

CHAPTER 30
POSTCOLONIAL PERSPECTIVE ON THE DEVELOPMENT
OF RULE OF LAW IN POST-SOVIET STATES:
A CASE STUDY OF UKRAINE AND EU'S ROLE

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INTRODUCTION

Postcolonial theory has played a crucial role in reshaping the narrative surrounding contemporary post-colonial nations by exposing the lasting impacts of colonialism. It challenges the conventional view that often labels these nations as “underdeveloped”, offering instead a deeper understanding of the complex challenges they face, particularly in establishing the rule of law. However, when it comes to analyzing the development of post-Soviet states, the influence of colonial experiences on their political, social, and economic systems is often overlooked. This Chapter seeks to emphasize the significance of acknowledging the unique challenges encountered by post-Soviet states following the dissolution of the USSR, as well as the enduring effects of their colonial pasts on their current trajectories.

In our previous study, it was argued that Russian colonialism persisted beyond the dissolution of the empire itself as it was inherited in the Bolshevik ideology. It was also pointed out that the Baltic states were able to gain the continued autonomy after Bolshevik revolution and implemented numerous institutional and economic reforms, before the Soviet Union re-annexed their territories. In contrast, other former colonies of the Russian Empire, including Belarus, Ukraine, Georgia, Armenia, and Azerbaijan, were quickly absorbed by the Bolshevik regime after the collapse of the previous imperial government¹. The significance of this difference is amplified if we consider the Soviet regime as at least quasi-colonial power, as it suggests that the de facto decolonization of some of the former Russian colonies only happened after the collapse of the Soviet Union. Consequently, in 1990s, these newly independent states faced similar challenges to those encountered by many post-colonial countries earlier, including legal traditions and institutions inherited from the former colonial

¹ Telenko O., Kurbet O. Postcolonial Theory and its Application to the Post-Soviet States. *History of Economics and Economic Thought of Ukraine*. 2023. Vol. 56. P. 255-285. <https://doi.org/10.15407/ingedu2023.56.255>

power, dependence on strong economic ties with the former metropolis, and the presence of local elites with a vested interest in preserving the existing power structures.

Therefore, *the goal of this Chapter* is to reveal how the lack of awareness of the colonial history of various Eurasian states not only hinders the recognition of diverse populations with unique cultures and historical narratives but also obstructs a comprehensive understanding of the challenges encountered by newly independent states following the dissolution of the Soviet Union. Focusing on Ukraine as a case study, it applies colonial theory to the difficulties in establishing the rule of law in post-Soviet states.

30.1. Application of Post-Colonial Theory to the Challenges of Establishing the Rule of Law in Post-Soviet States

The post-Soviet states all underwent severe economic crises after the collapse of the USSR, which were attributed to a combination of factors including years of administrative pricing, non-market allocation of resources, and macroeconomic imbalances. The long monetary disintegration process, which lasted until 1993 (except for Tajikistan, which introduced its national currency in 1995), led to even greater monetary chaos and accelerated inflation. Three post-Soviet countries experienced hyperinflation: Georgia in September 1994 with a 50,654% increase in inflation over 12 months, Armenia in May 1994 with a 29,600% increase, and Ukraine in December 1993 with a 10,155% increase. On the other hand, the Baltic states were the first to achieve macroeconomic stability. As early as 1992, they exited the rouble zone, established their own national currencies, balanced their budgets, and initiated fundamental microeconomic, structural, and institutional reforms. Andres Kasekamp emphasizes that the doctrine of legal continuity adopted by the Baltic states in the 1990s played a critical role in their success as they aimed to build their economies and establish democracies following independence. By relying on this doctrine, which formed the basis of their state-building efforts, the newly independent states were able to establish a strong foundation for their transitions ².

Noteworthy, Kasekamp also mentions the controversial nature of the doctrine of legal continuity in Estonia and Latvia, particularly with regards to its impact on minority rights³. Following the recognition of the Soviet regime

² Kasekamp A. Survival against the Odds: The Baltic States at 100. *Slavic Review*. 2019. Vol. 78, No. 3. P. 640–647. <https://www.jstor.org/stable/26844316>

³ Ibid.

as an occupation, those arriving in Estonia and Latvia after 1940 were required to apply for naturalization, a policy that some viewed as giving preferential treatment to Estonians and Latvians over Russian speakers. However, this policy helped integrate ethnic Russians into these societies and prevented the military aggression witnessed in later decades when the Russian Federation sought to revive its imperial ambitions towards its former colonies. The protection of Russian minorities in these states was used as a pretext for military interventions in other independent states, such as Georgia and Ukraine. The Baltic states' collective memory of 1918 motivated them to distinguish themselves from the post-Soviet space and swiftly integrate into the Western world. To achieve this, they prioritized joining as many international institutions and organizations as possible, including the European Union, which further strengthened their economic security and reinforced the rule of law.

In contrast to the Baltic states, the post-Soviet states that achieved independence in the 1990s after centuries of foreign rule lacked both a collective memory of sovereignty and the foundation for their own legal traditions. In addition to the deep economic crisis that occurred in the post-Soviet space after the dissolution of the Soviet Union, these states faced the challenge of reforming inherited institutions and economies that had been built to serve the interests of foreign states and local elites who favoured these interests. The resistance of political elites to adopt radical institutional and economic reforms combined with the interferences of the Russian Federation, which viewed these states as within its sphere of influence, exacerbated the situation.

The subsequent political events and the unsuccessful attempts at state-building in the region further solidified the historical legacy of the Western European Enlightenment. This legacy perpetuated a dichotomy between Western Europe (considered superior) and Eastern Europe (considered inferior), thereby shaping the perception of the post-Soviet states as perpetually striving to become European and inherently lacking in democratic values. This narrative exhibits similarities to the discourse surrounding the so-called "Third World", which was prevalent in Europe for a considerable period and has faced criticism from post-colonial scholars for disregarding the colonial history of these states. This narrative not only perpetuates a sense of inferiority already ingrained in the collective memory of these nations due to their colonial past, but it also limits their ability to fully participate in the European community. This determines the relevance and necessity of the analyzing the case of Ukraine, which illustrates the difficulties encountered by post-colonial states striving to build democratic institutions.

30.2. Development of Rule of Law in Ukraine: Challenges and Progress in Post-Colonial Context

After gaining independence in 1991, Ukraine was among the poorest post-Soviet republics along with Azerbaijan, Georgia, Kyrgyzstan, Tajikistan, and Uzbekistan. While the statistics from that time are not very certain, the available data indicates that Ukraine's GDP per capita constituted only \$1,307⁴. However, this figure doesn't take into account the high levels of inequality, which was particularly high in all post-Soviet states, meaning the reality may have been even more dire. According to Yuliia Sereda, economic situation in Ukraine was worse than in any other country beside the ones being in war, as of 1994. First decade of independence in Ukraine was characterized by growing income disparity with the simultaneous absence of a powerful middle class as the basis of a stable economy and civil society. According to official data, 1993–1994 were years of the peak income inequality, when the Gini coefficient that indicates level of income differentiation exceeded the mark of 0.45⁵. Ukraine's industry accounted for over 45% of GDP in 1991, but most of its industrial production lacked closed technological cycles, due to the inherited structure of organizing production in such a way that a single republic could not produce finished products on its own, thereby making its economic separation impossible. It is also worth noting that at the end of its existence, USSR's production funds were to a large extent physically and morally worn out and republics' production was protected from foreign competitors by the monopoly of foreign trade⁶. Along with the Ukraine's heavy reliance on energy and depletion of gas and oil fields and hyperinflation, it contributed to a significant drop in production and rising unemployment, that numbered from 1.5 to almost 3 million people according to the ILO methodology, in 1995–1999⁷. Under these conditions Ukraine had to establish a functional

⁴ Sutela P. The Underachiever: Ukraine's Economy Since 1991. *Carnegie Endowment for International Peace*. 2012. 34 p. URL: <http://www.jstor.org/stable/resrep13068> P. 3.

