providing sufficient historical background and accounts of the event of constitutional change for each country. In both individual analyses, I interpret the empirical data within my analytical framework and draw case conclusions, with a specific focus on the evolution of and interactions among coalitions of domestic actors in promoting or resisting constitutional changes toward democracy. Equally important to this analysis is the inclusion of those actors who neither support nor resist

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<sup>2</sup> Geoffrey Pridham, *Designing Democracy*, (New York: Palgrave Macmillan, 2005).

<sup>3</sup> Carlo Ruzza, *Europe and Civil Society*, (New York: Manchester University Press/Palgrave, 2004).

constitutional change by either purposely choosing not to act or being unable to do so. In the next section, I present a concluding comparative analysis of the two cases side-by-side. Finally, the conclusion discusses the limitations of this study and questions for future research.

In this way, my empirical analysis aims to establish the truth of three critical claims. Firstly, that countries enacting constitutional change from *within* existing, consolidating democratic systems are dependent on a core group of political elites forming a coalition and embracing the cause of constitutional reform. Second, that message framing and communication on intra-governmental and public levels makes a difference in the outcome of constitutional referendums, an issue that is especially relevant in countries looking to reform constitutions to align their governance with EU standards. Finally, that institutional openness to change is indispensable to countries looking to reform constitutions in line with the Copenhagen Criteria within existing, consolidating democratic systems.

It must be noted here that this thesis is not concerned with questions of normative evaluations of what types of actors and actions create the *best* exercises of democracy. While there is much scholarly debate over the merits of the democratic systems and reforms in these and similar cases, I am primarily concerned with the use of constitutional reform as a powerful instrument by which significant changes in governance, liberty, and human rights can be enacted. Thus, I will focus on analyzing the ways by which any such changes come into being in the first place, primarily as the result of domestic actors and coalitions.

In addition, because I approach the subject of constitutional change from a political science perspective, this does not represent a thesis in constitutional law. This analysis is focused on the roles, structures, and actions of varying domestic coalitions in promoting, or resisting, systemic change. Therefore, although I will draw occasionally from the work of legal

scholars, I do not purport to analyze constitutional texts or processes of constitution writing from a constitutional law perspective.

Finally, this analysis focuses on constitutional changes that arise from within existing, democratizing political systems. Political scientist Carl J. Friedrich described the legitimacy surrounding constitutions generally as coming from decisions reached “[b]y not too few.”<sup>4</sup> In the specific cases to be examined in detail in this paper, standards for legitimacy and constitutional change vary slightly by country and are predominately pre-established within the existing constitutional setting. The recent histories of both Romania and Serbia are complex and have been marked with significant regime changes. This thesis, however, focuses on attaining meaningful constitutional change in the setting of the established institutions in each nation—through the political processes established in each country for enacting constitutional change, in that creating change through existing popularly supported institutions represents the most legitimate way to further democracy in these countries. The most common alternative to legitimate democratic change from within the system is the *coup d’état*, which represents a very different imposition of change that, although worthy of discussion, is beyond the scope of this paper in focusing narrowly on one single important and legitimate phenomenon.

Although existing literature is abundant on many aspects of EU expansion, it provides too few examples of satisfactory comparative analysis of the roles of domestic coalitions in similar sets of cases. As EU and internal negotiations are extremely current in nature, a gap naturally exists in scholarly analysis of the issues at hand. In the case of Romania, one scholar noted that “academic analysis of Romania’s relations with the EU has been largely confined to occasional

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<sup>4</sup> Carl J. Friedrich, *Constitutional Government and Democracy*, (Waltham, MA: Blaisdell Publishing Company, 1968), 130.

book chapters and journal articles.”<sup>5</sup> If this is the case for Romania, then it is even more so for Serbia, which still has a long way to go in order to even begin negotiations for EU membership. Finally, the timely nature of the cases I have selected ensures the relevance of this research within the body of scholarly literature; at the same time, this timeliness could present limitations relating to unforeseen future developments and gaps in information.

This thesis, by treating cases related to democratic development and EU expansion, touches upon the unique global situation of modern times and of times to come. Remaining unconsolidated democracies will potentially continue to face more and more incentives from supranational and/or hegemonic actors to institute democratic changes from within. This certainly applies to CEE countries and other applicants for EU expansion; it likewise might soon apply to any number of countries in the Middle East, Africa, and South and Central America. More broadly still, understanding the workings of domestic coalitions, as well as their relations with external actors and the domestic populous, allows for a deeper insight into and the functioning of government systems and the forces involved in creating – or resisting – change. The issues raised here are inextricably linked with working toward the assurance of human rights, minority rights, and democratic values throughout the world.

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<sup>5</sup> Dimitris Papadimitriou and David Phinnemore, *Romania and the European Union: From marginalisation to membership*, (New York: Routledge, 2008), 1.

## **II. Research Design and Theoretical Framework**

### *Framework for Analyzing Domestic Coalitions as Actors: A 'Bottom-Up' Methodology*

In this section, I will set forth a comprehensive framework for analyzing the various domestic actors and advocacy coalitions that work at the national level toward, and against, constitutional reform. The main contribution of this thesis is that it presents a 'bottom-up' approach to issues concerning European integration and democratic development. Such an approach purports to give much-needed attention to the domestic actors that are instrumental in inducing constitutional change in democratic, or democratizing, societies. As I alluded to in the introduction, the trend in analyzing political and economic changes in potential EU candidate countries has focused in recent years on evaluating the effects that the EU and other international institutions have on domestic policies—a 'top-down' approach.<sup>6</sup> Here, I will put forth a much-needed counter perspective. This 'bottom-up' focus properly attributes agency to those national civil and political actors who design and implement national constitutional changes. It also addresses the role that institutional design plays in allowing or resisting change in constitutional frameworks. Just which actors are most important in shaping constitutional change in CEE countries? How does institutional structure affect the ability of these actors to enact change? How and when are actors able to form coalitions potent enough to put forth changes in countries' constitutional blueprints? The framework established here will enable case studies of Romania and Serbia to provide insight into these questions and the crucial processes of democratization and Europeanization that will shape Europe in the future.

In reality, it must be noted that such 'top-down' and 'bottom-up' phenomena occur simultaneously. Domestic actors absorb international and external ideas, norms, and practices,

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<sup>6</sup> Magen and Morlino, 26-27.

and in turn domestic actors influence international dialogues on constitutions, institutions, and democracy. From a constitutional law standpoint, as well, Schroth and Bostan have noted that a switch in modern times has now made it “pointless to consider” any domestic constitutional law without reference to relevant international influence that shape it.<sup>7</sup> For this reason, the framework I will lay out in the following pages carefully incorporates ‘top-down’ incentives and instruments, which will be highlighted in the next section. These EU-specific incentives often represent a significant source of outside motivations for domestic actors. Such motivations may readily be taken into account when examining the ways in which actors and coalitions behave. Therefore, although the framework I will use approaches the topic of constitutional change from a domestic, ‘bottom-up’ perspective, it does so knowing that such monumental changes do not take place in a vacuum and that, instead, many ‘top-down’ forces might be at play in inducing (or preventing) domestic political change.

Especially regarding CEE countries, motives must also be viewed in the broader context of a general incentive to modernize and develop economically, socially, and politically in the years after communism. While allowance for such ‘top-down’ motives is necessary in understanding domestic change in post-communist CEE countries, the focus of this thesis remains on the ways in which coalitions at the national level, which are responsible and responsive to a domestic public in addition to the international community, go about creating constitutional change.

The main concern of this paper lies with those actors and coalitions that are directly involved in the process of policymaking regarding constitutional change. Specifically, this framework for analysis will focus on the process of constitutional change as incorporating the

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<sup>7</sup> Peter W. Schroth and Ana Daniela Bostan, “International Constitutional Law and Anti-Corruption Measures in the European Union’s Accession Negotiations: Romania in Comparative Perspective,” *The International Journal of Comparative Law* 52, no. 3 (2005): 633-34.

original impetus and motivations for revision, legislative initiatives to revise, the constitutional drafting procedure on a political (rather than legal) level, and the process of popular approval. Thus, this framework will be concerned with domestic actors and coalitions involved at every phase of this constitutional design and passage, as these are the actors that are crucial in creating constitutional change.

In order to establish a framework for examining the success or failure of national political actors in creating constitutional change, the ideas of ‘domestic actors’ and ‘advocacy coalitions’ must be explored and defined in relation to each other and to the systems in which they exist. The term ‘domestic actors’ refers here to individual or institutional agents whose behaviors may influence policy outcomes. Domestic actors fall within one of a variety of domains in a country’s political system. By contrast, ‘advocacy coalitions’ may be thought of as groups of actors often representing multiple domains of action that have come together to promote an agreed upon idea in policy. Sabatier’s original conception of advocacy coalitions portrayed these coalitions as the forces that ultimately underlie and support stable political systems.<sup>8</sup> However, for the purposes of this analysis, I will use the term to include a type of coalition that might be comprised of domestic actors who have mobilized specifically for the purpose of supporting or resisting constitutional change, with the end goal of actually altering the policy systems previously upheld by older alignments of coalitions.

Pridham establishes a structure for looking holistically at political systems and the various domains that comprise them. These domains house a variety of domestic actors, whose collaboration yields the advocacy coalitions that are often most influential in creating widespread change. According to Pridham, political systems include:

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<sup>8</sup> Michael Mintrom and Sandra Vergari, “Advocacy Coalitions, Policy Entrepreneurs, and Policy Change,” *Policy Studies Journal* 24, no. 3 (1996): 420-434.



(a) motivational factors, (b) governance, comprising policy approaches and institutional aspects, (c) the political arena, including parties, the media and public opinion and (d) the socio-economic arena, including different interests, pressure groups, and civil mobilization.<sup>9</sup>

Parts (c) and (d) of this framework describe the extent of the arenas in which domestic actors form coalitions and create policy change. These arenas can also be thought of as the different ‘operational spheres’ where civil society functions, in the liberal democratic tradition.<sup>10</sup> Obvious actors in these spheres, with which this analysis will be concerned, include political parties and elites, scholarly elites, courts, non-governmental organizations (NGOs), the media, and religious groups. On one hand, it is more difficult to measure the effects of socio-economic actors because they often influence policies in indirect ways.<sup>11</sup> For example, a corporation might want country X to open its economy and democratic system to European standards and accede to the EU for financial and trade benefits. The ways in which this corporation might influence policies are far from transparent—especially in notoriously corrupt CEE governments. However, this analysis will focus primarily on the political arena along with and the actions of NGOs and minority and religious groups in the socio-economic arena. In part, this strategy will be adopted because of the difficulty of measuring actions of actors like corporations in the socio-economic arena. Primarily, though, this analysis will concentrate on political actors, NGOs, and minority and religious groups because of the nature of the issue of constitutional change. Since such change necessarily encompasses a high-up, national scale largely in the political eye, the set of actors I have mentioned are truly the most relevant to constitutional change, as the case studies that follow will show.

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<sup>9</sup> Pridham, 66.

<sup>10</sup> John D. Nagle and Alison Mahr, *Democracy and Democratization*, (Thousand Oaks, CA: SAGE Publications, 1999), 69.

<sup>11</sup> Pridham, 66.

In sum, then, Pridham considers types of motivations, institutions, actors, and operating spaces that comprise the interactive process of policy movements. I will examine the cases of Romania and Serbia by studying domestic actors and advocacy coalitions in relation to all of these factors. A careful analysis of the success or failure of the outputs of domestic actors and advocacy coalitions can only come about by such a holistic consideration of the inputs, structures, and acting spheres that make up the policy systems in which they operate.

Expanding on these dimensions for analysis, I will focus on two additional, “complementary” perspectives identified by Ruzza. These analytical focuses provide different but related approaches through which to explore Pridham’s domestic political systems. The approaches of Political Opportunity Theory (‘POS’) and ‘framing’, prove very useful in drawing conclusions from the interactions of factors (a) through (d) above, since they examine the dynamics by which domestic actors and advocacy coalitions create change. Ruzza identifies a dual role for domestic actors and advocacy coalitions: “on the one hand they feed ideas into the policy processes; on the other, they act as political forces – networks of activists and sympathizers – organised into structures and committed to effecting social and political change.”<sup>12</sup> The POS and framing approaches build from these basic premises of roles for domestic actors and advocacy coalitions as both formulators of ideas and catalysts for change.

The POS approach “examines the structural conditions under which movements are likely to achieve some sort of impact.”<sup>13</sup> In other words, POS considers the institutional setting in which actors and coalitions function. POS assumes that differences in institutional settings can affect how successful coalitions are at creating policy change. The POS analysis considers the following dimensions of ‘political opportunity’:

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<sup>12</sup> Ruzza, 23.

<sup>13</sup> Ibid., 29.

The relative openness or closure of the institutionalised political system; the stability or instability of that broad set of elite alignments that typically undergird a policy; the presence or absence of elite allies; the state's capacity and propensity for repression.<sup>14</sup>

Thus, this approach looks primarily to comparative differences in institutional and structural factors as determinants of the success of domestic actors and advocacy coalitions in effecting or resisting constitutional change. In the cases of Romania and Serbia, this analysis will prove useful in controlling for institutional settings that could affect the success of policy movements.

Likewise, the second approach, framing, will offer different but equally significant insight into the question of why both countries have been able to enact constitutional change, even though one had much more serious prospects of joining the EU than the other. While POS examines institutional and structural factors, framing focuses instead on how domestic actors and advocacy coalitions are able to portray their issues and standpoints, both in order to create broad coalitions and to gain the appeal of a voting public. Framing “examines the impact of [social movements’] ideas on public discourse.”<sup>15</sup> Originally put forth by Snow, et al.,<sup>16</sup> a framing analysis looks at an advocacy coalition as a ‘social movement’ comprising an alliance of any variety of domestic actors moving to promote unified ideas. Such a movement requires a so-called ‘master frame’ of the issues at hand. This master frame picks and chooses different aspects of the norms and perspectives of individual domestic actors in creating “a single concept” that will be relevant to a broader arrangement of actors or to the general public. In fact, Ruzza explains:

For a social movement to achieve wider support, its master frame must resonate with the priorities of sectors of the general public. Movements

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<sup>14</sup> Doug McAdam et al. (eds.), *Comparative Perspectives on Social Movements*, (Cambridge: Cambridge University Press, 1996), 27.

<sup>15</sup> Ruzza, 29.

<sup>16</sup> David A. Snow et al., “Frame Alignment Processes, Micromobilization, and Movements Participation,” *American Sociological Review* 51 no. 4 (1986): 464-481.

attempt to enhance this resonance by means of ‘frame alignment’ strategies whereby their frames become aligned with dominant cultural frames.<sup>17</sup>

In this way, the framing approach will offer insight into the ways in which advocacy coalitions form from domestic actors as well as the ultimate messages that they put forth to the public arenas.

Taken together, the two framework approaches put forth by Ruzza (framing and POS) combined with Pridham’s political systems domains can be used to create the following matrix (Matrix<sub>0</sub>) for case analysis:

**Matrix<sub>0</sub>: Framework for Analysis**

	<b>Motivations</b>	<b>Governance</b>	<b>Political Arena</b>	<b>Socio-Economic Arena</b>
<i><b>Political Opportunities (POS)</b> (Or, how institutions empower or restrict success)</i>				
<i><b>Framing</b> (Or, how coalitions shape messages to gain approval)</i>				

In this matrix, I propose to analyze actions toward constitutional change by examining the domains of political systems (motivations, governance, political arena, socio-economic arena) through the perspectives of framing and POS, which represent two main ways in which these components can affect policy outcomes.

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<sup>17</sup> Ruzza, 32.

Overall then, combining the POS and framing perspectives into a comprehensive analysis will touch upon issues of alliance building, public support and consensus forming, and institutional access and ability to get messages of reform across. Using this approach, I expect to show three things. First, I will show that a POS perspective reveals real institutional differences between Romania and Serbia that explain how Romania's reforms came relatively naturally, while Serbia's took place only after a systemic shock. Furthermore, I will demonstrate that strong elite coalitions – namely, political party elites – are instrumental in constitutional change success and account for the ability of both countries to successfully enact constitutional change. This theory of the importance of political elites reflects a traditional concept of elite theory of politics, described by Schumpeter.<sup>18</sup> In this theory, Schumpeter argued for a realist perspective whereby political elites serve “as the key to building and maintaining a stable democracy,” as opposed to a “democratic ideal” of governance by *all* citizens.<sup>19</sup> In both Romania and Serbia, shifts that allowed coalitions of political elites to form were the primary factors behind allowing constitutional change. Finally, I will establish that message framing and communication with voters is necessary for the successful adoption of constitutional referendums.

### ***Conceptualizing EU Incentives and Instruments for Change: The ‘Top-Down’ Perspective***

As I mentioned in the previous section, it is particularly useful to comprehend in a quick overview the ways in which the European Union and other international actors may influence policy developments—a ‘top-down’<sup>20</sup> perspective on domestic policy change. Of special interest is the ability of these organizations to influence the motivations of domestic actors to act toward or against constitutional change. In this way, the recent waves of constitutional change in CEE

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<sup>18</sup> Joseph Schumpeter, *Capitalism, Socialism and Democracy*, (New York: Harper & Brothers, 1942).

