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Problems of post-post-communism: Ukraine after the Orange Revolution

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Although Ukrainian democracy has made some progress since the 2004 Orange Revolution, significant problems remain. This article compares the difficulties facing post-Orange Revolution Ukraine to those encountered in East Central Europe in the early 1990s and maintains that Ukraine will have a harder time overcoming its challenges because its starting point and inheritances are different. That is, Ukrainian democracy must overcome many of the infirmities created during its initial decade of post-communism, and that these make establishing effective democratic governance in today's post-post-communist period arduous. Among the difficulties are designing effective institutions, managing the post-Orange Revolution coalition, removing entrenched corruption and weak respect for the rule of law, and coping with a less hospitable external environment. Events since the Orange Revolution bear out the argument that the events of 2004, while getting rid of a leadership with dubious democratic credentials, are merely the beginning of a process to bring a successful democratic government to Ukraine.

Keywords: Ukraine; post-communism; democratization; Orange Revolution; rule of law

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Ukraine's Orange Revolution, which brought Viktor Yushchenko to the country's presidency in January 2005, fuelled expectations that liberal, Western-oriented democracy would be established in Ukraine. After suffering for a decade under the semi-authoritarian and corrupt rule of President Leonid Kuchma, Ukrainian civil society unexpectedly rose up against efforts to install Kuchma's candidate, Prime Minister Viktor Yanukovych, as the new president. The massive and peaceful protests in Kyiv and elsewhere were reminiscent of popular uprisings in Central and Eastern Europe in 1989, and many, including Yushchenko, declared that the Orange Revolution showed the world a 'genuinely different Ukraine … a noble European nation, one that embraces genuine democratic values'.[1]

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Much of this optimism quickly faded. The initial 'Orange' government was dogged by corruption allegations and in-fighting. The European Union (EU) did not embrace Ukraine as a candidate country. Public confidence in the authorities plummeted, with one survey in November 2005 finding that nearly 60% of respondents believed the country was headed in the wrong direction, more than had expressed such a view in April 2004.[2] In 2006, the Orange coalition fell apart and Yanukovych returned as prime minister. A constitutional crisis in early 2007 threatened Ukraine with violence, and the September 2007 parliamentary elections, which brought Yulia Tymoshenko, one of the leaders of the Orange Revolution, back as prime minister, did little to bolster prospects for stable or effective governance. Within a year, a renewed 'Orange' coalition of Yushchenko and Tymoshenko fell apart amid accusations of treason and attempts to create a 'constitutional coup'.[3]

Why has this happened? What are the prospects for effective democratic governance in Ukraine? This paper seeks answers to these questions by comparing the Ukrainian 'revolution' with the initial post-communist transitions in East-Central Europe which produced successful market-oriented democratic governments. While it is fair to argue that it is too soon to make any definitive assessment of the fate of the Orange Revolution, and that states such as Poland, Hungary, and Slovakia did not experience instant success in the immediate post-communist period, it does appear that the road in Ukraine to a well-functioning, stable democracy that enjoys widespread legitimacy will be far more difficult than it was for its neighbours to the west.

The issue, therefore, is not simply democracy. Since 2004, Ukraine has had two rounds of parliamentary elections that were, despite some problems, judged free and fair. Voters can choose between several genuine political parties. There is more room than before for independent media and civic organizations. This constitutes progress, even if it falls short of being a revolution. The issue is the *quality* of Ukrainian democracy, an admittedly tougher topic to operationalize than democracy *per se*. Relevant concerns on this front would be the ability of political institutions to govern, stability and legitimacy of the political system, corruption and the rule of law, and the government's commitment to democratic freedoms and representing the interests of voters. True, no government is going to be a perfect democracy, but it should be possible to identify democratic systems that do a better job than others.

The core argument of this article is that the problems of post-Orange Revolution Ukraine are entrenched, going beyond well-known personality disputes between leading political figures. The article posits that Ukraine is going through a 'post-post-communist' transition, one occurring after the initial phases of the post-communist transition (e.g. development of new political institutions, property redistribution). To the extent that the post-communist transition in Ukraine in the 1990s was carried out poorly on political, economic, and social fronts and resulted in (at best) 'competitive authoritarianism',[4] Ukraine today confronts obstacles that are different both in scale and in kind from the

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transitions in East-Central Europe. This legacy will not be easily undone. In short, we are witnessing a new phenomenon in Ukraine, and, potentially, in other cases of late post-communist democratizers:[5] an attempted democratic transition not from communism, but from post-communism gone astray.

This requires modifications to existing frameworks, taking into account the inheritances and starting points in each case as well as some of the peculiarities of the Orange Revolution itself. If we accept a basic notion that historical factors and structural inheritances can facilitate or constrain the trajectories of democratic transitions,[6] then we need to recognize some of the different predicaments faced by would-be democratizers in Ukraine after the Orange Revolution. Ukraine's starting point in 2005 was very different from that of East-Central European countries in 1990, and vestiges of the experiences and structures set up prior to the Orange Revolution may limit the possibilities for easy or successful democratic consolidation. Democratization has had the clearest success in those countries that were able to make a clean and fast break with their communist past.[7] This article argues that Ukraine will be unable to make such a break from the path trodden in the initial post-communist period and will, in today's 'post-post-communist' environment, struggle to emulate its more successful western neighbours.

What distinguishes 'post-post-communism'? One can identify a variety of general political, economic, and external challenges that affect post-post-communist transitions in a manner different from those present during the post-communist transitions of over a decade ago. These are primarily structural factors, meaning that, in the short-term at least, good governance in Ukraine will depend upon more than just good leaders or the will of the people for a new form of government. Moreover, these structural factors are generic enough to lend themselves to comparative analysis and are not primarily Ukraine-specific (e.g. regional schisms, relations with Russia, questions over NATO membership). Among these challenges are re-designing political institutions, managing the post-Orange Revolution democratic coalition, removing entrenched corruption and oligarchic interests, preventing the return of old elites, and coping with a less supportive external environment. The following sections will explore these factors in more detail, beginning with the difficulties in re-designing political institutions.