⁵ Sereda Yu. V. Manifestations of the impact of structural changes in Ukrainian society on the transformation of the socio-economic structure. *Determinants of socioeconomic inequality in modern Ukraine*, edited by O. M. Balakireva. Kyiv: National Academy of Sciences of Ukraine, Institute for Economics and Forecasting, 2011. P. 110-122. URL: <https://ief.org.ua/en/publication/monohrafi/2011/determinanty-socialno-ekonomichnoi-nerivnosti-v-suchasniy-ukraini>

⁶ Heyets V. M. Society, state, economy: phenomenology of interaction and development. Kyiv: National Academy of Sciences of Ukraine, Institute for Economics and Forecasting, 2009. 864 p. URL: <https://ief.org.ua/en/publication/monohrafi/2009/suspilstvo-derzhava-ekonomika-fenomenolohija-vzaemodii-ta-rozvytku>

⁷ State Statistics Service of Ukraine. URL: <https://stat.gov.ua/uk>

democratic system and the competitive economy that could effectively integrate with the post-Soviet and European markets.

During the initial years of its independence, Ukraine underwent a major overhaul of its legislative system, which included the adoption of a new constitution in 1996. This was regarded as a crucial milestone in establishing the country's fundamental institutional structure and shaping its identity as a new state. The Venice Commission's assessment of the 1996 Constitution of Ukraine recognized its progressiveness in protecting human rights and freedoms, as well as the government's commitment to implement these rights in practice⁸. The Commission highly appreciated the special protection against the infringement of human rights in Article 157, which prohibits the amendments to the Constitution if they may abolish or restrict human and citizen rights and freedoms⁹. However, it also pointed out that the wording of some provisions could suggest that the courts are not authorized to enforce these rights directly. This ambiguity could lead to unrealistic expectations and harm the credibility of the constitutional provisions¹⁰.

While the Commission commended the introduction of the check and balance system aimed at preventing authoritarian solutions, it emphasized the need for a special attention to be paid to the Transitional Provisions of the Constitution. These provisions delayed the implementation of certain important provisions, such as the supervision function of the procuracy, until new legislation was in place¹¹. The Commission highlighted the need for legislation to be adopted in order to prevent the retention of elements of the previous system for an extended period of time¹².

It is evident that during the first thirteen years of Ukrainian independence, the Constitution failed to become an effective legal and political instrument that would create a predictable legal landscape. Additionally, there were instances of abusive constitutionalism where the democratic mechanism of constitutional

⁸ Council of Europe (Venice Commission). Opinion on the Constitution of Ukraine. CDL-INF(1997)002-e. 1997. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-INF\(1997\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-INF(1997)002-e)

⁹ Constitution of Ukraine. 1996. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en#Text Art. 157>.

¹⁰ Council of Europe (Venice Commission). Opinion on the Constitution of Ukraine. CDL-INF(1997)002-e. 1997. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-INF\(1997\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-INF(1997)002-e)

¹¹ Constitution of Ukraine. 1996. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en#Text>

¹² Council of Europe (Venice Commission). Opinion on the Constitution of Ukraine. CDL-INF(1997)002-e. 1997. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-INF\(1997\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-INF(1997)002-e)

change was used to undermine the democratic order. During this period, Soviet-era political practices and economic structures persisted, with little reform or replacement by the new legal framework. The Soviet legal system was reflected in this framework, where laws were primarily declaratory and lacked effective implementation mechanisms, resulting in legal gaps that could be exploited by political elites. This trend was particularly evident in the judiciary, where early legislation described the functions of the judiciary but failed to address inherent flaws in the Soviet system, including the dependence of judges on politicians and corruption. Under the Soviet regime, the judiciary was completely subservient to the government, and after Ukraine gained independence, none of the subsequent political elites wished to sever this strong connection, instead exploiting it for their own gain. The judiciary's dependence on authority peaked during Yanukovich's presidency. Legislative changes diminished the Supreme Court's role and reformed the High Council of Justice, which had only three judicial members and was tasked with appointing court chiefs and deputies. During this time, political persecutions were widespread with the most notable cases being the imprisonments of former Prime Minister Yuliya Tymoshenko and politician Yuriy Lutsenko on dubious charges¹³.

After the 2014 Revolution of Dignity and the signing of the Association Agreement with the EU, Ukraine finally implemented long-awaited amendments to its constitution. These amendments delineated the distribution of powers, strengthened the role of Parliament, introduced the principle of subsidiarity, and abolished the imperative mandate of the general supervisory powers of the Public Prosecutor's office. Since then, Ukraine has undergone two rounds of judicial and anti-corruption reforms, one from 2014–2016 and the other from 2020–2021, aimed at aligning the judicial system with the principles of the rule of law, reinforcing judicial independence and accountability, establishing independent anti-corruption bodies, and enhancing the system's efficiency and transparency.

At the outbreak of Russian full-scale invasion to in 2022, Ukraine was close to completing a significant judicial reform (2020–2022) that, if fully implemented, could possibly result in systemic changes. The new reforms are based on a comprehensive strategy for the development of the justice system and constitutional judiciary for 2021–2023, which includes key aspects of the reforms. The European Commission in its Opinion on Ukraine's application for membership of the European Union, 2022 assessed the effectiveness of

¹³ Law on the Judicial System and the Status of Judges of Ukraine, 2453-VI, 07/07/2010. 2010. URL: <https://zakon.rada.gov.ua/laws/show/2453-17>

Ukraine's justice system as mixed, with a favourable trend in civil and commercial proceedings but an unfavourable trend in administrative proceedings¹⁴. The Commission also highly evaluated the new legislation that introduces integrity and professional ethics checks for the key judicial governance bodies. According to the European, this legislation has the capacity to not just establish a judiciary that is independent and responsible, but also diminish the impact of special interest groups that have exploited the current judicial governance structure to weaken the rule of law in Ukraine¹⁵.

Regarding the fight against corruption in Ukraine, it has been a significant priority in Ukraine's reform agenda since the Revolution of Dignity. This effort has been focused on areas such as public procurement, public service delivery, energy, banking, and the health sector. The Commission evaluated the establishment of specialized anti-corruption institutions, such as the Anti-Corruption Prosecution Office (SAPO) and the National Anti-Corruption Bureau (NABU), which is seen as one of the actors have become some of the most trusted institutions in Ukraine. However, according to the Commission, transparency in the selection of the heads of these anti-corruption institutions and their independence remains critical¹⁶.

Overall, Ukraine's progress in enhancing the rule of law since the signing of the Association Agreement with the EU has been perceived as moving in a positive direction. However, the Commission's recommendations emphasized the need to bolster the independence of the judiciary, advance the fight against corruption, and curtail the influence of oligarchs¹⁷. It is clear that these matters, that have long been regarded as root causes of Ukraine's underdevelopment and lack of respect for the rule of law, are still of utmost importance. Some scholars have raised concerns about the extent to which Ukraine's leadership is truly committed to reform process, arguing that the involvement and pressure from European institutions have been vital for any progress to be achieved in Ukraine's reform journey. For example, Andrew Wilson's work "*Survival of the richest: how oligarchs block reform in Ukraine*" argues that the oligarchy's strong influence and the lack of political will have impeded efforts to reform

¹⁴ European Commission. Communication of the Commission to the European Parliament, the European Council and the Council: Commission Opinion on Ukraine's application for membership of the European Union. COM(2022) 407 final. 2022. URL: https://enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en P. 8.

¹⁵ Ibid., P. 9.

¹⁶ Ibid., P. 10.

