

**Social Rights under State Socialism?
Pensions and Housing in
Hungarian Welfare State Development***

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Abstract

Social rights are different in Eastern Europe than in the West. Their legacy reflects the very different relationship between state and citizen, and the more instrumental use of law under state socialism. This paper develops a model for distinguishing between different forms of social rights, not only in the West, but also as the concept might be applied to different periods of state socialism. A typology of different social rights is offered, and the lasting legacies of such rights are examined in Hungarian pension and housing policy since 1949. The paper is organized in four parts: 1) There is discussion of previous approaches to interpreting social rights in Eastern Europe. 2) A rough model is suggested to distinguish between varying conceptions of social rights along two dimensions: their relative emphasis on substantive or procedural justice, and on a negative or positive definition of the state's obligation to fulfill these rights. The result is four classifications of rights. The reigning Anglo-Saxon conception of social rights is thereby distinguished not only from the view employed by western welfare state advocates, but also from the Classical Communist logic and a Late Socialist form that is most relevant to contemporary Hungary. 3) It is argued that the informality of rights that was so central to the Late Socialist welfare state has in many ways been reinforced by the process of transformation from state socialism. 4) Housing and pension policy are used to illustrate the Hungarian rights legacy and how it continues to influence social policy.

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As a result of the current economic crisis across the region, ...the public is becoming increasingly sensitive to social rights. Most people cannot tolerate the growing differences among the diverse social groups or accept the reduction of the real value of their pensions and social services. Unfortunately, the drafters of the amended Constitution were not aware of the importance of including a precise and theoretically well-founded regulation explaining the scope of social and economic rights (Péter Paczolay, chief counselor to the Hungarian Constitutional Court, 1993b, p. 47).

Social rights are widely regarded as a critical element to any successful transition to liberal democracy (Kornai, 1990; Offe, 1993; Przeworski, 1991; World Bank, 1992). Market-oriented stabilization and structural reforms inevitably lead to at least a short-run decline in most people's living standards. Despite initial hopes of some economists (Lipton and Sachs, 1990), the transition process has proven to be highly protracted, and it is neither economically feasible nor conducive to democracy for governments to try jump-starting market growth before the populace has a chance to vote against the resulting social dislocation (Bresser Pereira, Maravall, and Przeworski, 1993). Recent elections in Hungary, Poland, Lithuania, Slovakia and Bulgaria demonstrate that East Europeans expect the state to be committed to social protection while they exchange the shabby security of the old regime for the uncertainties of elections and markets. A social safety-net is essential to avoiding a political backlash that might paralyze market reforms and perhaps lead to the embrace of non-pluralistic political alternatives.

Post-communist reform in Eastern Europe has typically been viewed as the imposition of new Western-style rights. Property rights are expected to bring forth marketization, electoral rights will usher in democracy, and social rights will ensure strong citizenship and social peace. Americans are particularly fond of framing issues in terms of rights, and to see politically mediated outcomes as derivative from the existing structure of rights (Glendon, 1991). Social transformation in Eastern Europe is often viewed as a problem of introducing the proper recipe of incentives and assurances: add Western-style rights and stir.

But the experience of property reform should make us careful about how we conceive of welfare state changes in terms of rights. The problems of Soviet-style economies have long been blamed on their lack of private property rights (Alchian, 1974; Nutter, 1968). Economic restructuring in Eastern Europe was therefore initially viewed as a kind of property rights-engineering from scratch (Lipton and Sachs, 1990; Brabant, 1991, Schroeder, 1988). But as attempts to create legally enforceable rights *de novo* have proven politically and administratively unworkable, property reform has increasingly come to be understood as a process of negotiating an already existing system of ill-specified claims.

Compared to property rights, social rights should be easier to conceptualize in terms of an ongoing negotiated process instead of inputs which beget a particular type of citizenship and welfare state. Social protection policies, unlike market relations, are more commonly viewed as a direct product of politics. A serious problem, however, is that while social rights are the central concept behind theories

of the welfare state, their meaning remains too ambiguous to be of much analytical use in Eastern Europe. The concept of social rights has, in practice, almost no definitional criteria beyond a vague association with egalitarian citizenship and Scandinavian welfare states. State-socialism is generally viewed as lacking real social rights because benefits which were allocated on the basis of need were subject to administrative discretion without means for effective legal appeal. Because there were no effective procedures for holding the state to the letter of the law this view holds that there could not have been genuine rights. East Europeans under communism had various tribunals and courts in which they could bring procedural grievances over employment-related benefits.¹ Social rights, as citizen guarantees for material provision, must connote more than job-related benefits. If, however, the term 'social right' applies primarily to need-based benefits for which the state can be effectively sued for non-provision then these social rights can be found almost nowhere outside of education or handicapped access. It remains unclear what should qualify as a social right. The concept must be better specified if it is to be applied to unfamiliar and radically different settings such as Eastern Europe.

I. Interpretations of Social Rights in Eastern Europe

The concept of social rights has been central to understanding the development of welfare states in the West. The basic idea that unifies various notions of social rights is that people cannot truly be free in a modern society unless they enjoy a certain degree of material security. Individuals who face the threat of abject poverty are, in other words, considered unable to participate in society as free citizens. The standard definition remains that of T.H. Marshall, that social rights constitute, "a modicum of economic welfare and security...the right to share to the full in the social heritage and to live the life of a civilized being according to standards prevailing in the society"(Marshall, 1950). Marshall described these rights in the British experience as a logical progression from basic civil rights in the eighteenth century to political rights in the nineteenth century, and ultimately the emergence of social rights in the twentieth. "Few can disagree with T.H. Marshall's proposition that social citizenship constitutes the core idea of the welfare state" as Esping-Andersen asserts, "But the concept must be fleshed out" (1990: 21). While the concept remains theoretically compelling, its poor specification makes it even harder to use for understanding Eastern European welfare states .

Social rights and a welfare state are concepts now being applied to former communist systems as they attempt to 'return to Europe'. Efforts to apply such vague categories to this unfamiliar situation have tended to follow one of three different paths. Analysts either ignore the social rights core of the welfare state; they insist that social rights were impossible under communism; or they attempt to

¹ Marshall does not discuss social insurance as a social right. For Hungarian employment benefits there were special courts for adjudicating disputes over the accounting of earnings-related benefits and various enterprise-based work councils and territorial labor courts.

understand communist-era social rights according to how they deviate from Marshall's ideal sequence of rights development.

Economist ignore social rights while analyzing East European welfare states. Kornai, for instance, is attentive to the sequencing of Hungary's welfare state -- arguing that Hungary is ahead of itself in the creation of a premature welfare state incommensurate with the level of economic development² -- but he carefully refers only to the socialist system's "constitutional commitments" rather than to social rights. Milanovic, a chief economist for the World Bank, skirts the issue of rights by trying to place state-socialism in terms of Esping-Andersen's scheme of different regimes of welfare capitalism (Milanovic, 1994).³ It is instructive that the welfare state is now characterized as a 'regime', a concept imported from international relations theory where it describes a set of implicit or explicit principles, norms, rules, and decision making procedures rather than a set of formal procedures grounded in international law. Unlike a system of rights, the effectiveness of regimes does not require a strong rule of law. While economists acknowledge that informal institutions are at least as important as formal ones (North, 1990) they have yet to explore the informal institutions of the welfare state.

Others argue that genuine social rights were not possible under communism because the authority of the state was only loosely constrained by the rule of law. In the context of Eastern Europe the welfare state has thus been analytically decoupled from its 'core idea' of social rights. The existence of a welfare state without other prerequisite rights can then only be defined negatively: as welfare without rights, or as T.H. Marshall commented in reference to India, "welfare without citizenship"(cited in Roche, p. 37). As the Hungarian legal scholar, A. Sajó has argued, there could be no social rights in Eastern Europe without the rule of law.

...[C]ertain public services were provided which correspond to some extent to third generation human rights, although they were not provided in terms of rights, i.e. these were not enforceable in an independent court. The state had no duties in this respect; it provided its services on a discretionary basis and in exchange of political loyalty and daily conformism."(1994: 6).

Ferge, a prominent Hungarian scholar of social policy, agrees that, "in the absence of civil and political rights access to these benefits or services *could not become social rights*"(1994: 10). This view is echoed in other characterizations of a Soviet-style "collectivist welfare state,"(Rose, 1992) and "welfare state authoritarianism"(Breslaur, 1978). The World Bank similarly points to a lack of legal procedures constraining state authority, when it perceives an absence of social rights in post-communist Hungary.

There appears to be no right to social assistance, in the sense that any individual demonstrating financial need (and meeting any other specified criteria) is guaranteed payment, with an appeal

² "Kornai states, "To a certain extent the classical, pre-reform socialist system rushed ahead when it made a constitutional commitment that it would satisfy a number of basic needs free or for minimal recompenses "(1993: 15-16).

³ Deacon (1993) and Baxandall (1993) also frame state-socialist welfare in terms of Esping-Andersen's three ideal-typical welfare regimes.

procedure providing for redress in the case of an assessment with which the claimant disagrees. ...The decision to award any benefit appears to be entirely at the discretion of the local council (World Bank 1992, p. 88-89).

When the existence of some form of social rights under state-socialism has been acknowledged, the focus has generally been on how such rights deviate from Marshall's three stage development sequence. Marshall's ideas about social rights were never intended to extend beyond the historical experience of England and, as numerous commentators have argued, the British path has not been closely followed by other nations (Briggs, 1961, Skocpol, 1992).⁴ Some have therefore argued that in Eastern Europe social policies *do* reflect a set of existing social rights, but that these rights are distorted because of their peculiar sequencing. Kolankiewicz (1992) argues that they have been misshapen from being collectively defined "industrial" rights. Scheppele (1994) speculates that East European social rights may have crowded out the space for subsequent civil and political rights. Such arguments have the benefit that they recognize how social rights are situated in their own historical context, although it is unclear why Marshall's sequence should be the analytical reference point. This paper takes as its point of departure the observation that East European social rights have a distinct form. But rather than classify social rights as either 'normal vs. distorted' or 'correctly vs. incorrectly sequenced' the following section attempts to delineate a two dimensional typology of different conceptions of social rights.

II. A Model of Social Rights

Different conceptions of social rights can be distinguished along two lines. The first is the familiar distinction between the relative emphasis on *negative* as opposed to *positive rights* (Berlin, 1969). The classification is between rights that are viewed as claims to autonomous activity, free from outside interference (negative rights), or alternately, as freedom conceived as self-realization, connoting an obligation on the part of the collective authority to act in ways that confirm that freedom by satisfying a set of preconditions which enable citizens to live freely (positive rights).

