

Lagging Behind: Romania's Democratic Quality under Neocommunist Governance, 1989-1996

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"And it is not until they have been led into a thousand mistakes in matters most essential to their lives and liberties, and are weary of suffering, that they can be induced to apply a remedy to the evils with which they are oppressed. It is only then that they begin to conceive and acknowledge the most palpable truths..."

- Cesare Beccaria,
Of Crimes and Punishments

After a dramatic electoral race, Traian Basescu became the President of Romania in December 2004. Basescu, the pro-democratic candidate of the Justice and Truth Alliance (JTA), defeated Adrian Nastase, the neocommunist nominee of the Social Democratic Party (SDP). The presidential confrontation's decisive moment occurred live on national television, in a pre-electoral debate.¹ At one point, Basescu told his opponent that "we [politicians] cannot have the same mentality fifteen years after communism's collapse [and] you prove to me, every day, that you are incapable of understanding that institutions must be allowed to function autonomously" (qtd. in Simonca 1). This phrase was disarming in its undeniable sincerity: Nastase remained speechless, while Basescu knew that he had won the hearts and minds of most Romanians.

From 1989 to 1996, neocommunists have dominated the Romanian political arena, prompting many scholars to question the Revolution's democratic origins (Codrescu 206). Romanian democracy emerged under contentious circumstances: small exclusivist elites executed dictator Nicolae Ceausescu and organized the National Salvation Front (NSF), "the new structure of state power" (Stoica 18). Leaving aside the Revolution's historical controversies, analysts should focus more on assessing the consequences of Romania's hesitant break with its communist past. As Michael McFaul points out, European countries that experienced regime change

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former members of the defunct Romanian Communist Party (RCP) that became involved with nominally-democratic political organizations after 1989.

In order to quantify neocommunist policies' impact on democratic quality, one may use the process-tracing method, which "attempts to identify the intervening causal process—the causal chain and causal mechanisms—between an independent variable and the outcome of the dependent variable" (Bennett and George 206). Seeking to explain the discrepancy in Freedom House scores between Romania and other Eastern European countries, this study's process-tracing approach analyzes two key elements of Romania's transition—neocommunists' repression of political dissent and their creation of weak institutions—assessing in each case the impact of incumbents' political culture on democratic quality.

Romanian Exceptionalism: Adapting Dahl's Model

Having defined the most important variables and the method of analysis, one should briefly describe the causal chain between incumbent elites' political culture and democratic quality. In *Polyarchy*, Dahl constructs a model of the links between the beliefs of political activists, their actions, and regime-type. If democratic quality approaches zero for authoritarian regimes and its maximum for liberal democracies, it follows that the regime-type spectrum relates to different values of democratic quality. Dahl's model applied to Romania thus suggests that the totalitarian legacy of the Ceausescu regime has largely influenced neocommunists' political culture and actions.

With respect to Romanian communism's features, one should note that the state intervened constantly and brutally in citizens' private realm. Communist propaganda targeted all members of society, regardless of age (Tismaneanu 206). For Ceausescu, the state's mission was to make citizens "aware of their mission [and] urge them to unity" (qtd. in Gallagher 60). If ordinary citizens were subject to such aggressive propagandistic practices, party members' lives gravitated only around the RCP. Following the 1989 revolution, the primary destination of these former communists was the NSF, which "inherited a significant proportion of the

Communist Party's membership, leaders, assets and ideological baggage (Sandu 31; Hollis 268). Inglehart argues that "once established, [political cultural] orientations have a momentum of their own, and may act as autonomous influences on politics and economics long after the events that gave rise to them" (17). Considering neocommunists' deep indoctrination, one may claim that Ceausescu's totalitarian legacy endured with the NSF well beyond the 1989 Revolution.