Re-shaping political institutions

The collapse of communism in East-Central Europe demanded the creation of new political institutions. Communist-era institutions proved both too weak to stand up to the demands of reform and unsuitable for democratic governance. Whether the party-state and its appendages collapsed or negotiated the end of their dominance, it was clear that political structures had to be overhauled. New constitutions were required. The rule of law and an independent judiciary – not to mention a vast reworking of legal codes to take into account new social, economic, and political realities – needed to take root. New political parties and interest associations

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would now compete for power and influence. The requirements of new democratic systems, in short, demanded wholesale institutional change from the communist regime.

This is not to say that the post-communist democracies were built on a *tabula rasa*. The communist system in various ways shaped post-communist trajectories. However, the complete collapse of communist authority by 1990 in Poland, Hungary, and Czechoslovakia gave new elites a relatively free hand to re-shape political institutions without paying excessive attention to vested interests that sought to preserve the old order. Moreover, because the political aspects of communist rule were so discredited, there was consensus for wholesale change. Anticipating the demands of democratization in the post-communist period, Dahrendorf suggested that the 'hour of the [constitutional] lawyer' would be relatively short.[8]

Of course, there were questions of institutional design and distribution of powers. Most states adopted proportional representation, which was thought to be more conducive to the development of strong political parties. While some debated the merits of parliamentary and presidential systems, most East-Central European states adopted parliamentary systems,[9] whereas Romania, Bulgaria, and most Yugoslav and Soviet successor states opted for stronger presidencies. A decade after these choices were made, it has become clear that parliamentary systems have performed better and have obviated the emergence of 'super-presidentialism', which has been a bane in Russia, Ukraine, and elsewhere.[10]

Post-communist Ukraine, particularly under the stewardship of Leonid Kuchma (1994–2004) provides plenty of evidence to indict a presidential system. Ukraine, like Russia, adopted a constitution with dual executives, but power – formal and informal – became concentrated in the hands of the president. According to the Parliamentary Powers Index developed by Fish and Kroenig and based upon 32 indicators of parliamentary power, Ukraine's parliament (in the period 2002–2004) scores only .50, similar to Russia (.44) and far lower than the Czech Republic (.81), Poland (.75) and Hungary (.75).[11] Similarly, according to Frye's scale of formal presidential powers, Ukraine (15) was close to Russia (18) and the same as authoritarian Belarus (15), while being much higher than the Czech Republic (4.75), Slovenia (5.5), and Hungary (7.25).[12] From both of these data-sets, the general lesson is clear: strong presidencies have not been conducive to democratic development in post-communist cases. Moreover, Kuchma also took advantage of a host of more informal powers to reward supporters and punish those that deviated from his preferences. As D'Anieri argues, 'power politics' in Ukraine trumped any formal arrangement for separation of powers. For example, the judicial system functioned as an appendage of the Ministry of Justice, which was tightly controlled by the president. The president also had the right to name the judges and the administrators of various courts, meaning that the courts were not only 'pro-government in an institutional sense, but they tended to be pro-Kuchma in a partisan sense.'[13] Opposition existed, but it was marginalized – hence the moniker 'competitive authoritarianism'. Given his ability to manipulate results to his liking, Kuchma and his team no doubt

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thought it would be possible to secure victory for his designated successor, Yanukovych, in the 2004 presidential election.

This did not happen, however. Despite evidence of fraud in favour of Yanukovych, Yushchenko won more votes (39.9%) than he did in the first round of elections (39.3%) on 31 October 2004. However, since neither won a majority, a run-off was scheduled for three weeks later. Despite exit polls that showed Yushchenko to have won a clear victory, the official results declared that Yanukovych won the plurality (49.4%) of the votes. As evidence of vote-rigging mounted, Yushchenko called for public protests – hence the Orange Revolution, which literally brought millions of Ukrainians into the streets. The 'party of power', which had long supported Kuchma, split over what to do next, and the Constitutional Court, facing both internal and international pressure, ordered a re-vote. In the final round of voting on 26 December, Viktor Yushchenko, and not Viktor Yanukovych, prevailed and ascended to the presidency.

Yushchenko's supporters pinned their hopes on his ability to use his powers to create an entirely different political order. However, in December 2004, prior to the final run-off, Kuchma secured a deal with Yushchenko whereby the powers of the presidency would be weakened. Yushchenko agreed to this deal as long as Kuchma agreed to go along with plans for an additional round of voting. According to this agreement, the parliament, from 2006 onward, would name the prime minister and the government would be representative of the majority in parliament. In addition, Ukraine would adopt a purely proportional representation system, with political parties requiring a 3% threshold in parliamentary elections to secure representation and with new rules of 'imperative mandate', meaning that deputies would be dismissed if they switched party affiliation. Many of Yushchenko's supporters were against these changes, arguing that it was unfair to change the powers of the presidency during presidential elections, but some conceded that such a pact was necessary for the stability of the transition.

One should add that the president did not surrender all powers, as s/he still appoints the ministers of defence and foreign affairs, prosecutor-general, and the head of the security service. The ambiguity this creates, however, may cause its own set of problems. These reforms were criticized as a 'return to the past', meaning that they re-establish a more ambiguous relationship between the president and parliament, such as had existed in the early 1990s, and have proved a source of conflict in Ukrainian politics.[14] Indeed, disputes between Yushchenko and Prime Minister Yanukovych in 2007 and then with Prime Minister Tymoshenko in 2008, both of which were over the distribution of powers between the two executives, precipitated serious political crises.

One could argue, perhaps, that limitations on presidential power were necessary to eliminate the temptation of presidential authoritarianism. The irony, however, is that weaker institutional powers for a reform-oriented president in effect watered down the results of the Orange Revolution. Not only is President Yushchenko institutionally weaker than his predecessor, but, as noted below, old elites from 2006–2007 were able to gain control over parliament. Eventually, the

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cohabitation between President Yushchenko and Prime Minister Yanukovych became untenable, as Ukraine stumbled through a year without clear direction. Resolution came only after Yushchenko issued a constitutionally dubious decree to dismiss parliament and hold new elections. These, however, changed personalities but not the underlying dynamic: Tymoshenko, advocating parliamentarism, squabbled with Yushchenko, who in September 2008 withdrew his party from the coalition government.

