

# A Tale of Two Transitions

## Exploring the Origins of Post-Communist Judicial Culture in Romania and the Czech Republic

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**Abstract:** Much of the debate about the rule of law in democratizing states centers on formal institutional design as the key to building a democratic judiciary. While acknowledging the importance of a good institutional blueprint, I argue that superior institutional rules do not necessarily lead to a healthy judicial culture that enshrines democratic principles and compels actors within the judiciary to take the formal rules seriously. Drawing on nearly 400 original survey and interview responses from judges in Romania and the Czech Republic, this article offers an empirical overview of aggregate-level trends across several key dimensions of judicial culture, including perceptions of judicial independence, attitudes toward corruption in the judiciary, and the professional satisfaction and commitment of judges. The findings of the study not only run counter to the institutionalist thesis that better institutional rules will produce a more democratic judiciary, they suggest an important theoretical linkage between judicial culture and patterns of trust in the self-governing institutions of the judiciary.<sup>1</sup>

**Keywords:** Czech Republic, democratization, judicial culture, Romania, rule of law

In both academic and policy circles, the “rule of law”<sup>2</sup> is often treated as a kind of panacea for democratizing states—at once credited with protecting the basic rights and liberties of citizens, providing a key horizontal check on government power, and laying the institutional groundwork for a functioning market economy.<sup>3</sup> In turn, a substantial body of literature has emerged in recent years examining the development of the rule of law in politically transitioning states around the world, including a significant corpus of

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research focused specifically on the challenges faced by transitioning legal systems in the post-Communist region.

One of the clearest themes in this literature is the importance of institutional design in the post-Communist legal reform process. More specifically, reform advocates argue that by crafting institutional rules that encourage judicial independence and protect against political interference in the judiciary, policymakers can stave off corruption and lay the foundations for the democratic rule of law. However, empirical studies of courts in the region tell a different story, indicating that court performance is seldom a direct function of formal institutional powers and protections. Moreover, a large body of social science research suggests that formal legal institutions, like other political and social institutions, are shaped by powerful informal rules and norms that may contradict or undercut the effectiveness of formal procedures and safeguards.

Following these insights, the present study explores the role of the judiciary's informal culture in the process of post-Communist legal reform. While acknowledging the importance of a good institutional blueprint, I argue that superior institutional rules do not necessarily lead to a healthy judicial culture—i.e., one that enshrines democratic principles and compels actors within the judiciary to take the formal rules seriously. Rather, the informal culture of the judiciary reflects a variety of concerns beyond the bounds of formal institutional design, which often work at cross purposes with formal structures and safeguards designed to foster transparency and judicial independence. In turn, if we are interested in building the rule of law in the transitioning states of the region, I argue that we must focus not only on designing good institutions, but on promoting an informal judicial culture that contributes to that goal, rather than working against it.

Drawing on nearly 400 original survey and interview responses from judges in Romania and the Czech Republic, this article offers an empirical overview of aggregate-level trends in judicial culture in two post-Communist states. Surveying several key dimensions of informal culture—including perceptions of judicial autonomy, attitudes toward corruption and professional misconduct, and the professional satisfaction and commitment of judges—I demonstrate that macro-level attitudinal patterns in the two cases run counter to the institutionalist thesis that better institutional rules will produce a more democratic judiciary. Rather, I argue that the findings suggest an important theoretical linkage between judicial culture and patterns of trust in the self-governing institutions of the judiciary.

### **Formal Institutions, Informal Culture and the Democratic Rule of Law**

Given the significance ascribed to the rule of law by leading scholars and democracy advocates,<sup>4</sup> the literature on political transition in the post-Communist region has increasingly focused on law and legal reform as a critical dimension of the democratization process. Indeed, the scholarship on post-Communist rule of law has steadily expanded in recent years to encompass a wide range of analytical perspectives and subjects of inquiry—from broad historical accounts of legal reform in the early transition period,<sup>5</sup> to focused studies analyzing specific patterns of post-Communist legal behavior.<sup>6</sup>

Within this body of literature, few approaches rival the prominence of institutionalist studies, which stress the importance of formal institutional design in reconfiguring post-Communist legal systems and securing the democratic rule of law. While a number of such studies examine how decisions are made regarding the design of post-Communist judicial institutions,<sup>7</sup> others analyze how particular institutional design configurations have

played out in the post-Communist context.<sup>8</sup> In one particularly notable example, Solomon and Foglesong adopt an institution-centered approach to the post-Communist judicial reform process in Russia, systematically identifying a host of institutional pathologies in the Russian judiciary and offering recommendations for restructuring institutional rules to improve court performance and increase judicial independence.<sup>9</sup>

Similarly, a number of the region's most prominent democracy-promotion and legal-assistance organizations have adopted a markedly institutionalist approach in their efforts to advance the rule of law. In both their published research and their on-the-ground advocacy work, organizations such as Freedom House and the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI) have focused a great deal of attention on institutional reform measures designed to foster the rule of law through the adoption of formal powers and procedures.<sup>10</sup> Thus, while cognizant of the extra-institutional challenges involved in the legal reform process, much of the work done by these organizations clearly endorses the philosophy that better designed institutions will produce more democratic, better functioning legal systems.

In both the academic and policy worlds, this institutionalist approach follows an implicit assumption that the rule of law is, at its core, a legal construct defined by written laws and constitutional clauses. Thus, without meeting some minimum threshold of formal institutional design, it is presumed that the rule of law is unlikely to develop. Further, many proponents of this approach argue that institutional rules are a logical place to concentrate reform efforts for the simple reason that formal rules are relatively easy to measure and change. Thus, the interest of many scholars and practitioners in the formal institutional aspects of the legal reform process reflects a desire to produce research with real-world relevance and clear practical application.<sup>11</sup>

To be sure, this perspective is not without merit. Indeed, institutionalist research has made many important contributions to our understanding of the development of post-Communist judiciaries—enhancing both our theoretical knowledge of the transition process, as well as our practical ability to promote the goals of democracy and the rule of law. However, there is good reason to believe that a strict institutionalist approach does not capture the complete picture of how and why the rule of law has developed (or failed to develop) in the countries of the post-Communist region.

To begin with, a number of recent empirical studies of courts in the region demonstrate that formal institutional powers and guarantees of independence are not particularly good predictors of court performance. Rather, these studies indicate that, when faced with politically significant or sensitive cases, court behavior is often better explained by a range of other mitigating factors, including economic growth,<sup>12</sup> political competition,<sup>13</sup> party system fragmentation,<sup>14</sup> and the role of human agency.<sup>15</sup> Likewise, recent comparative research assessing the impact of independent judicial councils on the practical application of judicial independence indicates that this commonly lauded institutional fix is far from a magic bullet for transitioning legal systems.<sup>16</sup>

Furthermore, several important strands of social science research suggest that real-world institutions seldom function according to formal institutional rules alone, but are shaped by powerful informal rules and norms that influence the behavior of actors within those institutions. In political science, this insight follows from a long tradition of scholarship demonstrating the frequently reciprocal relationship between cultural attitudes and institutional performance.<sup>17</sup> Similarly, prominent organizational culture theorists in sociol-

ogy and business management,<sup>18</sup> as well as influential scholars of institutional economics,<sup>19</sup> argue that cultural patterns of social interaction and informal “rules-in-use” can critically influence the way that political and economic institutions operate in real-world settings.

Perhaps most importantly, a sizable body of comparative law scholarship on legal culture has explored the influence of cultural norms and attitudes on legal behavior in court systems around the world. Pioneered in the 1970s by Lawrence Friedman and his colleagues at Stanford Law School, the legal culture literature clearly acknowledges the role of informal rules and norms—both within specific legal institutions (“internal” legal culture) and in the broader society (“external” legal culture)—in explaining the development of formal legal mechanisms and institutions.<sup>20</sup> Thus, despite problematic inconsistencies in terms of how the concept of legal culture is defined and theorized,<sup>21</sup> this scholarship challenges strict institutionalist interpretations of the legal reform process in transitioning states, suggesting that legal actors and the institutions they inhabit are significantly influenced not only by formal institutional rules, but by informal attitudes and cultural mores.

Drawing on these insights, the present study focuses on the informal culture of the judiciary as a key component of the rule of law in democratizing states. While acknowledging the importance of formal institutional rules in structuring the institutional environment in transitioning judiciaries, I argue that well-designed judicial institutions are no guarantee of a healthy or democratic judicial culture. Rather, I contend that the informal culture of the judiciary reflects a variety of concerns beyond the limits of formal institutional design, and that even in the most carefully designed judicial systems, the informal norms and attitudes of judges may counteract or undercut formal protections and guarantees written into the judiciary’s formal institutional rules. Thus, if we are interested in understanding how the rule of law takes shape in transitioning states, it is crucial to examine the role of the judiciary’s informal culture in this process.

