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Revolutionary Tactics: Insights from Police and Justice Reform in Georgia

by Peter Pomerantsev
with Geoffrey Robertson, Jovan Ratković
and Anne Applebaum



The background of the page features a series of concentric, light blue circles that create a sense of depth and movement. Overlaid on these circles are numerous small, light blue arrows, some pointing upwards and others following the curve of the circles, suggesting a path or a flow. The overall aesthetic is clean, modern, and dynamic.

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Introduction

The reforms carried out in Georgia after the Rose Revolution of 2004 were among the most radical ever attempted in the post-Soviet world, and probably the most controversial. The Georgian reformers inherited a state on the verge of disintegration and set about rebuilding institutions, transforming cultural mind-sets, and changing geopolitical direction. Their avowed aim was to “Westernise” the country, to break free of the Soviet legacy and of Russian influence. But expert and policy opinion, both in Georgia and internationally, is sharply divided over their achievements. For some, such as the World Bank, the Georgian reformers are courageous victors over crime, corruption, and bureaucratic waste;¹ others, including numerous respected non-governmental organisations (NGOs), admire the Rose reformers’ anti-corruption drive but accuse them of ruling through intimidation and abuse of justice.² This paper focuses on the reform of Georgia’s police and judiciary, but also seeks to understand the political tactics of the reformers. What options did they really have? Can other countries facing similar challenges learn from their successes and failures? What role did outsiders, such as Russia, the EU, and NATO, play in Georgia’s domestic political reform?

This paper seeks to answer these questions. The author, Peter Pomerantsev, conducted the research together with a unique international team, put together by the Legatum Institute, which visited Georgia in early 2014 to meet senior officials in both past and present governments as well as international observers and other key players.³ The research team included Geoffrey Robertson QC, one of Britain’s foremost legal experts; Jovan Ratković, a leader of the revolutionary Otpor movement in Yugoslavia, which unseated Milošević’s regime, and an adviser to Serbian president Boris Tadić between 2004 and 2012; and Anne Applebaum, a historian of the Soviet Union and Eastern Europe and director of the Legatum Institute’s Transitions Forum. Our experts’ findings, highlighted in feature boxes, inform the analysis of the Georgian reforms.

Background

In the late Soviet Union, Georgia had relatively more cultural, political, and economic freedom than other republics. Nationalist protests in 1978 and 1980 had guaranteed that Georgian remained the national language, churchgoing was tolerated, and academics and intellectuals had slightly more freedom of speech than in the rest of the USSR. Cautious of stepping on sensitive national pride, the Kremlin gave local leaders room to manage the republic's own affairs. As Professor Donald Reyfield writes in his encyclopaedic history of the country:

Tranquillity was assured by tolerating corruption. A shadow economy produced and sold goods made from stolen state materials; all-pervasive bribery gave many Georgians—university teachers, doctors, party officials, policemen—an almost capitalist standard of living... All Georgians knew that surgeons only operated on “grateful” patients. On the roads a driving license handed to a traffic policeman had a three rouble note inside if it was to be returned.⁴

The state sometimes operated in alliance with local “thieves-in-law”—the Soviet and post-Soviet version of Italian Mafia bosses, who helped run the black market and keep order. By the 1990s, nearly a third of thieves-in-law in the former Soviet space were Georgian.⁵

After independence in 1992, Georgia was ravaged by civil war and secessionist conflicts, which were instigated partly by extreme Georgian nationalists,⁶ but exacerbated by Russian military, financial, and political assistance to successful separatist movements in Abkhazia and South Ossetia.⁷ Basic services such as electricity and water ceased to function properly. State institutions broke down. There was no mechanism to collect taxes. As Reyfield writes:

[The state was] financed mediocrally, by selling posts: an ambassador's post cost 100,000 dollars, a district governor's 50,000, a traffic policeman's 5,000. Successful bidders recouped their investment through [corrupt] property deals, trafficking, releasing offenders, extorting fines. Millions of dollars went into officials' bank accounts. [President] Shevardnadze's family led the way: Shevardnadze's nephew Nugzar ran a casino, taking 10 percent of all laundered money. “Business men,” indistinguishable from “thieves-in-law,” acquired monopolies and real estate. Police would kidnap businessmen on the road from the airport and resell them to Chechen [bandits].

Crime rates soared: between 1991 and 1995 robbery rates doubled and assault increased 3.2 times.⁸ Thieves-in-law captured the state, providing “protection” and “dispute resolution”,⁹ controlling politicians, and dictating laws designed to enhance the value of their personal property and companies. The higher echelons of the police were bought off. Thieves-in-law were known to simply walk into police stations to dictate instructions to senior officers: 5,000 dollars was the going rate if a thief-in-law wanted to come down from Moscow and not be touched.¹⁰ The thieves-in-law were often networked with Russian criminal structures, which were in turn connected to Russian secret services, thus creating a nexus of crime and corruption which strengthened shadow-state ties with Russia.

Meanwhile, Russia continued to prop up South Ossetia and Abkhazia, undercutting Georgia's territorial integrity and humiliating Georgians. Russia increased diplomatic pressure on the country after Shevardnadze applied for NATO membership in 1997. With the arrival of Vladimir Putin in 2000, Russia became even more domineering. In 2003, for example, Russia

cut gas, electricity, and oil lines to Georgia to express displeasure at its policies.¹¹ “What can we do?” Shevardnadze would ask journalists who asked him why the country was not progressing. “We are a failed state.”¹²

In 2004, the Rose Revolution unseated Shevardnadze’s government, bringing to power a team of reformers from the United National Movement (UNM) with a promise of radical change. Led by the former minister of justice, Mikheil Saakashvili, the product of an elite Soviet education as well as a US law school, many in the new government spoke English and had worked in international think-tanks and NGOs. Most were young, some in their twenties. They were celebrated in the international community as the new, Western future of the country. But the reformers were also informed by a very Georgian context. In the Soviet period, many Georgian dissidents had been nationalists first and democrats second, fighting for national rather than just human rights. More importantly, the UNM’s vision was clearly shaped by national security concerns. The new reformers hoped reforms would create a strong, centralised state which would be more resistant to Russia. They also thought that joining the Western “club” would mean protection from Moscow. When Saakashvili spoke of his inspirations, he would often invoke Atatürk’s Turkey and Lee Kuan Yew’s Singapore as models, rather than the European Union, with its priorities of democracy and social justice.