The contrast should be clear. In East-Central Europe, institutional change took place in an environment with fewer constraints and vested interests. Constitutional designers could make choices (e.g., a presidential or parliamentary system) on a more abstract level, not worrying about the individuals, parties, or interests that would occupy them. Vestiges of the old system mattered less, as so much of it had been swept away. Lastly, the choices that were made, particularly in favour of stronger legislatures and weaker presidencies, boded well for democratization. Conversely, Ukraine in the initial post-communist period was burdened with a strong presidency that worked against democratization. After the Orange Revolution, it has tried to move toward a stronger parliamentary system that corresponds, on paper at least, with what exists in its more democratic neighbours to the west. However, these changes have been difficult to implement and rivalries and uncertainties over the division of power continue to create crises and instability.

As difficult as reshaping political institutions has been, this is not, as suggested in the introduction, the only element that would yield a more effective democratic government. Managing the 'Orange' democratic coalition poses its own challenges to governance and the democratization process in Ukraine.

Managing the democratic coalition

Opposition movements that succeed in gaining power typically encompass a variety of groups with different ideologies and priorities. This was certainly true in the East-Central European cases, where one witnessed, *inter alia*, a mixture of human-rights advocates, labour activists, religious groups, students, nationalists, disaffected communists, ethnic minorities, and economic liberals coalesce around the goal of removing the communist authorities. While each could agree on the desirability of change, each also had different priorities for the immediate post-communist period. This was exemplified best in Poland, in which the trade union *cum* social movement Solidarity split into several factions within two years of assuming political power, but it was a universal phenomenon: anti-communist forces fracturing after gaining victory.

This is not necessarily a negative phenomenon. Societies have political cleavages, and once the main cleavage between communists and their opponents became less salient, the anti-communist forces naturally began to squabble over various issues. New parties, often breaking with the catch-all opposition, established themselves across the political spectrum. In this respect, one might say that the social movement style of politics of the 1989 revolutions has evolved

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in East-Central Europe into the type of normal democratic politics one would find in any Western European country.

On this level, then, the challenges facing the motley members of the 'Orange' coalition were not that peculiar because, like Solidarity in Poland, they were a catch-all opposition movement, supported by millions of people. These included vocal students and others in the *Pora* and *Znayu* movements,[15] activists in independent trade unions, followers of the charismatic, populist, millionaire former 'Gas Princess' Yulia Tymoshenko,[16] the Socialists under Oleksandr Moroz, business interests that cut their ties to an increasingly corrupt political regime, nationalists upset with the pro-Russian positions of Kuchma and Yanukovych, and, of course, the reformist, pro-Western, former prime minister (and Kuchma appointee) Yushchenko, who had established an opposition party, Our Ukraine, in 2002. In January 2005 Yushchenko was installed as president of Ukraine and representatives from various anti-Kuchma forces assumed leadership roles in the new government. No single 'Orange' party was created.

Not surprisingly, the Orange Coalition began to experience internal schisms. Many of the leading figures (e.g. Yushchenko, Tymoshenko, Moroz) headed their own political blocs, and had pre-existing political rivalries that were only temporarily cast aside during the battle against Kuchma and Yanukovych. Yushchenko said that he was forced to act as a 'nanny' among governmental actors.[17] However, he arguably did a poor job in this capacity, resorting, according to one observer, to the 'Soviet stratagem of balancing one ambitious individual against another'.[18] He appointed his long-time ally (and godfather to his daughter) Petro Poroshenko as head of the National Security and Defence Council, and gave him additional powers, including the power to issue orders to government ministries, thereby by-passing the prime minister, Tymoshenko. As it became clear that Poroshenko, one of Ukraine's wealthiest men, had different priorities from Tymoshenko, the two quickly came into conflict. Moreover, Tymoshenko's populist policies, which included suggesting the review of 3000 privatizations and the capping of fuel prices, brought rebukes from Yushchenko and many of his allies. Eventually, in September 2005, Yushchenko dismissed both Tymoshenko and Poroshenko as well as other high-ranking officials accused of corruption and abuse of power.

Arguably, the break-up of the Orange Coalition in and of itself was not an intractable problem. Grand opposition coalitions do break up, and Ukrainians were now free to cast their votes for a variety of parties that claimed an 'Orange' heritage. Yet, some aspects remain troubling. First, as noted in more detail below, elements of the old regime have not been swept away, seen most clearly in the results of 2006 and 2007 parliamentary elections, in which Yanukovych's Party of Regions captured the largest number of votes. Thus, Yanukovych and his allies can exploit rifts among the Orangists to their own advantage, which they did with great success in both the summer of 2006 and in spring 2007. Second, the manner in which the Orange Coalition has split, with mutual allegations of corruption, is dispiriting to the population. The

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result, only a year after the Orange Revolution, was disillusionment in the very capacity of democratic elections to deliver change. For example, in November 2005, only 23% of respondents in one survey agreed that elections lead to a more democratic society, 14% believed they would lead to less corruption, and only 12.5% stated elections would improve the economy. All of these figures are significantly lower than those found in a survey in April 2004, before the Orange Revolution.[19] Lastly, as noted, the constitutional changes toward a parliamentary-presidential system re-enforced existing intra-Orange rivalries and put a premium on coalition politics. To the extent that Ukraine has a regionally fractured, often poisonous political atmosphere, as most in western Ukraine hold diametrically opposed views to those in eastern Ukraine on a number of issues (e.g. economic reform, language policy, foreign policy), governance becomes a problem. Indeed, it took the three Orange parties that cleared the 3% threshold in 2006 – Our Ukraine, the Tymoshenko Bloc, and the Socialists – almost three months to reach an agreement on a governing coalition, and then it fell apart within two weeks. In 2007, when the 'Orangists' won a three-seat majority in the parliament, negotiating a coalition was once again difficult, requiring months to put together a government that ultimately lasted less than a year. In short, stable governance is a tremendous challenge in Ukraine. In contrast, for example, despite Solidarity's fractious nature and eventual break up, it and its successor movements and parties were able to govern post-communist Poland for almost four years, enough time to put political and economic reforms on a solid, irreversible track. Ukraine's reforms, however, look much more precarious.