<sup>19</sup> Nagle and Mahr, 8.

<sup>20</sup> Expression of ‘top-down’ versus ‘bottom-up’ used by Magen and Morlino (2009).

countries have been greatly influenced by the varying incentive structures that exist for each country to join the EU. Other groups that offer strong incentives for CEE countries include the North Atlantic Treaty Organization (NATO), the Council of Europe, and various NGOs. However, the most noteworthy policy influences on CEE countries from external organizations have, in fact, come from the EU.<sup>21</sup> The case study of Romania will reveal a country particularly incentivized by its strong prospects of joining the EU, while the case of Serbia demonstrates that countries more ambivalent toward joining the EU often proceed through different paths toward constitutional change. In this way, a country's degree of external motivation, especially from the EU, will play a large role in the ways in which it goes about developing democratic systems and constitutions. Thus, this section will briefly explain the potential 'pull' of the EU due to its high influence in the CEE region. However, where especially relevant, this thesis will from time to time address specific events concerning other organizations or governments that may be particularly relevant to constitutional outcomes in the cases at hand.

Entrance into the EU presents economic, political, geographical, and strategic incentives to its potential entrant countries. While each country faces drawbacks associated with joining the EU, often proportional to the amounts of domestic institutional or ideological change required by EU accession, the interest of all of these countries in gaining to membership status in the EU has been expressed in the countries' formal relations with the EU and in the internal changes that have been realized in recent years. Schmidt explains that, even though the EU began as an economic union, out of all comparable unions within Europe,

only the EU has developed a single currency, a single market, a single voice in international trade negotiation, a single antitrust authority, common policies on

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<sup>21</sup> Silviu Jora, "European Integration and Democratic Consolidation in Romania Towards a Universal Modus Operandi?" *The Sphere of Politics*, no. 125 (2006): 65.

environmental protection, worker safety and health a common foreign and security policy, and even the beginnings of a common defense policy.<sup>22</sup>

The regional influence of the EU and its specific impact on trade and security policies thus presents a tremendous incentive to nations to conform to its membership standards. In turn, these standards are necessary in order to ensure the homogeneity in political and economic conditions that is needed for the functioning of the union.<sup>23</sup>

Grabbe presents one view of EU power relations as she theorizes that an asymmetry exists in negotiating powers between many CEE nations and the EU itself. This asymmetry allots far greater bargaining power to the EU in determining entrance conditions and norms. Remarking on concessions made to the EU by several CEE nations in 2001 that seemed to go against the interests of these countries, Grabbe describes an “asymmetrical dependence on [the EU],” where these states “wanted membership far more than the current member-states wanted to accept them.”<sup>24</sup> This phenomenon, coupled with a long-term perspective of the benefits of EU membership, explain why many CEE countries have accepted seemingly unfavorable conditions in order to gain membership in the EU.

According to Grabbe, one further dimension, Europeanization, must be accounted for in considering the willingness of these countries to sacrifice their perceived immediate interests in EU accession negotiations. She envisions Europeanization as a process by which CEE countries have adapted and continue to adapt to European norms in their own political negotiations and debates.<sup>25</sup>

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<sup>22</sup> Vivien Schmidt, *Democracy in Europe: The EU and National Politics*, (Oxford: Oxford University Press, 2006), 10.

<sup>23</sup> Peter-Christian Muller-Graff (ed.), *East Central Europe and the European Union: From Europe Agreements to a Member Status*, (Baden Baden: Nomos Verlagsgesellschaft, 1997), 40.

<sup>24</sup> Heather Grabbe, *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe*, (New York: Palgrave Macmillan, 2006), 1.

<sup>25</sup> *Ibid.*, 46.

Taken together, then, these elements give a foundation for the EU's potential role in influencing national policies concerning democratization and constitutional change. CEE countries retain strong incentives – economic, political, and otherwise – for working to comply with EU norms. Meanwhile, current EU member countries and the Union itself possess a higher level of negotiating power than the prospective member states. This produces a greater compliance with EU norms by negotiating candidates, and less actual negotiation. Finally, the phenomenon of more compliance / less negotiation can be further explained by the effects of Europeanization, which leads negotiating members of interested countries to be more inclined to support rather than oppose standards set for them by the existing European community.

The EU possesses a variety of mechanisms for influencing national policy, both through accession conditionality and through other means.<sup>26</sup> Here I will briefly present the various tools that the EU possesses in exerting its influence on countries wishing to accede. Much of the model presented here has been developed by Grabbe in her research on EU-CEE country negotiations. Several of these mechanisms will become relevant in analyzing individual cases and domestic actors' behaviors in conforming to EU pressures later on.

In 1993, the European Council put forth a set of conditions for entry, known today as the Copenhagen Criteria, stated in Figure 1, below. These conditions “were designed to minimise the risk of new entrants becoming politically unstable and economically burdensome to the existing EU.”<sup>27</sup>

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<sup>26</sup> Grabbe, 7.

<sup>27</sup> Ibid., 10.



**Figure 1: The EU's Copenhagen Criteria<sup>28</sup>**

**EU Membership Requires:**

- that the candidate country has achieved **stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities,**
- the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.
- The candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

Therefore, in order to begin negotiations for membership, each country must have successfully fulfilled these conditions, which include democratic standards. A country applying to join the EU submits its application to the European Council, which decides on accepting the application based on a formal opinion provided by the European Commission based on these criteria.<sup>29</sup>

In 1998, the EU began to issue Accession Partnerships<sup>30</sup> to states in the process of beginning negotiations. Accession Partnerships comprise non-binding lists of objectives, more specific than the vaguely outlined Copenhagen Criteria, for each nation in the short and medium term. A country's progress on these Accession Partnerships is likewise monitored by the European Commission. Grabbe notes that "Accession Partnerships limited the scope of

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<sup>28</sup> Grabbe, 10. (Emphasis added.)

<sup>29</sup> European Commission, "Conditions for Enlargement," The European Commission, [http://ec.europa.eu/enlargement/the-policy/conditions-for-enlargement/index\\_en.htm](http://ec.europa.eu/enlargement/the-policy/conditions-for-enlargement/index_en.htm), Accessed 2 March 2009.

<sup>30</sup> Grabbe, 14-18.

negotiations by making a number of potentially negotiable areas part of the conditions, and...they increased the scope of EU involvement in domestic policy-making.”<sup>31</sup>

Further, a negotiating country is required to fully accept, apply, implement, and enforce the EU’s *acquis communautaire*, which “is made up of the entirety of EU legislation...[and] is the shared foundation of rights and obligations binding all Member States.”<sup>32</sup> The *acquis* covers some 35 chapters that range in topic from free movement of workers and goods and foreign, security, and defense policy to judiciary and fundamental rights and justice, freedom, and security.<sup>33</sup> A country’s progress in adopting the *acquis* is also monitored by the European Commission, which issues regular reports on individual negotiating countries’ progress.<sup>34</sup> Once all chapters of the *acquis* have been closed by unanimous agreement by EU member states, the country can move forth in the process of ratifying an accession treaty.<sup>35</sup> The various steps taken by the EU during this process can strongly influence candidates’ policy decisions based on the prospect of EU accession. Table 1, below, synthesizes several descriptions presented by Grabbe that illustrate the various mechanisms for ‘policy transfer’ that the EU may use during the accession conditionality period.

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<sup>31</sup> Grabbe, 14.

<sup>32</sup> Anslem Skuhra (ed.), *The Eastern Enlargement of the European Union: Efforts and Obstacles on the Way to Membership*, (Innsbruck: StudienVerlag/Transaction Publishers, 2005), 11.

<sup>33</sup> A full list of the 35 chapters is available: European Commission, “The process of Enlargement,” The European Commission, [http://ec.europa.eu/enlargement/the-policy/process-of-enlargement/mandate-and-framework\\_en.htm](http://ec.europa.eu/enlargement/the-policy/process-of-enlargement/mandate-and-framework_en.htm), Accessed 2 March 2009.

<sup>34</sup> Skuhra, 17.

<sup>35</sup> European Commission, “The process of Enlargement.”

**Table 1: Grabbe’s Mechanisms for EU Policy Transfer to Candidate and Potential Candidate Countries<sup>36</sup>**

<i>Instrument</i>	<i>Types of examples</i>	<i>Type of influence</i>	<i>Leverage exerted on policy</i>
<b>Models:</b> Legislative and institutional templates	Policy Documents; White Papers; Legally Binding Agreements	Guidelines directly related to EU acceptance; Some legally enforceable	Very influential - direct link with accession; Binding agreements could be publicly enforced
<b>Money:</b> Aid and technical assistance	Aid programs	Conditionality for financial and other benefits; Transfer of practices and norms to national bureaucracies	Mixed results; Focus more on aid directly related to accession logistics now
<b>Benchmarking and monitoring</b>	Ranking, Regular Reports	Not enforceable but directly linked with accession prospects	Influence through direct link with accession prospects
<b>Advice and twinning</b>	Twinning program; <sup>37</sup> Expert advice, bureaucracy-to-bureaucracy contacts, Multilateral institutional contact	Routinization of practices; absorption of EU ideas and norms by national bureaucrats and institutions	Long-term indirect influence, taking EU practices to the heart of policy-making
<b>Gate-keeping:</b> Access to negotiations and further stages in the accession process	Denying further stages on conditionality	Strongly linked to accession incentives	Effectiveness depends on how policy solutions are laid out and if ntl officials will follow
<b>Soft methods:</b> Indirect effects	Leading by example of EU members; Influence of private sector actors	Can lead to adoption of EU policies and practices through observation and through competition	Difficult to measure; influence depends on implementation and type of private sector actors and competition

<sup>36</sup> Table synthesizes information found in Grabbe ,57-59 and 75-89. It utilizes much of Grabbe’s original language in combining what had been, in her work, two separate matrixes describing ‘instruments’ and ‘mechanisms’.

<sup>37</sup> ‘Twinning’ refers to the European Commission’s program since 1998 of pairing administrators from candidate countries with selected administrators from member states in order to promote stronger capacity in candidate countries to implement the *acquis*. Twinning occurs in projects that pair administrators in specific institutions for the achievement of outlined goals (Source: EU Integration Office, “Twinning,” Serbian Government EU Integration Office, <http://www.seio.sr.gov.yu/code/navigate.asp?Id=84>, Accessed 2 March 2009.)

The background offered in this section should serve as a reference as specific EU actions begin to take on meaning in the cases of Romania and Serbia's constitutional development. This general laying out of the various instruments and mechanisms by which the EU promotes its own norms of democracy and free markets within potential member countries should be kept in mind when considering from where domestic actors gain their own motivations and perspectives on democratization and constitutional change. Thus, having completed a 'bottom-up' framework along with an overview of possible 'top-down' external incentives and influences for domestic actors, I will move to the specific cases of Romania and Serbia in order to assess the ways in which these domestic actors and coalitions go about creating constitutional change.

### **III. Case Study One: Romania**

#### ***Historical Background***

Romania's approved constitutional referendum of 2003 contained a multitude of provisions to address EU concerns in promoting democracy and the protection of human rights and minorities. This revamped constitution, making these and more provisions to align Romania's protection of rights and democracy with EU standards, was approved in a two-day referendum that featured a large push by national and local-level authorities to drum up sufficient turnout. With a 55.7% turnout of eligible voters, the new constitution received an 89.7% approval.<sup>38</sup> In the case of Romania, this tremendous motion for constitutional change came at the hands of a coalition of political parties that had, in fact, framed the referendum as a vote on EU accession in order to bring voters to the polls.<sup>39</sup>

A closer examination of the events leading up to this referendum and the positioning of domestic coalitions will reveal the types of alliances and actions by coalitions of political parties in particular that were necessary to pass these wide-reaching changes. The in-depth consideration given here to Romania's political development since communism is especially pertinent for two reasons. First, the country's history remains generally unknown by many in the United States. Second, Romania's political culture resulting from its authoritarian communist years had significant impact, especially on its citizens' collective mentality toward democracy<sup>40</sup> and on its long transformation away from communism even after the official end of the communist regime in 1989.

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<sup>38</sup> Constantin Ciutacu, "Industrial relations and the new constitution," Eurofund European Industrial Relations Observatory On-Line, (3 Feb. 2004),

<http://www.eurofound.europa.eu/eiro/2004/01/feature/ro0401105f.htm>, Accessed 2 March 2009.

<sup>39</sup> Papadimitriou and Phinnemore, 83-84.

<sup>40</sup> Alina Mungiu-Pippidi, "Romania," in *Democracy and Political Culture in Eastern Europe*, eds. Hans-Dieter Klingemann, Dieter Fuchs, and Jan Zielonka, 313 (New York: Routledge, 2006).

The closing of EU negotiations in 2004 and Romania's official accession to the EU in January 2007 served as the most recent reminders of the strides toward standards of democracy, human rights, and rule of law that Romania has taken since its fall from communism in 1989. Romania's failure to be considered with the first wave of CEE countries that negotiated for EU membership (including the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia) was a reflection of its own unique historical, economic, and political trajectory. Recognizing Romania's strong EU incentive, I will consider the country's relations with the EU in tracing its democratic development and eventual constitutional revision in 2003. Romania's lag behind other CEE countries in transforming toward consolidated democracy and meeting EU standards has largely been attributed to the slowness of the country's political elites in truly escaping the country's communist past, an aspect that will come to light through the ensuing discussion of Romania's history leading up to its 2003 constitutional amendments and 2007 EU membership.

The year 1989 saw the toppling of the communist regime of Romanian President Nicolae Ceaușescu. Ceaușescu had succeeded Gheorghe Gheorghiu-Dej<sup>41</sup> as the leader of the Romanian Communist Party in 1965, and was in part known for his consolidation of Dej's policies of reducing Romanian dependence on Russia, despite the party's communist domestic policies.<sup>42</sup>

As Ceaușescu continued where Dej left off, Romania became an exception among communist

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<sup>41</sup> Gheorghe Gheorghiu-Dej rose to party prominence and became the party's General-Secretary in 1945. His policies of Marxist-Leninist domestic politics combined with external relations involving trade agreements with the West, to the great dislike of the Soviets. Dej operated both as a populist due to his "man-of-the-people style" and at the same time utilized brutal acts of violence, killing his own mother and other political opponents during his rise to power. His sudden death in 1965 paved the way for Ceaușescu's climb to the top and continued relations with the West, in defiance of the Soviets. Dej died from an aggressive form of lung cancer, which some suspected was the result of irradiation by Soviet agents. (Source: Tom Gallagher, *Theft of a Nation: Romania since Communism*, (London: C. Hurst & Co., 2005b, 51-56).

<sup>42</sup> Papadimitriou and Phinnemore, 18.

countries due to its general resistance to various Soviet policies during the Cold War years.<sup>43</sup> For this reason, during much of his presidency and in spite of his communist standpoint, Ceaușescu held the favor of many Western countries. However, under Ceaușescu and his wife, this communist regime became increasingly more despotic in its nationalist internal politics in the 1980s,<sup>44</sup> as devotion to the communist ideology faded while economic ‘hard times’ ensued.<sup>45</sup> In 1988, the European Parliament’s Directorate General for Committees and Delegations referred to Romania as “the most repressive country in Eastern Europe.”<sup>46</sup> Romania saw great levels of oppression and the beginnings of resistance forming from within Ceaușescu’s own party. In the end, the country’s severe hardships fueled a quick attempt by Ceaușescu and his wife to flee amongst violent protests and shootings. The couple was detained by a military tribunal for crimes of genocide. Upon being found guilty, the Ceaușescus were subsequently executed by firing squad on December 25, 1989—the bullet count totaling nearly 200 shots.<sup>47</sup>

The consequences of this dark tradition of communism and dictatorship would prove significant throughout the period of political reconstruction and democratization that followed. Under Ceaușescu, the repression of any dissenting parties meant, first of all, that his final downfall necessarily came from within, and, secondly, that talks of restoration after his assassination were hampered by the absence of organized opposing groups. Keil notes:

In almost all of the communist states in East Central Europe, there had been a number of “round table” talks between the party and various opposition groups. These talks had helped define the ways that the societies in question would extricate themselves from communism...Romania did not have the benefit of such conversations.<sup>48</sup>

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<sup>43</sup> Papadimitriou and Phinnemore, 18.

<sup>44</sup> Gallagher, 2005b, 66.

<sup>45</sup> Thomas J. Keil, *Romania’s Tortured Road Toward Modernity*, (Boulder: East European Monographs/Columbia University Press, 2006), 310.

<sup>46</sup> Papadimitriou and Phinnemore, 19.

<sup>47</sup> Gallagher, 2005b, 62-72.

<sup>48</sup> Keil, 347.

The broader implications of this on political culture must be equally noted. Keil suggests that the overthrow of Ceaușescu's regime was *not* a protest against communism, but rather “an example of what Max Weber called a ‘traditionalist revolution’ ...against a master because he...has failed to observe the traditional limits of his power and has failed to meet his traditional responsibilities and obligations to his subjects.”<sup>49</sup> The failure of Romanians to truly reject communism was compounded by the fact that Romania had never in its history embraced a strong tradition of democracy.<sup>50</sup> Romania's lack of organized and developed political alternatives had significant consequences in the years that followed fall of the Ceaușescus.