Tactics for Revolutionary Change: Police Reform

Soviet instruction leaflets for Kalashnikovs described it as an "implement to shoot, hit or stab with". Same with reforms: use any method you can! If you can't shoot: stab! There is no McKinsey guide to reforms. Theories are meaningless. My main advice? Don't write a plan. Write aims. You might write down twenty aims, and if you achieve one of them that's great already. If there are institutions which abuse the system: then just get rid of them! But remember a reform has to be sold for different audiences. Take privatisation: it has to be sold to some as an intellectual ideal, to others as a way to fight corruption, and to others as a way to make money.

Kakha Bendukidze, Minister for Reform Coordination, 2004–8¹³

After coming to power, the UNM had a strong popular mandate for carrying out radical change: the challenge was to make the promise reality. Previous governments had also promised to implement reforms but had failed; one senior minister would be sacked, only for another, just as corrupt, to take his place. The UNM looked around for a starting point. Reopening the privatisations of the previous regime might have been popular, but could have resulted in another cycle of corruption. Attempts to clean up the infamously corrupt customs service led the bureaucracy to push back. Sometimes officials simply blocked all goods on the border. Police reform was an immediate priority, needed to break the power of thieves-in-law and to restore confidence in the state. But though the police were unpopular, they were confident the new government would not dare to touch them. Corruption went right to the top. "They thought themselves safe," remembers Eka Zguladze, who at the age of 29 was hired from a Western NGO to be deputy minister of the interior: "We would meet to talk about reforms: senior officers would nod but I could tell they thought it was all just words."

"To make reforms you first have to make the right diagnosis," explains Bendukidze:

The post-Soviet world is one of simulacra. Institutions such as the police say they do one thing, "protect and serve," but in reality they are something else entirely, more like gangsters. Our aim was to create institutions which actually do what they say they do. We refused to believe there was some essential Georgian "mentality" prone to corruption. If you change the rules, you change the mentality.

But to change the rules the UNM realised it would need to tackle the whole "pyramid of corruption," from institutional structure through to the police on the street.

On the structural level, the Security Ministry, believed to be deeply infiltrated by Russian agents and thieves-in-law, was merged with the Ministry of the Interior. The total number of employees dropped from 85,000 to 25,000. The Georgian version of the KGB was slimmed down from 7,500 officials to 2,500. In order to eradicate the pervasive post-Soviet practice of security agencies extorting money from businesses through trumped-up tax charges, the tax police division was moved to the Ministry of Finance.

But it was also important that the reforms become popular, so in order to “sell” police reform to the public, the UNM decided to start with a small but very iconic part of the force: the traffic police. Traffic police were perceived to be particularly predatory. Employees of the force would pay a bribe in order to be hired, and then felt entitled to collect bribes from drivers. “We needed to prove reforms were possible per se,” remembers Zguladze, “almost as a marketing project. The traffic police were so demoralised and unpopular, we felt the population would support us.”

In July 2004, the traffic police department was disbanded. For one month there were no traffic police at all on Georgian roads. The reformers then launched a very public and media-friendly campaign to find new recruits. Officials toured the country accompanied by popular celebrities, and set up televised auditions for potential new recruits. The aim was to select young people straight out of university, as yet untainted by corruption. Attention was paid to physical appearance. Traffic police had been typecast as ageing men with beer guts, and so the new recruits were fit and 15 percent of them were female. They were also highly motivated: their salary would be 450 dollars a month, as opposed to the 30 dollars a month earned by their predecessors. The 2,467 men and women who made it through the selection process were given a two-week training course and issued with newly designed uniforms and prominent name-plates. In a symbolically important change, they were issued with Israeli Jericho handguns instead of Russian Makarovs. In August 2004 the new patrol police began work. They were polite and disciplined, and were soon operating out of purpose-built glass buildings whose open-plan design was intended to express a new transparency. The visual effect was strengthened with new, Western police cars with their lights permanently flashing, heralding the advent of reforms.

The resounding public success of the patrol police reform gave the UNM confidence to tackle the reform of the criminal police. Investigations were opened against corrupt police; in 2005, 25 were arrested and 192 disciplined. New laws inspired by Italy’s battle with the Mafia led to mass arrests of thieves-in-law, while others fled the country (often to Russia). Police were asked to reapply for their positions, and approximately half of the nation’s 30,000 police ended up not being reinstated.¹⁴

The police educational system was utterly overhauled. The old four-year BA/MA courses were scrapped and replaced with three-month modules based on Western models, and they were held in a new training centre where the average age of employees went down to 25 or 26. “When I arrived, the old training centre was a ruin: we transformed it into a new centre with a swimming pool and computer labs,” remembers Khatia Dekanoidze, who was first a senior official at the Ministry of the Interior and later director of the Police Academy between 2008 and 2012. The new academy was free to create its own curriculum, with special lectures and training to produce a new type of police officer. “Our aim was to make the new police understand they were there to serve and protect the community, not shelter bureaucrats,” says Dekanoidze. Lectures included a grounding in the international human rights conventions Georgia had signed up to and covered the concept of equality among citizens, including gender and ethnic equality. Police cadets took part in role plays where it was made clear to them how long they could detain a suspect and how to treat them during detention. Dekanoidze explains:

Investigators were taught they had to remain calm during interrogation. We encouraged police to behave so they would be liked by the public—be polite to children and pensioners. And it worked: from being reviled the police became among the most popular jobs. And then more people wanted to join.

Courses were tough, with only about 60 percent of trainees graduating. To retrain previous police cadres, a new system of promotion was introduced in 2008 that required anyone who desired promotion to take courses at the Police Academy. All the while, the PR work continued: a TV show was set at the Police Academy, and other programmes showed the new force at work, busting corrupt rackets and criminals.