Aside from the more formal political issues of reshaping institutions and maintaining democratic coalitions, one of the biggest challenges in post-Orange Revolution Ukraine is battling entrenched corruption and establishing the rule of law. It is to these concerns that we now turn.

Corruption, oligarchs, and rule of law

Corruption has been a problem in all post-communist states. Its roots, however, lay in the communist period itself, and opposition movements and parties in Central Europe in the 1980s positioned themselves as less corrupt than the communist authorities. In part, of course, they could do so because they were outsiders without access to corrupting power, but their explicit moral orientation (e.g. Solidarity's ties to the Church, Vaclav Havel's moralism as a *leitmotif* of the Velvet Revolution in Czechoslovakia) was a salient part of their appeal. True, corruption flourished in many post-communist countries in the immediate years after 1989, but this was arguably due more to the ambiguity of the political and economic environment, often exploited by former communists with insider connections or economic resources, than overt, purposeful actions of the post-communist elites.[20] In other words, Poland might have experienced a wave of corruption in the early 1990s, but one could not point to a fabulously wealthy political class of Solidarity leaders that had been the agents and beneficiaries of the corruption.

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Moreover, despite real problems (e.g., scandals in the late 1990s surrounding Czech privatization), the general movement in these states was toward less corruption over time.

In contrast, states experiencing post-post-communist transitions, such as Ukraine, begin the process in an environment rife with corruption. For example, in 2004, Transparency International ranked Ukraine 122 among 146 countries of the world in terms of corruption.[21] Notably, the corruption was not simply a residual product of the 'reforms' adopted by the government. Rather, corruption was pervasive due to the very nature of what Darden called the 'blackmail state', in which corrupt practices were encouraged by the political elites as a means for the regime to maintain power.[22] Thus, in addition to the widespread phenomenon of '*nomenklatura* privatization', under which members of the old Soviet-era elite used their positions to obtain ownership in economic enterprises, one saw in Ukraine corruption of the judicial process, harassment of opposition figures, electoral manipulation, and a crackdown on independent media, best exemplified by the murder in 2000 of Grigorii Gongadze, a journalist critical of the Kuchma regime.[23] Most seriously, many of these activities were linked to President Kuchma and his inner circle. As a consequence, any new leadership promising change would have to make the battle against corruption one of its top priorities.

On this score, too, the results of the Orange Revolution have disappointed many. Initially, there were what appeared to be isolated incidents of corruption. For example, the nominee for the post of justice minister lied about his academic credentials and Yushchenko's son was embroiled in a scandal due to his lavish lifestyle.[24] However, some observers began to speak out against a culture of corruption among the Orangists. One critic, who was largely supportive of Yushchenko, argued that the new government was all too similar to previous Ukrainian governments in its desire to push 'revolutionary viability' above the rule of law . The root problem, in his view, was lack of a moral and ethical culture, which had still not developed across a wide section of society.[25]

In 2005, Yushchenko's former campaign manager, Oleksandr Zinchenko, caused a major uproar by accusing high-ranking officials within the presidential administration (including Poroshenko, arguably Yushchenko's closest ally) and the 'Our Ukraine' party of various forms of corruption. Tymoshenko was accused of corruption as well, especially for siding with certain oligarchic groups in re-privatization schemes in order to eliminate her own debts. The result was September 2005's 'Orange Divorce', in which Tymoshenko was ignominiously dismissed by Yushchenko.

The central problem, however, was not simply a few bad apples in the barrel. Rather, this was more of a structural problem lying at the heart of the Orange Coalition itself. The Orangists were composed of numerous actors and factions, some of whom became fabulously wealthy thanks to dubious actions under the Kuchma regime and were themselves members of oligarchic political parties. In other words, one has been witnessing, post-Orange Revolution, the continued

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'oligarchization of power'.[26] True, in 2005 Tymoshenko had tried to spearhead a populist campaign that included prosecution for corrupt officials and re-privatization of ill-acquired property. However, some viewed this as an attempt by her and her allies to gain at the expense of other oligarchic factions,[27] and, in any event, she was removed from power. One observer noted that thousands of people, civil servants, politicians, journalists, business people, have 'deep financial and personal interests in maintaining the corrupt status quo' and thus the Orange Revolution would be the 'easy part' compared with the battle against entrenched corruption.[28] Examples of corrupt, or what Andrew Wilson calls 'virtual' politics include the emergence of fake or oligarchic parties designed to split the vote, PR campaigns and blackmail against political opponents, and staged demonstrations that essentially 'rent' protesters. Paradoxically, he suggests that media pluralism has actually increased the ability and temptation of various parties to attack each other with *kompromat*.[29] Post-Orange Ukrainian governments have also made deals with the old 'party of power', courting the support of Yanukovych and his allies in return for immunity from possible prosecution for electoral fraud and promises not to look into dubious privatization deals in the 1990s. Yuri Yekhanurov, who oversaw the (largely ineptly handled) mass privatization in Ukraine, was installed as prime minister in 2005 as Tymoshenko's replacement and referred positively to the oligarchs as the 'national bourgeoisie'.

How to overcome the dominance of various oligarchs or clans is a core dilemma facing post-Orange Ukraine. Certainly the spirit of the Orange Revolution was to produce a new politics, one that would be more moral and more just. One central issue, however, is what to do about the injustices of the recent past, particularly the vexed question of privatization. Some, including Tymoshenko, called for re-nationalization of property for the sake of economic justice.[30] Notably, this type of call for economic populism was not muted in the first post-communist transformations in the early 1990s, as virtually everything was owned by the state and there was a relatively strong consensus on the need for market-oriented reforms. In this way, the first wave of post-communist reformers was quickly able to transform the political economy of the old regime, as there were no property holders with property to lose. Ukraine was not so fortunate.