Just days before the execution of the Ceaușescus, the formation of the National Salvation Front (FSN) had been made public with Ion Iliescu as its head. Iliescu had been the most prominent of anti-Ceaușescu conspirators, despite his involvement in the Romanian Communist Party.<sup>51</sup> Although Iliescu claimed ongoing allegiance to the ideas of socialism, his FSN initially took a technocratic approach to reforming governance in Romania. Gallagher speculates that, due to the single-mindedness that prevailed under Ceaușescu, Iliescu and the FSN failed to foresee the conflicts and opposing viewpoints that would arise.<sup>52</sup> Nevertheless, the FSN laid out an immediate program that they would seek to follow, including such measures as “the introduction of a democratic, pluralist form of government and the abolition of the leading role of a single party; the holding of free elections; separation of powers;...observance of the rights and freedoms of ethnic minorities,” and the introduction of various economic measures to mitigate the damage that had been done to the Romanian economy under Ceaușescu.<sup>53</sup> However,

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<sup>49</sup> Keil, 346.

<sup>50</sup> Gallagher, 2005b, 68.

<sup>51</sup> *Ibid.*, 2005b, 71.

<sup>52</sup> *Ibid.*, 2005b, 75.

<sup>53</sup> *Ibid.*, 2005b, 74-75.



much of the FSN leadership was composed of members who had served in high-ranking positions in Ceaușescu's communist regime, including Iliescu himself. Questions of the legitimacy of the FSN as the ruling party came to light in some sectors of the public, while opposition parties, both new and older parties which had previously been banned under the dictatorship, began to form.<sup>54</sup>

In May 1990, the first post-communist elections were held. Despite the formation of several opposing parties, Iliescu's FSN won both the presidency (with 85.1% of the vote) and the vast majority of seats in parliament. Quite simply, the FSN held elections before opponents had enough time to organize themselves nearly as much as the ruling FSN.<sup>55</sup> However, the FSN's hold on national politics was not to remain intact. Economic struggles, unemployment, ethnic minority issues, miners' invasions known as *mineradas*, developing underground markets, and organizing labor unions all posed serious problems to the party's standing. The third *minerada*, which took place in September 1991, resulted in violence between police and protesting miners, who had received support from citizens of Bucharest where they were protesting. This event drew a major split in the FSN, as President Iliescu dismissed his Prime Minister, Petre Roman, who he blamed for economic problems and unrest. Roman instantly went from longtime ally to rival as he denounced Iliescu and formed his own party.<sup>56</sup>

In September, immediately before the splintering of the FSN, Romanian citizens overwhelmingly passed the country's democratic constitution of 1991, which became the groundwork for the subsequent 2003 revisions. Drafted by an academic who had won an independent seat in the parliament, the constitution promoted a centralized democratic government and defined the country's official language as Romanian. It received approval from

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<sup>54</sup> Keil, 350-353.

<sup>55</sup> Ibid., 362-363.

<sup>56</sup> Ibid., 367-430.

the FSN parliament and widespread approval across Romania, with notable exceptions coming only from two Hungarian-speaking counties.<sup>57</sup>

On an international level, the EU had become inundated with the prospect of enlarging its membership to absorb Romania and the rest of the newly democratizing CEE countries that had emerged from communism around the same time. In 1990, the EU developed an official association strategy for its enlargement to include the CEE countries. Earlier that year, Romania's EU ties had solidified as it began to receive monetary assistance from the EU's Phare program, designed to help economic development and transition in CEE countries.<sup>58</sup> However, the decision to leave Romania (along with Bulgaria) out of the first round of accession negotiations was based on Romania's questionable elections in 1990 that had returned communist party members to office, and on a notorious outburst of government violence at a student rally that year.<sup>59</sup> The European Parliament stated:

Political reform is lagging. It is still not clear whether the revolution was not, in fact, a coup. The new government, the [FSN], consists mainly of ex-communists. There are doubts as to the freedom of the elections last year. Democratisation of the decision making process has not yet been achieved. Human rights are still being violated.<sup>60</sup>

Despite the splintering of the FSN, Iliescu retained the support of a majority of members of parliament, who formed the Party of Social Democracy of Romania (PDSR). The PDSR again won elections in 1992 and Iliescu entered into a second term as president. His presidency from 1992-1996 was marked by both international achievements and domestic struggle, as the party became increasingly fragmented toward the end of his term. On one hand, Romania under

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<sup>57</sup> Gallagher, 2005b, 101.

<sup>58</sup> Papadimitriou and Phinnemore, 21-22.

<sup>59</sup> Ibid., 27.

<sup>60</sup> European Parliament, *Report on the General Outline of the Europe Agreements with Central and Eastern Europe*, A3-0055/91, 13 March 1991, 42.

Iliescu exhibited significant amounts of corruption, which was recognized by citizens<sup>61</sup> and the international community alike.<sup>62</sup> On the other, it reached an accord with Hungary concerning border disputes and the condition of Hungarians within Romania,<sup>63</sup> a move that was internationally promoted by the Council of Europe, but was also criticized from Romania's own nationalist front.<sup>64</sup> Additionally, despite Romania's questionable status on issues of corruption and human rights, developments in the CEE region, including the Yugoslavian conflict, made the EU's European Council move to authorize the creation of Europe Agreements with Romania and Bulgaria, beginning in May of 1992.<sup>65</sup> Thus, even as support for Iliescu waned within the coalitions that had previously supported him in Romania largely due to corruption in his regime, he managed to push forward talks with the EU that would eventually lead to constitutional developments toward democratizing for accession.

The 1996 elections, in which Iliescu barely put up a fight as the candidate for the PDSR, made it clear that his support had eroded as he lost on a runoff that was swayed by the nationalist blocs, which had turned their support away from him.<sup>66</sup> He was defeated by Emil Constantinescu of the Romanian Democratic Convention (CDR), a loose center-right coalition. Parliamentary power was now split among some five parties, with an alliance that included the CDR and the Social Democratic Union (USD) led by ex-Prime Minister Roman.<sup>67</sup> The 1996 elections represented a critical turning point in the international perspective of the country,

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<sup>61</sup> Gallagher, 2005b, 135.

<sup>62</sup> Ibid., 2005b, 124-125.

<sup>63</sup> Hungarians constitute one of the two most historically oppressed ethnic groups within Romania (the other group being the Roma).

<sup>64</sup> Gallagher, 2005b, 129-30.

<sup>65</sup> Papadimitriou and Phinnemore, 28.

<sup>66</sup> Gallagher, 2005b, 139.

<sup>67</sup> Liliana Popescu, "A Change of Power in Romania: The Results and Significance of the November 1996 Elections," *Government and Opposition* 32, no. 2 (April 1997): 181.

whose democracy was seen as more consolidated due to the electoral victory of a non ex-communist party.

In office, Constantinescu did not fare much better with his center-right policies than his ex-communist predecessor in addressing Romania's domestic problems. Economic problems continued to plague the nation, and parliamentary politics were marked by a state of "chaos" and inefficiency.<sup>68</sup> Furthermore, the European Commission maintained in 1997 that Romania had not yet fulfilled the Copenhagen Criteria for EU accession. The Commission noted that President Constantinescu had declared the opening of EU negotiations to be a top priority in Romania's interest. Additionally, the Commission communicated its appreciation of the change in leadership away from ex-communist officials brought about by the elections of 1996. However, it expressed concern over the delayed implementation of various economic and logistical agreements under a timetable established in Romania's Europe Agreement. The Commission wrote that "Romania is on the way to satisfying the political criteria set by the European Council at Copenhagen," after noting that additional improvements were still needed in areas of anti-corruption, human and minority rights (specifically, for the Roma people), general individual rights, and judicial system reform.<sup>69</sup>

By November 1998, the Commission had declared in its annual progress report that "Romania fulfils the Copenhagen political criteria." It stated:

Continued efforts have been made to respect and protect the rights of the Hungarian minority and to carry through reforms concerning the situation of children in orphanages. Nonetheless, much still remains to be done in rooting out corruption, improving the working of the courts and protecting individual liberties

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<sup>68</sup> Keil, 530.

<sup>69</sup> European Commission, "Commission Opinion on Romania's application for membership of the European Union," (4 Nov. 1998a), European Navigator, <http://www.ena.lu>, Accessed 9 March 2009.

and the rights of the Roma. Priority should also be given to reform of the public administration.<sup>70</sup>

By this time, the European Commission felt that Romania had met basic standards of “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities,” as outlined in the Copenhagen Criteria. The EU was now willing to consider negotiating for membership. Although the Commission still retained many doubts over the condition of Romania’s economy, for political expediency given the Kosovo conflict and the EU’s strategic political interests, it recommended the opening of accession negotiations with Romania (and Bulgaria) in October 1999. This represented a significant shift in the EU’s enlargement policy, from a technocratic to a political approach, which pushed Romania through to candidate status with relatively few changes in political and economic conditions over the year before.<sup>71</sup> The negotiations phase would potentially entail additional political adjustments, but the EU had agreed to at least begin to negotiate with Romania with regard to accession conditionality. After being authorized by the European Council, accession negotiations for Romania began in February 2000, with an accession goal of January 1, 2007 set for Romania.<sup>72</sup>

In 2000, the CDR-led government collapsed, resulting in the replacement of officials in office by other members of the CDR coalition. Still, the EU continued to support Romania’s broader efforts toward democratic political consolidation while noting concerns in annual reports that echoed those of 1998 and 1999.<sup>73</sup> Under the CDR coalition, a lack of demonstrable progress was even more acute on an economic level and led to the coalition’s fragmentation and the return

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<sup>70</sup> European Commission, “Regular Report from the Commission on Romania’s Progress Towards Accession,” (4 Nov. 1998b), The European Commission, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1998/romania\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/romania_en.pdf), Accessed 9 March 2009.

<sup>71</sup> Papadimitriou and Phinnemore, 43-44.

<sup>72</sup> *Ibid.*, 46.

<sup>73</sup> European Commission, 1998b.

of the PDSR and Iliescu to power when the Constantinescu failed to seek reelection. The alliance that the PDSR worked to form had made a strong commitment to working toward EU accession. As the EU brought forward a ‘big bang’ plan for enlargement to include CEE countries in 2004, it became clear that Romania would have to sit the round out until its earliest target of 2007.<sup>74</sup>

It was at this time—with the return of the Iliescu PDSR coalition to power—that Romania’s prospects of EU integration in the near future had finally crystallized into reality, and 2007 began to look like a reasonable target for accession. The movement to consolidate political commitments to democracy and human rights through constitutional amendments had, for a second time since 1989, come to light.

### ***“Yes to Europe”: An Overview and Analysis of the 2003 Constitutional Revisions***

On October 19, 2003, at the end of a two-day referendum where some 55.7% of registered voters turned out, Romania voted overwhelmingly to replace its constitution of 1991 with an amended version.<sup>75</sup> I will make the case that the actual forces for creating the coalition that passed this constitution were set into motion with the 2000 presidential and parliamentary elections. By tracing the events and coalition changes that followed these elections until the successful adoption of Romania’s constitutional amendments in 2003, I will establish the foundations for presenting a final analysis of the aspects of ‘Political Opportunities’ and ‘framing’ that were behind the passage of these reforms. In considering the coalitions that formed around the issue of constitutional change in Romania, I will specifically consider the tenets of Pridham’s theory

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<sup>74</sup> Papadimitriou and Phinnemore, 48-49.

<sup>75</sup> Ibid., 84.

of political systems, namely motivational factors, governance, the political arena, and the socio-economic arena.<sup>76</sup>

This new constitution was expressly geared toward priming Romania for EU accession. A general summary of the constitutional changes offers an overview of the complete package of amendments that voters approved. Many of these amendments addressed key topics of democracy, human rights, minority rights, and the rule of law, which appear in the right-hand column of Table 2. Later, I will contextualize the coalition building and methodology that led voters to choose to approve these amendments in full.

**Table 2: Summary of 2003 Changes to Romanian Constitution<sup>77</sup>**

<i>Article</i>	<i>Revision</i>	<i>Area(s) Affected</i>
<b>41</b>	Private property “guaranteed” by government; not only “protected” as under 1991 constitution	Economic Liberty
<b>41</b>	Forbids nationalization of private property on ethnic, racial, or religious grounds	Human & Minority Rights; Economic Liberty
<b>41</b>	Extends right to own property to foreign citizens	EU-Required; Economic Liberty
<b>46</b>	Provides protection for the disabled	Human Rights
<b>52</b>	Ends previous constitution’s mandatory military conscription	Personal Liberty
<b>69</b>	Restricts immunity of members of parliament	Corruption
<b>73</b>	Allows legislative initiatives to be introduced by minimum 100,000 citizens instead of 250,000 before	Democratic Process
<b>83</b>	Extends president’s term to five years (from four) to stagger parliamentary and presidential elections	Democratic Process
<b>106</b>	Forbids president from removing prime minister from office	Democratic Process; Corruption

<sup>76</sup> Pridham, 66.

<sup>77</sup> Compiled using: Linklaters, “Legal Overview: Constitution” *Emerging Romania 2004, The Business Guide*, (2004), [http://www.atypon-link.com/OXF/doi/pdf/10.5555/erro.2004.1.Emerging\\_Romania\\_2004.181](http://www.atypon-link.com/OXF/doi/pdf/10.5555/erro.2004.1.Emerging_Romania_2004.181), Accessed 10 March 2009, and Chamber of Deputies, “Constitution of Romania,” Parliament of Romania – Chamber of Deputies, <http://www.cdep.ro/pls/dic/site.page?id=339&idl=2>, Accessed 28 March 2009.

<b>114</b>	Meant to quicken notoriously slow legislative process and limit use of emergency orders by legislature	Democratic Process
<b>125</b>	Ensures judicial independence	Democratic process
<b>127</b>	Entitles ethnic minority citizens to use native minority language in courts	Human & Minority Rights
<b>135</b>	Narrows definition of “public property,” promotes privatization, and returns communications networks to private property status	Economic Liberty
<b>145</b>	Inserts new article on “Euro-Atlantic Integration;” Among other things, permits accession to EU through parliamentary vote, without referendum	EU-Specific

As Table 2, above, shows, the constitution of 2003 enshrined additional protections for minorities (rights to language use), personal liberties (property rights), and mechanisms for improving the government’s inefficient democracy. In the next few pages, I will explain how actors—primarily within Romania’s political arena—were the leaders of this constitutional change and how they were able to succeed in enacting such change through an overt focus on attaining EU membership.

The 2000 elections resulted in the return to power of the PDSR. This victory more accurately reflected an expression of disaffection with the way the CDR coalition had governed under Constantinescu than it did a vote for return of Iliescu.<sup>78</sup> Tables 3 and 4 that follow illustrate the change in political party support between the 1996 and 2000 in the presidential and parliamentary elections (showing Chamber of Deputies’, but not Senatorial). Several important trends stick out within these data. In 1996, the governing CDR coalition that had supported

<sup>78</sup> Papadimitriou and Phinnemore, 83



Constantinescu's presidential candidacy was made up of several parties combined. Overall, the CDR represented a center-right 'coalition of coalitions'<sup>79</sup> that came to power primarily due to the

**Table 3: Romanian Chamber of Deputies Election Results, 1996–2000<sup>80</sup>**

Party:	<i>PDSR</i>	<i>CDR</i>	<i>PD/USD</i>	<i>PNL<sub>1</sub></i>	<i>UDMR</i>	<i>PRM</i>	<i>PUNR/AN</i>
1996 Vote Share	21.5%	30.2%	12.9%	n/a	6.6%	4.5%	4.4%
1996 No. of Seats	91	122	53	n/a	25	19	18
<b>1996 Seat Share</b>	<b>26.5%</b>	<b>35.6%</b>	<b>15.5%</b>	<b>n/a</b>	<b>7.3%</b>	<b>5.5%</b>	<b>5.3%</b>
2000 Vote Share	36.6%	5.0%	7.0%	7.0%	6.8%	19.5%	1.4%
2000 No. of Seats	155	0	31	30	27	84	0
<b>2000 Seat Share</b>	<b>44.9%</b>	<b>0%</b>	<b>8.9%</b>	<b>8.7%</b>	<b>7.8%</b>	<b>24.3%</b>	<b>0%</b>

<sup>1</sup> In 1996 much of the current PNL was part of CDR, although one faction ran on separate lists, getting 1.9 % of votes and no seats.

**Table 4: Romanian Presidential Election Results, 1996–2000 (Percentages)**

	<i>Ion Iliescu</i>	<i>Emil Constantinescu</i>	<i>Theodor Stolojan</i>	<i>Mugur Isarescu</i>	<i>Petre Roman</i>	<i>Corneliu Vadim Tudor</i>	<i>Gheorghe Funar</i>
Party:	<i>PDSR<sub>1</sub></i>	<i>CDR</i>	<i>PNL</i>	<i>CDR 2000<sub>2</sub></i>	<i>PD</i>	<i>PRM</i>	<i>UDMR</i>
1996—I	32.3	28.2	n/a	n/a	20.6	4.7	6
1996—II	45.6	54.4	n/a	n/a	n/a	n/a	n/a
2000—I	36.4	n/a	11.7	9.6	3.0	28.3	6.2
2000—II	66.8	n/a	n/a	n/a	n/a	33.2	n/a

<sup>1</sup> After the 2000 elections, the PDSR became the PSD

<sup>2</sup> Even though Isarescu nominally ran as an independent, he received the official endorsement of CDR 2000.