From 2006, the government adopted a “zero tolerance” approach to minor crimes, including robbery, drug offences, crimes against tourists, and car theft. “There will be no probation sentences,” announced Saakashvili, “everyone who commits these crimes will go to prison.”¹⁵ Zero tolerance was also applied to state officials accused of corruption and nepotism. The aim was to transform them, in the popular imagination, from parasites to public servants. Officials could be sacked for wearing overly expensive watches or for minor traffic offences. Unwritten rules applied too: state prosecutors, for example, were discouraged from holding lavish birthday parties at restaurants and were expected to fly economy class.

It is extremely important to note that this police reform was—and still is—seen as a resounding success. The thieves-in-law were banished from power. The corruption pyramid was broken. Favourable attitudes to the police went from 49 percent in June 2004 to 77 percent in October 2005.¹⁶ In 2000, 80 percent of Georgians thought the police were corrupt; by 2006 this number had fallen to 24.6 percent. Registered crime decreased by 54 percent between 2006, and 2010; serious crime fell by 66 percent over the same period. In 2010 Georgia was assessed to be one of the safest places not only in the post-Soviet space but throughout Europe.¹⁷ From being reviled, traffic police became among the most popular members of society. The reform’s success helped restore faith in the state and in the new government. Police reform became the third-most popular UNM initiative after the stabilisation of the electricity grid and the construction of good roads.

The idea that corruption was somehow inherently, culturally Georgian lost traction. “When I first started at the Ministry of the Interior,” recalls Zguladze, “relatives would phone up asking for jobs; after a while, they stopped. It’s really not that hard to change habits.” “You don’t need to create a new generation, just new institutions,” remarks Bendukidze. This underlying institutional strength seems to be holding strong. Though the UNM lost power in the elections of 2012 and 2013, trust in the police remains high and crime rates continue to drop.¹⁸ There is concern, however, that a mass amnesty of criminals by the new government will demoralise the police. “They don’t feel protected anymore,” says Dekanoidze of her old cadres, “I worry we will see a roll-back in the advances made.”

But zero tolerance, as we shall see in more detail in the coming sections, also came at a cost. According to observers, including Human Rights Watch and the UN Human Rights Committee, the police, empowered to fight a Mafia-style enemy, became trigger-happy. “Although the Georgian government takes pride in its stated commitment to the rule of law and human rights protection, impunity for the actions of law enforcement officials remains

a serious problem,” wrote Human Rights Watch in 2007; “President Mikheil Saakashvili and the minister of the interior have made public statements condoning the use of lethal force.”¹⁹ The Georgian Young Lawyers’ Association (GYLA) believes that 44 civilians were shot dead by police and prison officials in 2005–6, almost twice the official Interior Ministry figure.²⁰ Complaints of torture were frequent, as was the systemic commandeering of land and businesses which, rightly or wrongly, many claimed had been obtained by corrupt means. In due course, the police became politicised in a different sense as well, using violence to put down anti-government protests in 2007 and 2009, harassing and intimidating activists, and using covert surveillance without any legal oversight.²¹ Zero tolerance led to an absurdly low acquittal rate of below 1 percent. Between 2003 and 2011 the prison population quadrupled from roughly 6,000 to over 24,000, a 300-percent increase.²² And while there was investment in prison infrastructure, prison life remained thoroughly unmodernised, with low-paid guards regularly resorting to torture and even rape.²³

“Zero tolerance means everyone gets put away for small and large crime,” argues Bendukidze. “If you had a nuanced approach this would have become corrupted. So a lot of people went to prison: this was painful but unavoidable.” But was it unavoidable? Or did the UNM miss a key turning point as it moved from police to judicial reform?

Jovan Ratković: A Serbian Perspective on Georgia’s Police Reforms

In Serbia, we did not put police reform at the top of the agenda after the fall of Milošević in October 2000 and we paid a huge price for that mistake. The assassination of Serbian Prime Minister Zoran Dindić in March 2003 was the direct result of collaboration between corrupt state security operatives and a leading criminal gang. Only after the assassination did the state start to fight against those elements. Both the police force and the intelligence agency were eventually rid of rogue elements. The police force is now regarded as impartial, although it still requires structural reform. Intelligence agency reform has been more successful. For that reason, security officers in Serbia often have performed sensitive police operations, such as searching for and arresting war-crime indictees and fighting against organised crime, global drug-trafficking rings in particular.

From the Serbian point of view, two elements of the Georgian reforms were particularly impressive: the communication campaign, designed to restore citizens’ confidence in the police; and the decision to dismiss the whole police force and then put everybody through a reselection process. Reformers always face the same dilemma: whether to follow a step-by-step approach, or to conduct many simultaneous reforms across society. In Georgia, the UNM decided to carry out many reforms simultaneously, and that had consequences, both positive and negative. The most important failure was the failure to involve the legislature and to establish real parliamentary control over the police.

Justice: A Botched Reform?

When do you stop zero tolerance? At first we were faced with an existential project: to break organised crime. But how do you find the point where society feels safe and change the approach?

Eka Tkeshelashvili, Minister of Justice, then Prosecutor General, 2006–8

Like most of the former Russian Empire and Soviet Union, Georgia inherited a low level of legal culture. By 2004, the judiciary faced problems with corruption, infrastructure, and education. The UNM's first step was to provide for the division of courts into regional, appeals, and supreme courts. Court-houses were rebuilt and new information systems were installed to create greater efficiency. A new High School of Justice changed and modernised judicial training and the examinations system. The number of officials in the justice system was radically reduced, and many officials had to retake exams they had failed. According to Tina Burjuliani, a former deputy justice minister, 30 judges were prosecuted between 2004 and 2009 on corruption and other charges. To help battle further corruption, higher salaries and longer-term appointments were given to those who remained.

Despite the successful infrastructure reform and anti-bribery initiatives, the new courts that emerged from the reforms process were in no way independent from the UNM. In criminal cases,²⁴ guilty verdicts were given in over 98 percent of cases; plea bargains were used in over 80 percent of these verdicts.²⁵ According to Ana Natsvlishvili of GYLA, judges were even known to copy and paste verdicts from previous cases or from the prosecutors' charges, sometimes so sloppily that they would include names of defendants from previous cases. Defence lawyers became more like negotiators, despairing of ever winning a case.