¹⁷ Ibid., P. 21.

crucial institutions and effectively address the issue of corruption¹⁸. Indeed, during the decades of independence, the prevalence of oligarchy, resistance of political elites to reforms and increasing corruption in Ukraine has been so pronounced that they began to be seen as ingrained in Ukrainian culture. Moreover, the comparative evaluation of rule of law development in the Eastern European region, which often overlooks the different historical paths taken by each state, has further contributed to Ukraine being viewed as an underachiever, inherently undemocratic, and always struggling to become European. However, when examining the main obstacles to Ukraine's progress in strengthening the rule of law through a post-colonial lens, a more nuanced and complex understanding emerges.

30.3. Oligarchy in Ukraine and Comparison to the Consequences of the Indirect Rule of Great Britain in African States

A frequently used explanation for oligarchy is a power structure in which a small group of people hold a disproportionate amount of power. Usually, these individuals are the wealthiest private owners in the state and have enough political influence to advance their own agendas. The phenomenon of oligarchy is widely observed in various countries, such as Colombia, Indonesia, Singapore, and even the United States. Nevertheless, it is particularly pronounced in the post-Soviet space.

The oligarchic system that emerged in post-Soviet space during the mid-1990s can be traced back to the Soviet Union which was characterized by a limited access order. Wealthy groups in those times did not own their own assets, but rather rapidly enriched themselves by monopolizing key sectors such as gas trade or banking, or by exerting informal control over state-owned enterprises. During the Soviet era, when the state was responsible for setting prices, owning all property, and controlling foreign trade, the economy was commanded by "red directors", who oversaw large factories under the supervision of the Party. After the collapse of the Soviet Union's centrally planned economy, the continuation of patron-client relations that originated during the Soviet era facilitated further capital growth of these groups through privatization. As a result, "red directors" and their associates secured leadership

¹⁸ Wilson A. Survival of the richest: how oligarchs block reform in Ukraine. European Council on Foreign Relations. 2016. 12 p. URL: <http://www.jstor.org/stable/resrep21573> P. 2.

positions at these enterprises ¹⁹. Some of these oligarchs sought to strengthen their positions under the new order by acquiring media assets and creating quasi-political parties, in order to expand their influence beyond the economic sphere. To secure parliamentary seats, they frequently relied on their pre-existing and well-established connections with former elites, who were willing to alter their ideology to maintain their grip on power.

In Ukraine, the close connections between the political elite and the oligarchs have intensified and created a vicious cycle of corruption. Elected officials who owed their parliamentary seats to oligarch support were obligated to reciprocate by advocating for laws that provided formal and informal privileges to the oligarchs, thereby increasing their influence and profits. The political parties, that lacked the support and resources of oligarchs were placed at a disadvantage in electoral competition, which prevented the formation of new elites and genuine change in the political landscape. This was evident in the case of The People's Movement of Ukraine, a political party primarily composed of Ukrainian dissidents that played a vital role in Ukraine regaining its independence. Despite having significant electoral support during Ukraine's independence movement, the party failed to maintain its unity in political competition with the tandem of former communists and "red directors".

In 1999, just prior to the upcoming presidential elections, the party's leader Viacheslav Chornovil died in a car crash under unusual circumstances. The prevention of the consolidation of power in the hands of the members of movement for independence was, in our opinion, in the interests of oligarchs. Since the movement was fundamentally anticolonial, as evidenced by the publications of its founders, such as Ivan Dziuba's "*Internationalism or Russification?*" ²⁰, it had strong incentives for the fundamental reformation of the Soviet system, which had favoured former "red directors". The failure of People's Movement of Ukraine to achieve rule in 1990s is often regarded as a biggest missed opportunity for Ukraine to break free from the post-Soviet legacy. Thereby, the limited access system and firm ties between the oligarchy and political elites that characterized the old Soviet system remained in place, albeit with one crucial distinction. In contrast to the Soviet era, the oligarchs,

¹⁹ Lough J., Dubrovskiy, V. Are anti-corruption reforms effective in Ukraine? Chatham House. 2018. 46 p. URL: <https://www.chathamhouse.org/sites/default/files/publications/research/2018-11-19-ukraine-anti-corruption-reforms-lough-dubrovskiy.pdf> P. 7-8.

²⁰ Dziuba I. *Internationalism or Russification?: A Study in the Soviet Nationalities Problem*. 1970. London: The Camelot Press Ltd. 263 p. URL: <https://diasporiana.org.ua/ideologiya/16780-dzyuba-i-internationalism-or-russification-a-study-in-the-soviet-nationalities-problem/>

who were formerly known as “red directors”, now exercise real power through political parties that serve their interests.

It is important to point out that in other post-Soviet states that underwent de facto decolonization in the 1990s, such as Georgia and Kazakhstan, the situation with oligarchy followed the similar pattern, although these cases may be less familiar to the Western world due to their geographical distance. The severity of this issue in the aforementioned countries is reflected in the introduction of legal measures, such as the draft law on de-oligarchization passed by the Parliament of Georgia in 2022 ²¹, and the growing political calls for “de-oligarchization” in Kazakhstan.

A slightly different trajectory regarding the former “red directors” striving for more political influence was observed in Russia. The Russian oligarchy flourished during the Yeltsin’s presidency, which was marked by hyperinflation, weak governance and failed attempts to build rule of law ²². As in other post-Soviet states the former “red directors” sought extend their influence through the connections with the authorities inherited from the Soviet system. Unlike Ukraine and some other post-Soviet republics, where the oligarchy created numerous political parties to achieve political influence preventing the members of the independence movements to consolidate political power, most of the Russian oligarchs supported President Yeltsin’s ruling party, the main opponent of the leader of previous regime, Gorbachev.

There may be various explanations for this phenomenon, but in our opinion, the most obvious reason is that the former “red directors” did not perceive any threat to their well-being from the new ruling party. The opposition movement that emerged in Russia prior to the collapse of the USSR did not primarily oppose the Soviet system itself. Rather, it was directed against Gorbachev’s liberal policies and his perceived failure to maintain control over the Union. The persistence of Soviet imperialistic mindset of the newly established regime is apparent in the Russian government’s repeated efforts to revive the USSR. These efforts have ranged from creating regional organizations such as the Commonwealth of Independent States (CIS) and later the Eurasian Economic Union to promote economic integration, to using less democratic methods such as military invasions against former Soviet republics seeking to sever ties with the former metropolis. Examples of such military interventions include the

²¹ Council of Europe (Venice Commission). Georgia. Interim opinion on the draft law “On the de-oligarchisation”. CDL-AD (2023)009. 2023. URL: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PL-PV\(2023\)001-bil](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PL-PV(2023)001-bil)

²² Hoffman D. Russian oligarchs. *Britannica*. 2026, Mar. 20. URL: <https://www.britannica.com/topic/Russian-oligarchs>

“Russian counterterrorism operations” in the independent state of Ichkeria in 1994, as well as in Georgia in 2008 and Ukraine in 2014.

In 1999, when Yeltsin announced his resignation, the tremendous resource advantages of the oligarchy, who were striving to preserve their influence, allowed Yeltsin’s chosen successor, Putin, to win the elections. Ironically, once Putin gained the power, he initiated the “elimination of oligarchs as a class”, which essentially meant that only those willing to operate in the interests of the newly established authoritarian regime would be allowed to keep their assets²³. Later during Putin’s regime, a new generation of elites who were firmly devoted to the new regime’s interests emerged.

Among the aforementioned, a notable instance is that oligarchy as a phenomenon in post-Soviet space can be traced back to the limited access order of the Soviet era, which was compounded by the challenging economic transition in post-Soviet states. It emerged in many post-Soviet countries including the former metropolis, Russia. Moreover, during the Soviet regime, individuals from non-Russian ethnic backgrounds could only hold high positions in the Republics if they demonstrated complete adherence to Russian Bolshevik policy and ideology, which also involved renouncing their national identity²⁴. Therefore, in our opinion, the phenomenon of former “red directors” gaining political and economic power after the collapse of the USSR cannot be attributed to any specific cultural factors of a particular state.