Note: Romanian presidential elections require victory by a simple majority of votes. It is common for no one candidate to receive greater than 50% during the first round election, after which a runoff is held between the top two vote getters to determine a winner by simple majority.

splintering of Iliescu's PDSR by the end of its 1992-1996 mandate. However, both the presidential and parliamentary election results show that, by 2000, the CDR had fragmented. In Table 3, by 2000 the National Liberty Party (PNL) that emerged from the CDR had fewer than

<sup>79</sup> Shafir, M. (2001), "The Ciorbea Government and democratization: a preliminary assessment," in Light, D. and Phillemore, D. (eds), *Post-Communist Romania: Coming to Terms with Transition* (London: Palgrave), 86.

<sup>80</sup> Tables (3 and 4) from Grigore Pop-Eleches, "Romania's Politics of Dejection," *Journal of Democracy* 12, no. 3 (2001): 157.

25% of the seats held by the CDR in the previous term, while the CDR itself dropped to 0 seats. The CDR had also included smaller partners in its coalition. The Hungarian Democratic Union (UDMR), which had supported the CDR alliance, managed to hold on to its votes for parliament and the presidency—largely due to its ethnic support base. Meanwhile, the Democratic Party (PD) of the center-left also lost significant amounts of support in the presidential and parliamentary elections due to its support of the CDR.<sup>81</sup>

Overall, this represented a “shrinking of the center,” which led to victories for the farther-left PDSR and President Iliescu, as well as the nationalist right-wing Greater Romania Party (PRM). This phenomenon resulted mostly from the inability of the centrist parties to coalesce around a single platform and presidential candidate in the aftermath of the collapsing CDR.<sup>82</sup> Pop-Eleches notes that the last-minute push for Iliescu’s victory in 2000 by civil society activists and Western organizations prevented a “dangerous drift toward extremism” that would have seen a right-wing, nationalist agenda permanently alter Romania’s course toward European integration.<sup>83</sup>

The priority of European integration, helping to facilitate democratic consolidation, had also shifted over the years in the minds of Romanians. Under Iliescu before 1996, the PDSR government had shown ambiguous enthusiasm for joining the EU. PDSR rhetoric increasingly supported European integration and the completion of Romania’s 1995 application for accession, but it demonstrated a lack of substantive support and understanding of what integration would entail, politically and economically speaking.<sup>84</sup> In addition, the nationalist PRM and the Hungarian UDMR had been substantively opposed to joining the EU, as was the Romanian

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<sup>81</sup> Pop-Eleches, 156-169.

<sup>82</sup> *Ibid.*, 156-169.

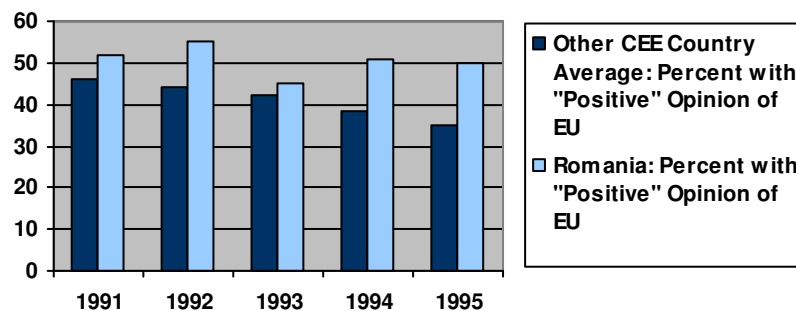
<sup>83</sup> *Ibid.*, 158-159.

<sup>84</sup> Papadimitriou and Phinnemore, 72-73.

Orthodox Church, all due to an overarching perception of a uniquely Romanian culture that should remain separate from a “neoimperialist” West.<sup>85</sup>

Yet, despite these countercurrents, general sentiment among Romanians remained strong in the mid-1990s that “Europe” instead represented “the source of the political and economic forms Romania should adopt.”<sup>86</sup> Romania has consistently polled at high levels compared to most other CEE countries in its perception of EU membership. Despite what politicians outside of the CDR may have believed, “by the mid-1990s it was clear that there were *votes to be had* in supporting integration,”<sup>87</sup> (emphasis added). This strong support for the EU is seen in Figure 2, below.

**Figure 2: Percent of Romanians with “Positive” Opinion of EU<sup>88</sup>**



The 1996 election of the CDR provided support for a coalition that embodied a more genuine ideological alignment with ideas of European integration and democratization. With support among Romanians still polling high and prospects for EU accession looking more realistic than

<sup>85</sup> Ibid., 75.

<sup>86</sup> Katherine Verdery, *What was Socialism, and What Comes Next?*, (Princeton: Princeton University Press, 1996), 108.

<sup>87</sup> Papadimitriou and Phinnemore, 75.

<sup>88</sup> European Commission, *Central and Eastern Eurobarometer: Public Opinion and the European Union (19 Countries' Survey)*, (Brussels: European Commission, 1996), 44-51. Note: 1991 “Other CEE Country Average” figures include Albania, Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, and Slovakia. 1992-1995 includes the 1991 countries *plus* Slovenia, Armenia, Belarus, and Ukraine.

ever, the PDSR had likewise fully embraced the priority of European integration by the electoral shift of 2000.

Very quickly, Iliescu's party demonstrated its newfound willingness to act toward the political, economic, and structural goals it would have to fulfill in order to join the EU. These were goals that had been pursued under Constantinescu, but goals which Constantinescu's weak government had failed to successfully mobilize a coalition in order to complete. In effect, Iliescu and his PDSR had reversed its previously hesitant position toward the EU after having seen the country's progress in negotiating with the EU and the widespread support that EU accession received in Romania. As part of its pro-Europe electoral agenda in 2000, the PDSR supported amending the constitution to address issues of institutional compatibility between the EU and the Constitution of 1991, while working toward constitutional democratization, individual and minority rights protection, judicial independence, and economic liberties.<sup>89</sup> Furthermore, in December 2000, before the runoff presidential election that eventually declared victory for Iliescu, Petre Roman (Iliescu's former rival) of the PD and leaders of the PNL formally expressed their support for drafting constitutional amendments in parliament, in cooperation with the PDSR.<sup>90</sup> Thus, the foundation for a coalition that could agree to constitutional amendments was already in place; this coalition stretched across party lines and former rivalries to agree on the overwhelmingly popular objective of EU accession. The PDSR became known as the Social Democratic Party (PSD), and it sought out an alliance with the Hungarian UDMR to bolster support for what remained a PSD parliamentary minority. This was in sharp contrast to the previous PDSR government that had largely left the Hungarians out of its decision-making

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<sup>89</sup> Papadimitriou and Phinnemore, 83-84.

<sup>90</sup> BBC Monitoring European, "Democrats, Liberals agree on 'priorities' to be implemented by new government," Dow Jones Factiva, 1 Dec. 2000.

process.<sup>91</sup> Whereas Iliescu had previously shown a commitment that fell short of fully implementing the necessary political and economic reforms for accession to the EU, continued public support for EU membership and the friendly EU relations established during Constantinescu's presidency meant that, upon taking office at the end of 2000, Iliescu's pro-Europe coalition solidified its EU commitment by working toward necessary constitutional reforms.

The process of drafting a revised constitution took until June 2003, with a parliamentary committee representing major parties leading the way until debates were opened up in June for the Chamber of Deputies and August for the Senate. In March, the coalition initiating the constitutional proposal stated, "the principal objective of this proposal . . . is to guarantee the constitutional foundation for achieving integration [within NATO and the European Union]," a purpose that was understood to include issues of judicial independence, separation of powers, and protections of private property.<sup>92</sup> This overt focus on integration with the EU (and NATO) guided the final version of the constitution, containing the provisions mentioned on pages 36-37, through the Senate and the Chamber of Deputies in a joint session that took place from August 25-29, 2003. However, tensions with the nationalist PRM continued to rise; PRM members had not participated in parliamentary debates and were subsequently angered by their exclusion from the committee deciding on a reconciled final draft to appear before the Senate and Chamber of Deputies.<sup>93</sup> While the PSD had managed to build a large majority coalition that included the PD, PNL, and UDMR, the PRM remained the only major party that opposed the constitutional

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<sup>91</sup> Papadimitriou and Phinnemore, 83.

<sup>92</sup> Cristina Chiva, "The Institutionalisation of Post-Communist Parliaments: Hungary and Romania in Comparative Perspective," *Parliamentary Affairs* 60, no. 2 (2007): 194.

<sup>93</sup> BBC Monitoring European, "Greater Romania Party objects to Constitution amendments," Dow Jones Factiva, 2 Sept. 2003.

revision, and its large voter share in the 2000 parliamentary elections posed a concern for successfully passing a constitutional referendum.

After minimal revisions in the parliamentary houses, the draft overwhelmingly passed parliament (without PRM support). Next, Romania’s constitution required that the constitutional revisions be put to a referendum. Consistent with the legislature’s intention in passing the referendum, the government moved to promote it under the slogan “*Yes to Europe.*”<sup>94</sup> The pro-constitution coalition campaigned for the passage of the referendum, including notable reaches by the UDMR to mobilize the Hungarian minority. This effort by the PSD coalition to frame the referendum around the issue of EU accession reflected public support levels for EU membership that had grown even further since the mid-1990s. The levels of Romanian support for EU membership from 2001 through 2003 compared with averages of support among all candidate countries are seen in Table 5:

**Table 5: Romanian Public Opinion on EU Membership<sup>95</sup>**

<i>EU Membership Viewed as:</i>		2001 (Autumn)	2002 (Autumn)	2003 (Autumn)
'a good thing'	<b>Romanian Public</b>	80%	78%	81%
	Candidate Country Average	59%	61%	62%
'neither good nor bad'	<b>Romanian Public</b>	11%	8%	10%
	Candidate Country Average	22%	22%	22%
'a bad thing'	<b>Romanian Public</b>	2%	2%	2%
	Candidate Country Average	10%	10%	10%

<sup>94</sup> Agence France-Presse, “Romanians to get extra day to vote in constitutional referendum,” Dow Jones Factiva, 9 Oct. 2003.

<sup>95</sup> Papadimitriou and Phinnemore, 76.

Source: Candidate Countries Eurobarometer (2002:1; 2002:2; 2003:4; 2004:1) (via [ec.europa.eu/public\\_opinion/cceb\\_en.htm](http://ec.europa.eu/public_opinion/cceb_en.htm))

Note: Candidate Average includes opinions from CEE Countries, Malta and Turkey

Despite this high support for EU integration, uncertainty over whether voters would actually turn out led the government to extend the referendum from one to two days' length, to be held on October 18-19, 2003. The government's concerns about the feasibility of passing this referendum were largely grounded. As one analyst pointed out, "the government has much more to lose if [the referendum] doesn't pass than to win if it does."<sup>96</sup> Despite the launch of the Romanian Society for Democracy by ex-Prime Minister Roman as a citizens' watchdog group, public debate on the referendum lagged; indicators were clear that it might not receive as much support as the idea of EU accession itself. Further, the Romanian Institute for Public Policies estimated that just 5% of Romanians had "an acceptable" knowledge of the referendum, just two days before voting was to take place.<sup>97</sup> One citizen noted that "people in the countryside think they are voting for [President] Iliescu."<sup>98</sup> Thus, the referendum results would be only somewhat tied to the government's campaign of saying "Yes to Europe" and also tied to what citizens thought of PSD's ability to govern.

In addition to the question of whether its message had sunk in with voters, the government had to accept that the far-right PRM, with 33% of the presidential vote in 2000, had called for all party members to boycott the referendum entirely,<sup>99</sup> since the referendum could not pass without a majority of voters at the polls. Even more uncertainty came with the knowledge that an estimated 20% of registered voters were thought to have left Romania for better work

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<sup>96</sup> Reuters, "Romanian voters could punish govt in referendum," Dow Jones Factiva, 17 Oct. 2003.

<sup>97</sup> Ibid.

<sup>98</sup> Reuters, "UPDATE 1-Romanians slow to vote on EU-minded constitution," Dow Jones Factiva, 18 Oct. 2003.

<sup>99</sup> Ibid.

conditions in Western Europe.<sup>100</sup> A majority vote was still feasible, but would require an unusually active role on the part of citizens in getting to the polls. On the other hand, the Orthodox Church, which had previously been against Europeanization, endorsed voting in favor of the referendum as a “Christian responsibility.”<sup>101</sup>

The referendum voting opened to an extremely slow start on the first day, followed by a large increase in voter turnout during the second day, when numbers steadily rose to a 57.7% turnout by the 8 p.m. closing of polls. 89.7% who voted had endorsed the amendments.<sup>102</sup> That this number is larger than the percent (up to 80) of Romanians actually supporting EU accession is not surprising; voter turnout undoubtedly reflected a bias toward those voters who were motivated enough to spend time and resources getting to the polls.

Even after passing these numerical tests, however, the referendum faced controversy. Figure 3, on page 46, depicts the increase of voters over time during the two-day referendum period, illustrating the phenomenon of suspiciously greater second-day turnout that raised outcries from the opposing PRM and NGOs alike. For government officials, the low turnout rates on the first referendum day had resulted in tremendous concern over the passing of the constitutional revisions, the country’s future with the EU, and, importantly, the future of the PSD party. Reports abounded of questionable, sometimes shocking attempts to boost participation. The government enlisted the help of clergymen and police officers to usher citizens from the streets to polls in some sites. In Bucharest, polling boxes were placed in public markets to attract voters. Election officials in the district of Cluj said that pension payments would only be

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<sup>100</sup> Agence France-Presse, “Low voter turnout threatens to torpedo Romania’s pro-Europe referendum,” Dow Jones Factiva, 19 Oct. 2003.

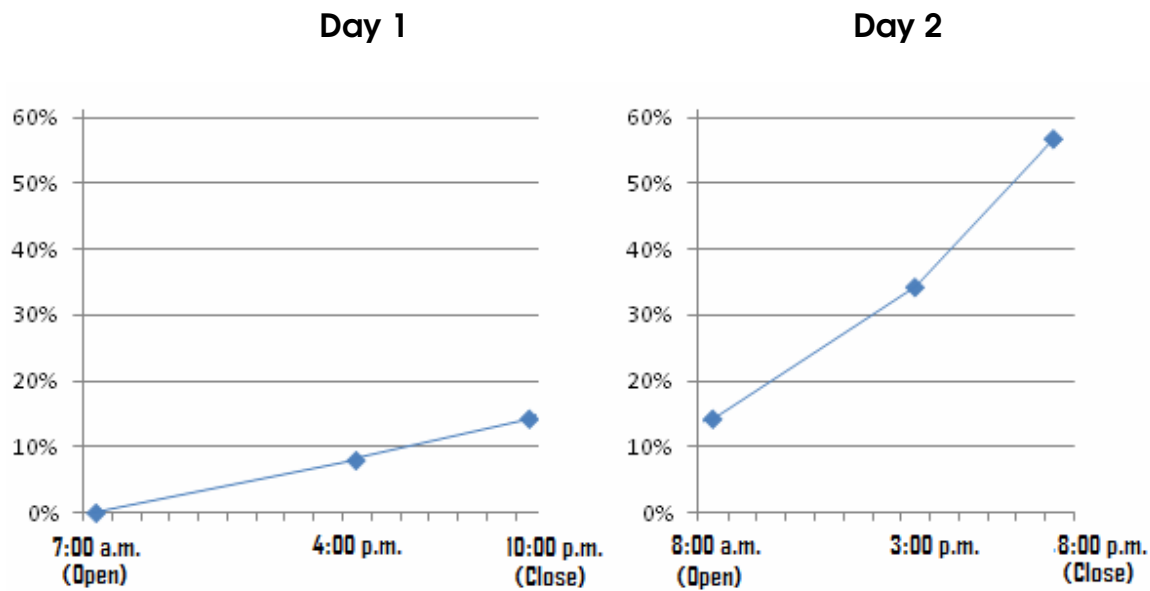
<sup>101</sup> Mihaela Rodina, “Romanian constitutional referendum seen as test for joining EU,” Agence France-Presse, Dow Jones Factiva, 18 Oct. 2003.

<sup>102</sup> Papadimitriou and Phinnemore, 84.



distributed to elderly people who voted. There were even reports of mayors being offered free trips to China for demonstrating high turnout.<sup>103</sup> Protests over such practices came, predictably,

**Figure 3: October 2003 Romanian Referendum Voting Turnout<sup>104</sup>**



from the nationalist PRM party, who was joined by citizens' groups like the NGO Pro Democracia.<sup>105</sup> All such protests were eventually discarded in the Romanian courts. On one hand, these irregularities raise some questions of the exact extent to which the strategies of

<sup>103</sup> Agence France-Presse, "Low voter turnout threatens to torpedo Romania's pro-Europe referendum," Dow Jones Factiva, 19 Oct. 2003.

<sup>104</sup> Compiled with reported turnout from:

Agence France-Presse, "Vote on constitution fails to inspire Romanian voters," Dow Jones Factiva, 19 Oct. 2003.