Already one sees that each of the major political leaders in Ukraine have their own oligarchs, many of which found their way into parliament in 2006 and 2007 and thus enjoy immunity from prosecution. True, as Way argues, oligarchy can be unstable, as oligarchs are not known for their loyalty and can be opportunistic,[31] but, even if alliances among oligarchs shift, can Ukrainians expect major changes in the policy and behaviour of political elites? Of course, in principle a political move against the oligarchs is possible, but as Tymoshenko's experience shows, this is politically and economically risky. Moreover, borrowing from the 'varieties of capitalism' literature, each type of capitalism, formed under particular historical conditions, can become resistant to change in the absence of some form of critical juncture.[32] Perhaps the Orange Revolution could have been that critical juncture to unmake aspects of Ukraine's political economy, and certainly, many Ukrainians

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hoped that this would be the case. However, evidence to date gives little hope to suggest that the oligarchs will lose their influence on Ukrainian politics. An issue that is closely related to this question is the presence of the old political elite in the political landscape of post-Orange Ukraine, an issue taken up in the next section.

Return of the old elites

How ephemeral are political changes brought about by events such as the Orange Revolution? In other words, how secure are democratizing regimes from a revanche of authoritarian forces? Can yesterday's discredited elites return to power, capitalizing on the mistakes of the new government, nostalgia, or employment of a new rhetoric?

This issue certainly arose after 1989 in Central Europe. Although the top leaders in the old regimes were so discredited that their return was politically (or, in the case of Ceausescu, physically) impossible, the communist parties did revamp themselves, adopting a new name (usually including the word 'socialist') and choosing new leaders who were less compromised and thus could offer some appeal to voters (e.g. Alexander Kwasniewski in Poland). In Bulgaria and Romania, these parties held onto power initially, preventing an immediate democratic breakthrough and arguably making the transition to democracy in both countries more difficult. In other cases, such as Poland and Hungary, the former communists gained power in elections in the 1990s, after the public grew sour on the promises of the market made by the new, democratic authorities. However, the important point to make is that these parties were reformed in important ways.[33] Once in power, they did not resort to authoritarian, statist practices. Instead, the main contours of democratization, marketization, and Europeanization were kept in place. Even in Bulgaria and Romania, the former communists realized they could not rule as before, and already by the mid-1990s both countries had made substantial, if incomplete, democratic progress.

Ukraine faces a different scenario. The Communist Party, defeated in 1991, is no longer the threat. Its strength, as measured by members in parliament and votes in presidential elections, declined throughout the 1990s. It does not offer a programme to attract new voters, and barely passed the 3% threshold in 2006 and 2007 elections. Holdovers from the Kuchma era are another story, however. Although the Kuchma regime itself fragmented into different parties and oligarchic groups prior to its overthrow in 2004, its core, centred on Viktor Yanukovych and the Party of Regions, remains a potent political force. It has a solid base in the industrialized, Russified Donbas region in Eastern Ukraine and it has money. Its leaders are unlikely to go to jail for past electoral mischief. It has taken advantage of pro-Russian language, anti-NATO feelings to mobilize protest and was able to play up the relative economic decline under Yushchenko in 2005–2006, meaning it can promise to return Ukraine to the 'good ol' days' of the early 2000s during which the country saw substantial economic growth. True, it is compromised by its attachments to unpopular or corrupt political elements,

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but the same could be said for most other political groupings in Ukraine. It is, in short, alive and well. According to James Sherr, the Orange Revolution defeated the old order, but 'its sources and structure of power remained intact...they (the Orangists) never fully grasped their [opponents] self-serving, parasitical, rent-seeking and (at worst) malevolent nature'.[34]

One early demonstration of this group's power was the pact concluded by Yushchenko and Yanukovych in September 2005, by which Yanukovych delivered the votes of the Party of Regions to approve Yushchenko's nominee, Yuri Yekhanurov, as prime minister. Some, of course, hail political pacts as necessary and even preferable on the road to democracy, as they prevent conflict and give out-going elites a sense of security and a stake in the democratic system.[35] Typically, pacts, such as those employed in Argentina, Chile, Spain, and South Africa, give outgoing elites immunity for prosecution, security for property (however acquired), and perhaps a guarantee of some political representation. Among the East-Central European countries, Poland moved toward a pact-like arrangement, cumulating in the 1989 Roundtable Agreement, but this pact became largely irrelevant by 1990–1991, once the old regime lost all credibility and support.

Pacts could hold a certain logic for Ukraine. As is clear, the old regime has not evaporated and must be dealt with as a political force, as engaging in witch-hunts could generate political chaos. Re-visiting scores of privatizations could jeopardize investor confidence, which has already been shaken by some of Tymoshenko's actions. Arguably, putting the country's past behind it, particularly given its political and regional polarization, would be an important part of charting a new path. Reflecting these sentiments, Yushchenko announced that, 'It's time to bury the war hatchet and to forget where it lies'.[36]

However, as Bunce notes, 'breaking' with the past as opposed to 'bridging' it, has been linked to successful democratic transitions in the post-communist world. Moreover, the evidence suggests that post-communist pacts have worked best when they are accompanied by popular mobilization, as an involved public is able to force the hand of undemocratic elites and secure better terms for democratic elements in any pact.[37] For all the outrage over the agreement on constitutional reforms between Kuchma and Yushchenko in December 2004, Kuchma's hand was weak because of the crowds on the streets, and this pact did deliver the big prize: Yushchenko's victory in re-run elections. However, by September 2005, the public had been demobilized and the Orange forces were divided, meaning that the deal between Yushchenko and his erstwhile opponent, Yanukovych, was a boon to the latter. Yanukovych and his allies won amnesty for any electoral fraud, parliamentary immunity for officials on local councils, rights for the parliamentary opposition, and legislation to guarantee property rights (thereby *de facto* legitimizing the numerous dubious privatizations that occurred under the old regime).