Another point to consider is the impact of the increasing influence of oligarchs on the de facto decolonization process in certain post-Soviet republics. As previously discussed, oligarchs in Ukraine utilized their wealth and connections to promote their political parties, effectively preventing the emergence of new political elites within the newly independent state. The formation of new political elites is crucial for effective state and nation building in post-colonial states that lack the legal traditions of a functioning democratic system.

However, the consolidation of power in the hands of oligarchs and their sponsored political parties in Ukraine resulted in the revival of a Soviet-style limited access system. This system ultimately facilitated the establishment of an authoritarian regime under Yanukovich in 2010, although it was short-lived. This highlights the contrast with the Baltic States, which underwent the process of decolonization in the 1920s and established the foundations of democracy

²³ Ibid.

²⁴ Telenko O., Kurbet O. Postcolonial Theory and its Application to the Post-Soviet States. *History of Economics and Economic Thought of Ukraine*. 2023. Vol. 56. P. 255-285. <https://doi.org/10.15407/ingedu2023.56.255>

and rule of law, that allowed them to adopt the doctrine of legal continuity after the liberation from Soviet occupation and prevented former “red directors” from gaining significant political influence. Instead, the combination of processes that took place in Ukraine resembles those of former British colonies in Africa.

One characteristic of colonial rule in Africa was the practice of appointing local chiefs to perform administrative duties such as tax collection and maintenance of law and order in their respective territories. It is worth noting that while indirect rule is often attributed to the British Empire, other colonial powers such as the French, Portuguese, and Belgians also implemented their own variations of indirect governance. In some instances, traditional local authorities in Africa were restructured to assume these responsibilities, while in other cases, new chiefs were installed by the colonial rulers. In their work “*Colonial Experience and Postcolonial Underdevelopment in Africa*”, Mizuno Nobuhiro, and Ryosuke Okazawa noted that the intermediary role of chiefs between the colonial ruler and the local population allowed them to benefit by extracting resources for their own benefit²⁵. As these scholars noted, local elites in post-colonial Africa, who were favoured by indirect rule during the colonial period retained their privileged positions. These elites held significant power and authority, which were maintained by the postcolonial governments who relied on them for electoral support²⁶. Thereby, the extractive institutions²⁷ established by colonial powers during the colonial period were inherited by the indigenous elite who continued to extract resources from the masses, much like during the colonial era, but without foreign supervision.

This pattern bears a striking resemblance to the post-Soviet space, where former elites that were accountable to the party during the Soviet era, gained significant political influence after the collapse of the regime. The significance and enduring nature of this issue in post-Soviet states, which were de facto decolonized only in the 1990s and lacked the necessary foundations of rule of law and legal traditions to tackle the problem effectively, demonstrates the complexity of their development after achieving independence. In our opinion,

²⁵ Mizuno N., Okazawa R. Colonial Experience and Postcolonial Underdevelopment in Africa. *Public Choice*. 2009. Vol. 141. No. 3-4. P. 405-419. <https://doi.org/10.1007/s11127-009-9461-8>

²⁶ Ibid.

²⁷ A term provided by Daron Acemoglu and James A. Robinson in: Acemoglu D., Robinson J. A. *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*. New York: Crown Publishing Group. 2012. 577 p. URL: https://ia801506.us.archive.org/27/items/WhyNationsFailTheOriginsODaronAcemoglu/Why-Nations-Fail_The-Origins-o-Daron-Acemoglu.pdf

this highlights the importance of further examining the development of post-Soviet states from a post-colonial perspective.

30.4. Lack of Political Will and Russian Influence on Ukraine

Ukraine has been frequently criticized for its perceived lack of political will to pursue reforms, despite having the potential to become a prosperous democratic state after the collapse of the Soviet Union. In addition to being the primary agricultural producer, the region was also a significant industrial hub, contributing 16% of the USSR's economic output in 1990²⁸. However, since gaining independence, the Ukrainian government has resisted necessary institutional reforms and instead used state's resources for personal gain. In his work *"Survival of the Richest: How Oligarchs Block Reform in Ukraine"*, Andrew Wilson emphasizes the growing doubts about Ukraine's leadership's commitment to rule of law reforms and links this problem to the influence of oligarchy and the endless loop of corruption it has created²⁹.

Pekka Sutela is another critic of the Ukrainian political leadership's lack of structural reforms. In his work *"The underachiever: Ukraine's economy since 1991"* he focuses on the economic and political situation in Ukraine after the collapse of the USSR and the subsequent relations with Russia and Europe as important factors in the country's development³⁰. Although he acknowledges Ukraine's dependence on Russian oil, minerals, and gas since gaining independence, Sutela argues that the true reason behind the "multi-vector" approach taken by Ukrainian policymakers was to promote the private interests of political elites³¹. Specifically, he suggests that this foreign policy was not primarily aimed at fostering positive relations with all sides, but rather served as a political tool to balance between the financial support from European organizations, which was meant to advance structural reforms, and subsidies for Russian gas in exchange for prospects of Eastern integration. According to Sutela, this approach allowed Ukrainian policymakers to benefit themselves through corruption schemes that flourished in Ukraine³².

²⁸ Karatnycky A. The Ukrainian Factor. *Foreign Affairs*. 1992. Vol. 71, No. 3. P. 90–107. <https://doi.org/10.2307/20045232>

²⁹ Wilson A. Survival of the richest: how oligarchs block reform in Ukraine. European Council on Foreign Relations. 2016. 12 p. URL: <http://www.jstor.org/stable/resrep21573> P. 1-3.

³⁰ Sutela P. The Underachiever: Ukraine's Economy Since 1991. Carnegie Endowment for International Peace. 2012. 34 p. URL: <http://www.jstor.org/stable/resrep13068> P. 3-19.

³¹ Ibid.

³² Ibid.

Certainly, as previously discussed, Ukrainian oligarchs who gained an immense influence on country's political sphere through limited access system have utilized political and legal tools to enrich themselves and obstruct institutional reforms that could potentially threaten their status quo. While this issue should not be underestimated, it is important to consider the broader historical and geopolitical context in which these issues are taking place. In his work, Sutela considered the economic and political situation in Ukraine after gaining independence and the country's foreign relations as backing statements for his argument that Ukrainian authorities resist reforms and advance their private interests. However, when viewed from a post-colonial perspective, a more comprehensive picture emerges.

In their work titled "*Post-colonial trade between Russia and former Soviet republics: back to big brother?*", Arman Mazhikeyev and Huw Edwards analysed the trade patterns among the former Soviet republics by comparing them to the trade relations between colonizers and their colonies³³. They focused on the fact that the Soviet system was built on upstream-downstream supply chains that often crossed republic borders multiple times. In addition, the patterns of specialization played a significant role in determining trade relations between the former Soviet republics. During the Soviet era, Moscow's centrally planned industrialization, and individual regions' specializations were planned to complement one another. In 1990, all republics, except Russia, traded mainly (80–90%) with other former Soviet republics, with half of that trade being with Russia³⁴. Consequently, the collapse of the USSR meant that the former republics had to undergo redevelopment of their industries and establish new ties, which was both, costly and risky. Moreover, unlike former overseas colonies that often seek to replace suboptimal trade links with their ex-colonizers with more natural ones, post-Soviet republics already had optimal trade relations due to their geographical proximity.

Another important factor to consider is that Ukraine's prolonged history of economic exploitation and industrial expansion led to its overindustrialisation by the time of its independence. As of 1991, more than 45% of Ukraine's GDP was contributed by its industrial sector³⁵. However, the low cost of energy led

³³ Mazhikeyev A., Edwards T. H. Post-colonial trade between Russia and former Soviet republics: back to big brother? *Economic Change and Restructuring*. 2021. Vol. 54. P. 877–918. <https://doi.org/10.1007/s10644-020-09302-8> P. 894.

³⁴ Ibid.