Agence France-Presse, "Iliescu urges Romanians to say 'yes to Europe' but referendum turnout low," Dow Jones Factiva, 18 Oct. 2003.

Agence France-Presse, "Low voter turnout threatens to torpedo Romania's pro-Europe referendum," Dow Jones Factiva, 19 Oct. 2003.

Papadimitriou and Phinnemore, 84.

<sup>105</sup> Cristian Pirvulescu and Mircea Toma, "Serious law infringements and administrative irregularities at the national level during the October 18-19 Romania's Constitution Referendum," Pro Democracy Association and Media Monitoring Agency – Academia Catavencu Press Release, 20 Oct. 2003, [http://www.mma.ro/Comunicate%20de%20presa/Constitutie\\_20oct2003\\_eng.htm](http://www.mma.ro/Comunicate%20de%20presa/Constitutie_20oct2003_eng.htm), Accessed 20 March 2009.

coalition building and issue framing by the PSD were instrumental in passing the referendum. However, the estimated 57.7% voter turnout exceeded the minimum of 50% by a significant amount, which indicates that the government’s large-scale efforts to pass the referendum did have a strong effect on its approval, despite a small percent that may have been attributable to questionable practices. Nevertheless, in my analysis, I will take some account of the role that the reportedly questionable tactics by the Romanian government might have had in passing the referendum.

Using the Pridham/Ruzza matrix, which I set forth earlier as a framework for analyzing domestic actors and coalitions, I will make the case that Romania’s reform depended entirely on party elites from the PSD, coalition building, issue framing in line with Romania’s strongly pro-EU popular opinion, and an institutional structure that was fundamentally amenable to change.

**Matrix A: Political Forces & Romania’s 2003 Constitution**

	<i>Motivations</i>	<i>Governance</i>	<i>Political Arena</i>	<i>Socio-Economic Arena</i>
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<p><b>Political Opportunities (POS) (Or, how institutions empower or restrict success)</b></p>	<p>-Since 1989, political incentive structure increasingly emphasizing Europeanization</p> <p>-Incompatibility of old constitution with institutional standards for EU sovereignty in some areas meant Romania had to revise for EU</p>	<p>-Unicameral parliamentary body split among parties, so parties need alliances</p> <p>-Constitutional revision possible by 2/3 approval from both chambers of parliament and a popular referendum</p> <p>-Referendum must be held within 30 days of passing constitutional draft, placing a finite limit on public debate</p>	<p>-Public opinion strongly in favor of accession to EU; reward to politicians for proceeding with EU</p> <p>-Shift: When PDSR was elected in 2000, it furthered EU talks; PDSR stance had changed toward EU</p> <p>-Shift: PDSR included Hungarian UDMR, PD, and PNL as elite coalition supporting drafting of constitution</p> <p>-PRM as only opposing major party</p>	<p>-Small parties and NGOs outside of main political arena, left out of drafting</p> <p>-Role of socio-economic actors in debate limited by 30-day rule between parliamentary approval and voters' referendum</p> <p>-NGOs and minority groups left to play a reactionary role in criticizing constitution only after drafting</p>
<p><b>Framing (Or, how coalitions shape messages to gain approval)</b></p>	<p>-PDSR motivation to continue EU progress to show relevance to voters and gain EU membership benefits</p> <p>-PD and PNL (democratic parties) value Western norms and Europeanization; demanded constitutional revision</p> <p>-Hungarian UDMR party concerned with minority rights and democracy</p> <p>-Nationalist PRM favored centralization, recognition of Romania's unique culture apart from Western Europe</p>	<p>-Need to form coalition, but enough democratic parties that nationalists could be left out</p> <p>-Romania's already fulfilling many EU standards of democracy meant constitutional changes needed were not drastic, more procedural, and easier to agree on</p>	<p>-Coalition formed with 'master frame' focused on changes for EU membership</p> <p>-Constitutional draft limited to issues of specific changes for international institution compatibility; resisted chance to push for more</p> <p>-Absence of nationalist PRM from drafting process allowed democrats to frame issue openly around EU membership</p> <p>-'Master frame' to public focused on EU accession, not constitution itself, because of public support for EU</p> <p>-However, some voting irregularities that included material rewards, threats, and misunderstanding of issues</p>	<p>-NGOs and interest group actors were minimal in debate over referendum</p> <p>-NGOs played mostly reactionary role to drafts and in complaining about election irregularities</p> <p>-Orthodox Church spoke in support of referendum, changing earlier position of Euro-skepticism</p>

Several important points emerge from this matrix regarding a 'POS' analysis, which accounts for political opportunities, institutional and otherwise, for enacting systemic change. In the case of Romania, momentum toward EU membership had been building, particularly in the years between Iliescu's first presidency ended in 1996 and his reelection in 2000. In the early 1990s, the costs of fully embracing the changes needed to accede to EU membership had seemed extremely high to Iliescu's his party in Romania's early post-communist days (especially given that members of his party, including Iliescu himself, were former communists). By 2000, the PDSR was able to embrace this pro-European change as something that seemed inevitable, brought him political support from other liberal parties, and was popularly supported in remarkably high opinion polls.

In addition, the political system necessitated that the most legitimate and feasible source of change would come from within the parliament. Thus, support for EU-friendly constitutional reform, necessary for accession, had to come from the major party elites within the parliamentary system. In this case, the role of NGOs proved to be largely reactionary, as they were able to criticize the document after its drafting and criticize referendum results, but not to participate very actively or openly in the drafting process. Conversely, however, one could make the case for the importance of public support in driving Romania's overall trajectory that led to constitutional reform, as without this support the PDSR surely would have been less likely to build a coalition around the issue of constitutional change necessary for EU accession.

One further constraint in the perspective of POS came from the 30-day limit imposed by Romania's previous constitution on the time that could take place between parliament's passing of the draft and the voters' referendum. Many NGOs decried a lack of sufficient debate in the public sphere over the constitutional draft. With a longer timeframe between the draft's creation

and the voters' referendum, actors in the socio-economic sphere might have had more time to facilitate discussion over the constitutional referendum beyond the government's unabashedly pro-referendum campaigning.

In 'framing' terms, looking at how parties communicated the issue at hand offers several additional empirical findings. Firstly, in forming the coalition to push for constitutional change in parliament, not only the PDSR but also the PD and PNL took the 2000 elections as an opportunity to prioritize constitutional reforms solely for the purpose of EU readiness. In fact, the ability of the PDSR to form a more general coalition in parliament depended on its support of these constitutional changes, according to the PD and PNL. Additionally, this coalition was able to leave out the nationalist PRM without compromising its Europeanizing goals because of the amount of support that a coalition of these parties and the Hungarian UDMR held in parliament. Therefore, the reform was pushed through parliament with a broad consensus that it would serve to bring Romania closer with EU procedural and institutional requirements as well as EU ideals for democracy.

The parliament's framing efforts to the general public were a bit more complicated. Undoubtedly, the "Yes to Europe" slogan illustrates how the government wanted to play upon the public's broad-level support for Romania's EU accession. Furthermore, the incorporation of the Hungarian minority, whose UDMR party held 7.8% of seats in the Chamber of Deputies after the 2000 elections, into the voting coalition sought to extend this message as widely as possible. However, the suggestion by the Romanian Institute for Public Policies that only 5% of voters had a sufficient understanding of the referendum echoed a sentiment widely seen in media reports that many voters viewed the referendum as an opinion poll for the PSD government instead of a vote on a new, EU-friendly constitution. Nevertheless, for the government, this referendum went

in its favor, undoubtedly due to a combination of pro-EU issue framing as well as a generally positive opinion of the new governing coalition at the time.

Even after the successful referendum, the question remained as to its legitimacy in the light of alleged voting irregularities. Although these irregularities complicate any analysis of the effectiveness of the government's campaign for the referendum, as I have already pointed out, the turnout was over 7% higher than the minimum, thus suggesting that elements I have highlighted aside from these problems did have a significant effect on the referendum's success. A further question remains, however, regarding the democratic legitimacy of a document passed with such scandal overhead. Indeed, one interpretation alleges that, largely because of this referendum scandal, Romania (like many other CEE countries in their post-communism transitions) remains a "semi-democracy"—on its way to legitimacy but not quite there yet.<sup>106</sup>

Although this is a plausible interpretation, the fact is that Romania's constitution made significant improvements over its prior version and was passed with widespread support coming from the country's main political parties. The EU's instant approval of this document was solidified as it continued to place Romania on the path to EU membership, which the country eventually gained at the start of the year 2007. Thus, the process of creating constitutional change in Romania actually stemmed from a pro-EU movement that had slowly picked up momentum both in domestic public opinion and, significantly, in support from elite political leaders. Its success was primarily due to the framing these leaders offered of the referendum as a giant leap towards the EU, although the impact of an unknown number of individuals voting for the referendum despite not being fully informed of its significance cannot be discounted. Finally, Romania's institutional openness to fundamental change was instrumental in facilitating the coalition's successful constitutional revision.

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<sup>106</sup> Papadimitriou and Phinnemore, 84.



## **IV. Case Study Two: Serbia**

### ***Historical Background***

The end of Slobodan Milošević's presidency of the Federal Republic of Yugoslavia (FRY) in 2000 opened the way for the beginning of Serbia-EU relations and a transition to democracy. As the president of Serbia and later of the FRY, Milošević had presided through conflicts in Bosnia-Herzegovina, Croatia, and Kosovo, the turbulent existence of the FRY. Under Milošević's regime, Serbia remained a socialist country longer than CEE peers, like Romania, which had largely begun to transition toward democracy immediately after the fall of communism. However, in Serbia's complicated recent history, the underpinnings of democracy had actually begun with Milošević, who permitted the provisional formation of opposition parties and passed the country's first post-communist constitution in 1990. For this reason, it is important to gain insight into the Milošević regime and the recent history of Serbia before examining its 2006 constitutional overhaul at the hands of a broad coalition of political parties.

At best, Milošević, an ex-communist, was a political opportunist. Milošević's rise to power in 1989, after convincing his ally in the communist party to step down as president, illustrated this opportunism: "an ideological eclectic and political opportunist, he had no difficulty changing his political stripes from communism to nationalism and adapting his political style to fit the image of a national leader."<sup>107</sup> At worst, as portrayed in much of Western literature, he was a genocidal war criminal who used a sharp nationalism to unite ethnic Serbs through politics of fear. During Milošević's indictment by the International Criminal Tribunal for the Former Yugoslavia (ICTFY), the prosecution argued that he had conspired for the ethnic cleansing and expulsion of non-Serbs "as part of a systematic plan to create an ethnically pure

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<sup>107</sup> Aleksa Djilas, "A Profile of Slobodan Milošević," *Foreign Affairs* 72, no. 3 (Summer 1993): 94.



Greater Serbia.”<sup>108</sup> However, after years of conflict and the death, deportation, or imprisonment of hundreds of thousands of people,<sup>109</sup> this Greater Serbia never emerged and the idea was eventually abandoned by Milošević.<sup>110</sup> Under Milošević, Serbians endured years of economic hardship, marked by hyperinflation, United Nations (UN) sanctions and criminalized economic activity, and extreme poverty. Furthermore, wars in surrounding countries, increased military spending, absorption of Balkan refugees, and eventual conflict with NATO over Kosovo all had serious effects on the country. A general state of deterioration and lawlessness was experienced by most under this Milošević regime.<sup>111</sup>

It was in 1990, during the early years of Milošević’s Serbian presidency, that the country adopted its first post-communist constitution. The Constitution of Serbia was passed in 1990 by a parliament controlled by Milošević’s party, the Socialist Party of Serbia (SPS), which had combined the ruling Communist Party of Serbia with ethnic supporters of Milošević to form a single coalition.<sup>112</sup> This constitution officially proclaimed Serbia as a democratic republic that featured a strong executive (Milošević).

One extreme view of the 1990 constitution argues that, despite the democratic republic it purported to establish, the constitution was actually “a normative expression of authoritarian-nationalist populism, based on non-democracy,” where “Serbia is reduced to a sad state wherein

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<sup>108</sup> Karl M. Osland, “The Trial of Slobodan Milošević,” in *Serbia Since 1989*, ed. Sabrina P. Ramet and Vjeran Pavlakovic, (Seattle: University of Washington Press, 2005), 229.

<sup>109</sup> *Ibid.*, 229.

<sup>110</sup> Janine N. Clark, *Serbia in the Shadow of Milošević: The Legacy of Conflict in the Balkans*, (New York: Tauris Academic Studies, 2008), 11.

<sup>111</sup> *Ibid.*, 27-43.

<sup>112</sup> Taro Tsukimura, “Has Democratization Consolidated Democracies in the Former Yugoslavia? A Political Overview Between 1990 and 2003” in *Democracy and Market Economics in Central and Eastern Europe: Are New Institutions Being Consolidated?*, ed. Tadayuki Hayashi, (Sapporo, Japan: Slavic Research Center, Hokkaido University, 2004), 253.

the ‘entire Republic resembles a single man [Milošević].’”<sup>113</sup> Conversely, some argue that Milošević’s pattern of electoral behavior in elections after 1990 gave some democratic legitimacy to the constitution. Milošević was forced throughout his presidency of Serbia and his later presidency of the Federal Republic of Yugoslavia (FRY) to form electoral coalitions in order to maintain the electability of his party; further, he eventually accepted his own electoral defeat in the 2000 elections at the hands of the Democratic Opposition of Serbia (DOS) that had formed to overtake him for the federal presidency.<sup>114</sup>

Reality lends some credence to both of these views in terms of the 1990 constitution, which was at once semi-democratic and disguisedly authoritarian. Milošević nominally permitted the formation of a multiparty system with free elections. However, his populist rhetoric of nationalism granted him security as the most viable presidential candidate for the foreseeable future.<sup>115</sup> Thus, in the constitution, he enshrined the Serbian presidency with “dictatorial powers, insofar as the President himself can declare a state of emergency, dissolve all judicial powers and abolish human rights.”<sup>116</sup> Additionally, this constitution “institutionally provided for an independent, sovereign state [of Serbia] without any further organizational relationship with the Yugoslav federation,”<sup>117</sup> which would eventually dissolve by 2003.

Milošević’s defeat came in 2000 during his campaign for reelection as president of the FRY. After the destruction that occurred on Serbian soil during the NATO conflict over Kosovo, Milošević was unable to defeat Vojislav Koštunica of the Democratic Party of Serbia (DSS) in a

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<sup>113</sup> Dusan Janjic, “Overdue Serbia,” in *Democratization in Post-Communist Transition Processes in the 1990s: Lights and Shadows*, ed. Anna Krasteva and Francesco Privitera, (Ravenna, Italy: Longo Editore University of Bologna, 2006), 155.

<sup>114</sup> Tsukimura, 254.

<sup>115</sup> Joseph Marko, “Kosovo/a – A Gordian Knot?” EURAC research – 2000 – Aufsatz-Kosovo-summary, (2000), <http://www.eurac.edu/Events/SummerAcademy/2000/Aufsatz-Kosovo-summary.htm>, Accessed 22 March 2009.

<sup>116</sup> Marko.

<sup>117</sup> Ibid.

direct election. Meanwhile, the DOS, which was made up of politicians from two large parties – the DSS and the Democratic Party (DS) – and a multitude of smaller parties, defeated the SPS of Milošević in Serbian elections. Not long after, Milošević was extradited for trial by the ICTFY in The Hague, where he faced charges of war crimes and genocide.<sup>118</sup>

The extradition of Milošević to The Hague exasperated existing strains in the DOS alliance. The DSS's Koštunica, a fierce nationalist even when compared with Milošević, opposed the extradition of the former president. Meanwhile, the DS's Zoran Djindjic, the prime minister of Serbia, was a pro-West academic who endorsed normalizing relations with the international community. This ideological disagreement caused a rift in the coalition, and Koštunica announced the DSS's separation from the DOS in 2002.<sup>119</sup> The failure of this short-lived coalition to agree on reforms stifled chances at constitutional revision in the first years after the fall of Milošević.

Meanwhile, Serbia's relationship with the EU had varied since 2000. Prior to Milošević's fall from power, Serbia had existed in international isolation as the EU's policies toward Serbia focused primarily on "conflict containment."<sup>120</sup> By 2000, years of conflict in the Western Balkans left Serbia facing a "triple process" of "post-communist transition, post-war reconstruction and reconciliation, and EU integration."<sup>121</sup> After the 2000 democratic elections, the EU included Serbia in its Stabilization and Association Process, allowing for the negotiation of a Stabilization and Association Agreement. Further, Serbia gained the status of "potential

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<sup>118</sup> Tsukimura, 257-258.

<sup>119</sup> Ibid., 258-259.

<sup>120</sup> Cristina Dallara, "Serbia: Borderline democracy?" in *International Actors, Democratization and the Rule of Law: Anchoring democracy?*, eds. Amichai Magen and Leonard Morlino, (New York: Routledge, 2009), 156.