### **A Closer Look at the Dimensions of Judicial Culture**

As the preceding discussion demonstrates, a wealth of scholarship points to the importance of informal cultural rules and norms in the development of transitioning legal systems. However, it is one thing to say that “culture matters,” and another to explain why and define exactly what type of culture. The following section is intended to elaborate upon the specific dimensions of judicial culture with which this study is concerned, rooting them in both the relevant theoretical literature and in the empirical realities of the post-Communist transition.

To be sure, the dimensions of judicial culture explored here are not exhaustive. As the comparative law scholarship makes clear, the informal norms and patterns of behavior that shape the inner workings of any judicial system are numerous and complex. Thus, the cultural attitudes analyzed in this study represent a few key dimensions of the judiciary’s informal culture, chosen for their theoretical significance and practical relevance with respect to the process of democratization in the post-Communist region.

#### **Judicial Autonomy**

The first dimension of judicial culture examined in this study is judicial autonomy—specifically, the idea that judges should feel free to decide cases and pursue professional advancement without undue influence from outside actors or superiors. Basic democratic

theory tells us that judicial independence is one of the most important principles underlying the democratic system of governance. It is this principle of independence that ensures the right of citizens to a fair trial and guards against political manipulation of the courts. Indeed, it is this principle of independence that distinguishes a democratic regime characterized by the rule of law from a less-than-democratic regime that uses rule *by* law to assert its power and stifle opposition.<sup>22</sup>

However, history tells us that the principle of judicial independence is not always reflected in the realities of day-to-day business in the courts. Thus, it is important to distinguish between the *de jure* independence of the judiciary as defined by a nation's constitution, and the *de facto* autonomy of judges to act independently in the "real world," without interference from external interests or pressures. In this study, we are concerned with the *de facto* autonomy of judges, given the clear relationship between real-world autonomy and the quality of justice. If judges do not feel free from external influence—whether it be from outside political or business interests, or a judge's immediate superiors within the court—this lack of autonomy is likely to have a negative impact on the impartiality of judicial decision-making in the courtroom and, in turn, the fairness and reliability of the legal system in adjudicating disputes.

Moreover, in the context of the post-Communist region, it is widely recognized that judicial independence throughout much of the region is frequently compromised in a variety of ways, not always limited to direct interference in the decision-making process.<sup>23</sup> Indeed, judges may be influenced through the manipulation of a range of personal and professional interests, including those related to their own career. Thus, the concept of judicial autonomy is broadly conceived in this study to include both the autonomy of judges in the legal decision-making process, as well as the autonomy of judges in relation to their career and the pursuit of professional advancement.<sup>24</sup>

### **Judicial Integrity**

Another key area of concern is the integrity of judges in the face of corruption and professional misconduct in the judiciary. As the literature on post-Communist transitions makes painfully clear, corruption has figured as an intractable problem throughout the region, in nearly every sector of society.<sup>25</sup> Though difficult to define and even more difficult to measure, corruption has clearly negative consequences when it comes to democratic state-building. Not only does corruption directly inhibit the efficiency and efficacy of fledgling democratic institutions, it also undermines their legitimacy in the eyes of the public, further impeding the ability of those institutions to function effectively.

Nowhere is this more true than in the courthouses of the post-Communist region—the institutions charged with adjudicating societal disputes and setting the bar for fairness and legality. Of course, corruption clearly and directly impacts the quality of justice by

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compromising the impartiality, fairness and reliability of the legal process. However, corruption in the courts is perhaps even more damaging as an impediment to real political and social change. If the transitioning countries of the post-Communist region are ever to consolidate a system of government based on dispassionate laws and procedures rather than favors and friendship networks, the process must begin with a judiciary capable of deciding disputes freely and fairly. The courts, in other words, are where the proverbial buck must stop. Thus, issues of corruption and professional integrity in the judiciary lie at the very core of the legal reform process—and, in turn, the democratization process—in transitioning states.

Given the thorny nature of corruption as a subject of study, this project focuses on tolerance toward corruption rather than attempting to measure corruption itself. In part, this approach is based on the assumption that attitudes toward corruption are likely linked to actual behavioral patterns—where we find lenient attitudes toward corruption, we are also likely to find a higher number of corrupt acts. However, I also argue that attitudes toward corruption matter in and of themselves, to the extent that tolerance towards corruption may actually encourage corrupt behavior, making it more likely to occur. Therefore, this study treats judges' attitudes toward corruption—both the individual misdeeds of others, as well as corruption as a systemic problem—as a critical component of the judiciary's informal culture.

### **Satisfaction and Commitment**

The third and final dimension of judicial culture concerns the professional satisfaction and commitment of judges—what, in more colloquial parlance, we might refer to as the “morale” of the judicial corps. Not only do judicial feelings of satisfaction and commitment have an intuitively logical connection with the development and performance of the judiciary as an institutional system, they are also theoretically grounded in the literature, recalling the concepts of “job satisfaction” and “organizational commitment,” which figure prominently in contemporary scholarship on organizational culture.<sup>26</sup>

For the purposes of this study, the professional satisfaction and commitment of judges is conceptualized as a key component of a healthy and democratic judicial culture—one in which judges believe in the importance of their work, feel personally satisfied by their chosen profession, and are dedicated to fulfilling their professional duties to the best of their abilities. Satisfaction and commitment thus serve important functions in attracting the best and the brightest to the judicial profession, as well as in maintaining the highest degree of professionalism and the highest quality decisions from the bench.

Moreover, the particular context of the post-Communist region offers another reason to consider the satisfaction and commitment of judges. In the transitioning societies of Eastern Europe and the former Soviet Union, it is rare for judges to enjoy the same level of esteem or respect typically accorded to legal professionals in Western societies. Indeed, legal professionals are often deeply mistrusted and disrespected, blamed for the misdeeds of the former regime and the failure of the present-day legal system to exact justice during the transition from communist rule.<sup>27</sup> In turn, it is plausible that such negative attitudes may be assimilated by judges themselves, resulting in a judicial corps that lacks respect for the judicial process and does not fully understand the importance of judges as guardians of the law—a dangerous scenario with clearly negative implications for the development of an independent and professional judiciary. Thus, it is all the more important in the transi-

tioning states of the post-Communist region to gauge the satisfaction and commitment of judges in assessing the health of the judiciary's informal culture.

### **A (Macro-Level) Theory of Judicial Culture**

As part of a larger project examining the content and causal antecedents of post-Communist judicial culture, the present analysis focuses on macro-level patterns of judicial culture in Romania and the Czech Republic. As such, the study is intended to provide a broad overview of aggregate-level trends in judicial attitudes across a few key dimensions of judicial culture, and to assess the strength of competing theoretical explanations concerning the macro-level origins of these attitudinal patterns.<sup>28</sup>

More specifically, in considering the impact of systemic-level influences on informal judicial attitudes, this project challenges the institutionalist assumption that a well-designed set of formal institutional structures will produce a healthy and democratic judiciary. Rather, I contend that aggregate-level trends in judicial culture are more likely to reflect patterns of trust in the leading institutions of the judiciary—particularly, self-governing bodies like independent judicial councils and professional unions, which are responsible for defending the interests of judges and ensuring the integrity and independence of the judicial process. Thus, in contrast to the rules-based approach of the institutionalist literature, I argue that institutional trust is the cornerstone upon which a healthy judicial culture is built.

Underlying this approach, I argue that formal rules and guarantees of independence are only effective when judges believe in the credibility of such rules. Thus, no matter how carefully policymakers design the institutional structures of the judiciary, the informal norms and practices of the judicial corps will ultimately depend on judges' trust in the institutional bodies charged with upholding the formal rules and protecting judicial independence. Indeed, without a high level of trust, institutional safeguards will be less likely to make judges feel protected, formal deterrents will be less likely to persuade judges to play by the rules, and even the most democratic and reform-minded of judges will feel less free to act according to their convictions.

Further, I argue that institutional trust is a function of experience. Thus, the extent to which judges trust in the leading institutions of the judiciary is a reflection of the character of the post-Communist judicial reform process and the role of those institutions and their leaders in that process. Specifically, where the reform process demonstrates elite initiative and commitment to push the reform agenda from within, I argue that this pattern of development instills confidence in self-governing judicial institutions, positively influencing the culture of the judiciary. In contrast, where the reform process is slowed by internal elite resistance and political buck-passing, I contend that the credibility of key institutions is undermined (regardless of how good these institutions appear on paper), with negative consequences for the informal culture of the judiciary.

### **A Tale of Two Transitions**

With this theoretical framework in mind, the following discussion offers a brief overview of the post-Communist judicial reform process in Romania and the Czech Republic, detailing both the formal institutional structures put in place by policymakers in each country, as well as the pace and internal dynamics of the transition process. In describing the divergent pathways to reform in each country, I attempt to demonstrate that the cases yield

dramatically different expectations about trends in judicial culture, depending on whether we expect judicial attitudes to reflect the quality of formal institutional design or the degree to which the judicial reform process has instilled trust in those institutions.