The second classification distinguishes between primarily *procedural* as opposed to *substantive* rights. Procedural rights are ensured through the enforcement of formally codified law according to closely specified and impersonal procedures. Substantive rights, on the other hand, are normative principles that serve to guide and direct relations between the state and citizens. There is no necessary connection between how procedural or substantive a social right is and its strength or weakness. The key difference between procedural and substantive social rights is in how they define the means for achieving equality. In the case of procedural social rights, equality is achieved through regularizing and generalizing the application of social protection policies so as to depersonalizes each individual before the

⁴ Social rights under Bismark's Germany and Napoleon's France, for example, preceded political rights.

law, except in those prescribed aspects of their condition -- such as income or family size -- that are specifically relevant to the execution of the law. Procedural social rights seek to equalize the opportunities or 'life chances' of the underprivileged, often through means-tested benefits and wide access to education. Substantive social rights, on the other hand, attempt to achieve equality of effect. This equality is satisfied only to the extent that differences in socio-economic status are diminished. A substantive social right demands results; its aims may be as specific as the attainment of a stipulated minimum vacation time for all workers, but there will be wide discretion for the means of achieving those aims.

Typology of Comparative Social Rights

	Procedural	Substantive
Positive	<p>Liberal Welfare Rights Strategies.</p> <p>Potential for redistribution is from implementation but is epiphenomenal to policy goals.</p>	<p>Classical Communist Law</p> <p>Historical necessity justifies all procedures. The state assumes the guiding role unhindered by personal zones of autonomy.</p>
Negative	<p>Ideal Anglo-American Rights</p> <p>Lockean rights. Limited in scope, but absolute in adherence to formal specifications.</p> <p>Modeled on formal private law.</p>	<p>Late Socialist Conceded Conventions.</p> <p>Informal social contract negotiating autonomous spheres.</p>

II.A. Negative-Procedural Social Rights

Negative-procedural social rights are the conception of social rights most familiar to Americans and which is clearly behind the earlier quote from the World Bank. Due to "our American tendency to formulate rights in a stark, unqualified, fashion"⁵, rights tend to be viewed in highly legalistic and absolute terms.⁶ Either somebody has a right or they do not. With the exception of education, the American state has therefore resisted specific commitments to ensure even the minimal provision of goods and services to its citizens. Rather than create abstract rights of entitlement to certain social

⁵ Glendon, 1991, p. 40.

⁶ The myth of rights as absolutes persists in the rhetoric of American politics. This is evident in President Clinton's recent campaign to expand health coverage by appealing to create a non-negotiable right to health care, "that no one can take away from you". Americans take rights very literally, even if in legal practice such rights are highly malleable and subject to widely divergent interpretation. See, for instance, William Blackstone, *Commentaries on the Laws of England*, Book I, 138; Alexis de, *Democracy in America*, Book I, 270 (1969); and Mary Ann Glendon, *Rights Talk* (1991).

minimums, the Anglo-American tradition has been to restrict social citizenship to the guarantee of legal due process in state social programs. The only formal commitment to equality is the procedural principle of, “like rules for like cases” (Scheuerman, 1994: 197). The provision of social citizenship has been therefore left for legislatures to create administrative programs with clear criteria of eligibility. Those social policies are favored which contain verifiable preconditions for state action, such as tax credits and means testing.

The Anglo-American tendency to define rights negatively is distinct, though related, to the tendency to formalize rights.⁷ American conceptions of negative rights have been attributed to a Lockean tradition, a culture of individualism, an agricultural frontier penchant for non-interference, and a desire for ‘limited government’ in response to the abuses of the English Crown. The formalization of rights as primarily procedural is part of the strong American separation of the government powers. The strong division of tasks strictly stipulates that the application of the law should be carried out mechanically according to clear and exhaustive procedures. Formalized legal administration, as Weber realized, requires that judges and administrators act like, “an automaton into which legal documents and fees are stuffed at the top in order that [they] may spill forth the verdict at the bottom along with the reasons, read mechanically from codified paragraphs.”⁸ American efforts to specify more ambitious social rights have been undermined by the fact that an equally rigid application of those rights is seen as potentially too burdensome for the legal and economic system. A strict and legalistic conception of rights has dissuaded the American state from committing to social rights, a fact evidenced by the failure of Franklin Delanor Roosevelt’s 1944 Bill of Economic Rights and America’s continuing refusal to sign the United Nations International Charter on Cultural and Economic Rights.

II.B. Formal-Positive Social Rights

Social reformers in capitalist systems have employed a different meaning of social rights when they have tried to mobilize support for welfare state expansion. State obligations for positive rights have often been framed in terms of liberal rights-based politics. This notion of social rights is a strategy for de-emphasizing the redistributive nature of the welfare state and appropriating the rhetoric of universalism and classical private law (Simon, 1986; Klausen, 1994). Klausen argues that T.H. Marshall used a universalist language to mobilize a broader support for an expanded welfare state, and that a close reading of Marshall indicates that he deliberately obfuscated the ways in which social citizenship implies redistribution from some groups to others. “‘Social citizenship’ is a suggestive metaphor for political

⁷ Many have observed a more recent “deformalization” of the law of the Western welfare state (Scheuerman, 1994; Unger, 1976; Lowi, 1987; Sunstein, 1990) but historically we can nonetheless identify a type of welfare that is anchored in verifiable procedures and an unwillingness, even by socially active courts, to go beyond a strictly formal definition of social rights.

⁸ Max Weber, *Economy and Society* (Berkeley: U of California Press, 1978), 979 cited in Scheuerman (1994), 209.

mobilization aiming at putting together broadly based coalitions aiming at welfare state expansion” (Klausen, 1994: 9). In Scandinavia the strategy to use formal-legal rights conceptions as a way to expand the welfare state came only after Left parties realized that the support of the proletariat would not constitute an electoral majority. The Swedish social democratic party thus stressed social rights and passed major universal programs when they were in need of broadened support to rule.

In America formal-positive social rights are associated with movements to expand the ‘New Property.’ (Reich, 1964). This idea, which culminated in the welfare rights movement of the 1960’s and 1970’s, sought to bypass difficult redistributive concerns by legally redefining plaintiffs’ interests in government welfare aid as a property right, a legal status that had already been extended to contractual social insurance. By bringing welfare aid under the legal mantle of property rights this movement sought to depoliticize the redistributive nature of the welfare state and to draw on the broad legitimacy of classical contract law. Liberal lawyers and social workers used the letter of the law to increase participation in government assistance programs and sought to establish a more expansive status for welfare rights.

But, as Simon (1986) has argued, “Private law welfare jurisprudence has been more a set of themes and rhetoric than a doctrine... the reference to private law was only an analogy; the welfare system was expected to depart from private law concepts in ways that were never systematically or comprehensively specified” (ibid: 1441). State and local governments were able to stem the tide of new aid recipients by merely tightening formal eligibility criterion. The attempt to expand the welfare state through the analogy of traditional private law norms associated with contract and property was undermined by the fact that the principles of property law are strongly adverse to redistribution. Private contract law secures protected vested interests by securing the fruits of one’s prospective labors and exchanges and also by ensuring that the law applies to all society without distinction. Redistribution, on the other hand, implies a taking from one group to give to another: a violation of both principles. By attempting to redefine welfare as a protected vested interest welfare advocates inadvertently championed contract law’s insistence on the immunity from collective revision.

II.C. Substantive-Positive Social Rights

Soviet-style regimes have been more overt about promoting collective redistribution in their more substantive conceptions of social rights. Under classical Stalinist regimes social rights were both substantive and positive.⁹ Policies promoting social protection were typically guided by an implicit social contract which did not necessarily correspond to the state’s body of formal law. In order to understand

⁹ The classification of classical Stalinist regimes are an ideal-type distinguished from ‘Late Communist regimes’ and characterized more by use of state terror, a weaker social contract, and less permissiveness of the informal economy. The movement from classical Stalinism to Late Communism was a process that took place at different times for different East European countries.

communist systems of informal proto-rights it is first important to discuss three features: 1) the functioning of informal rights, 2) the Leninist legal attitude toward rights,¹⁰ and 3) the mechanics of informal bargaining in which such 'rights' were developed and how they grew out of the drive for forced industrialization.

II.C.1. Informal Rights?

First of all, what *is* a substantive social right when there are no formal mechanisms to ensure that the state respect its commitments? The party-state promised its populace increasing improvement in living standards, an inc and, a growing part of which was provided through social benefits. The fact that there was no formal mechanisms for adjudication does not mean that such a social contract did not exist. The concept of a social contract between government and governed is in all cases a historical fiction, a presumption perhaps rooted in Judeo-Christian traditions of a covenant with God. Under state-socialism the implicit social contract may be thought of as "conceded conventions" which develop over time, and may be seen in what Kornai refers as the state's reaction to 'grumbling' and other signals that result from "the transgression of social tolerance levels" (1980: 278),¹¹ Rights may be largely conventional or what in Russia has been called "customary rights" (Naishul, 1993). Welfare state are regimes, not just legal constructs, and when the influence of the law is secondary we must be particularly attentive to the extra-legal norms behind them.

Comparatively speaking, the formalized legal commitments to social rights are a poor indication of the extent of welfare state development. Among industrialized nations, social policies with greater, more enforceable legal codification tend to be those with a weaker welfare state and less substantive social rights. "[I]t is in the 'residual' British welfare state that rights to social assistance have become most institutionalized, whereas in the social democratic Norwegian welfare state social assistance is as residual and discretionary as it is in the Mediterranean countries" (Gough,1993). Weak welfare states are also paradoxically more redistributive in their limited social policies because the benefits are more often targeted through means-testing (Korpi, 1980). Even among countries with a similar level of economic development, "there does not appear to be any strict correlation between the strength of constitutional welfare language and the generosity of welfare states."¹² Where extensive social rights are enumerated in law they are generally treated as 'aspirational' and 'programmatic' and therefore do not create

¹⁰ The historical roots of a particular Central European conception of rights undoubtedly pre-dates state socialism, but these considerations are outside the scope of the present inquiry. See, for instance Rothschild, (1986). It is important that citizenship rights in Central Europe have been defined by cultural membership rather than by the state. The question of who is a Hungarian is still very much alive, and is not settled by a constitution that remains intentionally vague on the subject.

¹¹ The term 'conceded convention' emerged a discussion with Zsuzsa Ferge. See also Pakulski's discussion of "conditional tolerance" (Paluski, 1986).

¹² Glendon, 1992, p. 531

concrete obligations for the state.¹³ The fact that in the United States, unlike Europe, the higher law makes no mention of social rights or affirmative welfare obligations does not mean that social rights are necessarily absent. The force of social rights derives from prevailing social contracts and political compromises that may or may not be formally expressed.

