

Is There a Recipe for Democratic Success?

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In the aftermath of the Second World War, many Western intellectuals doubted that Germany could become a democratic, civilized nation again. Yet, in less than a generation, the Germans did it by adopting a federal constitution carefully constraining those close to levers of power, engineering an economic miracle, and holding many (though not all) of those complicit in Nazi atrocities accountable.

When communism collapsed in 1989, there were fewer doubts about the bright future of post-communist Central and Eastern Europe. In fact, even the prospect of Russia's eventual joining of NATO and the European Economic Community was not seen as completely farfetched. Thirty years later, the results are mixed. Some countries, such as Belarus, have barely moved in the direction of democracy, individual freedom, and the rule of law; while others, such as Poland and Hungary, have backslid following substantial initial progress. Most, across the Balkans for example, seem trapped in the no man's land of flawed democracy, ridden with patronage and corruption and cynical about its geopolitical allegiances.

Some blame a backlash against the "politics of imitation" which sought to turn Central and Eastern Europe into a copy of the West, without much regard for local realities. Alternatively, the region might have simply reverted to the long-run version of itself, with some countries settling on the more liberal end of the spectrum and others further away from it.

Yet if Orbán et al. are products of a backlash against heavy-handed efforts to create Western-like institutions from scratch, how does one account for the even worse examples of authoritarian populism in places that never really faced the same pressure, such as Belarus, Serbia, or Moldova? And how come some of the most eager "imitators," such as the Balts or the Czechs, never backslid in any meaningful sense?

To complicate things further, the reform strategies across post-communist countries varied dramatically. One of the most worrying examples of democratic backsliding today, Hungary, pursued a unique mix of economic reforms—and by no means one prescribed by the "Washington Consensus" of the era. The government prioritized financial-sector restructuring and consolidation over privatization of its state-owned enterprises, avoiding significant social disruption and extended periods of high unemployment.

Upon close inspection, the stories of post-communist transitions thus eschew sweeping generalizations and grand narratives. Instead, they are stories of cumulative institutional change occurring in specific contexts, in which old cultural and political legacies interacted with discrete political choices and accidents of history, oftentimes in unexpected ways.

Some fifteen years ago, Hungary looked firmly like a success story, having made considerable progress on all sorts of metrics of democracy, rule of law, and institutional quality. Today, on measures as diverse as Freedom House's Freedom of the World Index, the World Bank's Worldwide Governance Indicators, and the Cato Institute's Human Freedom Index, Hungary lags significantly behind the Czech Republic, which has not seen a similar degree of "democratic backsliding" or "de-democratization"—in spite of living through its fair share of populist politics.

Has there been a backlash against the "politics of imitation" in one country but not in the other? Or, have the Czech liberal traditions of Tomáš Garrigue Masaryk and Karel Havlíček, and the Trianon- and Horthy-era ghosts of Hungary, simply asserted themselves irrespectively of choices made by policymakers in the 1990s and the early 2000s? The reality is more complicated. As Grzegorz Ekiert and Daniel Ziblatt write, looking for "deep causes" of the current developments is a fool's errand. It is far more productive to identify "chasms between formal and informal institutions, preventing gradual change and producing patterns of institutional mimicry to cope with institutional ruptures."

The judiciary in Hungary is a key example of such chasms. In the 1990s, the Hungarian government successfully insulated the judiciary from political pressures by following recommendations by international authorities and setting up an independent council of the judiciary—a step never taken by the Czech Republic, where the executive retained, at least formally, a significant role in running and overseeing the judiciary. In the 1990s, Hungary's constitutional court was also hailed as one of the strongest in the world—pushing back assertively against government legislation, including striking down its fiscal consolidation package in 1995. It also deployed the doctrine of an "invisible constitution," filling the gaps in the text of the constitution by borrowing from international law and developing and applying its own abstract concepts, such as human dignity.

Far from entrenching the principles of judicial independence in Hungarian legal practice and political life, these early reforms led to a backlash and ultimately to the full-fledged politicization of the courts under FIDESZ. The reason for the backlash was not "imitation," however, but rather the politics through which Western best practices were imported into Hungary.

Hungary's Workers Party transformed itself into a nominally democratic Socialist Party, purging itself of all the communist and totalitarian symbolism, but retaining the bulk of its cadres. When it returned to power in 1994, "full political insulation of their judiciaries vis-à-vis future majorities remained an advantageous strategy." To that end, the Socialist government pushed for a judicial reform which froze the communist judicial structures in place, unwittingly making the courts fair game for upcoming political struggles. The decision of the Workers Party to go mainstream could have gone the other way. Czech communists never renounced their totalitarian heritage and as a result remained as a fringe political force throughout much of the Czech

Republic's post-1989 existence, with little influence on policy, much less on the reforms of the judiciary.

Another consequential accident of history was the split of Czechoslovakia. Slovak nationalism, dormant under communism, became a significant phenomenon in 1990 and 1991. Yet, the decision of Václav Klaus and Vladimír Mečiar to end the Czechoslovak federation after the election in 1992 was in no way pre-ordained, nor was it forced by the pressure of public opinion. One important effect that the split had was the need for the Czechs to draft their own constitution, which took some inspiration from the German *Grundgesetz*, especially in its superrigid components designed to prevent democratic backsliding. The Hungarians, in contrast, talked about the need to replace the amended version of the 1948 constitution with something better, but no singular event forced them to cross partisan lines and to do so—until Viktor Orbán secured his constitutional majority in 2010 and passed a new Fundamental Law with FIDESZ votes only. By doing so, he also ensured that the entire pre-2011 jurisprudence of Hungary's constitutional court went out the window.

The Czech Republic's constitutional court did not need to invent an “invisible constitution” to stop parliamentary majorities from rewriting the rules of the political game by changing the electoral system or eroding the independence of the central bank. The text of the constitution was quite enough to generate a body of precedents that have cumulatively made Orbán-like power grabs difficult in the Czech context.

One important factor running through these accidents of history was the question of continuity. Not unlike in the case of Germany, where its fresh start under Allied occupation seems to have been the key to its post-war success, the more seamless the transitions from communism into the new democratic age were, in contrast, the more resonance was gained by the narrative of 1989 as of a revolution that was left unfinished or hi-jacked by former communists. Unlike in post-war Germany, compelling arguments can be made for some degree of legal and political continuity in post-communist Central and Eastern Europe. Yet, in retrospect at least, it appears that the difference in seamlessness with which old communist elites retook positions of influence and power within the new system were key to the post-communist countries' future woes.

In the Baltic states, national existence was incompatible with any form of continuity with the Soviet oppression. On the other end of the spectrum, little actual political change accompanied the formal demise of the communist regime in Belarus, Ukraine, or in Shevardnadze's Georgia. Between those two poles, there are varying degrees with which old communists reinvented themselves as pro-EU liberals (as in Hungary), seized sizeable assets during the wilder phases of privatization of state-owned enterprises (as in Slovakia), or moved to the margins of economic and political life.

Could things have been done differently, and better, in countries where communist elites continued to exert their influence, perhaps after a rebranding? While history does not allow for controlled experiments, the experience of the past 30 years does suggest that clean breaks are often the best way to fix not only toxic relationships, but also societies governed by toxic institutions.