### **Romania's Long and Winding Road to Reform**

On paper, the Romanian judiciary has developed one of the most carefully designed institutional frameworks of any country in Eastern Europe. With an independent self-governing council of judges (the Superior Council of Magistracy), one of the most well-developed

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and well-funded judicial training institutes in the region (the National Institute of Magistracy), and a strict system of exam-based hiring and promotion designed to root out patronage and corruption, the formal institutional design of the Romanian judiciary stands head and shoulders above many of its post-Communist neighbors. However, as I argue below, these formal institutional structures came after years of foot-dragging and political wrangling—largely at the behest of outside actors like the European Union (EU). In turn,

in the absence of a principled commitment by domestic elites to a program of genuine reform, I argue that the judicial reform process in Romania has produced a well-designed institutional framework that is handicapped by a lack of internal legitimacy.

During the early years of the post-Communist transition, leaders of Romania's so-called National Salvation Front made a number of important changes to the country's outdated legal codes, paying lip-service to the ideal of a democratic rule of law. In particular, Romania's 1991 Constitution laid the basic framework for the country's present-day court system and created a nominally independent judicial council charged with appointing and disciplining judges.<sup>29</sup> However, early leaders of the post-Communist state, many of whom had risen from the ranks of the defunct Romanian Communist Party, ultimately proved unwilling to make a genuine commitment to reforming the country's corrupt legal system, evidenced by their refusal to address the problem of former regime elites occupying key positions in the country's post-Communist judiciary.

Despite a number of important institutional changes in the years that followed, many of the former regime insiders who remained in the system have subsequently risen to the highest echelons of power in the judiciary—including the Constitutional Court, the Supreme Court and the Superior Council of Magistracy—where they have squandered important opportunities for meaningful reform. Thus, even at the helm of strong formal institutional platforms, leaders within the Romanian judiciary have been reticent for much of the post-Communist period to address the serious issues of corruption and political interference in the courts, concentrating instead on more parochial concerns like increasing judicial salaries. Moreover, political elites on both sides of the political spectrum in Romania have demonstrated an ongoing aversion to genuine legal reform, expediently criticizing the

judiciary while disingenuously promoting policies that have infringed on judicial independence and aggravated the problem of corruption in the courts.<sup>30</sup>

In turn, the judicial reform agenda has been driven primarily by outside interests and demands—particularly those of the EU, which has made judicial reform one of its top priorities in Romania. By strictly monitoring the judicial sector during the buildup to Romania's formal accession in 2007 and continuing to push for reforms after the country's admission as a full member state, the EU has served as a major catalyst for change, largely usurping the role of domestic leaders in the transition process. As an illustration, after several years of pressing Romanian politicians on the issue of judicial reform, EU leaders highlighted continuing concerns about the judiciary in their 2006 decision to admit Romania as a full member state. In turn, rather than unconditionally welcoming Romania into the union, EU officials included an extraordinary safeguard clause in the country's formal accession agreement allowing the suspension of Romania's rights and privileges in the judicial sector.<sup>31</sup> Moreover, since Romania officially joined the EU in January 2007, officials in Brussels have threatened to invoke the judicial safeguard clause on several occasions, as Romanian elites have lost enthusiasm for the cause of judicial reform and progress has stalled.<sup>32</sup>

In sum, despite a commendable institutional framework established at the behest of the EU, the judicial reform process in Romania has been characterized by a lack of genuine elite commitment to the principals of transparency and accountability underlying the democratic rule of law. As a consequence, in the absence of a strong internal reform movement, judicial confidence in the reform process and the resulting institutional framework has been weakened in Romania—producing a set of hollow institutions that look good on paper but leave many regular judges uncertain about the credibility of the new institutional structures and safeguards meant to protect them.

### **Imperfect but Authentic Reform in the Czech Republic**

In contrast to the Romanian experience, reformers in the Czech Republic have adopted institutional structures and safeguards far less sophisticated than those in Romania. Yet, I argue that the reform process has produced a far more credible institutional framework, thanks largely to the credible and sustained commitment of legal and political elites to a program of genuine reform.

By most measures, the institutional design of the Czech Republic's post-Communist judicial system appears strikingly unreformed. Unlike nearly all neighboring countries in Europe (East and West), the Czech government never created an independent self-governing council of judges to protect the interests of judges and defend the independence of the judicial branch. Moreover, while many judicial systems in the region have empowered independent judicial training institutes and adopted more objective mechanisms to evaluate judicial performance and achievement, the under-powered and politically subordinated Czech Judicial Academy languishes 270 kilometers from Prague in the small eastern town of Kromeriz, while the politically appointed Czech Minister of Justice maintains control over the nomination and promotion of Czech judges in an intentionally subjective process with few institutional safeguards.

Yet, despite the apparent lack of formal institutional progress, the process of judicial reform in the Czech Republic has been marked by strong elite leadership and a genuine commitment to the principles of transparency and accountability. In part, this commitment

was demonstrated early in the transition process by the policy of screening judicial appointees in a strict process of post-Communist lustration.<sup>33</sup> To be sure, this policy was both politically controversial and practically problematic, as vocal critics decried the process as a politically motivated witch-hunt, and a serious shortage of qualified personnel plagued the judiciary in the early- to mid-1990s.<sup>34</sup>

Nevertheless, the policy of judicial lustration offered an early and tangible demonstration of elite commitment to a program of genuine reform in the legal sector. Moreover, it substantively contributed to the reform process by laying the groundwork for a cultural sea change within the Czech judiciary. By severing many of the old clientelistic networks between the government and the judiciary, the policy succeeded in paving the way for a more professional, reform-oriented culture to take root in the years that followed—in particular, by making room in the upper ranks of the judiciary for more progressive, reform-minded leaders who would lead the charge for judicial reform in the Czech Republic.

Indeed, one of the most remarkable characteristics of the judicial reform process in the Czech case is the extent to which domestic judicial elites, rather than government leaders or EU officials, have spearheaded the movement for judicial reform. Rather than being co-opted as a pet project of the EU, the reform process has been led by vocal advocates in the Czech Union of Judges—a large professional association that has lobbied for reform since the early 1990s—as well as by a number of prominent intellectuals occupying posts in the country's top courts.<sup>35</sup>

Thus, despite a conspicuous lack of formal institutional improvements, the judicial reform process in the Czech Republic has been characterized by strong domestic leadership, which has propelled the democratic development of the Czech judiciary from within. In turn, I argue that the internally driven character of the Czech reform process has fostered a level of confidence in the institutional structures and organizational leadership of the Czech judiciary that no configuration of formal safeguards or protections could match.

### **Divergent Patterns of Trust**

As an illustration of the disparate trajectories of development in Romania and the Czech Republic, the data collected for this study reveal a marked contrast in patterns of institutional trust among judges from the two countries. Table 1 reports responses to a series of empirical indicators designed to gauge judicial trust in key legal and political institutions. Consistent with the reform trajectories described above, the data demonstrate that Czech judges are consistently more trusting of domestic judicial institutions than their Romanian counterparts, while judges in Romania hold a considerably more positive view of the EU and its role in the judicial reform process.

More specifically, nearly 70 percent of Czech judges in the study report that the country's judicial associations have done a good job representing judicial interests, while less than 40 percent of Romanian judges express this sentiment. Likewise, a substantially higher percentage of Czech judges positively evaluate both the Ministry of Justice (62 percent in the Czech Republic vs. 19 percent in Romania) and the country's judicial associations (83 percent in the Czech Republic vs. 52 percent in Romania) in terms of their impact on the judicial reform process.

Moreover, when examining judicial attitudes towards the EU, the opposite pattern emerges. In Romania, 90 percent of judges report some or a lot of trust in the EU, com-

TABLE 1. Attitudes toward key legal and political institutions

Indicator	Romania*			Czech Republic**			Country-Level Difference
	Positive	Don't Know/ No Answer	Negative	Positive	Don't Know/ No Answer	Negative	
Please indicate whether you think the following organization has had a positive or negative impact on the process of judicial reform:							
Ministry of Justice	19%	35%	46%	62%	14%	24%	+43 pts.
Judicial Associations	52%	37%	11%	83%	11%	6%	+31 pts.
European Union	86%	11%	3%	43%	49%	8%	-43 pts.
Please indicate how much confidence you have in the following organizations:							
Superior Council of Magistracy (Romania only)	Some/ A Lot	Don't Know/ No Answer	None/ A Little	Some/ A Lot	Don't Know/ No Answer	None A Little	Variation in "Some/A Lot" Responses
National Institute of Magistracy (Romania) / Judicial Academy (Czech Republic)	63%	1%	36%	N.A.	N.A.	N.A.	N.A.
European Union	75%	2%	23%	80%	9%	11%	+5 pts.
Please indicate how much you agree or disagree with the following statement:							
Judicial associations do a good job representing the interests of regular judges.	90%	2%	8%	67%	7%	26%	-23 pts.
	Agree	Don't Know/ No Answer	Disagree	Agree	Don't Know/ No Answer	Disagree	Variation in "Agree" Responses
	39%	17%	44%	69%	14%	17%	+30 pts.