Judges who tried to stand up to the UNM were dismissed. The story of former Supreme Judge Merab Turava highlights some of the underlying issues. A professor at Tbilisi University and Humboldt University in Berlin, Turava approved of the first wave of judicial reforms after 2004: bribe-taking was stamped out, new courtrooms were built. But, says Turava, he found the courts soon became subordinate to the minister of justice. Any judge who went against orders risked being thrown out of his job. Alternatively, his family might begin to have problems with the tax or other authorities. Turava remembers one particularly petty case which epitomised the revolutionary logic. A regional official, a supporter of Shevardnadze, had been dismissed by the new government. Believing his dismissal to be unfair, the sacked official refused to leave the building. The government claimed this was sabotage. When the case was brought to his court, Turava wanted to rule in favour of the defendant. But the Ministry of Justice insisted the official must be dismissed because it was important to "break" him, so as to instil order and prevent others from becoming similarly defiant.

In 2005 Turava joined two other "rebel judges" in a protest. After claiming publicly that the prosecutor general had pressured the chairman of the Supreme Court to give particular verdicts, these rebel judges were dismissed for misconduct. They claimed this was revenge for speaking out.²⁶ An investigation in 2014 by the Parliamentary Human Rights Commission and the Venice Commission agreed that the judges' rights had been "grossly violated".²⁷

Meanwhile, lines between party and state became very blurred inside the Ministry of Justice. The current justice minister, Tea Tsulukiani of the Georgian Dream Coalition—the group of parties which defeated the UNM in the 2012 elections—claims that the UNM would use the ministry as a headquarters during elections. Just how much the lines were blurred was demonstrated by the use of Christmas lights bearing the UNM's election number on the ministry's Christmas tree: "even the Christmas lights were politicised," says Tsulukiani.

The Georgian Dream Coalition came to power promising to "restore justice". In May 2014, the UN high commissioner for human rights remarked that "acquittal rates were becoming more realistic," and that judges had grown used to being "more independent both from the executive and from the prosecutors".²⁸ But the new regime has also been criticised for politically motivated prosecution of UNM members: by February 2014, 35 officials had been charged and 6,000 interrogated, with prosecutions moving forward under loose "abuse of office" and "criminal negligence charges".²⁹ Both domestic and international observers are alarmed. "Situations of selective justice should be avoided as they could harm the country's image abroad and weaken the rule of law," President of the European Commission José Manuel Barroso has stated.³⁰

Jovan Ratković: The Serbian Experience of Justice Reform

The Serbian government in power between 2008 and 2012 tried to carry out comprehensive judicial reform, putting all the judges and prosecutors through a reselection process. The attempt, although well-intentioned, failed because political parties intervened to appoint a small percentage of judges and prosecutors, and because a fair and transparent complaints system was not implemented. Various Serbian governments have tried to fight against corruption and organised crime while keeping the old guard in charge of the judicial system. These judges are willing to accept direction from sitting politicians, but retain close ties with former members of the Milošević regime and organised crime. Judiciary-sector reform remains one of the greatest challenges in Serbia's EU integration process.

Though the prosecutor's office is perceived as being heavily influenced by Georgian Dream, judges are, for the moment, making independent decisions, with the *Economist* observing "some notable acquittals for UNM officials".³¹ This may be temporary, as many UNM players still remain in the system, including the chief justice. Observers worry that, as Georgian Dream increases its influence over the security agencies and prosecutors, and as UNM officials are pushed out, judges might find it impossible to resist political pressure.

In retrospect, some senior UNM members admit that not creating the foundations of an independent judiciary was a significant failure. "There was a moment in 2010 when we should have made courts independent but we missed out," says Giga Bokeria, former secretary of the National Security Council and one of Saakashvili's closest advisers. "We had curbed corruption but didn't take the next step." But how does one strike a balance between curbing corruption and fostering independent courts? In a corrupt society, won't "independent courts" immediately become corrupt?

Geoffrey Robertson: Judicial Reform

In the Soviet Union, the judge was an apparatchik doing the bidding of the state, and the prosecutor was the state's attack dog. In most of the former Soviet Union these traditions live on, and the legacy of Stalinist show trials looms large. There is a real need to explain independence and impartiality in these societies: many do not understand the difference. Even if impartiality is understood, independence (from the state, from the army) is often ignored.

An official judicial code of conduct can help overcome this legacy. It can help judges learn what independence means in practice and how they should comport themselves. It can teach the public what it should expect from judges and teach politicians not to interfere with judges' decisions. Such a code must become part of the law, and judges and politicians who breach it must be disciplined. The big question is then: who judges the judges? There must be a body that disciplines judges if they break the code. In most countries, such a "Judicial and Legal Services Commission" is usually chaired by the chief justice. Ideally it would consist of academics and civil society players, human rights activists, and only a couple of judges. Input from the Venice Commission can be important too: if a state is willing, the commission can help guide judicial reform.

Any probation period for new judges must be handled carefully. New Georgian judges go through a three-year probation period and are at that time very susceptible to pressure. In Ukraine we saw judges on probation being given highly politicised cases against opposition members. They were expected to deliver the "correct" verdict if they wanted to pass their probation. It is therefore important that Georgian judges on their three-year probation period do not handle any political cases.

To fight corruption, a good model is the Independent Commission Against Corruption (ICAC) in Hong Kong and Australia. The ICAC is a permanent body which receives complaints about corruption in public bodies and has the authority to investigate and expose corrupt conduct in the public sector. As a permanent body the ICAC lies outside the political context and is guaranteed to be independent.

The Downsides of Revolutionary Maximalism

1 TRUTH AND RECONCILIATION

It was a very black and white situation.

Kakha Bendukidze

The UNM saw everything in black and white. They didn't have a truly Western mentality, which is rules-based and nuanced. They were more neo-Soviet.