³⁵ The World Bank. Ukraine – Country Assistance Evaluation. World Bank Publications. 2000. URL: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/593001468763766040> P 4.

to many industrial processes being highly energy-intensive. This was due to the Soviet Union's inefficient economic policies and the long-standing extraction of natural resources in Ukraine. According to Oksana Voytuk, the Statistical Yearbook of the USSR's National Economy shows that in 1940, Ukraine produced 495.1 million m³ of gas³⁶. In 1955, about 48% of the total gas production in the USSR came from the west of Ukraine³⁷. However, the intensive exploitation of Ukrainian gas deposits led to a rapid decline in gas production in the late 1970s. Since then, Ukraine has become highly dependent on gas transportation from Siberia to maintain its energy-inefficient industry. Consequently, following the dissolution of the USSR, Ukraine inherited significant manufacturing facilities but lacked a stable supply of raw materials and energy.

The preceding arguments suggest that the Ukrainian government had significant economic incentives to maintain close economic relations with their former colonizer, Russia, since Ukraine's independence. The severity of the economic crisis in the newly formed state, combined with the challenges in establishing new trade relations, prompted the government to adopt a multi-vector foreign policy approach that sought collaboration with the West while avoiding severing vital economic connections with Russia. Additionally, certain Ukrainian oligarchs with vested interests in heavy industry found maintaining economic ties with Russia to be advantageous for their personal gain. This situation was used by the Russian Federation to intervene politically and economically in Ukraine. They did so directly by controlling gas pricing and gas shut-offs, and indirectly by supporting oligarchs who were interested in maintaining economic connections with Russia.

One of the most prominent examples of such mutually beneficial relations is the collaboration between the Russian regime and Viktor Medvedchuk, Ukrainian oligarch, known for controlling a diesel pipeline from Russia, coal trading companies in Donbas region, and an oil refinery in Russia. Ukraine's heavy dependence on petroleum imports from Russia, made Medvedchuk one of the most influential oligarch in the state. At the same time, he is well-known for his consistent support of the pro-Russian Yanukovich regime in Ukraine through his media outlets from 2010 to 2014, as well as for his role in consolidating Ukraine's Eurosceptics through his public movement "Ukrainian Choice – Right of the People" from 2012 to 2022. In 2022, Security Service of Ukraine detained him and replenished the exchange fund for the return of

³⁶ Voytyuk O. The gas sector of Ukraine: past and future. *Wschodnioznawstwo (Eastern Studies)*. 2020. Vol. 14. P. 207-232. <https://doi.org/10.4467/20827695WSC.20.012.13340> P. 209.

³⁷ Ibid.

Ukrainian commanders and defenders of Mariupol from Russian captivity. The number of Ukrainian military personnel released on the exchange of Medvedchuk was a sign of his importance for Federal Security Service in Russia as an intermediary for funding of many agent networks and that he was a top traitor in Ukraine ³⁸.

The case of Viktor Medvedchuk exemplifies how the initial economic ties with Russia created favourable conditions for certain Ukrainian oligarchs to gain more power, which, over time, was amplified by Russian support and subsequently used to strengthen these ties and promote Russian influence. Obviously, the weak rule of law in newly-independent Ukraine and lack of domestic institutional reforms exacerbated the situation, leaving the state more vulnerable to Russian continued economic and political interventions. At the same time, these interventions often straightened the position of oligarchy, which in turn blocked the institutional reforms that could impede their influence. This argument supports the previously mentioned explanation of Ukrainian leadership's resistance to institutional reforms due to the influence of oligarchs, while highlighting two significant points: the impact of Ukraine's past experience of colonization on its economic and political situation after gaining independence, and the high level of Ukrainian dependence on the foreign state for internal policy.

Anna Ohanyan's book "*Russia Abroad: Driving Regional Fracture in Post-Communist Eurasia and Beyond*" provides insight into this phenomenon. Ohanyan employs the theory of regional structure, which suggests that former colonizers strive to preserve their influence over the region in many postcolonial systems, to analyze the post-Soviet space ³⁹. She notes that while postcolonial Africa and Southeast Asia provide more recognizable examples of this pattern, this is because these regions have largely completed the process of formal decolonization⁴⁰. Many post-Soviet countries, on the other hand, are still in the early stages of this process. The processes and mechanisms of imperial deconstruction, combined with the specific tactics employed by post-imperial Russia to maintain its dominance and influence in the region, often shape the trajectory and nature of state building in post-Soviet countries. Thus, the post-Soviet space is viewed by Ohanyan as a collection of fractured regions,

³⁸ Intelligence explained who in Russia benefited from Medvedchuk's exchange. *Radio Svoboda*. 2022. URL: <https://www.radiosvoboda.org/a/news-fsb-medvedchuk/32046744.html>

³⁹ *Russia Abroad: Driving Regional Fracture in Post-Communist Eurasia and Beyond*. Edited by Ohanyan A. Georgetown University Press, 2018. 220 p. <https://doi.org/10.2307/j.ctv75db6w> P. 23-28.

⁴⁰ Ibid.

typically postcolonial, with unsettled physical and institutional borders, where renegotiations between “parent” and successor states take place⁴¹. Notably, according to the regional structure theory, in fractured regions, external hegemony tends to use social connections and elite linkages to leverage power resources, resulting in the formation of “islands of power” within the state that apply power resources sporadically, ultimately undermining state governance and leaving the state even more vulnerable to foreign political and economic interventions⁴².

Considering the previous points, it is evident that Ukraine’s political leadership has often demonstrated lack of political will for pursuing institutional reforms in the state. It is also noticeable that the influence of Ukrainian oligarchy, seeking to chase personal interests, on the political elites played an important role in the prevention of the development of rule of law. However, it is equally important to recognize the wider historical and geopolitical circumstances that have contributed to the emergence and persistence of this problem. The theory of regional structure in post-colonial studies sheds light on how ex-metropolises seek to expand their geopolitical interests on former colonies even after *de facto* decolonization. Moreover, it highlights how these processes impede state and institution building in many post-colonial states.

As previously discussed, Ukraine’s prolonged subjugation to Russia resulted in a close economic relationship due to their close geographical proximity, resulting in a reliance on the former metropolis since the initial stages of imperial dissolution. The Russian Federation seeking to sustain control over the region employed various means to straighten these ties, such as providing support to the Ukrainian oligarchy, who wielded considerable political power in the country and had vested interests in these connections. These processes contributed to the concentration of ownership and influence in the state and made the networks supporting the region highly politicized, hindering the development of rule of law in the state. The lack of consensus and conflicting interests between the main political factions and oligarchic elites resulted in the series of missed opportunities to implement necessary fundamental institutional reforms. Notably, based on the previous points, Ukraine’s struggles towards EU integration can be seen not only as a means to limit Russian influence but also as a way out of the vicious cycle that has

⁴¹ Russia Abroad: Driving Regional Fracture in Post-Communist Eurasia and Beyond. Edited by Ohanyan A. Georgetown University Press, 2018. 220 p. <https://doi.org/10.2307/j.ctv75db6w> P. 41-44.

⁴² Ibid.

constrained effective state and institution building. This perspective highlights the significance of the EU's role in Ukraine's development.

30.5. Role of the EU in Strengthening the Rule of Law in Ukraine. Revisiting the EU's Perception of Eastern Europe

The EU's commitment to the rule of law is articulated in Article 2 of the Treaty of European Union, which identifies it as a fundamental common value⁴³. Similarly, the preamble of the EU Charter of Fundamental Rights restates that the Union is founded on the principles of democracy and the rule of law⁴⁴. However, the significance of the EU's dedication to the rule of law extends beyond its internal policy. The European Union is widely considered as one of the main "exporters" of rule of law, democracy and human rights. Indeed, the EU's constitutional framework not only recognizes the rule of law as a fundamental shared value, but also employs it as a criterion to evaluate the conduct of potential member states, as well as a cross-cutting objective of its foreign policy.