The Anglo-American tendency to view rights in absolute terms comes from a tradition of natural law in which the state and law-making are conceived of as responsible to 'higher' moral law. In the Eastern European tradition, on the other hand, the law has more overtly been the will of the state (Teitel, 1994; Kálmán, 1994). Formal legal structures in Eastern Europe have been particularly weak in structuring politics. Where such structures have existed they have often held little relevance for concrete political events. As Sajó observes, "In five years of democracy in not one single case did an ordinary Hungarian court ground its decision on the fundamental rights provisions of the Constitution" (1994: 18).¹⁴ As Kálmán Kulcsár, the former communist Minister of Justice, writes, "from the formal point of view the legal system was more or less consistent, but the implementation took place according to the demands of politics..."(1994: 7). Established expectations of entitlement, especially in situations of mutual dependency constitute a kind of informal right.¹⁵

II.C.2. Leninist Legal Principles

Legal codes could only residually define rights because the Communist Party was explicitly superior to the written law, even in the constitution. The formal legal principles of Soviet-type societies were nonetheless relevant. In the writings of Marx, Engels and Lenin were found the tenets of an instrumental jurisprudence that was based on material-determinism. Law was seen as epiphenomenal to class relations and conceived of as rules of conduct shaped through state power which expressed the will of the ruling class. Socialist law was viewed as unique because it sought to do more than merely protect its social system, but also to promote the onset of a qualitatively different era. The Communist Party's self-proclaimed historical mission was thus both to enforce the law and to transcend it according to broader aims. As one Hungarian legal scholar explained, "What we have here are basic principles which are not, in the strictest sense of a legal nature but which are in part expressed in, and take effect through, law, and which are categorically relevant to law"(Szabo, 1975:62). The present historical juncture required a particular 'revolutionary legality', which "implied that that aspect of legality or the rule of law

¹³ The fact that the Japanese constitution makes a detailed list of specific social rights does not mean that social rights in Japan are stronger than in Germany where the German Basic Law of 1949 merely recites that the republic is a "social" state.

¹⁴ Sajó (1989) also notes studies which show that the prevailing attitude has been that it is better not to rely on rights arguments vis a vis the public authorities. Better educated Hungarians regard compromise-seeking as an alternative. Being humble was reported to be the best approach for the poor.

¹⁵ Property rights are held up to be the prime example of rights that once introduced will transform Eastern Europe. Economic historians studying property rights, however, regard their creation as largely informal (North, 1990). Legal scholars also acknowledge that the basis for defining property rights ultimately rests on conformity with prevailing social conventions (Ackerman, 1977).

which concerned the citizens' rights was for the time being given less prominence, or rather, there was no special emphasis laid understandably on citizens' rights,..."(ibid., 64).

II.C.3. Forced Industrialization and Informal Bargaining.

At least as much as from Leninist legal principles, communist social rights derive from the state's single-minded industrialization drive and the bargaining systems which accompanied central planning. With full employment, high labor participation rates, and relatively egalitarian wage scales there was a different role for social policy under state socialism than in the West (Milanovic, 1994: 188). Social policies were not aimed at problems from an absence of labor income; there was only a small population of people outside the state employment and pensions system who might have no source of income. In general, social policy was a kind of wage subsidy for otherwise insufficient wages.

East European regimes after World War II emulated the Soviet growth-based approach to social policy. In Gastin Rimlinger's classic account of Soviet welfare, he claims that social policy since around 1929 increasingly aimed at furthering labor productivity. "Lip service was still paid to the notion that social insurance was a historic right of every Soviet worker -- which was won for him by the revolution -- but the argument was that circumstances had changed and new concepts were applicable"(Rimlinger, p. 272). Full worker's injury compensation in 1931, for instance, became contingent on being a member of the communist labor union and two years of previous employment unbroken by *any* absentee days. Rimlinger quotes from a 1933 address to the Party's official trade union congress, where social insurance was described as a way of fighting low productivity and eliminating turnover, both of which were seen to have been encouraged by the introduction of egalitarian pay scales.

Bureaucracy and egalitarianism must be eradicated from social insurance. We must reconstruct the whole social insurance practice in order to give the most privileged treatment to shock workers and to those with long service. The fight against labor turnover must be put into the forefront. We shall handle social insurance as a weapon in the struggle to attach workers to their enterprises and strike hard at loafers, malingerers, and disorganizers of work (p. 279).¹⁶

The priorities of the Soviet model profoundly shaped Hungarian social policy. Policies were fashioned to minimize the total resources diverted to consumption.

The political aim of forced economic development had reduced the satisfaction of social needs to simply a means, that is, to the means of maintaining the artificially low level of wages which represented the most important and most durable source of centralized surplus (Szalai and Orosz: 150).

The Hungarian welfare state had an overwhelming emphasis on work-related and contributory social insurance rather than universal social security. Only education, maternity grants, and (since 1975) health

¹⁶ Gorbachev, in his 1987 book *Perestroika* similarly writes, "[U]nder socialism, work is the foundation for social justice. Only work determines a citizen's real place in society, his social status. And this precludes any manifestations of equalizing... On this point we want to be perfectly clear: socialism has nothing to do with equalizing" (1987: 100).

were universal; other benefits (such as family allowances, sickness benefits and pensions) were distributed on the basis of employment, either through the workplace or centrally. Until the mid-1970's those who only worked outside of the state sector were excluded from access to contributory benefits.¹⁷

Welfare provision was never administered as a formalized entitlement. Actual policies stressed social obligations, such as the Family Rights Law which compelled family members with surplus earnings to support their elderly relatives in need (Szémen, 1989: 14). Public policy was often ruthless in exercising discretion to maximize economic and political mobilization. While family benefits were generous, they were conditioned upon 21 days monthly employment.¹⁸ Social assistance was entirely at the discretion of local officials and carried a great stigma. In the case of death, transferal of pension benefits to the widow was not automatic but was subject to official discretion.¹⁹ Because welfare was centralized and geared towards broad legitimation, programs tended to be insensitive to the more particular needs of individual groups.²⁰ Centrally administered mass programs expressed in macro statistics progressed rapidly while more particular needs, such as social work or the indexing of pensions was neglected.²¹ The Ministry of Popular Welfare and all forms of general assistance (hand-outs based purely on need) were abolished in 1950. Public assistance programs were seen as inimical to the aims of the state since socialism supposedly met all basic social needs by providing full employment.

The chart on the following page reflects the priorities of state socialism in terms of relative income flows. Consumption was not allowed to grow as fast as national income, and real wages -- which did not rise until after Stalin's death -- grew at an even slower pace. Consumption gains were largely from the rising value of social benefits rather than wages. From 1950 to the mid-1980's real wages grew at barely more than half the rate of income, and would soon decline.

As part of the industrialization drive East European states sought to maximize the resources which went to investment and therefore constrain consumption levels. Especially in the early years of state-socialism, an inordinate share of GDP went to investment rather than consumption (Pryor, 1985; Kornai, 1980). 'Social consumption' was promoted by central planners at the cost of individual consumption. The logic was that because almost none of the nation's savings and investment was mediated through personal income under socialism households should receive a smaller portion of GDP. Any income beyond the necessary minimum which went to household consumption was wasted from the perspective

¹⁷ This was an effective way of discouraging politically undesirable economic activity.

¹⁸ Ferge, Zsuzsa, 1991b, p. 162.

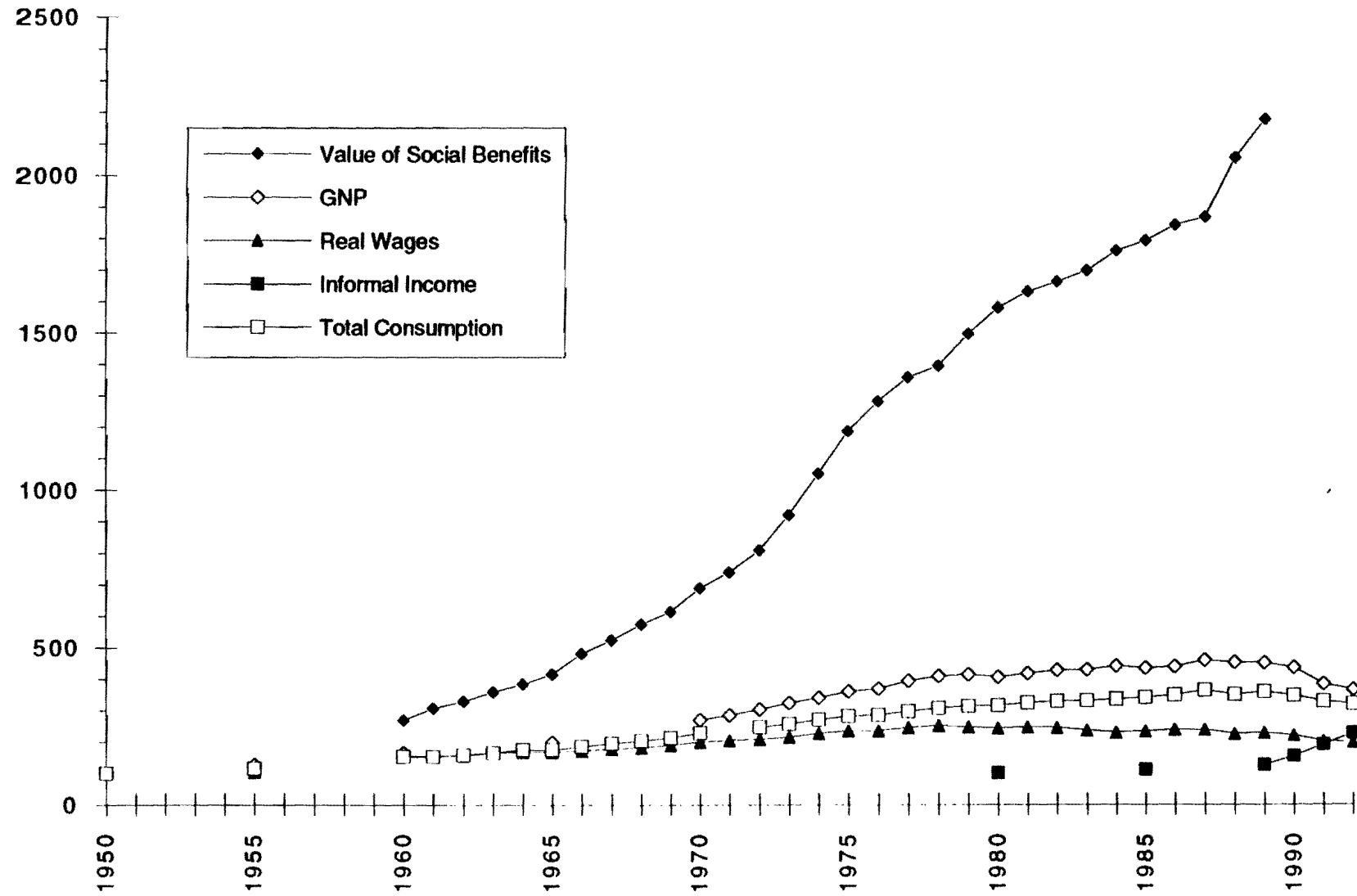
¹⁹ Before 1967 in Czechoslovakia, "benefits for orphans of politically suspect parentage were also subject to reexamination." O. Olc, (1974) *Politics in Czechoslovakia*, New York: W.H. Freeman, p.50, quoted in Mita Castle-Kanerova, "Social Policy in Czechoslovakia," Deacon 1992, p. 1992, p. 98.