Perhaps, one might say, this was politically prudent. However, this deal did not correspond very well to the demands of the crowds that supported Yushchenko, who believed his slogan, 'Let's put the crooks behind bars'. Such an agreement

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was, in the eyes of some, a betrayal of the revolution.[38] Noting as well the assurance by Yekhanurov that any re-privatizations would heretofore be settled by out of court settlements and negotiations, another observer caustically noted that, 'Kuchma must be laughing up his sleeve. His successor is endorsing, out of weakness, the corrupt political and economic system that he created – after all, that was what Viktor Yanukovych was supposed to do'.[39]

One might ask what Yushchenko gained. As noted, it turned out he did not need the votes of the Party of Regions to confirm Yekhanurov. His integrity, previously unassailable, was now seriously questioned. Moreover, Yanukovych did not deliver parliamentary votes for Yushchenko on key measures, including reforms needed to join the World Trade Organization, a new agreement on cooperation with NATO, and plans to re-privatize the Krivoryzhstal enterprise, which became the *cause-celebre* of those condemning insider privatizations.[40]

By the time of the March 2006 parliamentary elections, the possibility of Yanukovych's revival remained bright as the Orange forces were in disarray. While the performance of his Party of Regions – 32% of the vote – was less than what he gained in the first round of presidential elections in 2004 (36%), it retained the support of many prominent oligarchs and the loyalty of most voters in the more populous regions of eastern and southern Ukraine, as it ran on a platform to recognize Russian as a state language, re-establish close ties with Moscow, and provide strong decisive leadership to restore social benefits to the population. Notably, unlike the former communists in East-Central Europe, this grouping was 'unreconstructed and unrepentant' (e.g. about allegations of financial and electoral corruption) and able to take advantage of its financial resources to 'penetrate administrative structures and buy up those who could be bought'.[41] Still, it could not win a majority of seats, and when it looked like Tymoshenko could be re-installed as prime minister, the Party of Regions blockaded parliament, preventing a vote on her nomination. Then, amid cries of betrayal and allegations of bribery and interference by Moscow, Moroz switched sides, aligning with the self-proclaimed 'anti-crisis coalition' led by the Party of Regions, catapulting Yanukovych back as prime minister.

What did Yanukovych do in office? The record was not particularly encouraging. Not only were there battles with Yushchenko over distribution of powers, but the Yanukovych government launched various investigations of its opponents, closed political debate programs on state television, put pressure on regional media, employed civil lawsuits against its opponents, and conducted raids on various small businesses. Meanwhile, Dniproenergo, the largest power-producing enterprise in the country, was sold to Rinat Akhmetov, Ukraine's richest man and a leading figure in the Party of Regions, and Serhei Kovalov, the tainted head of the Central Election Commission (CEC) during the Orange Revolution, was re-nominated to serve in his old post. Prior to the 2007 elections, the CEC sought to prevent, on a technicality, members of Tymoshenko's party from appearing on the ballot. Intervention from the previously moribund Constitutional Court helped avert what could have been a crippling blow to Ukraine's nascent

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democracy. Thus, despite a PR campaign which involved American consultants, one might question whether Yanukovych and the Party of Regions have really changed and if democratic practice in Ukraine is truly secure.

The last structural factor that needs to be taken into account when considering the prospects of establishing effective democratic governance in Ukraine is the external political environment. The next section addresses this issue.

External environment

The 1989 revolutions in Central and Eastern Europe had obvious international implications. A prominent slogan across the region was 'Return to Europe', and the newly liberated states began to demand their place in the European Union and NATO. They signed Association Agreements with the EU (then EC) in 1991–1992, and clamoured for membership, the possibility of which was granted to them as early as 1993 when the EU developed the Copenhagen Criteria for aspirant states. True, the road to membership in the European Union was longer and more difficult than many had hoped, but no one doubted their European credentials. Whereas states such as Poland and Hungary may not have needed encouragement from the EU to implement democratic reforms, EU conditionality arguably played a crucial role in promoting political change in 'reluctant democratizers' such as Slovakia and Romania.[42] More informal linkages between EU and post-communist parties and non-governmental organizations were also important forces promoting change in both institutions and in the broader political culture. As for NATO, it expanded to Poland, the Czech Republic, and Hungary in 1999 and to seven other post-communist states in 2004, thereby anchoring much of the region in the previously Western alliance.

As Ukraine continues to face difficulties, one might ask what outside actors, especially the European Union, can do to assist reform and democratization. As noted, Yushchenko's election seemed to augur well for Ukraine's self-proclaimed European Choice, and Yushchenko himself has repeatedly stated that EU membership will be a goal for Ukraine. Moreover, it is important to note that European actors, including the presidents of Poland and Lithuania, were actively involved in the negotiations which brought Yushchenko to power. Thus, Ukraine, whose 'European vector' in its foreign policy bore little fruit for years and which had been somewhat of an after thought as the EU expanded elsewhere, was thrust front and centre on the EU's agenda.[43]

While Ukraine's Orange Revolution was universally welcomed throughout the EU, its stated ambitions to join the organization were greeted with more apprehension. Prior to Yushchenko's victory, Ukraine had concluded an Action Plan with the EU under its European Neighbourhood Policy (ENP), which is designed to promote political, economic, and security cooperation and ensure fulfilment of the 1998 Partnership and Cooperation Agreement (PCA) with the EU.[44] The ENP, however, groups Ukraine together with such countries as Egypt, Algeria, and Tunisia, countries with no prospect of gaining membership of the EU, and

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the ENP itself suggests nothing about future membership. After Yushchenko gained power, a ten-point addendum was attached to the Action Plan, which called for enhanced cooperation and further assistance in various sectors. EU Commissioner Benita Ferrero-Waldner noted that these additional points send a 'powerful signal' that the EU wants to 'see a qualitative difference in our relations as soon as possible',[45] but Ukrainians were disappointed that nothing was stated about the country's possible membership. Over four years after the Orange Revolution, and after it has become abundantly clear that Ukraine will continue to experience real difficulties in consolidating democracy and producing effective governance, the EU continues to pursue a policy of ambiguity, neither definitely closing the door on Ukraine but not opening it either. Even after Russia's military actions in Georgia in August 2008 elevated concerns about Ukraine's future, the EU refused to offer Ukraine the prospect of future membership.