\* N ranges between 295 and 303 cases, depending on question. \*\* N ranges between 88 and 90 cases, depending on question.

pared to only 67 percent in the Czech Republic. Similarly, a large majority of Romanian judges (86 percent) positively evaluate the EU's role in the judicial reform process, while less than half (43 percent) of respondents in the Czech Republic agree that the EU has had a positive impact on the country's judicial system.

These findings, I argue, strongly support the notion that the two countries' divergent pathways to reform have substantially influenced judicial confidence in the legal and political institutions involved in the reform process. In Romania, where the reform process was motivated largely by external actors like the EU, judicial confidence is conspicuously lacking in the country's domestic institutions, while positive evaluations of the EU abound. In the Czech Republic, where the reform process was driven by calls for reform from within the judiciary—particularly from the Czech Union of Judges—we find comparatively high levels of trust in domestic institutions and comparatively low levels of confidence in the EU.

### **Theoretical Implications**

In light of these divergent patterns of development, I argue that the cases of Romania and the Czech Republic present an ideal opportunity to assess competing theoretical explanations regarding the macro-level origins of judicial culture. On the one hand, the judicial reform process in Romania has yielded a clearly superior institutional framework. In turn, a strict institutionalist approach would predict that better formal protections and safeguards in the Romanian system should be associated with a healthier, more democratic judiciary than we are likely to find in the Czech Republic, where formal institutional reforms have been limited.

In contrast, if we theorize that informal judicial attitudes are more likely to reflect patterns of trust in the self-governing institutions of the judiciary, our expectations are markedly different. Indeed, using institutional trust as a gauge, we would expect that higher levels of trust in the leading institutions of the Czech judiciary will be associated with a more autonomous, transparent and professionally mature judicial culture, while low levels of institutional trust in the Romanian judiciary will be associated with comparatively negative trends in judicial culture.

### **Data and Methods**

To assess these theoretical propositions, the present analysis draws on original field research in Romania and the Czech Republic, completed over 12 months between July 2007 and June 2008. During this time, I conducted a series of structured interviews with judges in Romania and the Czech Republic, as well as a formal written survey of judges carried out with the assistance of collaborating professional associations in each country. These interviews and surveys generated nearly 400 unique responses, which provide the basis for the analysis below.

Structured judicial interviews, each lasting approximately one hour, were conducted in a controlled one-on-one setting, following a standardized interview script containing both closed- and open-ended questions. In these interviews, I probed judges' attitudes concerning a variety of topics, including ethical and professional norms, attitudes toward their work and colleagues, their opinions about training, appointment, and promotion procedures, and the relationship of the judiciary with other branches of government, the media, and the public. In total, I interviewed more than 100 judges in Romania and

approximately 20 judges in the Czech Republic, drawn from all levels of the judiciary in several representative geographic regions.<sup>36</sup>

In both countries, I also distributed a five-page written survey to a national sample of judges. This survey mirrored the closed-ended questions asked in my personal interviews with judges, thus allowing me to construct a large-N quantitative data set by combining survey and closed-ended interview responses. In Romania, survey responses were returned from a majority of the country's 40 counties (*judete*), totaling approximately 200 responses. In the Czech Republic, the survey yielded more than 70 responses from 7 of the Czech Republic's 8 territorial administrative units (*kraje*). As the sample statistics in Table 2 reveal, the samples in each country were reasonable well-distributed according to gender, age, instance and geographic location.

In comparing the cases of Romania and the Czech Republic, I argue that the countries share a number of important similarities that allow for a reasonably controlled comparison. In particular, as post-Communist states making the transition to democracy, a market economy and EU membership during roughly the same period of time, the two cases share a similar historical, cultural and political backdrop against which the processes of democratization and judicial reform have unfolded. At the same time, the cases differ markedly

**TABLE 2. Interview/survey sample vs. total population**

Sample Metric:	Romania		Czech Republic	
	Sample	Population*	Sample	Population**
<b>Number (N)</b>				
Total	304	4102	90	3044
<b>Gender</b>				
Male	29.6%	28.3%	60.0%	38.4%
Female	68.8%	71.7%	40.0%	61.6%
<b>Age</b>				
21-30	15.1%	6.9%	0.0%	0.7%
31-40	51.0%	47.5%	46.7%	33.4%
41-50	13.2%	21.1%	28.9%	28.6%
51-60	13.5%	21.8%	21.1%	28.1%
61-70	0.7%	2.7%	2.2%	9.2%
<b>Court Instance</b>				
District/Local Court	57.6%	48.4%	52.2%	61.8%
Tribunal/Regional Court	29.9%	32.1%	28.9%	30.9%
Appeals Court	11.8%	16.9%	11.1%	4.5%
Constitutional/Supreme Court	0.0%	2.6%	7.8%	3.4%
<b>Geographic Region</b>				
Bucharest	14.5%	13.2%	N.A.	N.A.
Wallachia	28.9%	34.0%	N.A.	N.A.
Transylvania	25.7%	32.1%	N.A.	N.A.
Moldavia	30.9%	20.7%	N.A.	N.A.
Prague	N.A.	N.A.	28.9%	22.3%
Bohemia	N.A.	N.A.	54.4%	73.9%
Moravia	N.A.	N.A.	44.4%	35.1%

\* Romanian figures for total population based on information provided by the Romanian Ministry of Justice and the Superior Council of Magistracy. \*\* Czech figures for total population based on information provided by the Czech Ministry of Justice..

in both the quality of the judiciary's formal institutional design and the role and reputation of domestic judicial institutions in the judicial reform process, suggesting a potentially fruitful comparison in these key areas.

That said, there are important methodological limitations associated with comparing a small number of cases whose outcomes may be influenced by numerous explanatory variables (what Lijphart deemed the "many variables, small N" problem).<sup>37</sup> Thus, the present analysis is envisioned primarily as a theory-building exercise, whose main purpose is to explore the utility of competing theoretical frameworks rather than to definitively test the validity of specific hypotheses. On one hand, the study is conceived of as a theory-infirming analysis intended to demonstrate the insufficiency of the institutionalist approach as a theoretical framework for explaining informal judicial attitudes. On the other hand, I argue that the cases offer the opportunity for a focused comparison of the relationship between institutional trust and judicial culture, intended to affirm the utility of this theoretical approach and encourage future research along similar lines.<sup>38</sup>

### **Assessing Feelings of Judicial Autonomy**

The first dimension of judicial culture examined in this analysis concerns the autonomy of judges. Here, the study adopts a broad definition that includes threats to judicial autonomy both in the decision-making process and in the realm of professional advancement, where judicial autonomy may be challenged indirectly. In turn, our evaluation of judicial autonomy in Romania and the Czech Republic employs a series of questions concerning the overall independence of the judiciary, as well as the degree of perceived interference in specific court cases and in the system of hiring and promotion.

As Table 3 illustrates, the findings reveal evidence of perceived threats to judicial autonomy among both Romanian and Czech judges, as respondents in both countries report feeling various kinds of improper or undue pressures on the judiciary. However, the data also reveal an important distinction in judicial attitudes between the two cases, according to which judges in the Czech Republic consistently report greater feelings of autonomy than their Romanian counterparts for nearly every indicator of judicial autonomy in the study.

At the most general level of abstraction, a large proportion of judicial respondents in both countries report feeling "considerable pressures" in their daily work. More specifically, 52 percent of Romanian judges and 46 percent of Czech judges report that they agree with the statement: "Although judicial independence is theoretically protected by law, practically speaking, judges face considerable pressures from within and from outside the system." Thus, a sizeable share of judges in both countries appear to believe that formal guarantees of judicial independence are not enough to shield the judiciary from the influence of outside actors. Moreover, the results indicate that a slightly larger percentage of judges in Romania feel their independence threatened than in the Czech case.