²⁰ Gypsies, for instance, were usually excluded from social programs.

²¹ Social work has only been recognized as officially acceptable since the mid-1980's and professional social worker training was only started in 1990

Incomes and Consumption

All values real per capita. 1950=100 except for informal income 1980 =100



of industrialization. Social policies allowed wages to be lower than would otherwise be possible because they compensated for variation in needs or earning abilities which resulted from child rearing, illness or aging. If wages had been high enough that people could, for instance, support their children without family benefits, then child-less workers paid the same wages would have had discretionary income that could have been better invested in state industrialization.

The fact that social policies compensated for low wages is evidenced by comparative statistics on income structure. There are big differences in the structure of income between socialist and capitalist economies. Wages under socialism account for a far smaller portion of people's incomes, but this is partially compensated by the greater importance of social transfers.

Table 1: Distribution in Socialist and Capitalist Countries, 1988-89²²

	Poland	CSFR	Hungary	Yugo	Bulgaria	Average
Structure of Income						
Wages (state sector)	53.0	69.5	55.0	62.2	56.5	59.2
Self-employment	25.2	3.4	14.0	20.9	14.7	15.6
Social Transfers	20.7	25.4	22.4	13.3	21.2	20.6
Property Income			2.6			--
Personal Taxes	1.0		10.7	1.2		4.3
	Sweden	W. Germ	Australia	USA	UK	Average
Wages (state sector)	64.5	63.1	71.2	75.8	72.0	69.3
Self-employment	3.7	16.7	8.5	6.7	4.5	8.0
Social Transfers	29.3	16.5	9.8	8.1	17.2	16.2
Property Income	2.7	1.1	8.0	5.8	2.7	4.1
Personal Taxes	28.5	14.8	21.0	16.5	13.6	18.9

The distinct character of state-socialist transfers is also apparent in the almost total lack of means-testing.²³ Benefits were aimed at mitigating the effect of low wages, not of mitigating inequalities -- since inequality was presumed not to be a problem under socialism. Unlike social provision in the West the distribution of social benefits was *regressive* rather than *progressive*. The regressiveness of social benefits can be shown using comparative concentration coefficients of social transfers for selected countries, as demonstrated in the table below. The more negative the value is for each country, the more cash benefits are skewed towards benefiting poorer income groups. Positive values indicate that benefits are disproportionately enjoyed by those with larger incomes and are present only for state-socialist economies. In the distribution of Hungarian social incomes the richest quintile receives almost double the share of transfers compared to the poorest (Ehrlich and Révész, 254).

²² Milanovic, 1992, p. 5.

²³ Contemporary analysts of East European welfare systems decry the lack of targeting in the previous regime. The chief economic problem with flat-rate or earnings-related benefits is that, unlike means-tested benefits, they are inefficient in terms of reaching those in need. But the more egalitarian the initial distribution is, then the less wasteful are universal programs.

Table 2: Concentration Coefficients of Cash Social Transfers²⁴

Australia	-43.6
United States	-37.2
Canada	-30.8
Sweden	-27.4
Poland	-4.5
Czechoslovakia	0.3
<u>Bulgaria</u>	<u>7.2</u>
Hungary total	1.4
Hungarian pensions	9.5
Hungarian family allowances	-21.9

The peculiar features of social policy under "classical communism" not only reflected the official preferences of central planners but also the unplanned features of what Kornai has called "the economics of shortage." Chronic shortage was endemic to state socialism regardless of the absolute levels of supply because demand was unconstrained by budgetary considerations and because bottlenecks induced people to hoard, thus creating an insatiable structural hunger for new capital inputs. In addition to ideologically based strategies there was therefore a further systematic impetus for the "expansion drive" or "investment hunger," to channel resources into the pool for investment funds while the consumption fund -- from which social programs are funded -- "gets again and again into a hopeless residual position for structural reasons."²⁵

Sectoral bargaining *within* the central planning process also helps explain the allocation of social programs relative to other areas like heavy industry. In the face of chronic shortage, ministries and state enterprises lobbied the center for increased allotments. The concentrated industrial sector, due to its size and complexity, afforded the most levels of hierarchy for extracting economic rents through political patronage: the most opportunities to gain favors, luxurious perks, or means to bypass the queuing mechanisms for underpriced goods. The vast scale of Soviet style industry helped to obscure these favors. Industrial durables were the most promising currency for favors since, unlike perishable goods, they could be hoarded indefinitely. Those who occupied positions of power in heavy industry were able to use their power to make their industry's growth a continuing priority (Winiecki, 1991). State administrators of social policy lobbied at a disadvantage because their outputs could not be hoarded and were not generally in scarce demand to politically well-connected people. Particular social policies only expanded when they indirectly supported powerful interests within the bargaining process.

II.D. Substantive-Negative Social Rights

²⁴ Concentration coefficients basically measure the relative effect of transfers on the Gini coefficient. B. Milanovic, 1992, p. 20. Notes: a) All data is for original income except for Hungary and UK for which the value is according to disposable, after-tax income; b) Data is for 1988-89.

²⁵ J. Szalai, in Deacon and Szalai, 1990, p. 95.

After Soviet tanks helped squash a failed revolution in 1956 a profound change gradually took place in the Hungarian social contract. In the resulting political compromise the state increasingly tolerated informal initiatives that fell outside the law so long as they did not threaten state rule. Stalin's principle that 'those who are not with us are against us' was replaced by Hungarian Party Secretary, János Kádár's famous, "those who are not against us are with us." Kádárism brought growing tolerance for zones of relative autonomy in economic and cultural life. Another unstated aspect of the new social contract was that the threat of future Soviet intervention dictated that politically sensitive policy changes had to be made under a cover of normalcy. Significant changes were often not expressed in official legal declarations so as to avoid all possible conflict with the Soviet Union or hard-line elements within the Party. Over the years a gradual softening of Kádárism promoted informality because it fostered layer upon layer of shifting political compromise.

Late Socialism social rights are distinguished from their predecessors by more than just increased informality. The state was under greater pressure to provide increased living standards and, when a stagnating economy made this prospect less and less possible, the state ensured rising well-being by granting new *subsidized spheres of economic non-interference* for citizens to enrich themselves. In the sense that social rights existed they may therefore be seen as a substantive commitment, but one which was increasingly a negative right granting freedom *from* the state.

After 1956 the Hungarian Communist Party, more than in any other Warsaw Pact state, sought to increase consumption and improve social conditions as a way to ensure social peace. The Communist Party learned that because informal kinds of rights left no institutional means to seek redress their transgression could lead to a challenging of the entire legal order. Part of the ensuing attempts at pro-consumption policy was a series of stop-go reforms that devolved many property rights to state enterprises, industrial groups, and work councils. These reforms did not address the more systematic bias against consumption and only partially brought about the kinds of socialist markets planners intended, but they did make the formal mechanisms of planning more fluid, uncertain and unpredictable.

The ways in which the state's social commitment changed over time is reflected in the changing language party bureaucrats and economists used to discuss full-employment. In depth interviews by Anna Seleny (1994) show that up until the late seventies the guarantee had been that almost "every able-bodied person had to be employed in the state sector." But, "In the late seventies," Seleny reports, "the State Wage and Labor Office began to emphasize that employment was not properly only the business of the state-firm and state-cooperative sectors, but of 'the entire economy -- which was already understood as including the small formal private sector in existence before 1982 -- and *that it was the job of the government to create the conditions which would allow the economy as a whole to supply employment opportunities*'" (italics added, p. 446). By the beginning of the eighties the understanding had further

evolved to be, “all those employed in ‘socially useful’ activities, including [those] in the second economy, in households, etc” (p. 446). Encouragement and selective toleration of the second economy became a part of social planning.

The previous incomes chart above also indicates how ‘hidden income’ and social income acted as a dual supplement for stagnating wages. The growth of alternative incomes reflects the fact that Hungarian earnings from primary full-time jobs accounted for a mere 50 percent of personal income in 1978, a figure that fell to 40 percent by 1987 (World Bank, 1992: 136). It is difficult to give reliable numbers for informal activity, and even harder to make time series comparisons on the data. The data shown here is from a particularly thorough and multi-dimensional study with a relatively large number of data points.²⁶ The study measures non-criminal productive activity concealed from public authorities. The total hidden economy as a percent of the documented economy was found to have expanded steadily from 13.1 percent in 1980, 14.4 percent in , 16.2 in 1989, 20.0 in 1990, 24.8 percent in 1991, and 29.6 percent in 1992. Government social benefits and informal work have clearly had a complementary relationship in compensating for stagnating wages. There are three salient points to be made about this relationship: 1) Reliance solely on the official economy became less and less common; 2) The growth of supplementary sources of income has not been a windfall for citizens so much as it has been a partial substitute for inadequate official wages. 3) Both social and informal forms of income, even more than social benefits, are distributionally *regressive*, i.e. they supplementing the incomes most of those who need are least in need.

Rather than rely solely on their wages from state employment Hungarians typically depended upon what Rose terms “portfolios of economies” (Rose, 1993). A major cross-national survey in 1991 found that a large majority of citizens in each of seven East European countries claimed they did not get enough money from their regular jobs to pay for what they really need (ibid., p. 27).²⁷ In Hungary three-quarters said they did not get enough, while in neighboring Austria only one quarter (72 percent) made this claim. A majority of Hungarians (68 percent) claim to obtain enough money to get by because most also depend on supplementary activities such as small scale agriculture, reciprocal labor exchange, and illegal transactions. Only 22 percent rely solely on the official economy (p. 31). It is difficult to measure unofficial activities for supplementing income, but time budget studies show that for Hungarians aged 15-69 the daily time they spent on income-supplementing work increased from 22 percent of the time spent on their full-time job in 1976 to almost 29 percent in 1986 (Social Report, 129, 132).

²⁶ Informal economic data from Vertes and Arvay, 1993: 62, indexed to 1980 and not corrected for population changes. Other data from Andorka and Harcsa , 1992 Social Riport, TARKI, Budapest.

²⁷ For individual countries the percentage who said they received enough is Bulgarian 28 percent, Czech Republic 46 percent, Slovak Republic 39 percent, HUNGARY 25 percent, Poland 38 percent, Romania 44 percent, Slovenia 34 percent, weighted average 36 percent.

The relative inequality of informal income, while more difficult to measure than social transfers, appears to be greater. The old theory put forward by Szelenyi was that the second economy reduced the inequalities generated by state salaries and social benefits (Szelenyi, 1969). But by the mid 1980's even Szelenyi agreed this was no longer the case (Szelenyi, 1987). According to one study the Gini coefficient for formal income is 0.3; for welfare payments it is 0.35, and informal income is approximately 0.55 (Elteto and Vita, 1987 in Sik 1992, p. 23). Secondary labor incomes are more than twice as important for the richest 20 percent of the population than for the poorest (Ehrlich and Révész, 1993, 253). It is unclear if earlier informal work had an equalizing effect on total income. One argument is that communist party members had been much less supportive of the second economy until the 1980's when they themselves began to depend upon informal sources of income (Róna-Tas, 1995). Whatever the precise motivations, the informal economy and social benefits were a two-pronged support for a distorted labor policy that was structurally opposed, yet politically committed, to raising consumption.