In addition to shaping former communists' political culture, Ceausescu's terrible legacy paved NSF's way to power in the 1990 and 1992 elections. The tragic events of the 1989 Revolution revealed Romanians' deep hatred for the tyrannical regime that had imposed irrational hardships on its citizens.⁴ In this context, people's electoral support for neocommunists appears paradoxical. However, Romanians did not associate the new ruling elites with their past, but with the merit of overthrowing Ceausescu. In *Problems of Democratic Transition and Consolidation*, Linz and Stepan brilliantly argue that the neocommunist victory came as no surprise given the totalitarianistic nature of the former regime (344). Ceausescu's extreme personality cult had conveyed the idea that he was the only one responsible for people's low standards of living. Ion Iliescu, leader of the NSF, won the Presidential elections of 1990 precisely because he was able to exonerate himself and his collaborators from any mistakes of the past and pose as the country's savior after the dictator's execution. Iliescu quickly abrogated many of Ceausescu's odious decrees, legalizing abortions and opening up the borders (Linz and Stepan 360). Following these measures, his popularity reached incredible heights.⁵

By contrast, the democratic opposition was unconsolidated and lacked authority in the postcommunist context. Ceausescu did not tolerate any form of opposition and persecuted all dissenters by putting them in prisons or mental hospitals (Linz and Stepan 353). Since they were only freed after the Revolution, they returned to the political arena tardily, having little appeal to the population because they had not participated in Ceausescu's overthrowing. Ironically, the 1989 Revolution granted more transitional authority to the neocommunists that

deposed him than to the people who had suffered for decades because of their democratic political beliefs.

Neocommunist Repression of the Democratic Opposition

After discussing Romania's exceptionalism with respect to its transition and subsequent democratic quality, one may turn to the process-tracing of neocommunist governance. As early as 1990, the Iliescu regime engaged repeatedly in undemocratic treatment of the opposition through both bureaucratic and violent means. The neocommunists tried to convey the impression that they were abiding by democratic rules, because they wanted to provide legitimacy to their social-democratic appearance. Upon close analysis, their actions are characteristic for totalitarian actors that endeavor to silence political dissent by any means possible.

Most often, the NSF and its successor parties acted against the opposition through bureaucratic mechanisms that affected democratic participation and competition. On January 23, 1990, the NSF's Council—acting as a provisional government—decided to transform itself into a political party and run in the upcoming electoral race (Stoica 23). Enjoying complete authority over Romania's political scene, the NSF decided unilaterally on the timing of elections, leaving little room for the democratic opposition to organize a proper campaign. Conversely, organizing was easy for Iliescu and his colleagues, who "appropriated the remnants of the communist administrative system and effectively substituted the RCP's control over it with its own" (Stan 43). The NSF could easily promote and propagate its electoral messages because it "maintained control over the allocation of radio frequencies, licenses for TV broadcasting, and access to television programming" (Verdery 111). The party also had a monopoly over advertising in public transportation and its members systematically destroyed the posters and flyers of the democratic opposition (Marincus 28). Most notably, the NSF engaged in electoral bribing by giving each peasant an agricultural terrain of at least 53,000 square feet (Marincus 28).

At the same time, the Iliescu regime violently repressed political opposition under the façade of protecting

public order. . . On January 28, 1990, several opposition parties organized a massive protest against the NSF decision to become a political party. In response, Iliescu instigated miners from the Jiu Valley to come to Bucharest and disperse the opposition, in order to protect the so-called new democratic regime (Tudor 1). Special security forces joined the miners in their violent actions, destroying buildings of opposition parties and beating to death many supporters (Deletant 42). As this scenario recurred during the early 1990s, opposition leaders were often arrested and denied fundamental rights to habeas corpus and legal defense.

The NSF's repression of the opposition—through both institutional and violent means—negatively affected participation, competition, freedom, and equality. With respect to the former two, the NSF guaranteed universal suffrage, but "a good democracy must ensure that all citizens are in fact able to make use of these formal rights" (Diamond and Morlino 23). At a *de jure* level, Romania had proportional electoral representation; still, any organization that opposed the neocommunists faced insurmountable *de facto* challenges in trying to reach the public. Furthermore, since people could not assemble to criticize the government and risked losing their lives for expressing dissent, one may argue that the state did not equally protect individual rights and liberties, but favored all the yes-men that sustained neocommunist policies. Overall, the Iliescu regime's lack of toleration for political opposition suggests that Ceausescu's legacy of totalitarianism was largely preserved in the political culture of NSF members.