<sup>121</sup> Nathalie Tocci, *The EU and Conflict Resolution: Promoting peace in the backyard*, (New York: Routledge, 2007), 78.

candidate” for membership.<sup>122</sup> However, negotiations for a Stabilization and Association Agreement, which had begun in October 2005, were temporarily suspended in May 2006 due to Serbia’s failure to cooperate with the ICTFY regarding war crimes issues.<sup>123</sup> Following the country’s 2006 constitutional revision and stated commitment to work with the ICTFY, EU talks resumed. Although Serbia is not particularly advanced in its candidacy for EU accession, it remains a top recipient of EU development aid—more so than Turkey, Ukraine, or Romania.<sup>124</sup>

Nevertheless, ambivalence remains within Serbia regarding potential EU membership and whether a Western or Eastern-European (Russian) model of democracy should be followed. Despite this ambivalence about how to proceed with Serbia’s development, the course of events that took place in Serbia in 2006 necessitated a revisiting and revision of Milošević’s Constitution of 1990.

### ***“For the Good of Serbia”: An Overview and Analysis of the 2006 Constitutional Revisions***

On October 28-29, 2006, Serbian voters narrowly approved the country’s first replacement of the Constitution of 1990. The referendum saw a 53.3% turnout, where some 51.4% of voters signaled approval for the new document.<sup>125</sup> This constitution was passed by referendum less than a month after its unanimous approval by Serbia’s unicameral parliament (with 242 of 250 Members of Parliament voting).<sup>126</sup> Pro-Western Serbian politicians hailed the constitution as a

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<sup>122</sup> Dallara, 156.

<sup>123</sup> Ibid., 156.

<sup>124</sup> Elena Baracani, “EU democratic rule of law promotion” in *International Actors, Democratization and the Rule of Law: Anchoring democracy?*, eds. Amichai Magen and Leonard Morlino, (New York: Routledge, 2009), 59-61.

<sup>125</sup> CeSID, “Referendum for confirmation of proposition of Constitution of the Republic of Serbia – October 2006,” Centre for Free Election and Democracy, (2004c), [http://www.cesid.org/eng/rezultati/sr\\_okt\\_2006/index.jsp](http://www.cesid.org/eng/rezultati/sr_okt_2006/index.jsp), Accessed 16 March 2009.

<sup>126</sup> BBC Monitoring European, “Beta news agency analyses Serbia’s new constitution,” Dow Jones Factiva, 6 Oct. 2006.

deliberate move in the direction of democratization and Europeanization. A closer examination of the events that brought about constitutional change in 2006, however, shows that this constitution, in fact, came about as the result of significant compromise on the parts of Serbian policymakers with varying ideologies. The ability of elites of diverse and conflicting ideologies to compromise was actually due to specific catalyzing events—the 2006 independence of Montenegro and rising concerns over the UN-run Kosovo and over Serbia’s territorial integrity—rather than the emergence of a consensus regarding democratization or Europeanization. Using the matrix combining Pridham’s political systems theory and Ruzza’s perspectives of POS ‘political opportunities’ and ‘framing’, I will argue here that, in the case of Serbia, the adoption of a constitution that might appear to be pro-EU and pro-democratization was actually the result of a perceived institutional necessity brought on by specific events. Thus, the document, worded toward democratization, actually came into being through issue framing that sought to reach across ideological lines, even including anti-Europe coalitions, under the theme of national necessity—“for the good of Serbia,”<sup>127</sup> as the referendum slogan proclaimed.

In this case, unlike Romania’s, I will provide an overview of the Serbian parliamentary and presidential elections before examining the constitutional changes that these elected officials set into motion. Serbia’s revised Constitution of 2006 included provisions for civil liberties, minority rights, human rights, and economic freedoms. However, the constitution also featured a prominent and controversial claim to Kosovo as an autonomous, yet integral, part of Serbia. The constitution has also been criticized as ambiguous in its democratizing, yet at times contradictory,

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<sup>127</sup> Neil MacDonald, “FT.com site : Serbia votes on new constitution,” *Financial Times Online*, 26 Oct. 2006.

content.<sup>128</sup> Largely, such idiosyncrasies, criticisms, and contradictions in the constitution arose because of the compromising and combining of the various of ideologies in power.

**Table 6: Serbian National Assembly Election Results, 2003<sup>129</sup>**

Party:	G17 Plus	Serbian Radical Party (SRS)	Democratic Party of Serbia (DSS)	Democratic Party (DS)	Serbian Renewal Movement-New Serbia	Socialist Party of Serbia
2003 Vote Share	11.7%	27.7%	18.0%	12.6%	7.8%	7.4%
2003 No. of Seats	34	82	53	37	23	21
2003 Seat Share	13.6%	32.8%	21.2%	14.8%	9.2%	8.4%

**Table 7: Serbian Presidential Election Results, 2004<sup>130 131</sup>**

	B. Karic <sub>1</sub>	D. Marsicanin	T. Nikolic	B. Tadic
Party:		Democratic Party of Serbia (DSS)	Serbian Radical Party (SRS)	Democratic Party (DS)
2004—I	19.3%	13.3%	30.1%	27.3%
2004—II	n/a	n/a	45.0%	53.7%

<sup>1</sup> Karic is successful businessman with close ties to the former Milosevic socialist regime. He did not run under any of the major parties in this election.

Several key patterns in the Serbian political landscape stand out in Tables 6 and 7 above. Firstly, as no single party held a majority of parliamentary seats, creating constitutional change from within the legitimate parliamentary setting through a two-thirds vote automatically required parties to band together and form coalitions. Secondly, while minority votes in a referendum presented a legitimate source of support or opposition for a constitution that had already passed

<sup>128</sup> Dragan Stojanovic, “Basic Characteristics and Contents of the 2006 Serbian Constitution,” *FACTA UNIVERSITATIS – Law and Politics*, no. 1 (2004): 67-85.

<sup>129</sup> CeSID, “Early Parliamentary Elections 2003,” Centre for Free Election and Democracy, (2003), [http://www.cesid.org/eng/rezultati/sr\\_dec\\_2003/index.jsp](http://www.cesid.org/eng/rezultati/sr_dec_2003/index.jsp), Accessed 17 March 2009.

<sup>130</sup> CeSID, “Presidential Elections 2004” Centre for Free Election and Democracy, (2004a), [http://www.cesid.org/eng/rezultati/sr\\_jun\\_2004/index.jsp](http://www.cesid.org/eng/rezultati/sr_jun_2004/index.jsp), Accessed 17 March 2009.

<sup>131</sup> CeSID, “Presidential Elections 2004, II Round” Centre for Free Election and Democracy, (2004b), [http://www.cesid.org/eng/rezultati/sr\\_jun\\_2004IIkrug/index.jsp](http://www.cesid.org/eng/rezultati/sr_jun_2004IIkrug/index.jsp), Accessed 17 March 2009.

through parliament, minority parties did not form a significant part of the parliamentary negotiating process. Finally, and most importantly, the ideological clashes between popular nationalist-radical parties and liberal pro-European parties heavily shaped the Serbian process of constitutional revision.

In the years since Milošević, Serbia has been split between nationalist-radical and liberal, pro-European parties with conflicting views on how to develop the country's young democracy. After the Democratic DOS, which had defeated Milošević, officially disbanded in 2002, the ultra-nationalist Serbian Radical Party (SRS) won more seats in parliament than any other party (though it still fell short of an absolute parliamentary majority). Further, Tomislav Nikolic, the SRS presidential candidate in 2004, came very close to defeating the liberal DS's Boris Tadić for the presidency. Some argue that the relative success of the SRS represented a resurgence of the nationalist philosophy prevalent under Milošević.<sup>132</sup> Others have pointed out that, since the parties which supported Milošević in 2000 won less votes in 2003 than in 2000, the success of the SRS was not actually a resurgence of nationalism, but rather a manifestation of dissatisfaction with the governing DOS coalition and the state of the Serbian economy.<sup>133</sup> Either way, the popularity of nationalist-radicals, and of the SRS in particular, was concerning for proponents of Europeanization and Western democracy. Serbia's Radicals, while generally favoring democratization, desire a "more paternalistic approach to democracy" that maintains historical and emotional ties to Russian democratic development and, consequently, skepticism or opposition to joining the EU and meeting Western-European norms.<sup>134</sup> For the Serbian nationalist-radicals, perception of the EU is largely tied to its demands of Serbian cooperation

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<sup>132</sup> "The nationalist backlash," *Economist*, 380 no. 8487, (22 July 2006).

<sup>133</sup> Patrick Moore, "Serbia's uncertain future," RFE Endnote, Dow Jones Factiva, 12 Jan. 2004.

<sup>134</sup> Yll Bajraktari and Greg Maly, "Is Serbia Moving Toward Europe?" United States Institute of Peace, (May 2007), [http://www.usip.org/pubs/usipeace\\_briefings/2007/0530\\_serbia\\_europe.html](http://www.usip.org/pubs/usipeace_briefings/2007/0530_serbia_europe.html), Accessed 18 March 2009.

with the ICTFY. Nationalism “chimed in well with Serbian core beliefs since political culture remained locked in blame and denial [where] most Serbs saw themselves as...victims of a range of local and international forces...”<sup>135</sup> Thus, in parliament the Serbian Radicals regularly “act as veto players inhibiting the adoption and implementation of EU-driven reforms.”<sup>136</sup> On the local level, issues of ethnic conflict marked the geography of Serbia especially, in the regions of Kosovo and Vojvodina.<sup>137</sup> The nationalist-radicals have favored solutions of centralization and national power over autonomy in these regions, while liberals generally desire the reverse.

The Radical majority in parliament was not the only large force opposed to instituting pro-democratic constitutional reforms solely for the purpose of Europeanization. Although the nationalist DSS had aligned with the liberal DS to defeat Milošević in 2000, its philosophy actually promoted a strong nationalism that was not compatible with sustaining a coalition with the liberal DS party.<sup>138</sup> Led by Vojislav Koštunica, the DSS supported an “unapologetic nationalism” that likewise appealed to Serbs who were skeptical of the West and of international intervention.<sup>139</sup> Koštunica served as Prime Minister in parliament and proved to be both an advocate for constitutional change and a cautious skeptic of European integration.

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<sup>135</sup> Tom Gallagher, *The Balkans in the New Millennium: In the shadow of war and peace*, (New York: Routledge, 2005a), 123.

<sup>136</sup> Dallara, 157-158.

<sup>137</sup> *Vojvodina* is an autonomous, multiethnic province in the northernmost region of Serbia that contains around a quarter of the country’s population, occupied mostly by ethnic Serbs and a smaller Hungarian minority. In light of the broad issue of territorial integrity at stake after the independence of Montenegro and the debate over UN-run Kosovo’s status, Vojvodina’s degree of autonomy became a large controversy among political parties. The province itself wanted more autonomy and was generally displeased with the amount given to it under the new constitution, while nationalists (especially the Radicals) fought to limit Vojvodina’s independence.

<sup>138</sup> Tsukimura, 258.

<sup>139</sup> Gallagher, 2005a, 123.



Opposing the nationalists and radicals was a smaller set of liberal, pro-Western parties, including Tadić's DS party and the G-17 party.<sup>140</sup> In contrast to the nationalists, these liberal parties were "clearly in favor of a pro-western form of government, and in favor of European integration."<sup>141</sup> Although these parties comprised an important part of the parliament, they were relatively weaker than the nationalists. Importantly, Tadić's position as president gave a voice to the pro-West viewpoint even though negotiations in parliament would require compromises of some of the liberals' ideals for a new democratic constitution.

Since 2000, the two post-Milošević governments had placed constitutional reforms at the top of their priorities due to the need to ensure Serbia's democratic development. In fact, a general consensus existed among political actors that the constitution needed replacement. However, previous efforts at constitution drafting by committees repeatedly reached impasses as parties blamed each other for obstructing the process.<sup>142</sup> One major obstacle to constitutional reform was the issue of holding new elections—what Boonstra refers to as the 'sequencing problem'.<sup>143</sup> As a legitimate reconstituting of the government through a parliamentary draft and popular referendum would require holding new elections once the constitution had passed, and given the delicate state of balance among Serbia's political parties, no democratic party in power seemed to want to risk its position by passing a constitution that could shorten its term in

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<sup>140</sup> The G-17 had its roots as a think tank-turned political party due to concern over government abuses of power. It took a technocratic stance toward governance and had a "clean pro-reform, pro-European agenda." Source: Gallagher, 2005a, 119-129.

<sup>141</sup> Moore.

<sup>142</sup> BBC Monitoring European, "Serbian government seen dragging heels over new constitution to avoid elections," Dow Jones Factiva, 16 Feb. 2006.

<sup>143</sup> Jos Boonstra, "Serbia's Constitutional Referendum: Democratic Reform and Euro-Atlantic Integration on Hold?" FRIDE Democratisation Programme, (Nov. 2006), [http://www.fride.org/descarga/COM\\_ReferSer\\_ENG\\_nov06.pdf](http://www.fride.org/descarga/COM_ReferSer_ENG_nov06.pdf), Accessed 19 March 2009, 4.

office.<sup>144</sup> Another problem seemed to be that, with so many conflicting ideologies about how to best go about democratizing Serbia, designing a constitution which could be agreed on by all became a difficult task. However, in the first half of 2006, changing circumstances made a drafting new constitution not only desirable by all parties, but in effect necessary.

On May 21, 2006, Montenegro declared its independence from Serbia through a referendum. Within ten days, Prime Minister Koštunica's ruling liberal DSS party had called for an immediate revision of the constitution. The actual need for replacing the constitution existed on several levels. Starting five years before, it had first been a promise of Koštunica's, then as president, to revise this document as a flawed relic of the "Milošević-era." Second, a new constitution had been demanded by the EU for years in its Stabilization and Association Process talks. More powerfully, the independence of Montenegro "brought the issue to the forefront" of political debate; it could no longer linger in the background."<sup>145</sup> Serbia needed to constitute itself as a "sovereign, independent state,"<sup>146</sup> detached from Montenegro as the final mark of the Federal Republic of Yugoslavia's dissolution that began several years prior. Finally, the reality that the 'sequencing problem' of elections had changed was fundamentally important in catalyzing quick action for constitutional revision. As international pressure mounted for a solution by the end of the year in Kosovo's movement for independence, the democratic parties in power (including the DSS) feared that internationally-imposed independence for Kosovo would add momentum to the already potent Radical movement.<sup>147</sup> Therefore, the opportunity to hold elections earlier than scheduled by passing a constitution seemed to allow the democratic parties to avoid the potential public backlash that might occur should an internationally-imposed

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<sup>144</sup> BBC Monitoring European, "Serbian government seen dragging heels over new constitution to avoid elections," Dow Jones Factiva, 16 Feb. 2006.

<sup>145</sup> Boonstra, 3.

<sup>146</sup> Stojanovic, 68.

<sup>147</sup> Boonstra, 4.

solution declaring Kosovo's independence work to shift support to the Radicals by the end of the year. With all of these incentives combined, the time was opportune for Koštunica's ruling DSS party to act in drafting a constitution and building a coalition to support it.

The drafting of a constitution took four months in parliament, where a parliamentary committee focused on creating compromises among all of the major political parties, while largely excluding input from coalitions outside of the parliament. The new constitution was based on two earlier drafts "providing formal and legal grounds" for the new draft; one of these drafts had come from the ruling DSS party in 2004 and the other from the DS party in 2005. Further, parliament's drafting process drew heavily on "a number of provisions and solutions from the 1990 Constitution," in addition to demands from the SRS party as the largest opposition party.<sup>148</sup> The most salient feature of the constitution was and remains its preamble, which states:

The province of Kosovo is an integral part of Serbia's territory, enjoying substantial autonomy within the framework of the sovereign state of Serbia and, consequently, all the state institutions are constitutionally obliged to defend Serbian interests in Kosovo.<sup>149</sup>

This controversial preamble, aimed at gaining vital Radical support as well as that of Milosevic's former SPS party, represents one example of the compromises made among the core coalition of parties in parliament, namely the DSS, DS, SRS, and SPS. These compromises are showcased in Table 8 (below).

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<sup>148</sup> Stojanovic, 68-69.

<sup>149</sup> Agence France-Presse, "The main points of Serbia's new constitution," Dow Jones Factiva, 1 Oct. 2006.

**Table 8: Serbia's 2006 Constitutional Compromises**

ISSUE	COMPROMISE
<b>Kosovo</b>	SRS Radicals <i>and</i> SPS Socialists based support for constitution on addressing Kosovo (and Serbia's territorial integrity) in preamble; also, DS and DSS believed this could "strengthen Serbia's legal position" in Kosovo negotiations <sup>150</sup>
<b>Vojvodina</b>	SRS Radicals opposed granting too much autonomy to Vojvodina region and were happy to see that the constitution overall favored centralization; Vojvodina's autonomy was not mentioned like Kosovo's in preamble. Meanwhile, liberal DS party was happy that Constitution provided for some financial autonomy for Vojvodina <sup>151</sup>
<b>European Values</b>	Section I claims the Republic of Serbia is "based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values." <sup>152</sup> Claim: these principles "implicitly acknowledge" a European orientation for Serbia, <sup>153</sup> which was especially desired by DS party
<b>European Integration</b>	Lacks an "integrative clause" that would allow it to accede to EU without having to amend again by giving EU sovereignty in necessary areas; <sup>154</sup> Constitution is not a final gear-up for EU integration as liberals might like

These main compromises were sufficient to ensure that the draft constitution passed the National Assembly on October 1, 2006, with a unanimous vote among the 242 members of parliament who voted (of 250 total).<sup>155</sup> However, despite the involvement of main party members in negotiations, NGOs and smaller political parties expressed dismay at being left out

<sup>150</sup> Boonstra, 3.