Many of the reasons for this can be identified: enlargement fatigue from the 2004 and 2007 expansions, concerns over the effects of future expansion (especially to Turkey), and Europe's existential crisis in the wake of French and Dutch rejection of the Constitutional Treaty in 2005 and Irish rejection of the Lisbon Treaty in 2008. All of these factors, of course, are independent of events in Ukraine, and emphasize the fact that the environment for EU expansion is far less auspicious than a decade earlier. Nevertheless, Ukrainians are aware that despite the changes *in* Ukraine, little has changed *for* Ukraine. Indeed, the outline of the Action Plan looks, at least on paper, much like the Common Strategy between the EU and Ukraine that was announced with fanfare in 1999 but led to modest progress on the ground. Nathalie Tocci, speaking generally about the ENP, argues that its vague statements about shared values and lack of any clear enforcement mechanism may make it 'amount to little more than a set of lofty ideals'. With respect to Ukraine, she contends that the lack of a prospect for membership creates a 'major disincentive' for Ukrainian elites to fulfil the promise of the ENP.[46] True, under a capable Yushchenko presidency Ukraine may not have needed the strongest outside incentive to undertake fundamental reforms, but by 2006 it became clear that he and his pro-European allies had diminishing political capital. True, there has been progress in EU–Ukrainian relations since 2004 (for example, Ukraine has won recognition as a market-economy; a free-trade zone is likely after Ukraine joins the World Trade Organization; and work is underway on a more liberal visa regime), but, Ukrainians might argue that Ukraine, by virtue of geography if nothing more, deserves to be considered as a potential applicant and not treated in the same manner as Middle Eastern or North African states.

Thus, at present, a profound paradox is apparent. On the one hand, the prospect of joining the EU has proven to be one of the most effective tools in persuading regimes to change institutions, laws, and even, perhaps, values. Several states have acceded to EU demands if the stakes were high enough and the criteria clear enough, which, typically, meant membership of the EU itself. The change of leadership in Ukraine could be argued to have fitted into the mould of some of these earlier cases where a regime with modest or only rhetorical interest in

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Europeanization is replaced by one that is more receptive to abiding by the EU's prescriptions. The EU is, however, offering at best a policy of vague conditionality with regard to Ukraine. As opposed to membership, which is a stronger 'do it all or get nothing' approach, the ENP offers a menu of options, in which Ukraine can choose what it wants without a lot of pressure. This is markedly similar to the EU's Barcelona Process with North African and Middle Eastern states, which, despite having democracy and political liberalization as a goal, has produced little of either. Thus, the tools inside the box of the ENP may be inadequate. Given that some of the optimism created by the Orange Revolution has markedly faded since 2005, the EU arguably needs to rethink its approach to Ukraine.

As for NATO membership, this is being advanced, especially by the United States. However, NATO membership is far more divisive in Ukraine than EU membership, which enjoys wide support. Most Ukrainians, according to surveys in 2005–2007, remain against it, and the Party of Regions, while claiming it is for eventual membership of the EU, is adamantly opposed to NATO membership. Moreover, Russia is steadfastly opposed to NATO expansion to Ukraine. At its 2008 summit, NATO leaders tabled a US-led measure to expedite Ukrainian membership. Possible NATO membership for Ukraine has been further vexed by Russian military actions in Georgia in 2008.[47]

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Conclusion

Ukraine's Orange Revolution created expectations that Ukraine would move quickly to consolidate democratic reforms and join both European and transatlantic institutions. Democratic progress has been elusive, however, and as early as 2006 the Orange forces found themselves outmanoeuvred by the same forces that attempted to steal the 2004 presidential elections. True, this did not mean the re-emergence of all the features of the Kuchma regime, and 2007 elections brought an Orange comeback, as Tymoshenko and Yushchenko joined forces and secured, just barely, a majority in parliament. Furthermore, there have been other positive developments. Civil society, especially among youth, is far more active and less intimidated than in the past. The press is freer and more aggressive in demanding governmental accountability. Political actors have eschewed violence against each other and against journalists. Ukrainian leaders debate issues and must appeal to public support in order to win and stay in power. In these respects, 'post-post-communist' Ukraine is more democratic and freer than in the post-communist period.

The central argument of this article, however, is that Ukraine's progress, compared to that which occurred in East-Central Europe in the 1990s, will remain limited for the foreseeable future. Ukrainian democracy may be stronger now than it was under Kuchma, but creating effective democratic governance will, in all probability, remain extremely difficult. 'Decapitating' the Kuchma regime was simply not enough, as many of the obstacles to democratic consolidation and effective governance in Ukraine are structural inheritances from the

recent past. No doubt part of the problem lies in the persistent and well-known regional divisions in the country, which will complicate matters for any party that manages to win elections.[48] Beyond that, however, one can also point to more generic problems, particularly with respect to entrenched corruption, the resiliency of elements of the old regime, a less supportive external environment, and difficulties in managing coalition politics, that differentiate Ukraine from East-Central European states. The fundamental point is that 2004 was not 1989, and that Ukraine's post-post-communist hangover is far more serious than anything confronted by initial post-communist elites in Warsaw, Prague, or Budapest.[49]

Where, then, may Ukraine be headed? The renewed Orange coalition, forged in 2007 between Yushchenko and Tymoshenko, has unravelled, and the two leaders are again more rivals than allies. In May 2008, supporters of Tymoshenko blocked the podium of the parliament to prevent Yushchenko from giving a speech and Yushchenko's chief of staff accused her of building a 'fascist regime'.[50] Three months later, Yushchenko pulled Our Ukraine out from the coalition, but Tymoshenko turned to the Party of Regions and the communists to pass new legislation on presidential impeachment and to increase the powers of parliament at the expense of those of the president. Yushchenko has threatened to call new elections. But, as the 2007 elections demonstrate, elections will not be enough to solve the country's entrenched political problems.

It would therefore be safe to say that Ukraine, while remaining democratic in the sense of having free, competitive elections, will have trouble producing an effective, stable government. In this regard, Ryabchuk may have hit upon the best characterization of what lies ahead. He maintains that Ukraine will likely suffer through a period of 'feckless pluralism'.[51] Carothers, in a general discussion of this concept, suggests that feckless pluralism is more likely under the following circumstances: a general public disaffection from politics; corrupt, self-interested, and ineffective political elites; a persistently weak state; tenuous social and political reforms; and an alternation of power among political groupings that only 'trade the country's problems back and forth from one hapless side to the other'. All of these are present in today's Ukraine, where one also finds a kind of dysfunctional equilibrium among entrenched, acrimonious parties that operate more as patronage networks than as organizations aggregating the preferences of the larger public.[52]

Ukraine is thus not on the same path trodden by Poland, the Czech Republic, and other, more successful, post-communist states. Its recent experience of 'competitive authoritarianism' has created difficulties for it in the post-post-communist period. Yushchenko won the presidency in late 2004, but he and others from the Orange camp have been unable to govern effectively. The Orange forces have been unable to systematically dismantle the debilitating structures of the old system and forge political consensus to institutionalize reforms and prevent the re-emergence of elements of the previous system. In the end, the Orange Revolution produced much less than its supporters had hoped. Ukraine will

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require far more to overcome the obstacles to effective democratic governance in its post-post-communist environment.