Weak Political and Judicial Institutions

From organized violence to the creation of shallow democratic institutions, Iliescu and the NSF did not stop short of anything that consolidated their power. Neocommunists deliberately constructed a state system that incorporated very weak checks and balances on the government. In theory, Romania is a semi-presidential Republic, with a powerful Parliament that can counterbalance executive power. However, both the President and the cabinet have powers that can overrule Parliamentary decisions: the President has the right to veto any piece of legislation, while the

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cabinet can enforce emergency ordinances.⁶ Furthermore, elected members of the Parliament (MPs) enjoy judicial immunity for the entire duration of their mandate. With respect to the judiciary, the criterion for becoming a member of superior courts was professional experience; hence, former communist magistrates still dominate the supreme institutions of Romania's judicial system (Mungiu-Pippidi 61).

Originating in elites' totalitarian mentality, inadequate checks and balances on state-level actors have impaired horizontal accountability and have weakened the Romania's rule of law. Particularly between 1989 and 1996, the judicial system has applied laws discriminatively based on people's political orientations, which encouraged generalized corruption. Citizens' freedom and equality of rights suffered under Iliescu's regime and people gradually lost their trust in judicial actors. Keeping in mind the link between the rule of law and equal enforcement of citizens' rights, one may argue that neocommunist's inadequate institutional reforms had persistent negative effects on multiple dimensions of democratic quality.

Alternative Explanations and Nuances

Using the method of process-tracing, this paper briefly discussed neocommunist leaders' essential policies in transitional Romania and pointed out their effects on various dimensions of democratic quality. However, one should also analyze the role of institutions in Romania's transition and their possible effects on democratic quality. Far from making purely autonomous policy decisions based solely on their political culture, actors were heavily influenced by both democratic and totalitarian institutions: while the former mainly shaped actors' choices of *de jure* institutional design, the latter influenced neocommunist's early informal practices.

In line with previous arguments, one should accept that the neocommunist political culture incorporates deeply-entrenched social norms that influenced elites in choosing to repress opposition groups or alter the incipient democratic political system to weaker and more ineffective forms. In other words, the communist mentality's persistence in the post-Revolutionary setting suggests that communist institutions were preserved—as informal rules—even after Ceausescu's

downfall. By contrast, neocommunist changed the *formal* institutions of the state in broad accordance to democratic standards, especially following the adoption of the 1991 Constitution. To fully legitimize their authority, these elites had to appear social-democratic and ultimately adopt formally-democratic institutions. One may speculate that mass protests could have overthrown the NSF rule had it not abided basic democratic standards.

In that sense, institutions had a deeper influence on long-term stability and the ultimate increase in Romania's democratic quality at the end of the 1990s. Linz points out that Constitution drafting and the new regime's initial agenda—two key focuses of this study—are crucially important for democratic consolidation (40). Considering the neocommunist's impact on democratic quality and their totalitarian tendencies, one may wonder why democracy did not break down in transitional Romania. The explanation involves both external institutional pressures and internal democratic habituation. Romania applied for membership in the EU in 1995 and maintained close relations with the International Monetary Fund (IMF) and the World Bank since 1990. Marincus argues that "the switch of direction toward market economy was practically imposed by financial institutions, which conditioned loans on the progress of reforms" (22). McFaul further highlights the importance of International Organizations (IOs) for democratization, stating that the Romanian regime "increasingly became more democratic as [it] sought membership in Western institutions such as the European Union and NATO" (90). Hence, external institutional pressures may partially account for the downward trend in Romania's Freedom House ratings. A complementary explanation relates to the neocommunist's habituation with the democratic game, meaning the process of actors' internalizing democratic norms when participating in a democratic system (Rustow 337). Likewise, one can argue that neocommunist gradually became more open-minded when they understood—most starkly, with the 2000 electoral victory—that elections and other democratic mechanisms can work to their advantage. The Romanian example proves that external and internal democratic institutions can influence actors' behavior and, consequently, a country's democratic

quality.