III. The Persistence of Informal Rights Since 1989

Rights have continued to take on an informal character since 1989 despite developments toward western style 'rule of law.' The continuing importance of an implicit social contract as the basis for substantive rights is evident in how the post-communist government concessions on social policies are titled "social pacts," and described by the Finance Minister as, "an agreement to safeguard social peace."²⁸ It can be seen in the way a particularly large and sudden gasoline price rise, executed without prior consultation, was met by a four day strike of drivers that shut down the country and wrung concessions from the government. It can also be seen in the responses Hungarians give opinion poll takers.

Opinion surveys both before and after 1989 reveal a certain puzzle that is solved by an understanding of informal-negative rights. There are strong normative expectations that the government should implement a redistributive welfare state. A vast majority of Hungarians in a 1987 study believed the government should provide a basic income (80 percent) and a job (90 percent); since then, there is greater distrust of government but a increasing support for redistributive social justice.²⁹ Although people do have not frame those expectations in terms of what we would normally consider rights. Hungarians express very strong notions of social justice but do not frame these ideas in individualistic terms: even under communism citizens rarely saw themselves as subject to personal injustices (Csepeli,

²⁸ *New York Times*, "Hungary Fights Unrest With New Social Contract," Nov. 29, 1992. p. A8.

²⁹ For a review of these studies see (Ferge, 1994). On a seven point scale a representative sample was asked in 1993 where their opinions lay between the statement 'it is a very important function of government to reduce inequality' at number seven and on the low scale the statement that 'the government does not have to reduce inequalities'. Expectations of redistributive welfare were indicated by a surprisingly high mean response of 5.68, which varied little across age, education, party preference, income, or occupation (Tardos, 1994).

et. al., 1994). Equity is a very strongly held value among Hungarians, yet at the same time they tend to blame the poor for their poverty, attributing their situation to moral or psychological shortcomings such as laziness or alcoholism. Comparing across European nations, "The more we move towards East the more frequent the occurrence of th[is] individualistic moral and psychological attribution pattern" (Csepeli and Örkény, 1994, 3).

Hungarians both support social redistribution and blame those in poverty. As Csepeli and Örkény report, egalitarianism does not come from liberal beliefs in equality but from distrust of the source of gains and a deep-seated belief in the state's responsibility. Highly political top-down development has meant that those who gain wealth are assumed to have done so dishonestly, rather than from hard work. If the state is fulfilling its substantive obligations then only personal shortcoming are seen as the cause of destitution. The state is considered responsible for addressing the inequalities it has created, but this does not mean that individuals should be able to sue the state for an apartment or job. Substantive-negative social rights may appear odd, perhaps even contradictory, but these are the views held by Hungarians. At least six factors inhibit such attitudes from taking on the character of more legal-formalist social rights.

III.a. Hungary's 'Negotiated Revolution'

When Hungary's reforming Communist Party negotiated the end of monopoly of power with a round table of dissident groups the transition from state-socialism took place through general principles of compromise that were often intentionally vague or avoided specifying the future rules in controversial but important areas such as privatization. The revolution of 1989 was technically little more than a constitutional amendment which managed not to violate the legal order of the previous regime (Paczolay, 1993a). Negotiations on the economy, moreover, did not include directors of quasi-autonomous state firms who were the most important economic actors (Stark, 1990). In Hungary the semblance of legal continuity helped provide stability and even upstream legitimacy, but the price of such continuity was that the prevailing system of rights have to be highly flexible and accommodating rather than rigid and absolute.³⁰

Hungary's gradual reforms have proved more workable than 'big bang' approaches, but the constant meddling in the rules of the game has meant that rights seem indeterminate. "The rights revolution remains unfinished... perhaps it has to do with the non-revolutionary nature of the transition process"(Sajó, 1994: 11). In 1989, after Parliament changed the constitution and established the

³⁰ Nowhere is this accommodating vagueness more apparent than in the pre-amble of the 1989 constitution in which the Communist Party and the opposition agreed that the new political system must be under the rule of law but they could not reconcile their differences on designating the type of state. The document ended up stating that the state is "based on law under the principles of both bourgeois democracy and democratic socialism."

nation's first ever constitutional court, a poll late that year found that less than five percent of Hungarians viewed the new constitution as "a significant event in domestic policy."³¹ Only a third of respondents could even begin to describe the court's competencies; less than four percent saw the court as having binding power of judicial review; almost no one mentioned the court's role in protecting citizen rights.

Legal rights gain much of their power from being perceived as impartial, autonomous principles that are exercised without regard to the interests of particular groups or individuals. Since the regime change, however, law continues to be treated as an instrument of economic development.³² It makes little difference that reforms now strive toward capitalism and liberal democracy; rights are still not seen as serious obstacles to government goals. It is one thing to imagine that markets and democracy will benefit everyone. It is another thing when winners and losers are then chosen according to the particular implementations of that vision. It is highly problematic to accept the rules of normal politics as fair and impartial when those rules are simultaneously being fashioned by self-interested participants (Offe, 1993; Elster, 1993).

III.b. Institutional Factors Leading to Legislative Confusion and Deadlock

Much of social policy responsibility was delegated to local governments in 1991 during a brief period where opposition and ruling parties agreed to cooperate in order to generate the two-thirds majority necessary to pass laws concerning local government and other 'self-government' bodies. That window of legislative opportunity soon closed and, until its defeat in May 1994, the ruling party continued to pass laws that officially were not aimed at self governments but which created loopholes or otherwise conflicted with 1991 laws. As a result 'the rule of law' was eroded because there have been multiple interpretations of the law and various conflicting laws from which to follow.

III.c. Judicial Factors Encouraging Informal Rights

As previously mentioned, Eastern European attitudes towards rights derive partly from the experience of late modernization. Modernization and the imposition of a 'rule of law' occurred simultaneously and law came to be seen as instrumental to the interests of economic development rather than an impersonal background condition. In the post-communist transformation process this pattern is reproduced because the creation of the rule of law is now an instrument of the state's role in coordinating

³¹ Hungarian Institute for Public Opinion Resources, MAR13.POL, 1989, Budapest.

³² Sajó argues that Hungarian rights suffer from the "tunnel effect" described by Albert Hirschman in developing countries. For late developing nations, "decision-making is known to be centralized, advances will be attributed to unfair favoritism... Centralized-decision-making economic systems...will strain to be more egalitarian not just because they want to, but also because they have to: centralization of decision making largely deprives them of the tolerance for inequality that is available to more decentralized systems" [Sajó, 1994. Albert Hirschman, "the changing tolerance for Income Inequality in the Course of economic Development", *Quarterly Journal of Economics* p. 558.]

the process of modernization and westernization (Teitel, 1994; Offe, 1993; Kulcsár, 1994). As Lech Walesa recently told the Polish Constitutional Tribunal, "In order to construct a lawful state one has to accept activities occurring on legal borderlines."³³

A number of judicial aspects in Hungary conspire against legal formalism. The Hungarian Constitutional Court technically has the most far-reaching powers of any constitutional court in the world and a strict interpretation of the constitution's strong social rights would be incompatible with capitalism (Elster, 1993). The court is thus left to its own unofficial restraints in using its power to secure social rights. In the lower court system there is a shortage of experienced judges, especially those familiar with such new types of law. Over half of judges work on a part-time basis, partly because pay and prestige is low (Ostas, 1992: 9). An important legal distinction is moreover maintained between official laws and their actual application; the court can strike down any unconstitutional law or official bureaucratic procedure, but it has no power to decide on how the law should apply to concrete cases. Principles of citizenship are also left ambiguous in Hungarian law, partly so as not to discriminate against foreign business and partly because of Hungarian minorities in neighboring nations. Unclear legal boundaries and inefficiency are compounded by the fact that the legal system is submerged by license applications, disputes caused by new laws, bankruptcy, and growing crime.

In Hungary the formal codification of social rights has been chiefly a combination of aspirational rhetoric and reluctant acknowledgment of existing changes. The only written constitution has been the largely amended document written by the Communists in 1949. The post-communist Constitutional Court has explicitly endorsed Hungary's strong tradition of unwritten customary law (Paczolay, 1993b). Social rights in the new Constitution are basically unchanged from the 1949 version. Its broader provisions concerning social rights include:

- Labor is guaranteed "the right to work, to freely choose [a] job and occupation" and "to have an income [commensurate] with the quantity and quality of the work performed by him/her" (section 70/B).
- All women are guaranteed "all the pre- and post-natal care" (section 66).
- Children are guaranteed "all the protection and care required for proper physical, mental and moral development" (section 67).

These rights can be interpreted in widely divergent ways. The wording of the existing constitution can not be enforced except in such a way that social rights would continue to be 'aspirational' and 'programmatic.'

III.d. Administrative Overload and Lack of Capacity

³³ Radio Free Europe/ Radio Liberty daily report (electronic), November 9, 1994.

At every level of government the administration is overloaded with a flood of new tasks and has little experience of resources. An objective of the political compromise of 1989 was to prevent any one part of the state from gaining dominant executive power over the others: to achieve an effective separation of powers. This has led to an over-burdening of legislative competencies of the parliament. Parliament in past decades handled an average of ten or so acts a year. They are now faced with approximately 100 new acts annually, leaving only about 6 hours for presentations and discussion on each act (Ágh, 1993, Balázs, 1993). Contrary to stereotypes of a bloated bureaucracy the staffing levels of the central ministries have a paltry total of eight thousand employees (Rice 1992, 121).³⁴ By comparison “the Netherlands has over 150,000 *national* civil servants without ever having had the ambition to be a centrally planned economy.”(Toonen, 1993,158). The transformation process requires a tremendous amount of coordination and an overwhelmed administration can only make the law less respected and its implementation more haphazard.

III.e. Marketization Under Economic Decline and Radical Uncertainty

Highly uncertain conditions encourage business arrangements which are less formalized because people will seek out parallel assurances and prefer short-term arrangements with high profit margins and low sunken costs. Declining GDP and tax receipts leads to a financial crisis of the post-communist state (Campbell, 1992) which leads to a viscous cycle of rising tax rates and tax evasion. As one study which cross-checked the tax-receipts of business partners found, the exaggeration and concealment of production for tax purposes is greatest in the more private types of firms and in those fast-growing sectors such as business services and foreign trade. Evasion is highest among the new limited liability companies, for whom it was found that, “On the average 87 percent of gross production value and 581 percent of labour cost is ‘missing’ from the balance sheets” (Vertes and Árvay, 1994, 13). Moreover, privatization of the economy through highly formal state means has been terribly slow compared to the dynamic process of ‘spontaneous privatization’ by public firms, a process that has eventually been encouraged by the state. While these processes do not directly conflict with ‘the rule of law’ they do perpetuate the state-socialist legacy of informal bargaining networks.