<sup>151</sup> BBC Monitoring European, "Parties reach consensus on new Serbian draft constitution," Dow Jones Factiva, 29 Sept. 2006.

<sup>152</sup> Serbian Government, "Constitution of the Republic of Serbia," Government of the Republic of Serbia, (2004), [http://www.srbija.gov.rs/cinjenice\\_o\\_srbiji/ustav.php?change\\_lang=en](http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav.php?change_lang=en), Accessed 19 March 2009.

<sup>153</sup> Stojanovic, 69.

<sup>154</sup> Ibid., 69-71.

<sup>155</sup> BBC Monitoring European, "Beta news agency analyses Serbia's new constitution," Dow Jones Factiva, 6 Oct. 2006.

entirely from the constitutional debates. In fact, the actual text of the constitutional draft was not available to the public before its approval, and the draft was put to a parliamentary vote without an open debate after weeks of informal negotiations, presumably due to the urgency of the draft's passing.<sup>156</sup> This lack of transparency and public debate attracted criticism from the Organisation for Security and Cooperation in Europe, prominent NGOs, and even President Tadić of the DS.<sup>157</sup> The very nature of the parties' effort to pass an acceptable constitution as rapidly as possible precluded in-depth public discourse, and policy shaping occurred only at the most elite levels of large political parties.

The government-funded referendums were set for October 28-29, 2006, less than one month after parliament had passed the draft constitution. The constitution continued to receive opposition from non-parliamentary parties as well as the opposition of the G-17 party,<sup>158</sup> which was threatening to withdraw from government because of the refusal of the Serbian government to cooperate with the ICTFY.<sup>159</sup> The speaker of Vojvodina's parliament also called for a boycott of the referendum for lack of a public debate,<sup>160</sup> as did numerous NGOs from Vojvodina.<sup>161</sup> Moreover, the referendum attracted controversy as the government had removed some one million ethnic Albanian voters from the registers for the last six years, since the pro-independence majority in Kosovo had abstained from voting since 1990. Thus, in an electorate of only 6.5 million Serbian voters, this large number was missing despite the referendum's

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<sup>156</sup> SeeNews, "UPDATE 1: Serbia heads for Early Elections After Parliament Passes New Constitution," 30 Sept. 2006.

<sup>157</sup> Agence France-Presse, "Serbia to adopt new constitution in bid to keep Kosovo," Dow Jones Factiva, 30 Sept. 2006.

<sup>158</sup> For clarification on G-17 party, see footnote on page 60.

<sup>159</sup> BBC Monitoring European, "Analyst says boycott calls pose no threat to Serbian constitutional referendum," Dow Jones Factiva, 8 Oct. 2006.

<sup>160</sup> Agence France-Presse, "Vojvodina's top official calls for boycott of constitution vote," Dow Jones Factiva, 11 Oct. 2006.

<sup>161</sup> BBC Monitoring European, "Analyst says boycott calls pose no threat to Serbian constitutional referendum," Dow Jones Factiva, 8 Oct. 2006.

notable reference to Kosovo.<sup>162</sup> A variety of groups also spoke out in support of the referendum. Ethnic minority groups of Goranis<sup>163</sup> and Bosniaks<sup>164</sup> urged voters to support the constitution. The Greek Orthodox Church extended its support, as Kosovo was seen as a religious heartland for the Church.<sup>165</sup> Taken together, these groups presented a diverse selection of political actors and actors from the socio-economic arena who appealed to targeted groups of voters based on specific issues of appeal (i.e., religious heritage for the Orthodox majority).

The issue of historical voter apathy was at least as dangerous to the approval of the constitutional referendum as the opposition that had organized against it.<sup>166</sup> The question remained to be answered as to how the government could broadly appeal to at least a simple majority of registered voters in order to have the public approve the referendum. In parliament and in subsequent media reports about the draft constitution, the issue of territorial integrity in Kosovo had taken precedence over other elements of the constitution. However, analysts and opinion polls indicated that a forceful message focusing only on Kosovo would not resonate with voters. Opinion polls taken around 2005-2006 suggested shifting sensibilities among Serbian voters, who, despite longstanding attachment to the Kosovo territory, appeared to be less absolute in their beliefs about a potential Kosovo independence than the government was. In one such poll, “61.9% of Serbs from Serbia said that they were open to Kosovar Albanians’ preferred

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<sup>162</sup> Agence France-Presse, “Serbia to adopt new constitution in bid to keep Kosovo,” Dow Jones Factiva, 30 Sept. 2006.

<sup>163</sup> BBC Monitoring European, “Ethnic Gorani organization urges its community to vote for Serbian constitution,” Dow Jones Factiva, 26 Oct. 2006.

<sup>164</sup> BBC Monitoring European, “Sandzak Muslim council urges support for Serbian constitution,” Dow Jones Factiva, 26 Oct. 2006.

<sup>165</sup> Katarina Kratovac, “Serbian premier, head of church: new constitution is ‘best defense’ for Kosovo, Serb heartland,” Associated Press, Dow Jones Factiva, 26 Oct. 2006.

<sup>166</sup> BBC Monitoring European, “Analyst says boycott calls pose no threat to Serbian constitutional referendum,” Dow Jones Factiva, 8 Oct. 2006.

future status outcome, that is to say some form of independence.”<sup>167</sup> In another opinion poll, only 10% of voters who supported the constitution said that they would do so for the purpose of claiming sovereignty over Kosovo.<sup>168</sup> Thus, the legislators’ focus on Kosovo had been more political, reconciling strong differences among party ideologies, than pragmatic in reflecting constituents’ desires and working to truly answer the Kosovo question. One analyst explained that, instead of a “forceful campaign...that would exaggerate things such as we are preserving Kosovo and so forth,” he believed “[p]eople should be told that this is a debt, an obligation that needed to be fulfilled four, five, or six years ago.”<sup>169</sup> In fact, the government’s referendum campaign chose to embrace a softened message that appealed more to voters’ concerns over the country’s general economic and political well-being. This campaign featured the slogan, “*Good days for the good of Serbia.*”<sup>170</sup> Billboards displaying this motto implored voters to consider the referendum as a fundamental step for their country’s future, not as a political mandate to Kosovo.

On the first day of the referendum, turnout reached a reported 17.5% at close, though this number was nearly double in Serb enclaves of Kosovo.<sup>171</sup> This low percentage was overcome by the end of the second day, when overall turnout reached 53.3%, with 51.4% voting for the approval of the referendum.<sup>172</sup> Regional turnout levels were disparate across areas of Serbia; in Vojvodina, only 43.6% of voters went to the polls, while in Kosovo (where this figure primarily reflects the ethnic Serb population that comprises around 10% of Kosovo), turnout was around

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<sup>167</sup> Clark, 133.

<sup>168</sup> Agence France-Presse, “Serbian constitution likely to be approved: poll,” Dow Jones Factiva, 20 Oct. 2006.

<sup>169</sup> BBC Monitoring European, “Analyst says boycott calls pose no threat to Serbian constitutional referendum,” Dow Jones Factiva, 8 Oct. 2006.

<sup>170</sup> MacDonald.

<sup>171</sup> Ljilja Cvekic, “Crunch day for Serbia’s two-stage constitution vote,” Reuters, Dow Jones Factiva, 28 Oct. 2006.

<sup>172</sup> CeSID, 2004c.

81.6%.<sup>173</sup> Voters in Vojvodina expressed their disappointment over the amount of autonomy that the constitution had given them, while Serbs in Kosovo turned out in large numbers hoping to keep the region within Serbia. The overall turnout was moderate; while those who voted overwhelmingly approved of the constitution, the referendum was less than a slim two points more than the margin needed to gain approval.

Outside organizations, including the EU's European Commission, praised the adoption of this constitution as a progressive step toward democratization and internationalization in Serbia. However, internal NGOs, such as the independent and established Centre for Free Election and Democracy (CeSID), have pointed to various electoral irregularities and potentially unethical intimidation and "massive state pressure" on Serbian citizens. These tactics, allegedly used by government officials, largely went overlooked in the international eye.<sup>174</sup> For the purpose of my analysis, it is useful to include possible voter coercion into a framing perspective in attaining a full explanation of why voters turned out.

Thus, with this timeline of events in mind, it is possible to synthesize a theory of the main factors that created Serbia's 2006 constitutional change. Matrix B that follows presents a complete 'framing' analysis as well as a 'POS' analysis, using Pridham's political systems theory as a base for investigating these perspectives.

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<sup>173</sup> BBC Monitoring European, "Highest turnout at Serbian referendum in Kosovo – NGO," Dow Jones Factiva, 29 Oct. 2006

<sup>174</sup> International Helsinki Federation for Human Rights, "Serbia: Constitutional Referendum Results Obtained Only Under Severe Government Pressure," International Helsinki Federation for Human Rights, Press Release, 31 Oct. 2006, [http://www.ihf-hr.org/viewbinary/viewhtml.php?doc\\_id=7118](http://www.ihf-hr.org/viewbinary/viewhtml.php?doc_id=7118), Accessed 18 March 2009.



## Matrix B: Political Forces & Serbia's 2006 Constitution

	<i>Motivations</i>	<i>Governance</i>	<i>Political Arena</i>	<i>Socio-Economic Arena</i>
<b><i>Political Opportunities (POS) (Or, how institutions empower or restrict success)</i></b>	<ul style="list-style-type: none"> <li>-Long-term desire of DSS to revise old constitution</li> <li>-EU encouraging constitutional change for years as part of Stabilization and Association Process</li> <li>-Shift: Montenegro's independence leaves Serbian constitution in need of update</li> <li>-Shift: Obstacles that created Boonstra's elections 'sequencing problem'<sup>175</sup> were removed, so that it was desirable for democratic parties to hold elections earlier</li> </ul>	<ul style="list-style-type: none"> <li>-Unicameral parliamentary body split among parties forced alliances to form</li> <li>-2/3 majority vote required to change constitution from legislature, seen as only legitimate way to enact democratic change</li> <li>-A full majority of registered voters in Serbia had to approve referendum at polls</li> <li>-Removing estimated 1 million Kosovars from voting rolls made it institutionally easier to pass referendum</li> </ul>	<ul style="list-style-type: none"> <li>-Alignment of party elites initially restricted change; democratic coalition deterred by chance of losing power in early elections and Radicals in favor of vastly different provisions</li> <li>-Shift: Of events made democratic parties want to hold earlier elections, more willing to compromise with Radicals</li> </ul>	<ul style="list-style-type: none"> <li>-Minority parties and groups outside of main political arena, including NGOs, left out of drafting</li> <li>-Such groups played a reactionary role in criticizing or supporting constitution; not much effect on document itself or its outcome</li> <li>-Leaving these groups out enabled faster change but meant less public discourse</li> </ul>
<b><i>Framing (Or, how coalitions shape messages to gain approval)</i></b>	<ul style="list-style-type: none"> <li>-DS party wanting to Europeanize, create distance from Milošević regime</li> <li>-DSS party wanting to modernize and maintain stronghold as democratic coalition leader</li> <li>-Nationalist SRS party wanting to centralize and limit autonomy for Kosovo, other regions</li> <li>-Shift: After Montenegro's independence, parties agreed on revising to assert Serbia's sovereignty and try and gain legal ground on the</li> </ul>	<ul style="list-style-type: none"> <li>-Need to form coalition in parliament among democratic parties and Radicals was realized through shift in events, motivations</li> <li>-However, voting population less extreme on issue of Kosovo, so a need arose to frame issue differently to public</li> </ul>	<ul style="list-style-type: none"> <li>-Among political groups, a 'master frame' emerged of revision as necessary to preserve territorial integrity, ensure sovereignty, modernize</li> <li>-Media focused heavily on Kosovo aspect of constitution</li> <li>-Leading political coalition changed tone of 'master frame' for public; focused less on Kosovo/more on modernization</li> <li>-Public framing of issue allegedly</li> </ul>	<ul style="list-style-type: none"> <li>-Some groups, including some minority groups, urged voters to support because of particular issues (like minority rights)</li> <li>-Other groups including local governments (Vojvodina) and NGOs opposed, based on inadequate public discourse, but these groups did not stop referendum from passing</li> </ul>

<sup>175</sup> See page 61

	issue of Kosovo		included threats of lawlessness if the constitution was not passed	
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From this matrix, several key points emerge from the POS analysis, which focuses on opportunities in the political system. First, the Serbian domestic institutions permitted revision by democratic means—that is, by a legislative proposal approved by a two-thirds majority and a popular referendum. However, the fragmented nature of political parties had led to a considerable impasse in revising the constitution. This phenomenon had been worsened by the elections ‘sequencing problem’, which meant that the DSS, as the leader of the majority democratic coalition, had little incentive to revise the constitution for fear of being defeated by the Radicals before its electoral term was up. In 2006, Montenegro’s declared independence and the growing focus on Kosovo’s separatist movement actually made it more desirable to hold elections earlier, thus eliminating this disincentive for the leading coalition. This shift in salient political issues also provided grounds for compromise among the democratic and Radical parties over Kosovo’s sovereignty. This empirical study has shown that this fundamental shift in Serbia’s system allowed for political party elites to draft the document, with little to no input from smaller civil society groups and minority interests. However, questions remain as to how democratically legitimate a constitution created without much input from sectors outside of the government, particularly minorities, may be.

The framing perspective complements the POS analysis by considering the means of communication by which party coalitions and the electorate mobilized to ultimately approve the constitution. Like POS, the framing analysis looks to the events of 2006 as critical for shifting parties’ motivations to redraft the constitution and for improving their willingness to compromise.

Political parties in parliament actually framed the document according to the stances most fundamental to their separate ideologies. For the pro-Western DS party, the constitutional draft was a chance to open lines of communication with greater Europe. For the Radicals, the constitution and the emerging problem of Kosovo's independence created an opportunity to push for nationalistic centralization in government. Overall, these parties found middle ground in seeking a basic level of democratization through the constitution. However, the document's general framing, at times ambiguous, means that the way in which this democracy will develop depends largely on the direction that the parliament takes in passing future laws.<sup>176</sup>

Although the media tended to emphasize the Kosovo issue, the government successfully crafted a 'master frame' campaign to appeal to the wider public—but primarily the ethnic Serb majority. This 'master frame' was somewhat different from the way that political parties had framed the document in parliament according to their interests and the Kosovo issue. The government utilized a campaign for the public that stressed the general importance of the document to Serbia's future development. In doing so, it reportedly used questionable techniques, such as the threat of anarchy in the event that the referendum were to fail.<sup>177</sup> Nevertheless, the creation of a 'mater frame' was responsive to the general political climate in Serbia that was distrustful of the government and highly valued improvement in living conditions even more than claiming Kosovo as a Serbian territory. Ultimately, the government's ability to frame the constitution as necessary for Serbia, after the document's origins in parliament as a set of ideological compromises, was crucial in the successful constitutional referendum.

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<sup>176</sup> Dallara, 183.

<sup>177</sup> International Helsinki Federation for Human Rights.

In Serbia, the question of EU relations remains unanswered. On one hand, passing this constitution was a necessary step in continuing talks with the EU for a possible Serbian accession in the future. On the other hand, the question of EU ‘accession fatigue’ after the recent addition of a second wave of CEE countries makes it uncertain whether the EU will ever be ready to receive Serbia.<sup>178</sup> Certainly, Serbia will require future constitutional amendment if it is to accede to the EU. If such revisions occur, Serbia’s political will in terms of parties and public opinion must be more prepared to support the document not out of a sense of duty stemming from its anachronism, but rather out of a desire to accede to EU membership status. However, the precarious balance of ideologies in Serbia makes the country’s own desire to join the EU in the future an even larger question.

Therefore, Serbia’s Constitution of 2006 demonstrates an interesting compromise in a country that, like many former communist countries, faces internal pressures from a wide and evolving set of popular ideologies. Although this constitution represented a needed update from Milošević’s democratic framework put forward in 1990, ultimately the fate of democratic development in Serbia and Serbia’s European future will depend on whether its affectations fall on the side of its pro-Western or its Radical elements in the years to come.

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<sup>178</sup> “Bumpy road ahead in East Central Europe: Post-accession crisis and social challenge in ECE,” Project EU-Consent, Corvinus University, Budapest, (22 April 2007), [http://www.eu-consent.net/library/deliverables/D15b\\_Team5.pdf](http://www.eu-consent.net/library/deliverables/D15b_Team5.pdf), Accessed 28 March 2009.