When we examine indicators gauging more specific types of threats to judicial independence, we find that judges in Romania are consistently more likely to report experiencing undue pressure or interference. For example, when asked about the frequency of direct pressure from politicians and superiors, 13 percent of Romanian judges reported feeling pressure from politicians on a regular basis, and 9 percent of Romanian respondents reported frequent pressure from their superiors in the judiciary. In contrast, only 1 percent of Czech judges reported frequent pressure from politicians and only 4 percent reported feeling significant pressure from their superiors. Similarly, when asked about undue inter-

TABLE 3. Aggregate measures of judicial autonomy

Indicator	Romania*		Czech Republic**		Country-Level Difference	
	Disagree	Don't Know/ No Answer	Disagree	Don't Know/ No Answer	Agree	Variation in "Disagree" Responses
Please indicate how much you agree or disagree with the following statement:						
Although judicial independence is theoretically protected by law, practically speaking, judges face considerable pressures from within and from outside the system.	38%	10%	44%	10%	46%	+6 pts.
	Never/ Rarely	Don't Know/ No Answer	Some/ Rarely	Don't Know/ No Answer	None Often	Variation in "Never/Rarely" Responses
In general, how often do you feel pressure from politicians who may have an interest in the outcome of a particular case?	79%	8%	96%	3%	1%	+17 pts.
What about from your superiors (such as the president of your court, members of the court of next instance, or the Supreme Council of Magistracy)? How often would you say you feel pressure from them?	85%	6%	92%	4%	4%	+7 pts.

**TABLE 3. (Continued)**

Indicator	Romania*		Czech Republic**		Country-Level Difference	
	None/ A Little	Don't Know/ No Answer	None/ A Little	Don't Know/ No Answer	Some/ A Lot	Variation in "None/A Little" Responses
To what extent do you believe that political connections play a role in determining which judges get hired and promoted?	46%	18%	72%	14%	14%	+26 pts.
What about personal connections? To what extent do you think these influence decisions about hiring and promotions?	44%	15%	37%	13%	50%	-7 pts.

\* N ranges between 295 and 303 cases, depending on question. \*\* N ranges between 88 and 90 cases, depending on question.

ference in the hiring and promotion process, more than one third (36 percent) of Romanian judges indicated that political connections play a significant role in personnel decisions, compared to only 14 percent of Czech judges.

The one area in which Czech judges indicate feeling less autonomous than their Romanian counterparts concerns the role of personal connections in hiring and promotion practices. Here, a full 50 percent of Czech respondents say that personal connections matter in hiring and promotion decisions, compared to 41 percent of respondents in Romania. In turn, this finding appears to indicate a troubling tendency in the Czech judiciary's informal culture. However, a key distinction in the institutional structures of the two countries may be at least partially responsible for this surprising result. Whereas the majority of hiring and promotion decisions in Romania are made according to a strict exam-based system designed to promote objectivity and eliminate the possibility of favoritism or corruption, the Czech system is much more subjective in nature, eschewing absolute neutrality in favor of greater discretionary power on the part of court presidents and advisory councils.

In turn, given the stark contrast in formal procedures between the two cases, it is plausible that Czech judges may view the role of personal connections in career-related decisions differently than their Romanian colleagues. Indeed, in personal interviews with judges in Romania, respondents almost universally viewed the impact of personal connections in the hiring and promotion process as unfair and unjust. However, among Czech judges, the verdict was mixed. While some saw the influence of personal connections as a hindrance to fair personnel decisions, others viewed it as a natural, even constructive element of a more discretionary system of professional advancement.<sup>39</sup> Thus, it is necessary to exercise caution in interpreting responses to this indicator, recognizing that its contextual meaning may not be readily comparable across the two cases.

Finally, a closer look at the data in Table 3 suggests an important difference not only in the level of autonomy enjoyed by judges in Romania and the Czech Republic, but in the kind of autonomy in each case. In the Czech Republic, as we have seen, judges express the most concern about personal connections in the hiring and promotion process, but very little concern about political interference in their work or in their careers. In contrast, we see significant concerns among Romanian judges about political pressure in both the judicial decision-making process and the judicial career path, suggesting that the constitutionally defined separation of powers in Romania is threatened to a degree that we do not see in the Czech case.

### **Comparing Patterns of Judicial Integrity**

The next dimension of judicial culture concerns the integrity of judges in the face of corruption and professional misconduct. Given the sensitive nature of the topic, the surveys and interviews employed in this study do not contain questions that directly implicate respondents in any type of immoral or illegal behavior. Rather, the indicators below were designed to measure judges' tolerance toward corruption, as opposed to corruption as an empirical fact.

With this in mind, the first indicator of judicial integrity probes judicial attitudes towards corruption as a generalized systemic problem. Using a seven-point Likert scale of agreement, respondents were asked to agree or disagree with the following statement: "It may not be a good thing, but a certain amount of corruption in the judiciary is probably inevitable." As Table 4 indicates, the results reveal a dramatic difference in the attitudes of Romanian and Czech judges toward the problem of corruption in the judicial system.

In Romania, nearly half (48 percent) of the judges who participated in the study said they believe that corruption in the judiciary is an inevitable problem, as compared to only 3 percent of respondents in the Czech Republic.

The second integrity indicator, designed to measure the tolerance of judges toward the corrupt behavior of others, yields similar results. In this case, judges were asked to imagine a hypothetical scenario in which they obtained certain information that a judge in their court had accepted a bribe or personal favor to influence the outcome of a case. The judges were then asked how they would most likely respond, given a choice between the following options: (a) Keep it to yourself, do nothing; (b) Approach the colleague, but do nothing more; (c) Approach the colleague first, then report the incident if this fails to correct his/her behavior; (d) Report the incident to the proper authorities as soon as you find out; (e) other.<sup>40</sup> Similarly, almost half (45 percent) of respondents in Romania indicated they would not report the misconduct of their colleague, while only 14 percent of Czech judges said they would not report the hypothetical transgression.

Assuming these figures are an accurate representation of the true attitudes of judges in both countries, the data clearly indicate that the level of tolerance toward corruption is dramatically higher among Romanian judges than among their Czech counterparts—both as a systemic problem and with regard to the corrupt actions of others. Thus, even acknowledging that these relatively simple indicators cannot capture the full complexity of the issues at hand, they offer powerful evidence of a significant distinction between the informal cultures of the Romanian and Czech judiciaries in the area of judicial integrity.

### **Trends in Satisfaction and Commitment**

The third and final dimension of judicial culture explored in this study concerns the professional satisfaction and commitment of judges. These concepts are operationalized through a series of statements with which judges were asked to agree or disagree using a seven-point Likert scale.<sup>41</sup> The statements were designed to gauge a number of facets of judicial satisfaction and commitment, including judges' satisfaction with the material conditions in the courts and the adequacy of judicial salaries, feelings of personal and professional fulfillment, the long-term commitment of judges to the judicial profession, and the willingness of judges to make everyday sacrifices to fulfill their professional duties.

A look at aggregate responses to the indicators in Table 5 reveals some interesting patterns in the cultural landscapes of the Romanian and Czech judiciaries—both in terms of their similarities and their differences. First, we see that satisfaction with the material conditions facing judges is in somewhat short supply in both cases. This is especially true regarding the issue of auxiliary personnel in the courts, which only 25 percent of Romanian judges and 14 percent of Czech judges believe is adequate. Responses regarding judicial salaries and the maintenance of courthouse buildings are more optimistic in both cases. However, a clear distinction can be made between Romanian judges, a third of whom are dissatisfied with judicial salaries and more than half of whom are dissatisfied with courthouse buildings, and Czech judges who are generally, if not enthusiastically, satisfied with both salaries and buildings.<sup>42</sup>

To be sure, these material conditions matter—particularly because of the impression they give to citizens about the status of the courts in society and the health of the justice system. Whether or not material conditions in the courts are an accurate reflection of the state of justice, they can have a powerful impact on the way citizens think about the judicial system.<sup>43</sup> Yet, it is an open question whether such material conditions actually

TABLE 4. Aggregate measures of judicial integrity

Indicator	Romania*			Czech Republic**			Country-Level Difference	
	Disagree	Don't Know/ No Answer	Agree	Disagree	Don't Know/ No Answer	Agree	Variation in "Disagree" Responses	Variation in "Report Colleague" Responses
Please indicate how much you agree or disagree with the following statement:								
It may not be a good thing, but a certain amount of corruption in the judiciary is probably inevitable.	46%	6%	48%	94%	2%	3%	+50 pts.	
If you obtained certain information that a judge in your court had accepted a bribe or personal favor to influence the outcome of a case, how would you most likely respond?	Report Colleague†	Don't Know/ No Answer	Don't Report Colleague‡‡	Report Colleague†	Don't Know/ No Answer	Don't Report Colleague‡‡	Variation in "Report Colleague" Responses	+27 pts.
	48%	7%	45%	75%	13%	13%		

\* N ranges between 295 and 303 cases, depending on question. \*\* N ranges between 88 and 90 cases, depending on question. † Report Colleague responses include: "report the incident to the proper authorities as soon as you find out" and "approach the colleague first, then report the incident if this fails to correct his/her behavior." ‡‡ Don't Report Colleague

impact the way judges themselves view their work—perhaps the most important potential consequence of poor material conditions in the courts.