The idea of promotion of the rule of law by the EU on the global stage is evident from Article 3(5) of Treaty on European Union (TEU), which clearly states that the Union is committed to supporting and advancing its values and interests in its dealings with the rest of the world⁴⁵. Likewise, Article 21 of TEU defines rule of law as one of the fundamental principles of the EU's foreign policy, which must be not only respected but also promoted abroad via common policies and actions⁴⁶. Noteworthy, these formulations do not impose any specific legal obligations on EU institutions, but rather function as broad guidelines to provide direction and limitations to EU actors when engaging in international affairs or developing and implementing external policies. Accordingly, EU often utilizes "soft" policy tools, such as political dialogues, public diplomacy or cooperation programs to advance its values in regards to non-EU countries, while also employing some legally binding instruments, such as unilateral trade, technical, and financial measures. In this context, the

⁴³ European Union. Consolidated version of the Treaty on European Union. *Official Journal of the European Communities*, C 325/5. 2002. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12002M/TXT> Art. 2.

⁴⁴ European Union. Charter of Fundamental Rights of the European Union. *Official Journal of the European Union*, 2012/C 326/02. 2012. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> Preamble.

⁴⁵ European Union. Consolidated version of the Treaty on European Union. *Official Journal of the European Communities*, C 325/5. 2002. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12002M/TXT> Art 3 (5).

⁴⁶ *Ibid.* Art 21.

EU employs a “carrots and sticks” approach, motivating third states to adopt policies that align with EU values, such as democracy, rule of law, and human rights, in exchange for receiving certain economic benefits from the Union.

This approach is also mirrored in the Copenhagen criteria for EU accession. In 1993, the European Council established the accession criteria, which are now known as the Copenhagen criteria, in response to applications for EU membership from post-Soviet countries. The rule of law was identified as a key component of the political criterion. The significance of the political criteria was further underscored by the Amsterdam Treaty, which introduced a new provision under Article 49 of TEU that stated that “any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union”⁴⁷. The opportunity to join the EU has long been seen as a strong impetus for institutional and policy reform in candidate countries, with the conditions for accession serving as a significant incentive for such reforms. However, the effectiveness of this approach is still questionable due to the lack of clear definitions of critical terms like “stability of institutions” and the absence of a monitoring mechanism to assess compliance with the criteria after joining the EU. Recent events have highlighted this issue, as the EU has faced a rule of law crisis, prompting the adoption of the Rule of Law Framework to address threats to the rule of law in EU Member States.

In the case of Ukraine, the necessity of undertaking fundamental reforms has always been seen as closely tied to its ambition of joining the European Union while lack of commitment to the reforms has been linked to the reluctance of Ukraine’s leadership to sever its past ties. This strong connection is evident when comparing Ukraine’s progress before and after signing the Association Agreement with the EU in 2014, as previously discussed. However, despite the common belief that the desire to join the EU was the driving force behind Ukraine’s reforms, the EU’s political will and its perception of Ukraine played an equally significant role in the country’s development, which is often overlooked in analysis.

In 1994, the Partnership and Cooperation Agreement signed between the EU and Ukraine marked the beginning of their international cooperation, establishing the primary principles of collaboration in the political, economic, and humanitarian spheres. The agreement placed significant emphasis on the need to strengthen the rule of law in Ukraine, and offered the possibility of establishing a free trade area on the condition of further progress through

⁴⁷ Ibid. Art 49.

economic reforms (Article 4)⁴⁸. It is worth noting that the EU also concluded similar agreements with other former Soviet states, including Russia, at that time. According to Olesia Tragniuk's article "*European Union and Ukraine: Some Issues of Legal Regulation of Relations – From Partnership and Cooperation Agreement to Association Agreement*", the development of relations between Ukraine and the EU was complicated at that stage by Brussels' demand for Ukraine to have a nuclear-free status and to accede to the Treaty on the Non-Proliferation of Nuclear Weapons as a principal condition for development cooperation⁴⁹. In response, Ukraine signed the Budapest Memorandum with Russia and the USA, which promised financial compensation and security guarantees in exchange for the withdrawal of nuclear weapons from Ukraine. However, as we have seen, this did not prevent Russia from invading Ukraine two decades later.

Tragniuk also highlights the EU's general approach towards Ukraine in post-Cold War period, citing the Common Position of the EU adopted in 1994 by the Council, which prioritized promoting Ukraine as a state that maintained balanced relations with both Russia and the West⁵⁰. Notably, the Western perspective of Ukraine primarily in the context of its relations with Russia caused frustration among Ukraine's civil society, allowing Ukrainian oligarchs who had vested interests in preserving ties with Russia to push anti-Western narratives through their media assets. They maintained that the EU would never consider Ukraine as an equal partner with the potential of accession to the Union. Moreover, the initial Western perception of Ukraine as a buffer zone between itself and Russia can be seen as another significant factor that supported the adoption of a multi-vector foreign policy approach by the Ukrainian government. As previously discussed, the severe economic crisis, Ukraine's favourable geographic location for trade with Russia, and the interests of some oligarchs made it difficult to sever ties with the former metropolis. The uncertainty regarding relations with the EU, another crucial

⁴⁸ Partnership and Cooperation Agreement between the European Communities and their Member States. *Official Journal, Series L 049*. 1998. URL: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:21998A0219\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:21998A0219(02)) P. 0001 – 0002

⁴⁹ Tragniuk O. European Union and Ukraine: some issues of legal regulation of relations – from Partnership and Cooperation Agreement to Association Agreement. *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft*. 2016. Vol. 99. No. 1. URL: <http://www.jstor.org/stable/44504905>

⁵⁰ European Union (Council). Common Position of 28 November 1994 on the objectives and priorities of the European Union towards Ukraine. *Official Journal of the European Communities, L 313*. 1994. URL: <http://data.europa.eu/eli/compos/1994/779/oj> P. 0001–0002.

strategic partner due to Ukraine's geographic location, further complicated this process.

The EU's perspective on Ukraine remained similar throughout the following decade. According to Taras Kuzio's article "*EU and Ukraine: a turning point in 2004?*", the EU's strategy towards Ukraine was not consistent in the medium- to long-term, as demonstrated by the conflicting and occasionally offensive remarks made by EU officials⁵¹. Specifically, Kuzio cited an interview with European Commission President Romano Prodi in 2003, in which he stated that while Balkans "belonged" to Europe and Turkey was already an official candidate there was no reason for Ukraine, Moldova or Morocco to join EU⁵². Another example Kuzio provided was the German-French report drawn up by their respective ministers in 2000, which stated that if Ukraine were to join the Union, it would isolate Russia, and there should be no further expansion of the union to the east beyond the ten central European countries currently under negotiation⁵³. These statements further strengthened the belief in Ukraine that the EU did not view Ukraine as a potential future member and even as a part of "Europe".

Notably, the political statements of the EU regarding Ukraine in the 2000s reflected the public opinion in the Union regarding the Eastern enlargement. According to the UK Select Committee on European Union's 2005–06 report, the public's waning support for EU enlargement could be attributed in part to the differences in cultural, political, and economic backgrounds of the applicant states from the former Soviet Union and the Balkans, which are generally seen as "poor, politically unstable, and riddled with organized crime⁵⁴".

In 2007, the EU launched a lengthy negotiation process with Ukraine for a new "wider agreement" aimed at providing a legal framework for closer economic cooperation, including a free trade area, and improving political dialogue. The negotiation process took place over 21 rounds between 2007 and 2012 and was eventually completed in 2013. The refusal of former Ukrainian

⁵¹ Kuzio T. *EU and Ukraine: a turning point in 2004? Occasional papers n.47*. European Union Institute for Security Studies. 2003. URL: <https://www.iss.europa.eu/sites/default/files/EUIS/SFiles/occ47.pdf> P. 10.

⁵² Ibid.