Conclusions

Although one should consider these positive effects on democratic quality, one must not overvalue their importance. At least in the short term, neocommunist mostly acted according to their deeply-rooted totalitarian political culture. Once again, Freedom House ratings verify this hypothesis, showing only a slight downward trend across time and a fairly consistent democratic gap between Romania and other Eastern European countries. This essay attempted to show that the neocommunist's direct actions negatively affected Romania's freedom, equality, electoral competition and participation, vertical and horizontal accountability, responsiveness, and rule of law. Granting that recycling elites can be highly detrimental to democratic consolidation, especially where previous regimes have been totalitarian, analysts need to stress the importance of imposing international and domestic laws that ban former officials' access to the transitional political scene. In order to prevent a vacuum of human capital, such lustration laws should not purge *all* former members of a despotic party, but only its high-ranking elites.⁷

The international community should help peoples emerging from ruthless dictatorships in their transitional processes. While respecting the sovereign domestic visions for reconstructing these societies, international powers have the responsibility to assure that recycled elites cannot harm democracy after the collapse of totalitarian regimes. Although some may consider these recommendations as inconsistent with fostering democratization, the long-term benefits of restricting former elites' participation to the transitional political scene—and implicitly affecting democratic quality by formalizing unequal participation—far outweigh the costs of allowing them to shape fragile new democracies.

Notes

1. This debate was broadcasted four days before the Presidential runoff and 1,415,000 people watched it (Simonca 1).
2. While all other Eastern European democracies reached ratings equal to or below 2.5 as early as 1991, Romania's rating remained greater or equal to 3.5—equivalent to a partially free or hybrid regime—up until the democratic opposition won the 1996 elections (see figure 1). Freedom House scores are from <http://www.

freedomhouse.org>.

3. This essay builds upon and particularizes Dahl's model of political culture, taking into account both the roles of both actors and institutions in Romania's transition. See figure 2.

4. Ceausescu's objective was to repay all of Romania's foreign debt, so he boosted agricultural exports. As a result, the daily per capita calorie intake fell from 3259 in 1980 to 2930 in 1988 (Frausum, Gehmann, Gross 1).

5. Iliescu won the 1990 elections with more than 85% of the popular vote (Stoica 23). He was reelected both in 1992 and 2000, which confirms his long-lasting popularity among many Romanians.

6. See Romania's Constitution from 1991, <http://www.constitutie.ro/const1991.htm>

7. An extreme form of purging took place in Iraq after the fall of Saddam Hussein, which created more instability and undermined democracy. For a comprehensive analysis of this process, see Larry Diamond, *Squandered Victory*.

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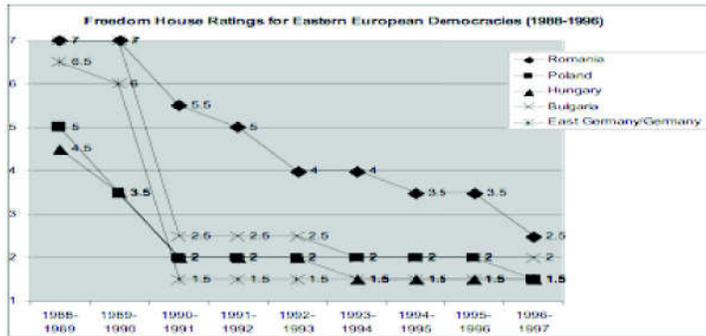


Fig. 1: Freedom House scores for new democracies in Eastern Europe (1988-1997)

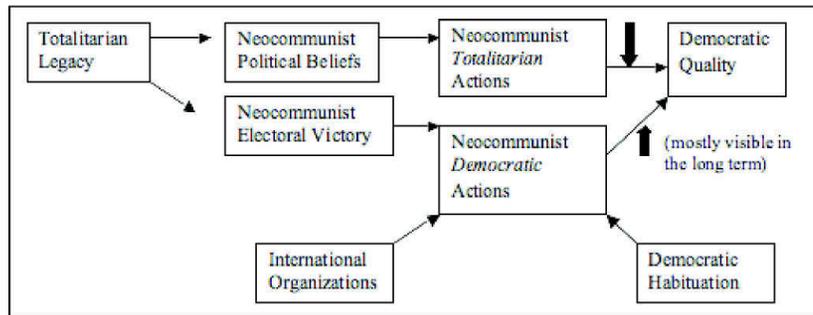


Fig. 2: Romanian democratic quality in transition



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Patenting and the Varying Enforcement of Covenants Not to Compete: A Comparative Analysis of Silicon Valley and Route 128

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Within Silicon Valley's external economies of scale, skilled employees move rapidly between competing firms. Literature attributes this dynamic to the entrepreneurial culture that took root in Silicon Valley in the 1950's, beginning with the "Grandfather" of Silicon Valley, Fairchild Semiconductor. Recently, scholars are paying attention to the role the enforcement of covenants not to compete play in dictating employee mobility within external economies of scale – and subsequently culture. For instance, in Massachusetts, employers can invoke covenants not to compete to reduce employee mobility and the associated costs that firms bear through employee flight. Conversely, under California law, such covenants are effectively impossible to enforce.