In this regard, the data reveal that despite complaints about inadequate working conditions, both Romanian and Czech judges report extremely high levels of personal satisfaction with their work. When asked whether they are proud of the work they do as judges, 96 percent of respondents in both Romania and the Czech Republic responded positively. Similarly, 93 percent of Romanian judges and 97 percent of Czech judges indicated that they find their work personally fulfilling.<sup>44</sup> Moreover, while not conclusive, simple correlations between the material satisfaction indicators described above and judges' feelings of personal and professional fulfillment indicate no statistically significant relationships between these variables in either Romania or the Czech Republic. Thus, the evidence strongly suggests that feelings of professional satisfaction are not tied to questions of material conditions in the courts.

Regarding the issue of commitment, the last three rows of Table 5 show that both long-term commitment to the judicial profession and short-term commitment in the form of time and energy is quite high across the board. In Romania and the Czech Republic, more than three quarters of judges report that there is no other job they would prefer, while 80-90 percent of judges in both countries say they often think about cases when they are not at work and often work extra hours when they are not required. Again, this suggests that commitment to the judicial profession is not related to the material conditions in the courts, but rather to judicial feelings of job satisfaction, as the literature on organizational culture would suggest.<sup>45</sup> However, a more comprehensive statistical analysis is necessary to draw any firm conclusions on this point.

### Discussion

Taken together, the survey and interview data reveal some intriguing attitudinal trends in the judiciaries of Romania and the Czech Republic. Most obviously, the data demonstrate a clear cultural distinction in the areas of judicial autonomy and judicial integrity—indicating that, by and large, Romanian judges feel less autonomous than their Czech colleagues and hold substantially more tolerant attitudes toward corruption and professional misconduct in the judiciary.

At the most basic level, these findings support the proposition that informal judicial culture is an issue worthy of attention by scholars and policymakers concerned with democratization and legal reform in the post-Communist region. Indeed, the attitudinal trends observed in the Romanian case illustrate how informal cultural norms in transitioning judiciaries can (and do) run counter to the principles of transparency and accountability espoused by would-be reformers, undercutting sophisticated formal institutional structures and safeguards designed to promote the democratic rule of law.

Moreover, with respect to the macro-level origins of judicial culture, the findings suggest that institutional trust is a better predictor of informal cultural attitudes than formal institutional design. Indeed, the survey and interview results in both countries run in direct opposition to institutionalist expectations, demonstrating that the superior institutional design of the Romanian judiciary has done little to guarantee the informal autonomy or integrity of judges in Romania, while the culture of the Czech judiciary appears unaffected by a largely unreformed institutional design. At the same time, the results seem to suggest that higher levels of trust in the self-governing institutions of the Czech judiciary have

TABLE 5. Aggregate measures of satisfaction and commitment

Indicator	Romania*		Czech Republic**		Country-Level Difference
	Agree	Don't Know/ No Answer	Agree	Don't Know/ No Answer	
Please indicate how much you agree or disagree with the following statement:					Variation in "Agree" Responses
Judges in Romania/Czech Republic are paid a good salary relative to their peers in other professions.	66%	1%	83%	1%	+17 pts.
The courthouse buildings where I work are well maintained.	43%	3%	69%	2%	+26 pts.
The courts are provided with adequate support staff (clerks, secretaries, etc.).	25%	2%	14%	6%	-11 pts.
I am proud of my work as a judge.	96%	3%	96%	3%	0 pts.
I find my work as a judge personally fulfilling.	93%	3%	97%	0%	+4 pts.
I may not like everything about my job, but there is no other profession that I would prefer.	90%	3%	79%	11%	-11 pts.
I often think about current cases when I am not at work.	89%	2%	86%	8%	-3 pts.
I often work extra hours when I'm not required to.	87%	4%	82%	9%	-5 pts.

\* N ranges between 295 and 303 cases, depending on question. \*\* N ranges between 88 and 90 cases, depending on question.

helped to foster greater feelings of autonomy and integrity among Czech judges—even in the absence of advanced institutional protections and guarantees—while a deficit of institutional trust in Romania is associated with comparatively negative attitudinal trends among Romanian judges.

In turn, the study's findings offer some initial support for a theoretical framework linking informal cultural attitudes with feelings of institutional trust. To be sure, the present analysis cannot conclusively demonstrate such a relationship. However, as a theory-building inquiry designed to shed light on the utility of competing theoretical frameworks, the study challenges the wisdom of a strict institutionalist approach to judicial reform, pointing instead to the relationship between institutional trust and cultural attitudes as a fruitful avenue for future research.

Finally, with respect to the professional satisfaction and commitment of judges, the results of the study are admittedly more ambiguous. While Romanian judges are generally less satisfied with the material conditions and resources of the judiciary, they nevertheless report feeling equally proud of and nearly as fulfilled by their work as their Czech colleagues. Moreover, regarding their allegiance to the judicial vocation, Romanian judges actually report higher levels of professional commitment than Czech judges in the study. Thus, it is unclear from these results whether feelings of judicial satisfaction and commitment are linked to systemic-level concerns such as the quality of the judiciary's institutional design or the reputation of leading judicial institutions. What the data do suggest, however, is that feelings of professional fulfillment and commitment among judges in both countries are being driven by concerns beyond the immediate material conditions in the courts.

### **Conclusion**

As part of a larger project examining the role of cultural norms and attitudes in the process of post-Communist judicial reform, this analysis examines several key dimensions of the judiciary's informal culture in the transitioning states of Romania and the Czech Republic. Based on nearly 400 survey and interview responses from judges in both countries, I offer an empirical overview of aggregate-level trends in judicial culture, identifying important similarities and differences between the cases, and attempting to assess the strength of competing theoretical frameworks for understanding these attitudinal patterns.

While the results of the study indicate high levels of job satisfaction and relatively strong organizational commitment among judges in both Romania and the Czech Republic, the data concerning judicial autonomy and judicial integrity appear less optimistic in the Romanian case—marking an important distinction between the judicial cultures of the two countries. In turn, I argue that the findings of the study underline the importance of informal cultural norms and attitudes in the judiciary, which may work at cross purposes with institutional reform efforts intended to promote transparency and accountability in transitioning legal systems. Further, I argue that the data provide strong empirical evidence refuting the institutionalist claim that superior institutional design will produce better institutional outcomes. Rather, in line with aggregate-level patterns in the data, I contend that the informal culture of the judiciary is more likely related to the level of trust that judges place in the self-governing institutions of the judiciary, which are responsible for defending the interests of judges and ensuring the enforcement of formal institutional rules and protections.

In turn, the findings of the study may have important implications for policymakers interested in promoting democracy and the rule of law in the post-Communist region. If the results of this analysis are correct, they suggest that policymakers must look beyond the level of formal institutional design in addressing the challenges of post-Communist legal reform. At the minimum, reformers should be cognizant of the role that informal rules and norms may have on the performance and development of transitioning judicial institutions. Moreover, the findings suggest that policymakers should consider how proposed reforms may influence the reputation and credibility of key legal and political institutions, recognizing that trustworthy institutions may be more valuable to the development of a healthy judicial culture than strong formal powers and protections.

Finally, it must be acknowledged that this study can offer only a cursory glimpse at the fascinating and complex role of judicial culture in the development of the region's transitioning judiciaries. Concentrating on a small number of cases, the analysis is intended to provide an empirical overview of macro-level trends, and to present a clear and compelling theoretical alternative to the dominant institutionalist paradigm in the literature on democratization and the rule of law. However, given the methodological limitations of a two-case comparison focused on the impact of systemic-level variables, the findings are necessarily more suggestive than conclusive.

Thus, the next step—and a vital one, at that—is to bolster the claims made here by moving the analysis from the macro level to the micro level, examining how individual judges' attitudes are shaped by their individual characteristics, experiences and opinions, as well as by their personal understanding of important macro-level processes. First and foremost, such a micro-level approach will allow us to demonstrate the power of the macro-level arguments made here, by illustrating how confidence in key legal and political institutions impacts individual judges' attitudes about their autonomy, their profession and the problem of judicial corruption. Moreover, this approach is likely to illuminate a host of other factors—demographic, attitudinal and experiential—that play a role in shaping judicial attitudes and opinions at the individual level, allowing us to build a more nuanced, more comprehensive theory of the origins of judicial culture in transitioning states.

## NOTES

1. This project was completed with the support of a Fulbright-Hays Doctoral Dissertation Research Abroad fellowship. An earlier version of this paper was delivered at the Havighurst Center for Russian & Post-Soviet Studies' Annual International Young Researchers Conference, "Legal Change in Context: Cross-Disciplinary Approaches to Law and the Transformation of Post-Communist Polities," October 23-26, 2008, Miami University, Oxford, OH.