⁵³ Boratyński J., Burakovsky I., Dodonov B., Duleba A., Gromadzki G., Haran O. et. al. *More than Neighbours: The Enlarged European Union and Ukraine – New Relations*. Warsaw: Stefan Batory Foundation; Kyiv: International Renaissance Foundation, 2004. 32 p. URL: https://www.batory.org.pl/doc/policy_paper.pdf

⁵⁴ House of Lords: European Union Committee. *The Further Enlargement of the EU: threat or opportunity?* 53rd Report, Session 2005–2006. HL Paper 273. 2006. 280 p. URL: <https://publications.parliament.uk/pa/ld200506/ldselect/ldeucom/273/273.pdf>

President Viktor Yanukovich to sign the long-awaited agreement triggered the Revolution of Dignity in Ukraine and the subsequent change of government. The Association Agreement is widely regarded as one of the most advanced bilateral agreements of the EU with third states. It comprises two parts, economic and political. The political component concentrates on the necessary reforms in the state, particularly concerning the strengthening of the rule of law, while the economic aspect includes a Deep and Comprehensive Free Trade Area (DCFTA) between the EU and Ukraine, which fosters the reintegration of the Ukrainian economy into the West. The European Commission reports that the European Union has emerged as Ukraine's leading trading partner, representing 39.5% of its total trade in 2021⁵⁵. Not only has the EU become Ukraine's primary export destination, but it has also become the primary source of imports for the country. The Association Agreement has played a crucial role in restructuring Ukraine's energy market, leading to reduced economic and energy reliance on Russia.

The Association Agreement was also used by the EU as a basis for facilitating reforms in such important areas in Ukraine as judicial system, anti-corruption and decentralization. By virtue of its political affiliation with Ukraine and the institutional framework enshrined in the Association Agreement, the European Union was able to devise a rapid-response plan for state-building in Ukraine. The Support Group for Ukraine (SGUA) within the European Commission utilized this structure to facilitate collaboration among the EU's institutions and member countries, along with external entities such as international organizations, financial institutions, and bilateral donors like the United States, Canada, and Japan. As a result, the EU was able to offer unprecedented assistance in macroeconomics and state-building to Ukraine. Since 2014, the European Union has provided Ukraine with over EUR 5.6 billion in financial aid through five macro-financial assistance programs alone, not including the aid provided through other foreign policy instruments⁵⁶.

Based on the preceding points, it is evident that the European Union has played a significant role in Ukraine's institutional reforms. Despite the slow

⁵⁵ European Commission EU trade relations with Ukraine. Facts figures and last developments. 2023. URL: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/ukraine_en

⁵⁶ European Commission. Communication of the Commission to the European Parliament, the European Council and the Council: Commission Opinion on Ukraine's application for membership of the European Union. COM(2022) 407 final. 2022. URL: https://enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en P. 3-4.

pace of these changes, the progress made by Ukraine after entering into the Association Agreement with the EU should not be underestimated, especially given the fundamental nature of these reforms taking place during a time of Russian military aggression towards Ukraine.

Noteworthy, the political will of the European Union to recognize Ukraine as a European state and support its Euro integration was the driving force behind these reforms. The Revolution of Dignity is widely regarded as a turning point in Ukrainian history, when civil society rejected its Soviet heritage, including corruption and oligarchy, and embraced Western values with the goal of becoming European citizens while the Ukrainian political leadership initiated the necessary reforms in response to such public demand. However, the closer look reveals that although civil society played a crucial role in preserving democracy in Ukraine, it was the EU's political determination to commence negotiations regarding the Association Agreement in 2007 that provided the Ukrainian government with the essential support, assistance, and most significantly, the chance to sever the postcolonial economic ties with Russia in 2014. This allowed for the necessary economic and institutional reforms in Ukraine after the Revolution to take place. Notably, the Revolution of Dignity did not result in an immediate change of political elites. The new government was composed of politicians who had been part of the Ukrainian political arena since independence, owing to the limited access system formed by the oligarchy. The Revolution also failed to remove the oligarchs from Ukraine's political landscape. However, severing economic ties with Russia, made possible by Ukraine's integration with the Western economy, reduced the political clout of the most influential oligarchs engaged in business with Russia. This broke the vicious cycle that had hindered the reform process.

Undoubtedly, there is still a long way to go in terms of establishing the strong rule of law in Ukraine, and with the full-scale invasion by Russia in 2022, progress may be delayed. Nevertheless, the EU's grant of candidate status to Ukraine (2022), the formal opening of accession negotiations (2024), and the subsequent progress in the screening process and negotiation clusters indicate that the West no longer views Ukraine as culturally non-European and remains committed to supporting its path towards EU membership.

Based on the discussion above, it is justified that the postcolonial perspective offers valuable insights into the complex challenges that Ukraine faces in establishing and reinforcing the rule of law, especially with regards to its economic dependence on its former colonizer and its influence on state-building. Acknowledging and addressing the impact of the colonial past can lead to a more accurate understanding of these challenges and effective

measures to overcome them, contributing to economic security and to a more resilient society. In contrast, neglecting the colonial past and its consequences may create additional obstacles to the country's development. Thus, the postcolonial perspective provides a more comprehensive understanding of Ukraine's situation, including in the context of path dependence, and offers important insights for its path forward.

CONCLUSION

This Chapter provides a comprehensive examination of the impact that the colonial experience has had on the development of the rule of law in post-Soviet states after gaining independence, specifically through the lens of Ukraine's complex history under both Russian Imperial and Soviet rule. The absence of a shared memory of sovereignty and a solid legal tradition in Ukraine, stemming from prolonged foreign domination, presents significant challenges in reforming inherited institutions and economies that had primarily served the interests of external powers and local elites aligned with them. The persistence of former elites in gaining political influence following regime collapses extends not only to Ukraine and the wider post-Soviet region, but also to post-colonial Africa, reflecting the deep-seated legacy of indirect British colonial rule.

Employing the theory of regional structure to the post-Soviet context, this analysis underscores the efforts of former colonizers to maintain their influence over the region in various postcolonial systems. These insights elucidate the considerable obstacles to institutional reforms encountered by Ukraine following the dissolution of the USSR. Moreover, this Chapter challenges the commonly held notion that Ukraine's eagerness to join the European Union was the sole driving force behind its pro-European progress. While this aspiration significantly contributed to reducing Ukraine's economic dependence on Russia and curtailing the influence of pro-Russian oligarchs, it also highlights the transformative shift in the perception of Ukraine, from being perceived as a mere buffer zone between Europe and Russia to being recognized as an equal economic partner. This evolving perception that determined the political will of the EU to establish stronger economic and political relation with Ukraine combined with the assistance provided in conducting necessary reforms has played a significant role in strengthening of the rule of law in Ukraine since 2014.

This study underscores the critical need for in-depth research and analysis of states with a Soviet background from a post-colonial perspective. By highlighting the complex interplay between historical legacies, foreign influence, and internal dynamics, we enhance our understanding of the

challenges and opportunities faced by these states, and we stress the long-lasting effects of colonial experiences on their political, social, and economic systems. The proposed post-colonial framework ensures representation of various post-Soviet states and their unique local contexts, fostering a more holistic analysis of the colonial legacy and its effects on the development of states worldwide.

Ultimately, this framework offers a nuanced and context-specific approach essential for capturing the complexities and uniqueness of Ukraine's trajectory. It paves the way for informed policy decisions and economic transformations that will promote a more resilient society and enhance economic security amid ongoing time of uncertainty and existential threats.

SUMMARY

This Chapter aims to reveal how the lack of awareness regarding the colonial history of various Eurasian states hinders the recognition of diverse populations with unique cultures and historical narratives. Furthermore, it obstructs a comprehensive understanding of the challenges encountered by newly independent states following the dissolution of the Soviet Union. Focusing on Ukraine as a case study, it applies colonial theory to explore the difficulties surrounding the establishment of the rule of law in post-Soviet states.