Tea Tsulukiani

The policy of zero tolerance was informed by a revolutionary fervour, but did the same fervour also open the door for a sense that UNM officials were above the law? At the time of writing, the Georgian prosecutor's office has some 20,000 cases pending, all of which accuse the UNM of unfair legal decisions and abuse of power.³²

One of the most controversial charges against the UNM is that it used threats and intimidation in order to expropriate property and money from businessmen. According to Archil Kbilashvili, who briefly served as prosecutor general in 2012–13, 9,500 Georgians claim that they gave real estate to the state under pressure from the prosecutor. The property and money thus expropriated would sometimes end up being used for the greater good, as the numerous new buildings in Tbilisi demonstrate. But some of it may have been diverted for personal gain: whether through re-privatisation's which favoured "loyal" businessmen, or because fines obtained through plea-bargaining arrangements went into private investment funds with no public oversight.

At present, none of these cases are being pursued. Kbilashvili and others who have worked with the new government claim that Georgian Dream leaders fear opening a Pandora's box and know that they will not be able to afford to refund billions of dollars' worth of property. Some of the expropriations involved swaps: businessmen were told to donate a particular piece of land which the government wanted for some construction, and were then compensated with another piece of land. Sorting all this out would be very difficult.

The UNM categorically denies that it engaged in systemic illegal expropriation, and it especially disputes the accusation of personal gain. The reality, they argue, is that the Georgian Dream government does not prosecute them because the cases are simply not strong enough: "99 percent of the expropriation cases were against people who had done something wrong," says Bendukidze, "but our common use of plea bargaining contributed to a public perception that the government is up for dark deals. UNM should have been better at communication."

Whether the UNM is guilty of all the accusations aimed at it, whether it "cut a few corners" or simply alienated people, the unresolved legacy of its rule is causing deep fissures in society. The public debate is polarised, with the media largely split along partisan lines. So how can Georgia come to terms with such a divisive past?

Jovan Ratković: How Serbia Has Been Coming to Terms with the Past

In Serbia there was a lot of discussion, after the fall of Milošević and the reintroduction of democracy, whether to form a Truth and Reconciliation Commission. There were several non-governmental attempts to do so, but they all failed. Looking back, I think that we made a mistake after the fall of Milošević in not adopting a law on lustration of officials who played a prominent role in the Milošević regime—many of them are now back in power, including the country's president, the prime minister, the parliamentary speaker, and the foreign minister.

The most important move towards reconciliation in the country was the political agreement signed in 2008 between the then ruling Democratic Party (DS) and the Socialist Party of Serbia (SPS) (Milošević's former party). The SPS decided to openly distance itself from Milošević's legacy and to exclude most of the officials who were active in the Milošević regime from party leadership. They also publicly embraced Serbia's drive to join the European Union and to seek reconciliation with its neighbours. In return the Democratic Party agreed to accept SPS as its junior partner in the Serbian government of 2008–12. The coalition government signed the Stabilisation and Association Agreement with the EU in 2008, obtained candidate status for EU membership in early 2012, opened a dialogue on normalisation of relations with Kosovo Albanians, and started and implemented reconciliation initiatives with Croatia and Bosnia and Herzegovina.

In Georgia's case, instead of a public inquiry into the sins of the former regime—effectively, an investigation of the work of the whole regime by political decree—I would much rather see comprehensive reform of the judicial system. Then the investigation of possible wrongdoing by former state officials would be initiated on an individual basis, i.e. once reasonable grounds for suspicion had been established. Until a democratic and fair judicial system is created, interrogation of former state officials would have to be conducted in co-operation with, or under the supervision of, a relevant international body, trusted by a large majority of the general public—e.g. the European Commission or the Council of Europe.

Kbilashvili believes the new government is worried that opening the massive number of lawsuits against former officials could demoralise the state. He has also advocated a bill of indictment on prison abuse, which would hold the heads of department and ministers—and not just low-level officials—responsible. His attempts, however, were blocked by the Georgian Dream. Indeed, the more one considers the consequences of revisiting the injustices of the last ten years, the more complex and potentially messy the situation looks. What should happen with old officials who were unfairly dismissed? Police? Judges? And if the Georgian Dream tries to rectify past sins, the effects might be hard to predict. A mass amnesty of prisoners has already allowed some real criminals back into society. Nobody wants the thieves-in-law to return.

"The Georgian Dream coalition was elected on a promise of restoring justice, and now people don't understand why there's no progress," says Dodo Shonava, general producer of Channel 2, the Georgian public broadcaster; "we need to find a way to heal the last ten years." "There is no real closure on any of the high-profile investigations, no sense of justice having reigned," agrees Shorena Shaverdashvili, publisher of *Liberali*, an independent political magazine, "and no moving forward either, in terms of vision, on how to better treat the past. So, we have this undigested hatred towards UNM, running wild, and no psychological resolution."

Geoffrey Robertson: Dealing with the Past

A public inquiry, like a royal commission, where anyone could make an allegation, which would then be looked at and the evidence sifted through: this would help give the public a sense of justice, and if prosecutions were to go to court, they would not seem political. There could be a role for European and international judges in such an inquiry to make it more dispassionate. If Georgia were to have its own Independent Commission Against Corruption (ICAC), this body could also investigate cases from the past decade, and would allow for a systemic, permanent approach to dealing with the multitude of complaints.

2 THE NEED TO FOSTER AN OPPOSITION

You need three people to change the country: one to fight bureaucracy, another to fight corruption, a third to take the political lead. In Georgia we had less than a hundred people in the country capable of changing it. Very few people are capable of carrying out reforms. You have very few people who you can trust.

Kakha Bendukidze

The state was run by a small group of people. They thought they were always right—and if you opposed them you were wrong.

Shorena Shaverdashvili, publisher of *Liberali* magazine

The debate over judicial abuse and expropriation is indicative of how the UNM, having started off with a strong public consensus for reform, began to lose touch with the country. "From 2007 we began to confuse our messaging," admits Bendukidze. "For example, take the case of forestry reforms. We began them—then stopped. But we didn't communicate this properly, and the public still believe we privatised the forests when we didn't."