Notes

1. Yushchenko, ‘Our Ukraine’.
2. Freedom House, ‘Public Views’. In April 2004, 55.7% of respondents thought the country was moving in the wrong direction.
3. *Kyiv Post*, 4 September 2008.
4. The seminal source for this idea is Levitsky and Way, ‘The Rise of Competitive Authoritarianism’.
5. The most obvious comparison would be with the Georgian ‘Rose Revolution’ or the Kyrgyz ‘Tulip Revolution,’ but one could also apply arguments of this sort to Serbia after Milosevic.
6. Bunce, *Subversive Institutions*; King, ‘Post-Postcommunism’.
7. Bunce, ‘Rethinking Recent Democratization,’ 167–92.
8. Dahrendorf, *Reflections*.
9. The Polish case comes closer to a semi-presidential system, but even in this case the *Sejm* (parliament) – and the prime minister – are arguably the more important political actors.
10. Fish, ‘Stronger Legislatures’, 5–20.
11. Ibid. This scale, based upon responses by country experts, reflects whether each of the parliaments in these states have the 32 attributes (e.g. does the legislature have authority to appoint the prime minister, does it control its own internal funding, are its members immune from arrest, etc.).
12. Frye, ‘A Politics of Institutional Choice’, 523–52. Poland’s score (13) was the highest in East-Central Europe, and it also was the country that had the greatest amount of political instability due to struggles between the presidency and the legislature. This scale measures the extent of presidential power along a set of 27 indicators (e.g. appoints ministers, appoints judges, calls elections), with a score of 0 (lacks power), 1 (has sole power), or .5 (shares that power with parliament). The maximum possible score is 27.
13. D’Anieri, *Understanding Ukrainian Politics*, 205.
14. D’Anieri, ‘What Has Changed’, 82–91.
15. *Pora* (‘It’s time’) and *Znayu* (‘I know’) were pro-democratic organizations, led primarily by university students, which had formed prior to 2004 and took the lead in organizing many of the demonstrations during the Orange Revolution.
16. Tymoshenko had served in the 1990s as a deputy prime minister in charge of the energy sector and was accused of overseeing corrupt deals that personally enriched her. By the end of the 1990s, however, she became a critic of the Kuchma administration and was briefly jailed. Accusations of corruption were gradually forgotten as she became a leader of the anti-Kuchma opposition.
17. *Ukrainska pravda*, 8 September 2005.
18. James Sherr, in *Defence Express* (Kyiv), 6 September 2005.
19. Freedom House, ‘Public Views’.
20. Karklins, *The System Made Me Do It*.
21. This put Ukraine lower than such notorious corrupt locales such as Yemen, Zimbabwe, and the Palestinian Authority. See www.transparency.org/publications/annual_report.
22. Darden, ‘Blackmail as a Tool of State Domination’, 67–71.
23. Diuk and Gongadze, ‘Post-Election Blues’.
24. Walsh, ‘Son Cashes in on Orange Revolution’.

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25. Ryabchuk, 'Mrs Simpson's Cherished Gun'.
26. Hoshovsurka, 'How to Stop'.
27. Paskhaver and Verkhovodova, 'Privatization Before and After'.
28. Applebaum, 'Poison and Power'.
29. Wilson, 'Virtual Politics'.
30. Paskhaver and Verkhovodova, 'Privatization Before and After'.
31. Way, 'Kuchma's Failed Authoritarianism', 131–45.
32. As one example, see Hall and Soskice, *Varieties of Capitalism*.
33. Grzymala-Busse, *Redeeming the Communist Past*.
34. Sherr, 'The School of Defeat'.
35. The classic sources are O'Donnell and Schmitter, *Transitions from Authoritarian Rule*, and Przeworski, *Democracy and the Market*.
36. 'Ukrainian President Turns to a Rival', *Washington Post*, 23 September 2005, A15.
37. Bunce, 'Rethinking Recent Democratization'.
38. Smolanky and Menon, 'Orange Revolution Turns to Rot'.
39. Lavelle, 'Ukraine's "Post-Orange" Order'.
40. This steel mill, Ukraine's largest, was sold in 2004 to a consortium led by Kuchma's son-in-law, Viktor Pinchuk, for $800 million, well below that of other bidders. It was re-auctioned in October 2005, despite parliamentary opposition, and sold to Mittal Steel of the Netherlands for $4.8 billion, more than all other previous privatizations in Ukraine combined.
41. Sherr, 'The School of Defeat'.
42. Kubicek, *The European Union and Democratization.*
43. Kuzio, 'Is Ukraine Part of Europe's Future'.
44. Ibid.
45. *Zerkalo nedlei* (Kyiv), 27 August–2 September 2005.
46. Tocci, 'The European Neighbourhood Policy'.
47. NATO leaders refused to change their positions with respect to Ukraine and Georgia in fall 2008, as many worried about complicating relations with Russia. See report, for example, by Agence France-Press, 'Too Soon for Georgia, Ukraine to Get NATO Entry Plan', 2 October 2008.
48. Regionalism is a prominent theme in many studies of Ukrainian politics, although many argued that the Orange Revolution altered some of the 'boundaries' of Ukrainian regional politics. For more on regionalism in Ukraine, see Kubicek, 'Regional Polarisation in Ukraine', 273–94, and Barrington and Herron, 'One Ukraine or Many?', 53–86.
49. This is not to say that everything in East Central Europe has been easy. One could point to the troubles forming a coalition government in the Czech Republic in 2006–2007, and the falsification of economic forecasts to help the Socialists get elected in Hungary in 2006. The point of comparison, however, is contemporary Ukraine with the initial post-communist period in East Central Europe.
50. *The Economist*, 29 May 2008.
51. Ryabchuk, 'Is Ukraine a "Feckless Democracy"?'.
52. Carothers, 'The End of the Transition Paradigm', 5–21.

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