IV. Informal Rights in Pensions and Housing

Housing provision and the income maintenance of the elderly provide excellent examples of the kind of implicit bargains that have comprised the Hungarian social contract and the shift from the Stalinist model to more negative kinds of substantive rights. The state ultimately did not commit the resources to guarantee income to the elderly or provide for growing housing needs. Policy in each area is

³⁴ Another estimate puts the number at eleven thousand with an additional eighty thousand in sub-national state offices and local government staff (Balasz ,p. 78).

woefully inadequate and deeply distorted; yet both also demonstrate some of state socialism's greatest achievements. This section examines each policy area, the bargains that underlay policy developments, and the legacy now inherited from past compromises.

IV.a. Pensions

Unlike pensioners in advanced market economies, Hungarians could scarcely rely on personal saving and investments as an additional pillar of support during retirement. Wages were generally so low that their partial replacement by pensions tended to be insufficient, especially when indexing lagged behind inflation. Like other groups in Hungary, pensioners found secondary means of securing income with varying degrees of recognized legality. The state subsidized these opportunities through such measures as a low retirement age and easy terms for gaining disability pensions or retiring early. Special provisions were even made so that firms could hire part-time retired workers. These arrangements served as an implicit compromise that mitigated a host of officially unacknowledged problems, such as poverty for the elderly, inflexible hiring regulations for state enterprise managers, and the need for full-employment and popular quiescence for the party-state. The inherited legacy of these earlier bargains can be seen in current distortions such as the large portion of pensioners on disability and the low retirement age. Under post-communism it difficult to address these apparent irregularities when they embody proto-rights which have become entrenched parts of people's coping strategies in a largely informal economy.³⁵

The development of a Hungarian pension system was a significant achievement of the Communist regime. Coverage expanded impressively from 534 thousand pensioners in 1950 to 2.3 million pensioners in 1987.³⁶ The replacement rate of wages by pensions has gone from 22 percent in 1950 to 55 percent in 1988. About 95 percent of those over the pensionable age now receive benefits.³⁷ Eligibility depends on age and the number of years of service. The number of years of required employment was ten until it was changed to 25 in 1984.³⁸ Pensions were introduced as an incentive for workers to enter state firms and were only slowly extended to cooperatives, agriculture, and finally the private sector. Benefits are calculated as a portion of previous earnings and, like health and education, are also funded directly from the state budget. Hungary was unique among East European countries in that since 1968 state enterprises were required to contribute for pensions.

³⁵ Among Hungarian social rights, pensions are the only area where individual grievances had means of legal recourse. Hungarians could appeal to appeal boards and go to court if they felt they had been incorrectly classified or their benefits had been incorrectly tabulated. Surprisingly detailed records exist on these legal processes, but it is impossible to know when to attribute changes to the claimants or the judges.

³⁶ Ferge, in Adam, 1991, p. 139. A considerable portion of this increase is demographic. The population of Hungary is about 10.5 million.

³⁷ ³⁷ *ibid.*

³⁸ J. Adam, 1991, p. 8.

The elderly in Hungary have not been guaranteed a secure income. The root of the problem may have been that the elderly enjoyed little bargaining power within the social contract, a result of the fact that they could neither withhold their labor nor riot.³⁹ Citizens who did not work a sufficient length of time, often women, have not been entitled to any pensions. Even with rising replacement rates, the fact that the wages being replaced were so low to begin with meant that pensions could barely keep the elderly out of poverty. In 1972 15 percent of those 60-69 years of age were in the bottom income decile, and 28 percent of those over 69 years (Ehrlich and Révész, 1993, 160). The relative position of pensioners improved over the eighties but only a small part of this is due to improved indexing; mostly the explanation is that the elderly with extremely low pensions were dying off, and because there was more poverty in the general population. With the inflation beginning in the eighties combined with insufficient indexing pensions lost 17 percent of their value from 1980 to 1985 and another 15 percent over the following two years (Szémen, 1989, p. 12).

In 1988 15 percent of all retirement age Hungarians applied for the highly stigmatized emergency assistance, claiming that there were no relatives obliged and able to support them. The inadequacy of the pension system was officially denied, although was, according to Szémen, secretly the subject of confidential government studies with highly restricted access (1994: 19-31). Reportedly it was one such confidential inquiry in Budapest in the second half of the eighties that shocked long-time communist party leader János Kádár into personally ordering a supplementary budget for local councils to distribute emergency welfare aid. Among the applications for emergency aid between 1976 and 1986, 70 percent were by the elderly (Szémen, 1990). In 1991 two-thirds of monthly pension payments were less than ten thousand HUF while the official minimum income for meeting basic necessities was then twelve to fourteen thousand (Rege in TARKI, 1993, p.8). Since the change in regime the real value of pensions has continued to fall, and a recent Constitutional Court decision narrowly rejected a challenge that would have required pensions to keep pace with inflation. Part of the problem is the overall decline in the economy and changing demographics,⁴⁰ but such factors do not begin to explain such questions as why the mandatory retirement age is so low and why, despite the low age limit, a large portion of Hungarians still retire earlier only to reenter the labor market? Such contours of the current pension system result from the social bargains made in past years.

Implicit bargaining around pension policy is deeply related to the continuation of hidden unemployment. Under the logic of shortage economics and soft budget constraints there was both an

³⁹ I would like to thank Béla Greskovits for making this point to me. Presumably if the elderly become an organized voting force this situation can now change.

⁴⁰ Demographics continue to be blamed for the problems in the social security system but over the eighties an average of only 9,300 net new retirees entered the system annually. The crisis in social security has corresponds to only a 1.5 percent increase in the retired portion of the population over the last two decades, compared to the 6.4 percent increase in the preceding decades when no crisis existed. (Augustinovic., 307).

intensifying labor shortage and growing pressure on unemployment (Kornai, 1980).⁴¹ From the perspective of state enterprises it became increasingly difficult to get central funds to meet the insatiable demand for labor. For central planners it became increasingly difficult to create new jobs and place workers displaced by economic reforms. With some considerable distortion it was possible to use pension-related policies to give something to everyone: state enterprises received a larger, more flexible pool of workers, state planners increased their labor force while simultaneously reducing unemployment pressures, and pensioners at least had a number of new opportunities for an adequate retirement income.

Like poverty, unemployment was ideologically unacceptable and hidden by 'unemployment within the gates' for underpaid workers who joked that "they pretend to pay us and we pretend to work."⁴² Only in the final years of communism was there official recognition of even limited unemployment from temporary sectoral restructuring. Pension policy was used to contain hidden unemployment through the continuation of a low mandatory retirement age, generous use of disability pensions, and the creation of a special pensioner labor market for the retired. When life expectancy was increasing in the 1950's and 1960's, there was strong economic growth but the regime was unwilling to take the politically damaging step of postponing the retirement age beyond its current levels of sixty years for men and fifty-five years for women. Later, when growth faltered, unemployment pressures heightened and planners could not accommodate the new groups of elderly job seekers who would have entered the labor market.

Since 1951 it was possible to increase one's pension by remaining in normal employment past retirement age. Until the economic reforms of 1968 this had been the most prevalent strategy for the elderly to gain extra income. Incentives for continued employment were adjusted according to the relative

⁴¹ The concept of 'welfare' is too easily conflated with the notion of soft budget constraints. According to Kornai, a budget constraint is soft when the ability to pay from available revenues -- one's budget -- is not an effective constraint on behavior. Soft budget constraints are claimed to have existed under state-socialism because the state normally sustained persistent budgetary shortfalls and provided supplementary funds or permitted overdrafts. At first glance, soft budget constraints may seem to be a kind of 'welfare' since economic actors are given continuing support on the basis of declared need rather than a market-based profit calculus. It is critical to recognize, however, that unlike ministries and state enterprises, households under state-socialism did not enjoy soft budget constraints. Kornai states,

The constraint may be even harder in a socialist economy than in a capitalist one, because the scope of the credits extended to households is much narrower. Personal loans exist; some durable consumer goods may be bought on installments; self-built residential accommodation is granted bank credit. But these credits, even taken together, finance only a rather small part of total household expenditure. Credit availability is limited by many kinds of restrictions. Repayments are rigorously collected; extensions are only granted in extraordinary cases. Apart from rare exceptions, a household can not get into an overdraft" (Kornai 1980, p. 444).

Enterprises were generally financially sustained under central planning regardless of performance and had no fear of bankruptcy because state funds would supply the wage bill and credit would be extended under loose terms. But for the household the budget constraint was hard.

⁴² Grannick characterizes full employment as the dominant feature of soviet economies and he tries to construct mathematical models demonstrating how policies derived from this feature (Grannick, 1986).

saturation or shortage in the labor market. From 1959 to 1962 when labor markets were relatively saturated and elderly employment was not encouraged, nonetheless around three quarters of those who had reached the retiring age felt economically compelled to remain in employment (Szémen, 1990: 20). This pattern was disrupted by the more complex bargains around social security that emerged after the economic reforms of 1968.

After 1968 in-kind social benefits were reduced relatively and even absolutely as a portion of public consumption, while in-cash social security benefits were increased. Starting in 1968 various work incentives were introduced in order to improve labor productivity. Restrictions were placed on the wage-bill of firms to contain inflation and prevent labor hoarding. These measures set off new informal bargaining mechanisms as firms turned to social security as a substitute for wage increases. Firms could evade wage restrictions by doling out sick leave and disability benefits because the money was paid by a separate social security fund. Sick and elderly workers were counted as part of the enterprise's workforce as a hostage for capital inputs during plan bargaining. The enterprise was, however, not required to count the social benefits against their total wage-bill. The savings from this creative accounting could be used to give wage increases to other workers as incentives for productive effort and loyalty -- especially highly skilled workers that were relatively affluent but most scarce.⁴³ This maneuver was a way of subverting the strict wage fund restrictions and also gave firms an increased degree of flexibility with their workforce. When production was slow, firms could reduce their workforce by negotiating early retirement, sick leave. When production picked up again elderly part-timers could be brought back.