As the UNM period wore on, more of the public became alienated. The large numbers of officials who had been dismissed created a de facto opposition. Former allies in the NGO community—the same community that had produced many UNM officials—found themselves ignored and dismissed by their former colleagues. "By 2008," says Shorena

Shaverdashvili, "the UNM leaders had become closed off and paranoid." "They ignored the same values of openness they once professed," says Ana Natsvlishvili of GYLA.

Instead of fostering a truly competitive and open political environment, the UNM is accused of stymieing the development of opposition parties. Some allege that they threatened potential funders of opposition parties. According to the US State Department Report on Human Rights Practices for 2011:

Members of some opposition parties reported threatening calls warning them to refrain from party participation, and surveillance by local police from unmarked cars. An NGO reported being filmed while entering a hotel conference room to meet with an opposition party. Opposition party members also alleged teacher dismissals due to party affiliation.³³

"Georgia is not an electoral democracy," concluded Freedom House in 2010, "flaws have included the abuse of state resources, reports of intimidation aimed at public employees and opposition activists, and apparent voter-list inaccuracies."³⁴ The UNM was also accused of forcing national television to follow the government line. The EU's Georgia in Transition report of 2013 quotes Transparency International:

The government is generally understood to have established control over the country's most influential television stations through their acquisition by Government-friendly businessmen, forcing journalists employed by these stations to practise self-censorship.³⁵

Meanwhile the UNM's claim to be creating a "new Georgian mentality" was interpreted, by many Georgians, as dismissive of Georgia's religious institutions. Churchgoing had continued during Soviet times, and for many the Orthodox Church remained one of the most potent symbols of Georgian nationhood. The Patriarch is the country's most popular public figure, with an approval rating of 90 percent.³⁶ Though the UNM funded the church, they excluded it from political decision-making.

The church-state relationship is further complicated by the fact that the Georgian Orthodox Church has historical ties with Russia, and many of its elite were educated in Moscow. Though it claims to be geopolitically neutral, the church's opposition to some EU principles puts it on a de facto collision course with EU-integration policy. In 2011, the church opposed legislation which would give equal legal and tax status to other religious groups, and has been outspoken in saying that Georgians should not study abroad.³⁷ In May 2013 tens of thousands of demonstrators, led by priests and Orthodox activists, threw rocks at a small pro-LGBT rally.³⁸ In his 2013 Christmas epistle the Patriarch went so far as to argue that "pseudo-liberalism" destroys Christian values,³⁹ thus implicitly aligning Georgia with Putin's "conservative" Russia.⁴⁰ The Patriarch and senior church figures have regularly called for warmer ties with Russia, especially if they result in the return of break-away regions.⁴¹ In a 2013 speech to the Georgian diaspora in Moscow, the Patriarch described Putin as a "wise person, who will improve the situation in Georgia and Georgia will be united".⁴²

Paradoxically, by failing to create a strong relationship with the church and by destroying any potential political opposition, the UNM undermined their crucial national security agenda, giving Russia an ideological bridgehead into the heart of Georgian politics and society.

Jovan Ratković: The Serbian Experience of Fostering a Healthy Opposition

Once in power, President Boris Tadić and his centre-left Democratic Party understood that Serbia would need strong centre-right opposition that would respect pro-democratic rules and work towards integration into the European Union and reconciliation with Serbia's neighbours. At that time the major opposition party was the Serbian Radical Party (SRS), an unreformed extreme-right party that used to be a political ally of Milošević. Thus Tadić decided to help the more moderate wing of the SRS leave the party and create the new Serbian Progressive Party (SNS), which is currently in power in Serbia. Although this visionary political move meant that Tadić and his party lost the presidential and parliamentary elections in 2012, it created a consensus within the Serbian political scene on both European orientation and the need to respect democratic rules.

The Serbian Orthodox Church (SPC) has not actively opposed Serbian membership of the European Union. It maintains strong relations with both Greek and Russian Orthodox Churches. The experience of the Greek Orthodox Church is particularly important in that it shows that it is possible for an Orthodox country to be a member of the EU and NATO while retaining both its national identity and its right to fiercely criticise the European Union. The same goes for the Bulgarian, Romanian, and Cypriot Orthodox Churches, but co-operation between them and the Serbian Church is not as strong. It is also important to stress that the Serbian Orthodox Church maintains regular contact with the Vatican and all other major confessions in Serbia (Protestants, Muslims, and Jews). These "traditional" churches work closely together in Serbia to protect their mutual interests—for example, the introduction of religious education in schools and opposition to granting equal status to "non-traditional" confessions.

Russia and the West: Geopolitical Direction and Domestic Reforms

On the surface Georgia, despite its change of government, appears committed to Western integration and to the reforms necessary to achieve this. In 2013 Georgia initialled an Association Agreement with the EU, including a Deep and Comprehensive Free Trade Area (DCFTA).⁴³ In exchange, Georgia agreed to adopt over a ten-year period some 350 EU laws in relation to trade, consumer protection, and environmental regulation. Though NATO membership has been shelved for the time being, the dream of future accession remains an important factor in Georgia's public discourse. According to polling conducted in 2014 by the National Democratic Institute (NDI), 77 percent of Georgians want EU membership and 72 percent NATO membership.⁴⁴ Beneath the surface, however, a more complex picture emerges.

Though the Georgian intellectual tradition regards the country as an integral part of European civilisation, the pro-EU course of the UNM is now associated with economic hardship. The UNM's pro-market economic reforms boosted investment and growth (between 9 and 12 percent in 2005–7),⁴⁵ leading the World Bank to vote it the world's top reformer in 2006.⁴⁶ As of June 2013, Georgia was a remarkable eighth place in the World Bank's Ease of Doing Business Index.⁴⁷ But these reforms failed to create jobs or reduce poverty. Unemployment remains at approximately 15 percent,⁴⁸ and in 2012 youth unemployment stood at 33 percent.⁴⁹ In rural areas, where half the population lives, small-scale self-sufficient farming is still the main source of livelihood. Some 45 percent of all households in Georgia live below the poverty line.⁵⁰ The approach of the Georgian Dream coalition government—backed by the billionaire Bdzina Ivanishvili, who made his fortune in 1990s Russia—is to improve economic ties with Russia, which has led to the partial lifting of the 2006 Russian ban on Georgian wine, mineral water, and agricultural products.⁵¹ So far this policy has not delivered. If it did, it could of course also bring a return to the corrupt, crony-capitalist economic model favoured by Moscow.