2. This study follows the prevailing trend in the literature, positing that the rule of law is characterized by at least a few minimal conditions—that laws are freely available, that they are fairly and consistently applied, and that no individual or institution is above the law. Thus, paraphrasing O'Donnell, the rule of law is defined here as: The maintenance of social and political order according to legal rules which are written down, publicly promulgated, and fairly and equally applied across all segments of the population, regardless of one's class, status, or position in society. See Guillermo O'Donnell, "Why the Rule of Law Matters," *Journal of Democracy* 15, no. 4 (2004): 32-46.

3. As Carothers notes, "Western policymakers have seized on the rule of law as an elixir for countries in transition . . . How can US policy on China cut through the conundrum of balancing human rights against economic interests? Promoting the rule of law, some observers argue, advances both

principles and profits. What will take for Russia to move beyond Wild West capitalism to more orderly market economics? Developing the rule of law, many insist, is the key . . . Indeed, whether it's Bosnia, Rwanda, Haiti, or elsewhere, the cure is the rule of law, of course." See Thomas Carothers, "The Rule of Law Revival," *Foreign Affairs* 77, no. 2 (1998): 95.

4. Juan Linz and Alfred Stepan, "Toward Consolidated Democracies," *Journal of Democracy* 7, no. 2 (1996): 14-33; Larry Diamond and Leonardo Morlino, "The Quality of Democracy: An Overview," *Journal of Democracy* 15, no. 4 (2004): 20-31; and O'Donnell, "Why the Rule of Law Matters."

5. Donald D. Barry, ed., *Toward the "Rule of Law" in Russia? Political and Legal Reform in the Transition Period* (Armonk, NY: M.E. Sharp, 1992); Inga Markovitz, *Imperfect Justice: An East-West German Diary* (New York: Oxford University Press, 1995); Gordon B. Smith, *Reforming the Russian Legal System* (Cambridge: Cambridge University Press, 1996).

6. Kathryn Hendley, "Mobilizing Law in Contemporary Russia: The Evolution of Disputes Over Home Repair Projects," forthcoming in *The American Journal of Comparative Law* 58, no. 4 (2010); Sang-Weon Kim and William A. Pridemore, "Social Change, Institutional Anomie, and Serious Property Crime in Transitional Russia," *British Journal of Criminology* 45 (2005): 81-97.

7. Pedro Magalhaes, "The Politics of Judicial Reform in Eastern Europe," *Comparative Politics* 32, no. 1 (1999): 43-62; Shannon Ishiyama Smithey and John Ishiyama, "Judicious Choices: Designing Courts in Post-Communist Politics," *Communist and Post-Communist Studies* 33, no. 2 (2000): 163-82; Alexei Trochev, "Less Democracy, More Courts: A Puzzle of Judicial Review in Russia," *Law & Society Review* 38, no. 3 (2004): 513-48.

8. Irina Dline and Olga Schwartz, "The Jury Is Still Out on the Future of Jury Trials in Russia," *East European Constitutional Review* 11, nos. 1/2 (2002): 104-10; Kathryn Hendley, "Accelerated Procedure in the Russian Arbitrazh Courts: A Case Study of Unintended Consequences," *Problems of Post-Communism* 52, no. 6 (2005): 21-31.

9. Peter H. Solomon and Todd S. Foglesong, *Courts and Transition in Russia: The Challenge of Judicial Reform* (Boulder, CO: Westview Press, 2000).

10. Freedom House, *Nations in Transit 2005* (New York: Freedom House, 2005); ABA/CEELI, *Judicial Reform Index for Romania* (Washington, DC: American Bar Association/Central European and Eurasian Law Initiative, 2002).

11. As one prominent scholar puts it, "The focus of any practical endeavors to secure judicial independence must be on institutional arrangements designed to protect and foster independence. Judicial independence of mind and behavior cannot be manufactured." Peter H. Russell, "Toward a General Theory of Judicial Independence," in *Judicial Independence in the Age of Democracy: Critical Perspectives from Around the World*, eds. Peter H. Russell and David M. O'Brien (Charlottesville, VA: The University of Virginia Press, 2001, p. 8).

12. Erik S. Herron and Kirk A. Randazzo, "The Relationship Between Independence and Judicial Review in Post-Communist Courts," *Journal of Politics* 65, no. 2 (2003): 422-38.

13. Maria Popova, "Judicial Independence and Political Competition: Electoral and Defamation Disputes in Russia and Ukraine," Ph.D. dissertation, Harvard University (2006).

14. Shannon Ishiyama Smithey and John Ishiyama, "Judicious Choices: Designing Courts in Post-Communist Politics," *Communist and Post-Communist Studies* 33 (2000): 163-182.

15. Herman Schwartz, *The Struggle for Constitutional Justice in Post-Communist Europe* (Chicago: University of Chicago Press, 2000); Trevor L. Brown and Charles Wise, "The Constitutional Court and Legislative-Executive Relations: The Case of Ukraine," *Political Science Quarterly* 19, no. 1 (2004): 143-80; Kim Lane Scheppele, "Democracy by Judiciary (Or Why Courts Can Sometimes Be More Democratic than Parliaments)," in *Rethinking the Rule of Law in Post-Communist Europe: Past Legacies, Institutional Innovations, and Constitutional Discourses*, eds. W. Sadurski, M. Krygier and A. Czarnota (Budapest: Central European University Press, 2005).

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19. Elinor Ostrom, *Understanding Institutional Diversity* (Princeton: Princeton University Press, 2005); Douglass North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990); David M. Kreps, "Corporate Culture and Economic Theory," in *Perspectives on Positive Political Economy*, ed. J. E. Alt and K. A. Shepsle (Cambridge: Cambridge University Press, 1990).

20. Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975); John Henry Merryman, *Law and Social Change in Mediterranean Europe and Latin America: A Handbook of Legal and Social Indicators for Comparative Study* (Stanford, CA: Stanford Law School, 1979); David Clark, "The Legal Profession in Comparative Perspective: Growth and Specialization," *The American Journal of Comparative Law* 30 (1982): 163–75.

21. As Silbey notes in a critical review of the comparative law scholarship on legal culture, the term was "never theorized elaborately and reformulated several times over the years as a general concept more than a set of quantifiable indicators." Susan S. Silbey, "Legal Culture and Consciousness," in *International Encyclopedia of the Social and Behavioral Sciences* (Amsterdam: Elsevier Science, Ltd., 2001): 8625. Moreover, in a retrospective essay on the legal culture movement, Friedman himself acknowledges the ambiguity of the term, suggesting that it is mainly useful as a way of "lining up a range of phenomena into one very general category." Lawrence M. Friedman, "The Concept of Legal Culture: A Reply," in *Comparing Legal Cultures*, ed. David Nelken (Hants, UK: Dartmouth Publishers, 1997): 33.

22. For a detailed and thought provoking discussion of the distinctions between "rule of law" and "rule by law," see O'Donnell, "Why the Rule of Law Matters."

23. Peter H. Solomon Jr., "Informal Practices in Russian Justice: Probing the Limits of Post-Soviet Reform," in *Russia, Europe, and the Rule of Law*, ed. Ferdinand Feldbrugge, 79–92 (Leiden, Netherlands: Martinus Nijhoff, 2007); Bruno Schönfelder, "Judicial Independence in Bulgaria: A Tale of Splendour and Misery," *Europe-Asia Studies* 57, no. 1 (2005): 61–92.

24. Russell identifies several "critical points of control and undue influence" where judicial independence is typically compromised in democratic or democratizing states. Besides altering the formal institutional or administrative structures of the court system, Russell argues that two important mechanisms are frequently used by would-be interlopers to threaten judicial independence more informally: (1) improper interference in "personnel" decisions, such as judicial appointments and promotions; and (2) "direct" actions, including bribery, threats, telephone calls, private visits, etc. Following this theoretical framework, the concept of judicial autonomy is operationalized in this study with questions about both indirect interference in personnel decisions, as well as direct actions aimed at altering the outcome of specific cases. See Peter H. Russell, "Toward a General Theory of Judicial Independence," in *Judicial Independence in the Age of Democracy: Critical Perspectives from Around the World*, eds. Peter H. Russell and David M. O'Brien (Charlottesville, VA: The University of Virginia Press, 2001).

25. William Lockley Miller, Åse B. Grødeland, and Tatyana Y. Koshechkina, *A Culture of Corruption? Coping with Government in Post-Communist Europe* (Budapest: Central European University Press, 2001); Rasma Karklins, "Typology of Post-Communist Corruption," *Problems of Post-Communism* 49, no. 4 (2002): 22–33; Wayne Sandholtz and Rein Taagepera, "Corruption, Culture, and Communism," *International Review of Sociology* 15, no. 1 (2005): 109–131; Leslie Holmes, *Rotten States? Corruption, Post-Communism, and Neoliberalism* (Durham, NC: Duke University Press, 2006).