Pensioners could often receive more money by retiring and then reentering the labor market as a pensioner than if they remained as an active worker accumulating additional years on their service records. A substantial portion of older workers used early exit from the state sector as a strategy for improving their living standards, or at least their conditions of work. Thus from 1970 to 1981 the percentage of pensioners that were officially employed grew to close to twenty percent while the portion of the active (non-pensioner) labor force over retirement age fell from 12.8 percent to under 2 percent (Szémen, 1990). The policy of encouraging self-employment as a partial substitute for pensions appears to have been more prevalent in Hungary than in its neighbors. Pensioners, on average received almost

⁴³ Labor, especially skilled labor, has significant informal bargaining power since within the shortage economy labor markets are permanently tight. Managers always have an incentive to hoard labor to expand their output capacity and the power they derive from a larger jurisdiction. One of the best ways to get more capital from the central bureaucracy is to have more labor and visa versa; each input is an effective hostage for acquiring the other. The uncertainty of incessant bottlenecks reinforces this impulse for managers to hoard, especially for skilled labor which is generally most scarce and difficult to substitute. Managers can be assured that central planners will increase their wage bill to meet any labor they can acquire. Meanwhile, workers can use the threat of moving to a better job or non-fulfillment of plan targets to secure bonuses, low production quotas and preferred social services. This is one reason why many services-in-kind went disproportionately to the better-off skilled laborers. The most skilled workers have the most leverage and can obtain greater benefits (Sabel and Stark, 1982).

fifteen percent (14.8) of their income from self-employment, more than double the portion of pensioners in Poland (7.7) or Czechoslovakia (4.7).⁴⁴ Two-thirds (65 percent) of pensioners were engaged in agricultural production on household plots and auxiliary farms. For retired households as a whole, 43 percent of food consumption and 16 per cent of all personal income comes from small scale farming (Kepecs & Dallos, 1986). In 1982 the pension was the sole income source for barely more than a third of pensioners, mostly those over seventy years of age (Kepecs & Dallos, 1986: 72). The income from supplementary sources tended to be small but, given the lack of discretionary income in the Hungarian pay scale, all of these opportunities were highly significant.

Thus, it was a great blow to the elderly when, from 1987, attempts at economic restructuring led to real unemployment, and new tax and wage regulations were introduced which discouraged the pensioner labor market. The number of vacant positions at the pensioner labor exchange fell four times faster than the reduction in the faltering active labor market (Szémen, 1989: 29). Unfortunately, at this precise time the number of pensioners seeking work was increasing (Szémen, 1989:30). Surveys by Szémen (1990) indicate a progressive erosion of the different official employment options which had supplemented the income of the elderly. First, enterprises stopped hiring outside workers through the pensioner labor exchange; they then reportedly ceased employing the elderly based on need. By 1989 half of large scale enterprises surveyed ended the employment of pensioners altogether. Since 1991 policies encourage to shed workers who are closing in on retirement age.

Disability pensions present one example of the informal pension legacies of state socialism. The number of Hungarians who have obtained such pensions is suspiciously high. As of 1989 registers indicate that 27 percent of pensioners were on a disability pension. Within this group 41 percent of all disabled pensioners, and 13 percent of pensioners in their own right were under the age limit. (Ehrlich and Révész, 1993, 18). The proportion of new disability pensions has increased, six-fold since 1960, with most of jump since the mid-1980's.⁴⁵ These increases are particularly impressive because they take place despite a reduction in new accidents reported. Numerous government proclamations have condemned inauthentic disability pensions and have threatened crack-downs. But the doctors who evaluate the claims have no incentive to reject claims.⁴⁶

⁴⁴ Milanovic (1992), p. 13

⁴⁵ The number of disability pensioners per ten thousand insurees has gone from 26 in 1960 to 70 in 1970, 89 in 1985, 101 in 1988, and 162 in 1993. All data from Hungarian Social Security Yearbook 1994 (draft copy) tables 4.2.2. Some part of this increase is undoubtedly due to deteriorating health.

⁴⁶ To the contrary, as the result of another implicit compromise doctors receive most of their pay from illegal tips. The government pays doctors very poorly. Officially there is condemnation of the high-priced tipping that is now necessary to get medical attention. Unwilling to pay doctors enough so that they will reject tipping the state implicitly condones this illegal practice pay even including doctors tips as a category in income tax forms.

Since 1989 the pension system continues to be used to artificially reduce unemployment, but in new ways.⁴⁷ A sample survey in 1992 found that only 9 percent of pensioners were working in firms (cited in Szémen, 1994:10). New programs for 'pre-retirement' and 'anticipatory retirement' now reduce unemployment by reassigning vulnerable workers to the status of pensioner. Instead of receiving unemployment benefits they receive a pension with which -- if supplemented by other sources -- they can make ends meet. From the point of view of the macro economy it may make little difference if subsidies for the elderly are assigned due to a pensioner or unemployed status, but politically there is a great difference.

Pre-retirement began in the late eighties for workers within five years of retirement. Firms could take the option to retire a worker early by paying six months advance pension insurance payments. The government also assumed 50-100 percent of this cost if firms either went bankrupt, were liquidated, conducted large scale lay-offs, or were operating without a profit. Workers fearing lay-offs have rushed to these programs and pre-retirement was twelve times as numerous in 1991 than in 1989 (Szémen, 1994:12). Anticipatory retirement, another program, was introduced in 1991 and gives pensioner status to unemployed workers who are within three years of retirement age, have been unable to find work for six months, and have worked the minimum service requirements. The program is a kind of subsidized early retirement for the long-term unemployed. Eleven percent of all new pensions awarded in 1993 were for anticipatory retirement, up from 6.9 percent in 1992.

Why have Hungarians placed these new burdens on their already overburdened pension system? The policies are problematic and convoluted but benefit all sides. Workers prefer to avoid unemployment and the social stigma it still carries (Ferge, 1994). Firms enjoy these programs because they are an easy way to lay people off without devastating morale, and because the state pays the lion's share of the severance. For the government, they are beholden to both external creditors and the domestic population. World lending organizations such as the IMF and World Bank exert pressure to reduce unemployment benefits which they see as a work disincentive that hinders a work ethic and marketization. Retirement parachutes to elderly workers, on the other hand, are viewed as more benign because they are calculated on work-based contributions and the recipients are on their way out of the labor force anyway. Anything is better for the government than unemployment. As Przeworski has discovered from regression analysis of Polish public opinion and economic indicators, "Fear of unemployment overwhelms the effects of all other economic variables combined, and it makes people turn against the reform program." (Przeworski in Bresser, et. al., 1993:165). Unemployment alone explains 87 percent of the variance in public support for the government because it increases uncertainty on a scope far beyond those actually displaced. In

⁴⁷ An exception is the new legislation which, since 1994, provides for private pension groups with preferable tax status. Due to high tax exposure these private plans can be expected to grow rapidly, although they can also be expected to reduce the possibility of broad political support for state pension provision.

the absence of a well developed safety-net the threat of unemployment means the threat of subsistence. "This is a cost no one can tolerate even in the short run" (ibid., 1993: 206).

IV.b. Housing

The story of post-war housing policy is one that begins with a great push to provide socialized housing to the proletarian masses and ends with the state finding itself mostly subsidizing private construction and accommodating the proliferation of private property rights in its own rental sector. The state committed itself to rebuilding Hungary after World War II, to improving living standards, and to industrialization. Improved housing was a central part of each of these three goals, especially the construction of housing for new industrial workers coming to urban centers. The state sought to engineer a steady increase in the housing stock according to socialist principles. "The principle was -- according to the principle of housing as a social right -- that an average income should cover the cost of housing" (Hegedüs and Tocsis, 1993b). But the policies fell prey to the internal politics of central plan bargaining and the influence of the second economy. State housing was highly inegalitarian, and its construction increasingly slipped outside government control. These distortions continue to influence housing policy after the fall of state-socialism.

Unlike the Soviet Union, where all land was decreed state property in 1917, East European countries rejected total nationalization of land. In Hungary, nationalization of "the private tenement sector" took place in Hungary in 1952, but personal property of consumer goods, including housing, was considered ideologically acceptable. Real estate containing less than six rooms was exempt from nationalization. There was no legal restraint on families constructing their own homes, although each household was restricted to a total of one family house and one weekend house. In the 1956 uprising housing conditions had been a significant issue and afterwards the regime made a number of concessions (Hegedüs, 1983). For instance, after 1956 illegally squatted homes were legalized and state housing agencies were no longer empowered to force housing dwellers into sharing their lease with another family assigned by the state. In 1958 the fifteen year housing construction program was unveiled which aimed to build one million units by 1975 (Hegedüs and Tocsis, 1993a).

State-socialism oversaw dramatic progress in the development of Hungarian housing in the early years. In 1949 the number of persons per room was a startlingly high 2.59; running water was in only 17 percent of homes, and only 12 percent had flush water toilets. In 1990 the comparable figures had been improved to 1.11 persons per room, 76 percent water, and 74 percent toilets. The ratio of overcrowded flats, as defined by Hungarian standards, similarly fell from 61 percent in 1960 to 15 percent in 1990 (Ehrlich and Révész, p. 157n). Rents in state dwelling are highly subsidized. Hungarians in 1992 paid only 3 percent of their income on rents, while the comparable amounts are 15-25 percent in most European Community countries. The average rent in 1991 was little more than the

equivalent of 10 dollars, which covered only a third of maintenance and management costs. Comparable units in the (minuscule) private rental sector typically are rented for over twenty times these prices (Csomos, p.6).

Yet the housing situation increasingly became one of crisis. Most Hungarians surveyed at the end of state-socialism considered 'the housing shortage' to be among Hungary's gravest social problems, far more important than the lack of democracy.⁴⁸ State rental waiting lists are so long that parents often sign up their newborns so that their turn will come in time for adulthood. It is not uncommon for young couples to live with the elderly as caretakers for many years in return for the opportunity to rent the apartment after they die. While waiting lists are impossibly long, the purchase of an average apartment costs over fifteen years of average earnings, two or three times more than the average time in Western countries (Csomos, 1993, p. 10).

Moreover, the state distribution and subsidization of housing has been highly inegalitarian. While the state has been obligated to provide the population with access to suitable shelter, in reality housing was a major source of inequality. Under state socialism inequality was less a matter of wealth or income than it was of access. The acquisition of nationalized property or the bypassing of waiting lists depended on political loyalty and personal connections. Studies conducted at the end of the Sixties indicate that in the state sector preferred housing was a fringe benefit for the privileged while the lower strata of society lived in lower quality dwellings *that were less subsidized* (Konrád and Szelenyi, 1969). In 1989 the top 20 percent of Hungarians in terms of income received forty percent of all housing payments. The top income quintile enjoyed three and a half times more housing subsidies than the bottom quintile (Ehrlich and Révész: 162, 254).