Defying the conventional wisdom behind intellectual property regimes, Silicon Valley's success is an intriguing instance in which limiting a firm's control over its human capital and subsequent intellectual property may ultimately encourage innovative activity. The paper seeks to discern a relationship between varying enforcement of non-competes and patenting, predicting a negative relationship in which invalidated covenants not to compete result in higher patenting rates. Ultimately, the data analyzed is congruent with this prediction, but because of the limited scope of the statistical analysis, the results cannot conclusively discern the nature of the relationship or the degree of true innovation versus patenting.

"Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

California Business and Professions Code Statute 16600

"To this day, a poster of the Fairchild [Semiconductor] family tree, showing the corporate genealogy of the scores of Fairchild spin offs, hangs on the walls of many Silicon Valley firms. This picture has come to symbolize the complex mix of social solidarity and individualistic competition that emerged in the Valley. The tree traces the common ancestry of the regions semiconductor industry... The importance of these overlapping, quasi-familial ties is reflected in continuing references, more than three decades later, to the 'fathers' (or 'grandfathers') of Silicon Valley and their offspring, the 'Fairchildren.'"

AnnaLee Saxenian, Regional Advantage: Culture and Competition in Silicon Valley and Route 128

History demonstrates that the numerous factors determining which paths

former employees through covenants not to compete has led to a high degree of new firm creation relative to firm creation under strictly enforced covenants.² The importance of Silicon Valley's laidback, job-hopping culture should certainly not be discounted, but it ought not necessarily be attributed to chance considering it is likely a product of Statute 16600. Stanford Law Professor Ronald Gilson notes,

"Coupled with the limited usefulness of trade secret law in California as elsewhere, Silicon Valley employers' early efforts to prevent employees leaving to compete with employers' proprietary tacit knowledge failed. Employees learned that they could leave; employers learned that they could not prevent high velocity employment and the resulting knowledge spillover. And that legal infrastructure caused employers, however reluctantly, to adopt a different strategy, one of cooperation and competition..."³

technologically innovative industrial clusters follow often fall into place serendipitously. Paul Krugman notes, "given a slightly different sequence of events, Silicon Valley might have been in Los Angeles, Massachusetts, or even Oxfordshire."⁴ Not surprisingly, advantageous circumstances rather than carefully premeditated policy can determine the success of innovative activity despite the importance society places on the institutionalized intellectual property (IP) regimes, which are credited for delivering incredible prosperity. By better grasping the different forces at play in the differing contexts in which technology clusters arise, policymakers can better understand the role fundamental IP regimes play, specifically patenting.

Can the above California Statute enacted in 1872, nullifying covenants not to compete between employees and employers, explain the industry churn that distinguishes Silicon Valley in the 21st century from the more institutionally rigid Route 128 cluster in Boston? Or rather, are less tangible cultural forces responsible for Silicon Valley's dynamism with their resulting "overlapping, quasi-familial ties" that Saxenian details above? Evidence shows that the relative inability of firms to limit knowledge spillovers by

Alone, cultural explanations are incomplete accounts of economic institutions' characteristics. The tremendous success of Silicon Valley's more entrepreneurial culture and norms should theoretically provide a model for Route 128 to emulate. The later decades of the 20th century provided sufficient time for Route 128 to evolve after the risk and rewards of entrepreneurship were legitimized by the likes of Steve Jobs with Apple and Robert Noyce with Fairchild and Intel. Too much revenue is at stake not to adapt! The varying enforcement of covenants not to compete may provide greater insight into the concrete differences that distinguish Route 128 and Silicon Valley.

Defying the conventional wisdom behind intellectual property regimes, this phenomenon is intriguing because it demonstrates in Silicon Valley's success an instance in which limiting a firm's control over its intellectual (human) capital and subsequent intellectual property may ultimately encourage innovative activity. Moreover, the positive externalities associated with agglomeration appear to outweigh the potential dangers of invalid covenants, evidenced by the lack of R&D flight away from Silicon Valley.

The current scholarship analyzing