The reputation of Western powers has been damaged in Georgia by a perception that both the US and the EU were too uncritically supportive of the UNM regime. Although the EU and other Western bodies would regularly publish critical reports on the excesses of the Saakashvili government, these were rarely translated into political pressure or high-level criticism. Whether justified or not, there is a perception at all levels of Georgian society that Western powers are stopping the rectification of justice by criticising the new arrests of UNM officials on the grounds that they are politically motivated. "People feel the EU and US are protecting their own protégés, instead of thinking about justice," says Dodo Shonava.

At the same time, the West's inability to give Georgia any meaningful security guarantees has made Georgians understandably nervous. The annexation of Crimea and actions in Ukraine have made Georgia more fearful than before: could it be next?⁵² Disappointment with the West is growing. Approval for the idea that Georgia should join the Russian-led Eurasian Union has been inching up over the last year, from 11 to 16 percent. In an NDI survey, 58 percent of respondents agreed with the statement "Georgia will benefit more from joining EU and NATO" and 22 percent with the statement "Georgia will benefit more from abandoning Euro integration in favour of better relations with Russia".⁵³ Some believe that support for the

latter view would increase if Russia promised to return the break-away regions of Abkhazia and South Ossetia. "Returning the break-away regions is so important in the national psychology," says Shorena Shaverdashvili, that "many would abandon other aims, such as joining NATO, just to have them back".

Georgia is thus at a delicate moment in its development. If a large percentage of Georgians were to stop believing that EU and NATO membership are realistic targets, it is not inconceivable that Georgia's domestic reforms could stall as well.

Georgians are right to worry. Jovan Ratković argues that, although the Ukraine crisis has raised awareness within the EU of the failures of the current approach to the Eastern Partnership countries of Ukraine, Moldova, Georgia, Armenia, Azerbaijan and, nominally, Belarus, there is no consensus as to what should change. There is still no membership perspective for these countries to join the EU, nor can the EU facilitate the kinds of rapid cash transfers—and bribes—that Russia can. Meanwhile, NATO is unwilling to extend membership to countries that are partially occupied by foreign troops, as is already the case with Georgia and Moldova, and may well become true of Ukraine. Russia knows this: that is precisely why it has created "frozen conflicts" in all of these countries.

Anne Applebaum argues that if the EU is not prepared, realistically, to extend membership further east at the moment, then both Georgia and Europe should adjust. Europe could help Georgia to stay focused on its reform process by building up the Association Agreements, strengthening the Eastern Partnership relationship, and eventually giving Georgia the same kind of access to the EU as that enjoyed by Norway and Switzerland. Other help should also be made available—perhaps support for infrastructure construction and a path to visa liberalisation. At the same time, Georgians need to rethink their own motivations and their own reform dynamic. Right now, Georgia needs politicians who argue for the rule of law and an independent judiciary, not because it will speed up EU access, but because it will be good for Georgians. Georgia's internal domestic reforms need a domestic political programme to go along with them. These are deep changes that cannot be made—and probably will not work—if Georgians themselves do not feel that they "own" them.

What Georgia Means: for Ukraine and Beyond

The reforms that Georgians carried out after the Rose Revolution took place in a unique context: unprecedented public support for painful change, as well as an economic upswing that made mass sackings of old officials possible. The Georgian reforms cannot be cut and pasted onto other societies with any expectation of success. However, there are lessons for others from the Georgian experience, most notably for those in Ukraine who want to build a more efficient, more transparent, less corrupt, and fairer state.

» **Motivation for reforms is key**

The public's motivation will define the direction of reform. Both historically and because of current Russian policy, the reforms in Georgia were deeply linked to questions of national security: the need to defeat corruption and build a strong state was a self-defence priority, and human rights were secondary. Security can of course help motivate reforms: Ukraine faces a similar situation now with its police, army, and special services crumbling in the face of Russian aggression and infiltration. But prioritising security means social justice and economic development can get lost—as has been the case in Georgia. Reformers can get “addicted” to the national security agenda, overplaying it as an excuse not to tackle other challenges. National security is also a motivation that can be subverted: if the national security context changes, does that mean reforms stop? It is important that Ukrainian reformers remember that fear of Russia cannot be the only motivation for change: the public must be clear that they are undergoing potentially painful reforms for broader aims and ultimately for their own prosperity.

» **Conservatives could be reformers too**

The UNM reformers in Georgia alienated the church and consciously painted themselves as hyper-liberal, futuristic Westerners. From post-modern public buildings that would be confusing to many Londoners let alone rural Georgians, to the insistence that elite officials all had to speak English, the UNM reformers treated traditional Georgian society as if it were unfit for the future. But in successful democracies, including Poland and the US, the church and social conservatives can play a constructive role. However, the Georgian reformers were so rigid that their opponents, including those who favour Georgia's return to the Russian sphere of influence, could argue that democratic capitalism was opposed to Georgian traditional values. In its new role as a bastion of conservatism, Russia has proven that it can and will skilfully support traditional elements in countries it wants to influence. The Serbian experience has shown how it is possible to resist this pressure, to build strong, pro-EU conservative parties, and to ensure the church does not see the West as a threat. The church played an important role during the Maidan revolution in Ukraine, where protesters carried icons next to EU flags and priests inspired the crowd as much as pop stars. Moving forward, it is crucial that the Ukrainian churches remain within the pro-reform and pro-Western fold.