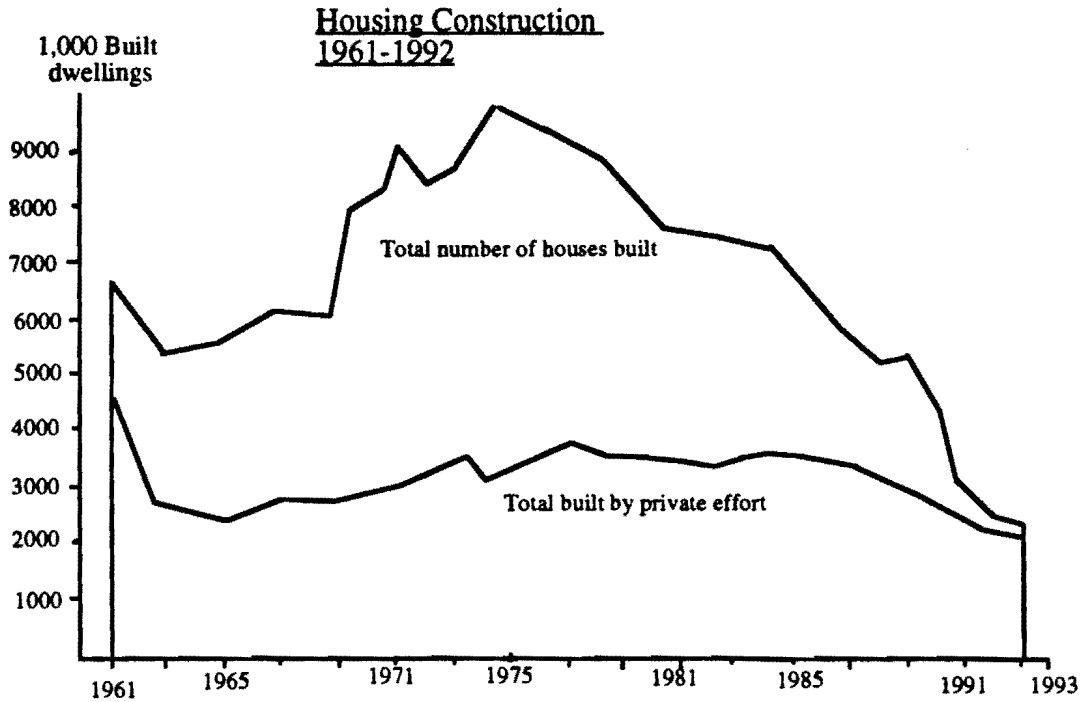
What happened to the state's commitment to positively provide housing as a social right? At the end of the Sixties Hungarian housing specialists had been urging that the existing housing stock was demographically inadequate and the state must provide housing for the new generation (Hegedüs and Markus, 1969). The Housing Act of 1971 established an ambitious housing policy based on subsidies to the state construction industry and a special housing finance system complemented by private savings. The government practiced "regulation from behind."⁴⁹ in a complex allocation scheme involving the state construction industry, state bank, local councils and large workplaces,⁵⁰ Initially, the measures led

⁴⁸ When asked to select Hungary's five gravest social problems in 1988 from a list of twelve, fifty-six percent selected "The housing shortage" in the top five. Only 20 percent selected a lack of democracy in the top five (T. István, 1990: 319).

⁴⁹ "Behind the system of legal rights other macro level regulative systems are working which are not ...controlled by civil institutions. This regulation from behind' can be so effective that it becomes possible for the political elite to avoid direct measures to achieve its aims" (Hegedüs and Tosics, 1991).

⁵⁰ Just as the reforms allowed firms to use the pension system as an informal instrument of wage-policy, so too enterprise-based employee housing grants and loans for construction were part of the 1971 housing act. Grants and loans were a larger part of enterprise-based housing policy than other enterprise housing supports such as aid for rent or workers hostels.

to a surge in state construction, but the longer term effect was to stir up informal bargaining mechanisms within the central planning process and the second economy. These secondary mechanisms undermined the state's efforts and became increasingly important as the state eventually withdrew its commitment to construct mass housing.



A counter-intuitive fact about housing policy under communism is that owner occupancy levels *rose* steadily to rates far in excess of most industrialized nations. The portion of the population renting from the state fell sharply under communism from 38 percent in 1949 and 1960 to 34 percent in 1970, 30 percent in 1980, 26 percent in 1984, and 20 percent in 1993 (Social Report, 1990: 91). As the chart above indicates, the total number of units built by the government initially increased, reached a peak right after the 1971 housing mobilization, and then fell continuously up through the present.⁵¹ Eventually the initiatives of the state sector diminished and subsidies began increasingly to support private construction,

Until 1988 enterprises had to draw up their own firm-based social policies. The number of people receiving enterprise-based housing aid has diminished considerably (Fajth and Lakatos, 1994), although the total spending on fringe benefits may have increased in reaction to increasing taxation (Rein, 1994).

⁵¹ Sources: Vajda and Farkas, 1990; Hegedüs, 1992; Csomos, 1993. Forty thousand homes new homes per year is considered the minimum point for maintaining existing housing stock by replacing lost buildings according to Miklos Fracsis, independent housing expert.

especially in the form of very low interest-rate loans.⁵² Private construction faced serious bottlenecks in obtaining land, capital, and construction materials. Originally, state control of these resources was tightly controlled but subsequently loosened, especially throughout the eighties.

The push for state-led housing was concurrent with aspects of the reform process which increased the informality of the economy and eventually obstructed the aims of the regime.⁵³ First of all, the reforms intensified the bargaining of industrial interests in the central planning process. The reforms of 1968, and particularly the Housing reform of 1971, gave more power to the sectoral ministries, including construction. Hegedüs explains how the situation was before the reforms,

The 1960's were characterized by a unique contradiction in the East-European countries. On the one hand decisive political steps were made for the improvement of the housing situation, while on the other hand these decisions were not followed by investments. The cause of this is that in the economic power sphere there is not an interest group behind housing construction which would make a lobby in favour of the sector(1993a:18).

In the logic of plan bargaining the construction industry's increased power after 1971 allowed it to demand more central allocation of resources for each unit and thereby to gain some slack as a hedge against future shortages.

The unintended result was to make state-built housing unattractive for the state compared to private construction. A strengthened state construction industry was able to win increases in the administrative prices for state housing, making it even more expensive relative to privately constructed housing. The increased resource allocations to the state construction sector were partly meant to mobilize private initiatives toward state goals, but the relationship with the growing second economy led largely to the cannibalization of these very same state resources. A thriving private labor market in construction, for instance, competed for workers with the state construction firms and bid up the wages, especially for skilled work (Hegedüs, 1990: 229). Both formal and informal means were found for private construction to circumvent previous bottlenecks. Building materials were controlled by state monopolies, but an informal market developed for materials that were used or 'leaked' from state firms. The diversion of state materials was often tolerated by enterprise managers, and was facilitated by the growth of quasi-private subcontracting by groups of workers using state equipment (Stark, 1984).⁵⁴ In urban areas available land for private building was scarce, but in the mid-80's it became increasingly easy to get building bans lifted with the proper connections (Hegedüs, 1990). One study of the hills around

⁵² These long-term, low interest loans were particularly generous in light of the ensuing inflation and global interest rate increases. The new government in 1990 tried to renegotiate the terms of these loans and were prevented in the new Constitutional Court's first act.

⁵³ Perhaps due to reforms, housing shortages in Hungary were less severe than in most Soviet-Bloc nations. Estimates of Hungarian housing shortage in 1986 are judged to be 6.6 percent of total housing stock., high but not compared to 15.3 percent in CSFR, 17.1 percent in GDR, 23.9 percent in Poland, 30.2 percent in USSR (Csomos,1993.)

⁵⁴ A common anecdote is of a worker who brought a brick home from work every day and after ten years had built a house.

Budapest even found accelerating speculation in land and skyrocketing land prices (Loránt in Hegedüs, 1992: 255). After 1982 the state essentially withdrew from the housing sector as it exerted too high a burden on the troubled national budget. The shift was signaled in the 1983 Housing act which released restrictions and extended subsidies to the private housing sector.

The state made a kind of pact with the devil by involving the second economy in housing policy. The original intent was that the state would sponge off the second economy instead of the other way around. The promotion of private construction had been included in the Housing Act as an anti-inflationary measure meant to absorb excess demand created by the rising second economy. Much of the construction, however, was based on non-monetarized barter exchange and thus did little to absorb excess money (Sik, 1988). Another problem was that families in the cities reinvested their second economy incomes in weekend cottages and auxiliary farms instead of in urban housing where shortages were most acute.⁵⁵

In the state-owned housing sector an informal system of renter's rights eventually evolved to be almost indistinguishable from ownership rights. People in state dwellings effectively owned the right to subsidized tenancy. There was very little housing mobility although leases were passed down through the generations and sub-markets existed where people sold leasing rights, often for large sums of money. The maintenance of these buildings was typically poor, and major renovations were indefinitely postponed as neither state nor tenant saw themselves as enough of an owner for such undertakings. People did their own home improvement and generally viewed a state rental, once acquired, as 'theirs'.

These kind of quasi-ownership rights are hard to classify as either social rights or property rights. The dwellings were provided as a social obligation by the state to meet basic needs; but they also entailed the creation of property rights for use, transfer, and the exclusion of others. These established entitlements do not quite fit under ordinary categories of rights. Regardless of what names we choose, there is an important legacy of informality and accustomed expectations of entitlement which have a critical role in shaping the politics of post-communist social policy. The widespread privatization of state rental stock completes a gradual shifting of property rights to the residents and also a gradual shifting of housing policy into the heated arena of contemporary ownership battles. This is not the place to outline the ever-changing contours of privatization politics.⁵⁶ What is relevant is that there has been a freeze on

⁵⁵ Eighty percent of the state housing stock was in the seven largest cities at the end of state-socialism (Vajda and Farkas, 1990).

⁵⁶ Some brief illustrations: eviction of is hindered by the requirement that landlords first find a suitable alternative unit, a very difficult prospect in current housing markets. In Budapest the Court Enforcement Office oversees debt collection and eviction, receiving about 3-4 thousand new claims a month for debt collection for 16 officers. They rarely pursue non-payment of privately owned apartments; although they receive about 100 monthly private cases, they only carry out about 10-30 evictions per year with an average processing time of 4-5 years. Tenant protection laws from the 1971 Housing Act make eviction and foreclosure all but impossibly cumbersome (Gray, 1993:72). Despite the fact that rents cover only a third of maintenance costs there has been a reluctance to raise rates. The central government raised rents at about the rate of

rent increases and very low price terms of privatization to former tenants which indicates that extra-legal expectations about tenant entitlement is still recognized. And furthermore the transfer of responsibility for housing policy to overly decentralized local governments with poor administrative capacities ensures that actual implementation will not closely follow formal procedures.

Conclusion

This paper has argued that the legal rights that are expressed in formal institutional arrangements are no more important than the extra-legal proto-rights embodied in various systems of mutual accommodation. Social rights are a recognition of social guarantees, and the formal codification of rights may be only loosely related to their practical application. The unfortunate tendency to see rights and law as synonymous comes from incorrectly presupposing that law provides the only basis for such guarantees. To the extent that the specifications of the law solely constitute social guarantees we may then regard the formal law as the basis of social rights; but where guarantees instead gain their force through quasi-formal social arrangements, then it is important to acknowledge that those conventions become the substance of social rights. These latter kind of rights existed under state socialism in the form of implicit social contracts and in informal bargaining arrangements. An approach that uses this more expansive definition of rights acknowledges that they can exist prior to a democratically accountable state and that post-communism does not craft them 'from scratch.'

inflation back in 1990 and then transferred the property to local government. Despite intense financial difficulties local governments have also chosen to leave rents at their below-market prices.

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