## V. Comparative Analysis of Cases

What do the cases of Romania and Serbia’s constitutional reforms collectively tell us about the roles of domestic actors in creating change? From the individualized matrixes for each of these cases, some broad conclusions can be drawn about the process of constitutional change in these countries, in other CEE countries, and in potential EU candidates more generally. On one hand, the cases reached a similar outcome: both constitutions passed and were applauded by the EU for advancements toward European standards of democracy. On the other hand, the outcomes differed on a fundamental level: Romania’s constitution brought the country in line with EU standards for membership, while Serbia’s constitution left it in need of further reforms in order to meet EU standards. These cases show a strong role for ‘bottom-up’ actors in creating constitutional change. Both cases illustrate the important role of domestic actors in initiating such changes and the way that variances in ‘bottom-up’ conditions and actions might produce different outcomes. The essential differences and similarities in case analyses of domestic actors’ ‘political opportunities’ (POS) and ‘framing’ approaches that led to these outcomes are summarized in Matrix C, below.

**Matrix C: Comparing Coalitions and Constitutional Outcomes in Romania (2003) and Serbia (2006)**

	<i>Romania</i>	<i>Serbia</i>	<i>BOTH</i>
<b><i>Political Coalitions &amp; Framing</i></b>	Formed a Coalition of Similarities among liberal parties and Hungarians – interested in changing just for EU; Able to leave Radical party out	Formed a Coalition of Compromise among spectrum of parties (liberals, radicals, moderates) based on need to modernize and preserve territorial integrity, after specific events	Change led by elite coalitions; NGOs and other organizations largely left out of drafting process and were relegated to reactionary roles

<b><i>Coalitions' Framing to Public</i></b>	Framed issue to match public support for EU; Also included Hungarian minority and public support for Iliescu's government	Framed to public as overdue step toward modernization (instead of as mandate to Kosovo); Largely ignored issue of EU in public framing	Framed issue to the public's mindset
<b><i>POS &amp; Political Systems</i></b>	Coalition of left-leaning parties ready to act following the defeat of the impotent centrist CDR party	Parties needing to compromise because of ideological differences to form necessary bloc in parliament to pass reforms	Democratic systems were open to legitimate change through parliament, then popular referendum; Multiparty system required coalitions to form majorities big enough to pass changes
<b><i>POS &amp; Incentives for Main Parties</i></b>	Main PDSR party encouraged to embrace constitutional reform because of country's progress toward EU, popular support for EU, and need to gain support for other issues in parliament	Independence of Montenegro and instability over Kosovo reversed the disincentive for main DSS party, which had previously dragged feet on constitutional change because elections would risk power	Key <u>differences</u> are highlighted here—Romania reformed with parties fully embracing EU and democratization; Serbia reformed with much compromise only after main party could be convinced it did not stand to lose from constitutional reform
<b><i>Outcomes</i></b>	Constitution readily passed and brought Romania within sufficient EU standards for 2007 membership	Constitution narrowly passed and brought Serbia steps closer to EU standards, but future changes would be required to gain EU membership	Referendums passed and met with general praise from the EU

The matrix above combines the individual country matrixes for Romania and Serbia to highlight only the most crucial differences and similarities in coalitions' POS and framing. Although it does not present an all-exclusive list of similarities and differences in the coalition-forming and issue framing that occurred, it aims to highlight those similarities and differences that had the greatest impact on the outcomes of these cases.

Beginning with a framing perspective, it is clear that both Romania and Serbia were led to constitutional reform by coalitions formed by political elites. This corresponds with Schumpeter's theory of elites, which posits that the most crucial decisions are actually made by a

select number of powerful individuals.<sup>179</sup> This finding overlaps with a POS analysis, which explains the need for elites by looking at the countries' pre-reform constitutional systems. Both countries' existing constitutions necessitated legitimate constitutional change from within the legislatures, which reflected the existing multiparty political systems. This meant that political parties—controlling well under the 2/3 majority needed to pass constitutional changes—were required to form coalitions with other major parties. Together, these institutional aspects and the issue framing that occurred demonstrate that these countries' constitutional changes could not have taken place without the backing of political elites from major parties.

However, a framing analysis also reveals a significant difference in the ways that political party coalitions were able to agree on the issue of constitutional change. In Romania, where public support for EU integration was very high and the country was advanced in its negotiations with the EU, party officials from the PDSR (previously uncertain about proceeding with EU negotiations) readily took the opportunity to build a broad base of support around the issue of constitutional change for the purpose of EU accession. This opportunity offered the PDSR, as the incoming largest party in parliament, the chance to form a lasting coalition with other liberal parties that wanted to see Romania join the EU. In fact, party support for Romania's coalition was so strong that the PDSR/PSD was able to avoid negotiating with the nationalist PRM despite its 24% seat share in parliament. This point contrasts greatly with Serbia, where constitutional change occurred only as a compromise among nearly all major parties including the anti-EU Radicals. Serbia's need to compromise was undoubtedly a function of its relatively less advanced stage in EU talks as well as its public's relative ambivalence toward EU membership. Ultimately, the coalition that formed was able to agree on constitutional change not for purposes

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<sup>179</sup> Nagle, 8.

of Europeanizing or joining the EU, but rather for purposes of modernization and maintaining territorial integrity.

Both the Romanian and Serbian governments utilized a ‘master frame’ in which they considered how to optimize voter enthusiasm. This too played a role in their ability to pass constitutional reforms. In Romania, the same message that had brought the governing coalition together, that is, change for the EU, was very appealing to the public’s strongly pro-EU sentiment. In Serbia, the parliament generally tried to emphasize the modernization aspect of the constitution more than the issues of territorial integrity and Kosovo that had secured the Radicals’ participation in the revision process. Only in Kosovo itself did the message of keeping Kosovo serve as a strong driver for ethnic Serbs to come to the polls. In the rest of the country, the focus on modernization after Milošević’s regime held more clout with voters.

The POS perspective presents some additional insights into the factors that influenced the outcomes of these cases. As I have mentioned, the case of Romania was largely one of consent over Europeanization, while Serbia’s case was representative of a compromise among major parties which was spurred by the issues of Montenegro and Kosovo. In fact, once Romania’s PDSR won the 2000 elections, forming a coalition around the issue of pro-EU constitutional change became an easy and expected next step for the country, already so advanced in and enthusiastic about its EU negotiations. By contrast, Serbia’s constitutional reform, although much needed, had long been hampered by the country’s division among parties and Boonstra’s ‘sequencing problem’.<sup>180</sup> Thus, whereas electing a new party gave Romania the opportunity needed to implement EU-minded constitutional reform, it took a deeper change combating this ‘sequencing problem’ to allow Serbia’s DSS to act. This change came at the hands of Montenegro’s declared independence earlier in the year and the increased prospects of Kosovo’s

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<sup>180</sup> Boonstra, 3.



possible independence in the near future. Ultimately, in both countries, it was the relative openness of the democratic process that allowed legislatures to form coalitions and pass constitutional drafts with relative ease. In Serbia's case, the opening of this system by the removal of the 'sequencing problem' further illustrates the impact that institutions' amenability to change has on the constitution drafting process.

In the end, it is not hard to see how Romania's constitutional reforms led to its prompt EU accession, while Serbia's led only to further talks with the EU due to its many compromises. These cases demonstrate overall how countries take the EU into account when making policy decisions—for Romania, the entire change was spurred by the EU, while for Serbia, the EU was widely debated and its standards overtly acknowledged in the constitution at the urging of the most liberal parties. Furthermore, this comparison shows CEE countries at different phases of EU talks and with differing levels of public support for EU membership. In fact, if Serbia wishes to join the EU in the future, it will be forced to make bolder, more overtly pro-European changes (similar to those made by Romania) to its 2006 constitution. For a country like Serbia, unsure of whether it will accede to EU membership in the future, this comparison shows the importance of compromise among parties and broad support among the public in advancing what had been strained talks with the EU. Most broadly, this comparison illustrates the importance of political elites in the process of initiating constitutional change, the necessity of having sufficiently open democratic systems in order to receive this change, and the need to frame a message in a manner that resonates with voters.

Finally, both cases raise significant concern over the absence of open, non-elite led debate involving NGOs and public forums for considering such large systemic changes. Complaints abounded in both Romania and Serbia from NGOs about the low levels of debate

that took place between drafts passing parliament and being put to vote. It is not an understatement to add that NGOs and actors from outside of political parties played disturbingly small roles in the actual drafting processes. Indeed, attaining a sufficient level of representation in the drafting and debating processes for all of the many ethnic and social groups represented within these countries would be difficult, but undoubtedly more democratic. While allowing for elite-driven change is more efficient in taking action in situations constrained by time, constitutions—the most fundamental of governing documents—might best be crafted with the utmost deference to representing all of their countries' constituent members.

## **VI. Conclusion**

This study has attempted to explain why domestic actors in countries like Romania and Serbia, at two very different stages of EU talks and with disparate amounts of public support for EU membership, have nonetheless been able to achieve constitutional change that have met with EU approval. Through empirical case studies, the thesis has established that several components prove fundamental to constitutional change in countries with existing democratic systems that require popular referendums after legislative approval: the support of domestic political elites, institutions and systems that are generally open to systemic change, and a message that will resonate with the voting public.

The differences observed between the cases of Romania and Serbia offer a more insightful answer to the question of why both countries were able to pass constitutional reforms despite their significant divergence in prospects for EU membership and in public support for EU membership. Romania achieved constitutional reform on the momentum of EU fervor that had been building for years in the country. It was able to do so because of the changing of the re-  
ascent of the PDSR, whose enthusiastic embracing of EU membership was actually indicative of how advanced the country had become in its EU negotiations and in its public support for joining the EU. Romania required no major institutional or systemic changes to pass the referendum, only a newly elected party to form a coalition and build upon the public's support for EU membership. By contrast, Serbia's overall ambivalence toward EU membership and toward the future path its democracy would take was seen in the strong Radical presence in its legislature. Serbia actually required an institutional shock, delivered by the independence of Montenegro as well as growing knowledge of Kosovo's potential declaration of its own independence, in order to reform its constitution at last. This shock forced political elites to consider the necessity of

compromise for constitutional change. Specifically, it compelled the DSS party to desire earlier elections when the party previously had feared them. The country's overall ambivalence toward EU membership and need to compromise were reflected in the contents of the constitution as well as in the way that the Serbian government framed its referendum as a step toward modernization, rather than toward the EU. In brief, the major findings of this empirical study are found in Figure 4, below.

#### **Figure 4: Summary of Key Findings for Constitutional Change**

**A Country with Good Prospects of Acceding to EU and High Popular Approval of EU Membership Requires:**

- Right timing with EU talks and elite coalition ready to embrace constitutional reforms
- Issue framing that mobilizes voters to capitalize on their EU enthusiasm

**A Country with Questionable Prospects of Acceding to EU and Ambivalent Popular Sentiment toward EU Membership Requires:**

- Possible institutional or systemic shock, changing incentives or power structure among major players
- Short-run compromise among major parties and political elites
- Issue framing not around EU but instead around issues most important to voters

**In General, Countries Requiring Legislative Approval for Constitutional Drafts followed by Referendum Require:**

- Domestic political elites willing to support constitutional change
- Issue framing that caters to voter sentiment
- Sufficient institutional openness and receptiveness to systemic change

## *Limitations*

It is important to acknowledge the limitations of this thesis, along with some broader limitations of this type of study. Most generally, the relatively recent nature of these events and ever-changing relations among the EU and its candidate/potential candidate countries inherently limits the availability of academic literature on these topics. Furthermore, although this analysis benefitted greatly from the wide availability of English-language foreign press articles, more primary sources would have contributed much to this paper's examination of the ways that coalitions framed these issues.

As with any case study, the question of how to extrapolate generalizations from the results is important here. This paper asserts that the most fundamental finding of common threads between these two cases is, in fact, very applicable to the majority of cases of countries considering constitutional change from within an existing democratic framework. However, a few limitations of these specific cases must be discussed briefly. In both Romania and Serbia, NGOs and international groups protested against various techniques used by the government to encourage voter turnout. They also critiqued the lack of open, public discussion of the constitutional drafts. Furthermore, Serbia's act of dropping 1 million Kosovars from its voting rolls several years before invites questioning of whether or not the government's referendum may be viewed as wholly legitimate. Likewise, the liberal Romanian coalition led by the PDSR/PSD purposely included the Hungarian minority in its drafting coalition but did not reach out to the long-oppressed Roma minority. These concerns are extremely pertinent to issues of democratic legitimacy, human rights, and the general state of affairs in post-communist countries looking to democratize. Despite such objections, this thesis maintains that valuable lessons exist within the cases for the ways in which governing coalitions have gone about, and will continue

to go about, enacting constitutional change. The constraints of this study require that I pass little judgment on just how ‘democratic’ or ‘legitimate’ either change was and, rather, that I focus on the ability of such changes to work toward legitimate democracy in the long run as part of an ongoing and evolving process.

A similar objection may be raised regarding the use of EU approval as a benchmark for democratic development. The EU is neither completely objective, nor is it static, when it comes to the meaning and definition of its standards of democracy. In addition, the EU operates with economic, political, and security considerations that come in conjunction with its democratic standards and which may, at times, supersede them. Thus, just because the EU approves of a document as a whole does not guarantee that it meets objective and unquestionable democratic standards. In fact, Romania’s inclusion with Bulgaria for accession had a great deal to do with EU security and political concerns in the CEE region rather than the minimal democratic progress made by Romania from 1996-2000 under the CDR. Nevertheless, using EU democratic standards as a benchmark reflects the real influence that the EU has as an institution in policy changes in its potential member countries. Furthermore, these standards set by the EU, although not perfect, present a measurable opposition to alternative Eastern modes of democracy, exemplified by contemporary Russia. For CEE countries like Serbia, this dichotomy is very real and reflected in their current political climates. For this reason, measuring how these countries perform in comparison to EU standards offers a simple and significant barometer for where countries stand in relation to the Western democratic community.

### ***Implications for the EU and for Potential EU Member Countries***

On the intergovernmental level, this study has shown that the EU has a large role to play in guiding the policy movements and constitutional frameworks for its potential entrant states—even those that, like Serbia, remain uncertain of whether they will be able to gain entrance. The EU should, therefore, remain cognizant of the important role it plays in transitioning most CEE countries away from communist systems and toward consolidated democracy.

This analysis also has strong implications for specific countries operating within the EU's orbit, which continually interacts with national governments in 'top-down' and 'bottom-up' manners. One such country in need of further reforms in order to solidify its EU accession is the Republic of Turkey. Turkey has been in discussions with the EU for over forty years regarding its membership, yet has been unable to satisfy the EU's criteria despite constitutional amendments in 2004 and 2007. The population of Turkey has witnessed a drop in support for EU membership in the past several years. In 2006, Turkey expressed the lowest support for continued expansion of the EU out of all EU members and candidate countries, with just 45% of the population in favor of expansion. At that time, only 43% of Turks held a positive view of the EU.<sup>181</sup> Turkey falls short of EU requirements for democracy in many ways, including its provisions for minority rights, freedom of speech, and democratic institutions. With a system that has been unable to attain large-scale constitutional transition, Turkey's success at satisfying EU standards might depend, similar to the case of Serbia, on a systemic shock that would allow for more profound change and more significant involvement of elite coalitions. Although its institutions have allowed constitutional change in the past, they make larger changes—like allowing for government, not secular, control of the military—much more difficult, which

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<sup>181</sup> "New Eurobarometer poll results show a drop in Turkish support for the EU," *Hurriyet Turkish Daily News Online*, 2006.

suggests a dim future for Turkey given this study's observations of a need for institutional openness to change. Finally, the importance of message framing must not be forgotten for Turks who are in favor of Europeanization. Although the country has been able to pass constitutional changes in recent years, mostly aimed at EU compatibility, its waning public support for EU membership casts doubt on the continued ability of coalitions to form around the issue and voters to continue to support it unless the importance of such reforms becomes more clearly aligned with the country's overall well-being in the future.

### ***Future Research***

Critically, this thesis aims to establish the importance of including the 'bottom-up' perspective of domestic actors in any analysis of EU impact on national policies. Too often, discussions on the impact of the EU treat potential member countries as completely devoid of agency in the policy negotiating process, implying that the EU has far more sway than domestic actors in determining accession and its related policy decisions within countries. This is correct in a way—every EU member country retains a final veto over accession decisions, and the EU is currently dealing with substantial 'enlargement fatigue'. Nonetheless, the ways in which EU norms become policies at the national level are primarily determined by national actors in a democratic process. Whether or not these countries eventually become EU members, their domestic policies will be considerably altered as a result of their interactions with the EU and its standards for democracy. Therefore, while the 'top-down' literature currently outnumbers 'bottom-up' perspectives by a great amount, it is worthwhile to pursue similar 'bottom-up' studies in the future.

Finally, a normative analysis was regrettably beyond the scope of this study. However, such future research will be critical in not only examining how domestic actors shape



constitutions and national policies based on EU standards, but also in evaluating what types of constitutional changes have the best net effects for democracy. Ideally, such an evaluation would incorporate, as in the work of Magen and Morlino,<sup>182</sup> the aspect of policy implementation (beyond nominal changes in laws and institutions). Perhaps, after all, the EU is not promoting optimal brands of democratization in CEE countries. On the contrary, it might be that without the EU incentive, these countries would fail to fully shake their societies' ties to communism. Only through normative studies that actually evaluate the effects of national changes toward EU standards can we begin to reflect on what a tremendous impact the EU has had on national policies and, indeed, whether or not this impact has been fundamentally beneficial at the state level.

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<sup>182</sup> Magen and Morlino, 26-52.

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