26. Indeed, numerous studies of organizational culture in both business and public sector settings focus on understanding and modeling the organizational commitment of employees as a critical element of a healthy and productive organizational culture. See Clifford J. Mottaz, "Determinants of Organizational Commitments," *Human Relations* 41, no. 6 (1988): 467-82; Natalie J. Allen and John P. Meyer, "The Measurement and Antecedents of Affective, Continuance and Normative Commitment to the Organization," *Journal of Occupational Psychology* 63 (1990): 1-18; Roderick D. Iverson and Parimal Roy, "A Causal Model of Behavioral Commitment: Evidence from a Study of Australian Blue-Collar Employees," *Journal of Management* 20, no. 1 (1994): 15-41. Moreover, a number of empirical studies have demonstrated a strong link between job satisfaction and organizational commitment, suggesting that satisfaction is an important predictor of employee performance and retention.

27. According to a number of studies, the purpose and authority of the law was so distorted under the communist system that its legitimacy has been irrevocably damaged, resulting in a legal culture characterized by widespread cynicism, mistrust and animosity toward formal legal rules and legal institutions—a syndrome that is sometimes referred to as "legal nihilism" or "anti-legalism." See Marina Kurkchiyan, "The Illegitimacy of Law in Post-Soviet Societies," in *Law and Informal Practices*, ed. Denis J. Galligan and Marina Kurkchiyan (Oxford: Oxford University Press, 2003); Peter Solomon, "Legality in Soviet Political Culture: A Perspective on Gorbachev's Reforms," in *Stalinism: Its Nature and Aftermath*, ed. Nick Lampert and Gábor T. Rittersporn (Armonk, NY: M. E. Sharpe, 1992); John Reitz, "Constitutionalism and the Rule of Law: Theoretical Perspectives," in *Democratic Theory and Post-Communist Change*, ed. Robert D. Grey, 111-143 (Upper Saddle River, NJ: Prentice Hall, 1997); Grażyna Skąpska, "The Legacy of Anti-Legalism," in *Marxism and Communism: Posthumous Reflections on Politics, Society, and Law*, ed. Martin Krygier, 199-218 (Amsterdam-Atlanta: Rodopi, 1994).

28. To be sure, the informal attitudes of judges are also likely to be influenced by a variety of factors at the individual level. Indeed, much of the doctoral dissertation on which this article is based analyzes the micro-level foundations of judicial culture. However, I argue that a good deal can be learned from examining the macro-level characteristics of the judicial reform process in Romania and the Czech Republic, and comparing those systemic constraints with aggregate-level patterns of judicial culture.

29. In practice, the council remained a highly politicized organ for much of the early post-Communist period, until a 2003 constitutional amendment that expanded its power and independence. For a more detailed chronology of legal reform legislation in Romania, see Daniel J. Beers, "Crime and Punishment in Romania: A System in Transition," in *Crime and Punishment Around the World*, ed. Graeme Newman (Westport, CT: Praeger Publishers, forthcoming 2010).

30. As an illustration, the Romanian Parliament has failed to approve many high level corruption cases in recent years against some of the country's most important political figures—a pattern of interference in the judiciary that has garnered severe criticism from both civil society watchdogs and international actors like the EU. In one particularly high profile case against the country's former Prime Minister, the Parliament went so far as to assume the role of an extraordinary instance—calling witnesses, hearing testimony, and ultimately dismissing the case—without the legal authority to do so. See "Deputatii au dat ieri o lovitură grea justiției prin neacordarea votului pentru urmărirea penală a lui Năstasa și Mitrea" ["Deputies dealt a heavy blow to justice in voting against the criminal pursuit of Năstasa and Mitrea"], *România Liberă*, August 14, 2008.

31. Commission of the European Communities, *Monitoring Report on the State of Preparedness for EU Membership of Bulgaria and Romania* (Brussels: Commission of the European Communities, 2006).

32. "Comisarul Frattini amenință România cu clauza de salvagardare pe Justiție" ["Commissioner Frattini threatens Romania with safeguard clause on Justice"], *Gândul*, May 31, 2007; "Clauza de salvagardare pe justiție?" ["Safeguard clause on justice?"], *România Liberă* October 9, 2007.

33. Unlike many neighboring states in Eastern Europe, the Czech government enacted a sweeping lustration policy in the early 1990s, which excluded former Communist Party members, secret police and collaborators from a range of public offices, including those in the judiciary. See Mark

S. Ellis, "Purging the Past: The Current State of Lustration Laws in the Former Communist Bloc," *Law and Contemporary Problems* 59, no. 4 (1996): 181-196.

34. Indeed, a number of retrospective analyses of Czech lustration raise serious doubts about whether the policy did more harm than good in attempting to purge the post-Communist government of former communist collaborators. See Jiřina Šiklová, "Lustration or the Czech Way of Screening," *East European Constitutional Review* 5 (1996): 57-62; Roman Boed, "An Evaluation of the Legality and Efficacy of Lustration as a Tool of Transitional Justice," *Columbia Journal of Transnational Law* 37, no. 2 (1999): 357-402; Kieran Williams, "A Scorecard for Czech Lustration," *Central Europe Review* 1, no. 19 (1999). Available at <http://www.ce-review.org/99/19/williams19.html>.

35. Most notably, former Czech Constitutional Court justice Vojtěch Cepl has spoken and published extensively as a prominent advocate of legal and constitutional reform in the Czech Republic. See Vojtěch Cepl, "Constitutional Reform in the Czech Republic," *University of San Francisco Law Review* 28 (1993): 41-47; Mark Gillis and Vojtech Cepl, "Making Amends After Communism," *Journal of Democracy* 7, no. 4 (1996): 118-124; Vojtěch Cepl "Bottlenecks in the Transformation of Eastern Europe," *Washington University Journal of Law and Policy* 4 (2000): 23-31.

36. In Romania, all interviews were conducted in Romanian, unless the respondent preferred to speak in English. In the Czech Republic, just under half of the interviews were conducted in English, while the rest were conducted in Czech with the aid of an interpreter.

37. Arend Lijphart, "Comparative Politics and the Comparative Method," *The American Political Science Review* 65, no. 3 (1971): 682-693.

38. To be sure, I do not argue that this analysis can provide evidence of a causal relationship between institutional trust and judicial culture. However, I do contend that it is useful for illuminating a potentially fruitful avenue for future research.

39. For example, one Czech judge explained: "If I didn't know the Chief Justice, I would never have become a judge. [But] it doesn't mean this is a bad thing. He read my articles, saw me lecturing, met me in public forums, so he knew I would be a good fit for the job." Author interview with Czech Supreme Administrative Court judge, Prague, April 11, 2008. Echoing this sentiment, another judge commented on the role of personal relationships in getting promoted: "It is just the way that promotions happen here. It doesn't mean playing golf with the [court] president. You should be known for your work . . . Obviously it is not transparent, but I don't consider it to be bad." Author interview with Czech administrative court judge, Prague, April 22, 2008.

40. For respondents who chose "other," if the open-ended response closely aligned with one of the predetermined responses, the answer was recoded accordingly.

41. Possible responses included: (1) completely disagree; (2) disagree; (3) somewhat disagree; (4) neither agree nor disagree; (5) somewhat agree; (6) agree; (7) completely agree.

42. Having visited a large number of courthouses in locations across Romania and the Czech Republic, these findings corroborate my own experiences and observations: While nearly all of the Czech courts I visited appeared to be in a more-or-less acceptable state of repair, conditions at the Romanian courthouses I saw were inconsistent at best, and shockingly inadequate at worst.

43. This opinion was echoed several times in interviews with Romanian judges working in courts with particularly dire circumstances. Moreover, in a series of citizen focus groups conducted by the author and two Romanian colleagues in May-June 2008 in Bucharest, Romania, participants repeatedly mentioned the material problems they observed in the courts, such as overcrowding, poorly maintained buildings, poorly organized filing systems, etc. as evidence of the inefficiency and incompetence that they claimed were characteristic of the entire legal system.

44. The results concerning judicial satisfaction should be interpreted with some caution. Given that the data in this study were collected voluntarily from willing participants, it is possible that we see such high levels of judicial satisfaction because of a selection bias issue—namely, that enthusiastic and optimistic judges were more likely to opt into the study than dissatisfied or disinterested judges.

45. See Larry J. Williams and Stella E. Anderson, "Job Satisfaction and Organizational Commitment as Predictors of Organizational Citizenship and In-Role Behaviors," *Journal of Man-*

*agement* 17, no. 3 (1991): 601-17; Robert J. Vandenberg and Charles E. Lance, "Examining the Causal Order of Job Satisfaction and Organizational Commitment," *Journal of Management* 18, no. 1 (1992): 153-67; Peter Lok and John Crawford, "The relationship between commitment and organizational culture, subculture, leadership style and job satisfaction in organizational change and development," *Leadership & Organization Development Journal* 20, no. 7 (1999): 365-74.