The analysis underscores the impact of unsuccessful decolonization efforts and the inability to establish independent legal traditions in Ukraine following the collapse of the Russian Empire on the development of the rule of law in contemporary Ukraine. We examine the main obstacles to strengthening the rule of law in Ukraine, such as the influence of oligarchy, corruption and lack of political will, drawing connections between these issues and the colonial legacy as well as post-colonial tensions in the region.

The study further delves into the EU's role in enhancing the rule of law in Ukraine and the EU's broader perception of Eastern Europe. We emphasize how a deficient understanding of colonial history among external actors – who play a leading role in advocating for the rule of law, democracy, and human rights globally – hinders the ability to address postcolonial challenges effectively.

References

1. Acemoglu D., Robinson J. A. *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*. New York: Crown Publishing Group. 2012. 577 p. URL: https://ia801506.us.archive.org/27/items/WhyNationsFailTheOriginsODaronAcemoglu/Why-Nations-Fail_-The-Origins-o-Daron-Acemoglu.pdf

2. Boratyński J., Burakovsky I., Dodonov B., Duleba A., Gromadzki G., Haran O. et. al. *More than Neighbours: The Enlarged European Union and Ukraine – New Relations*. Warsaw: Stefan Batory Foundation; Kyiv: International Renaissance Foundation, 2004. 32 p. URL: https://www.batory.org.pl/doc/policy_paper.pdf
3. Constitution of Ukraine. 1996. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en#Text>
4. Council of Europe (Venice Commission). Georgia. Interim opinion on the draft law “On the de-oligarchisation”. CDL-AD (2023)009. 2023. URL: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PL-PV\(2023\)001-bil](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PL-PV(2023)001-bil)
5. Council of Europe (Venice Commission). Opinion on the Constitution of Ukraine. CDL-INF(1997)002-e. 1997. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-INF\(1997\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-INF(1997)002-e)
6. Dziuba I. *Internationalism or Russification?: A Study in the Soviet Nationalities Problem*. 1970. London: The Camelot Press Ltd. 263 p. URL: <https://diasporiana.org.ua/ideologiya/16780-dzyuba-i-internationalism-or-russification-a-study-in-the-soviet-nationalities-problem/>
7. European Commission EU trade relations with Ukraine. Facts figures and last developments. 2023. URL: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/ukraine_en
8. European Commission. Communication of the Commission to the European Parliament, the European Council and the Council: Commission Opinion on Ukraine’s application for membership of the European Union. COM(2022) 407 final. 2022. URL: https://enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en
9. European Union (Council). Common Position of 28 November 1994 on the objectives and priorities of the European Union towards Ukraine. *Official Journal of the European Communities*, L 313. 1994. URL: <http://data.europa.eu/eli/compos/1994/779/oj>
10. European Union. Consolidated version of the Treaty on European Union. *Official Journal of the European Communities*, C 325/5. 2002. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12002M/TXT>
11. European Union. Charter of Fundamental Rights of the European Union. *Official Journal of the European Union*, 2012/C 326/02. 2012. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>
12. Heyets V. M. *Society, state, economy: phenomenology of interaction and development*. Kyiv: National Academy of Sciences of Ukraine, Institute for Economics and Forecasting, 2009. 864 p. URL: <https://ief.org.ua/en/>

publication/monohrafi/2009/suspilstvo-derzhava-ekonomika-fenomenolohija-vzaemodii-ta-rozvytku

13. Hoffman D. Russian oligarchs. *Britannica*. 2026, Mar. 20. URL: <https://www.britannica.com/topic/Russian-oligarchs>

14. House of Lords: European Union Committee. The Further Enlargement of the EU: threat or opportunity? 53rd Report, Session 2005–2006. HL Paper 273. 2006. 280 p. URL: <https://publications.parliament.uk/pa/ld200506/ldselect/ldcom/273/273.pdf>

15. Intelligence explained who in Russia benefited from Medvedchuk's exchange. *Radio Svoboda*. 2022. URL: <https://www.radiosvoboda.org/a/news-fsb-medvedchuk/32046744.html>

16. Karatnycky A. The Ukrainian Factor. *Foreign Affairs*. 1992. Vol. 71, No. 3. P. 90–107. DOI: <https://doi.org/10.2307/20045232>

17. Kasekamp A. Survival against the Odds: The Baltic States at 100. *Slavic Review*. 2019. Vol. 78, No. 3. P. 640–647. <https://www.jstor.org/stable/26844316>

18. Kuzio T. EU and Ukraine: a turning point in 2004? *Occasional papers n. 47*. European Union Institute for Security Studies. 2003. URL: <https://www.iss.europa.eu/sites/default/files/EUISSFiles/occ47.pdf>

19. Law on the Judicial System and the Status of Judges of Ukraine, 2453-VI, 07/07/2010. 2010. URL: <https://zakon.rada.gov.ua/laws/show/2453-17>

20. Lough J., Dubrovskiy, V. Are anti-corruption reforms effective in Ukraine? Chatham House. 2018. 46 p. URL: <https://www.chathamhouse.org/sites/default/files/publications/research/2018-11-19-ukraine-anti-corruption-reforms-lough-dubrovskiy.pdf>

21. Mazhikeyev A., Edwards T. H. Post-colonial trade between Russia and former Soviet republics: back to big brother? *Economic Change and Restructuring*. 2021. Vol. 54. P. 877–918. DOI: <https://doi.org/10.1007/s10644-020-09302-8>

22. Mizuno N., Okazawa R. Colonial Experience and Postcolonial Underdevelopment in Africa. *Public Choice*. 2009. Vol. 141. No. 3–4. P. 405–419. DOI: <https://doi.org/10.1007/s11127-009-9461-8>

23. Partnership and Cooperation Agreement between the European Communities and their Member States. *Official Journal, Series L 049*. 1998. URL: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:21998A0219\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:21998A0219(02))

24. Russia Abroad: Driving Regional Fracture in Post-Communist Eurasia and Beyond. Edited by Ohanyan A. Georgetown University Press, 2018. 220 p. DOI: <https://doi.org/10.2307/j.ctv75db6w>

25. Sereda Yu. V. Manifestations of the impact of structural changes in Ukrainian society on the transformation of the socio-economic structure. *Determinants of socioeconomic inequality in modern Ukraine*, edited by O. M. Balakireva. Kyiv: National Academy of Sciences of Ukraine, Institute for Economics and Forecasting, 2011. P. 110-122. URL: <https://ief.org.ua/en/publication/monohrafi/2011/determinanty-socialno-ekonomichnoi-nerivnosti-v-suchasniy-ukraini>
26. State Statistics Service of Ukraine. URL: <https://stat.gov.ua/uk>
27. Sutela P. The Underachiever: Ukraine's Economy Since 1991. Carnegie Endowment for International Peace. 2012. 34 p. URL: <http://www.jstor.org/stable/resrep13068>
28. Telenko O., Kurbet O. Postcolonial Theory and its Application to the Post-Soviet States. *History of Economics and Economic Thought of Ukraine*. 2023. Vol. 56. P. 255-285. DOI: <https://doi.org/10.15407/ingedu2023.56.255>
29. The World Bank. Ukraine – Country Assistance Evaluation. World Bank Publications. 2000. URL: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/593001468763766040>
30. Tragniuk O. European Union and Ukraine: some issues of legal regulation of relations – from Partnership and Cooperation Agreement to Association Agreement. *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft*. 2016. Vol. 99. No. 1. URL: <http://www.jstor.org/stable/44504905>
31. Voytyuk O. The gas sector of Ukraine: past and future. *Wschodnioznawstwo (Eastern Studies)*. 2020. Vol. 14. P. 207-232. DOI: <https://doi.org/10.4467/20827695WSC.20.012.13340>
32. Wilson A. Survival of the richest: how oligarchs block reform in Ukraine. European Council on Foreign Relations. 2016. 12 p. URL: <http://www.jstor.org/stable/resrep21573>

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