» **Selling your reforms**

At the start of their campaign the Georgian reformers understood the need to market the very idea of reforms—to make people feel that change was possible in principle. They chose traffic police reform because it was a sector they felt they could realistically and successfully change quickly, and thus break the public's pessimism. In other countries other sectors might be selected. The main point is that dramatic change must be clearly visible, and the public must believe that it is possible to end corruption and transform the bureaucracy.

» **What judges do**

The Georgian reformers were caught in a chicken-and-egg situation: in order to defeat corruption they needed to ensure the judiciary were loyal to the reformers and not to criminal gangs, but by ensuring judges were loyal they made the judiciary deeply politicised. As Geoffrey Robertson argues, a real paradigm shift must make it clear to the judges and the public alike that judges are politically independent. A code of conduct which clearly defines the role of the judiciary, state, and public is a strong start.

» **Reforms and the West**

The widespread perception in Georgia that the West backed, and continues to back, its “protégés” in the UNM despite their democratic deficits has damaged the reputation of Western institutions in Georgia. In Ukraine, which has a mature civil society and untrustworthy officials, Western donors need to work closely with Ukrainian civil society, if need be over the heads of Ukrainian officials, in order to push the bureaucracy and the government into enacting real change.

At the same time, the mechanisms and indexes used by Western and multinational donors to measure the success of reforms have become staid. Georgian reformers became highly skilled at improving their ranking in “ease of doing business” metrics but did so without tackling underlying challenges. The Georgian reforms were in many ways the acme and great success story of a certain World Bank formula for transition—but they also showed how easily simplistic Western expectations can be exploited. In the end, deep reforms, which invariably require massive disruption, require deep popular support if they are to succeed. It is not enough to be theoretically right, or to do what your foreign advisers’ textbooks say you should do. Any major economic or democratic political reform also has to include, from the beginning, a plan to construct a national consensus around the new order. Outsiders and insiders should think, before they begin, about how to prepare the public for change.

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WITH CONTRIBUTIONS FROM:

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OVERALL RANKING: (TOTAL 142)

84

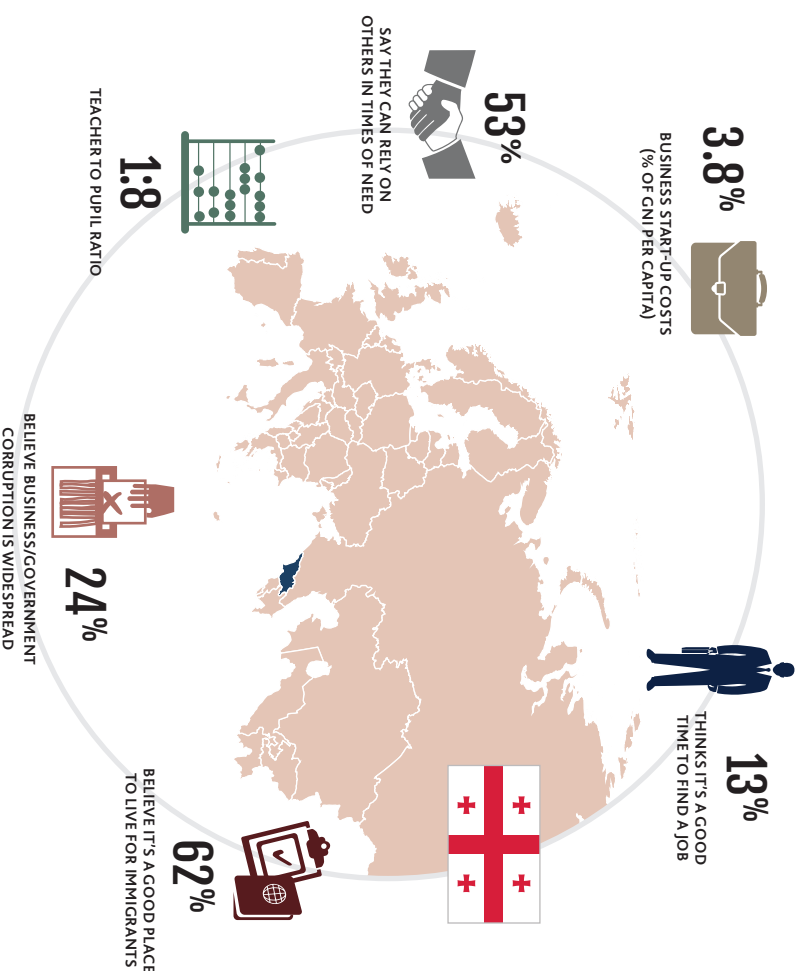
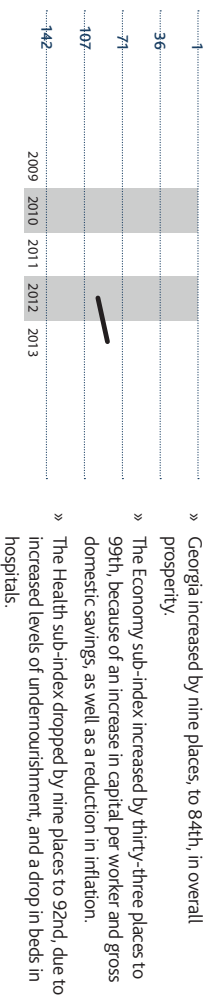
EUROPE RANKING

Norway	1
Switzerland	2
Sweden	4
Denmark	6
Finland	8
Netherlands	9
Luxembourg	10
Ireland	12
Iceland	13
Germany	14
Austria	15
United Kingdom	16
Belgium	17
France	20
Spain	23
Slovenia	24
Malta	25
Portugal	27
Czech Republic	29
Italy	32
Poland	34
Estonia	36
Cyprus	37
Slovakia	38
Hungary	41
Lithuania	43
Latvia	48
Bulgaria	49
Croatia	53
Greece	54
Romania	55
Belarus	58
Russia	61
Ukraine	64
Montenegro	71
Serbia	76
Macedonia	79
Azerbaijan	81
Albania	83
Georgia	84
Moldova	89
Armenia	95
Bosnia-Herzegovina	97

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GEORGIA

PERFORMANCE



DATA IN FOCUS:

SUB-INDICES

	Year	Data	Global Av.
99 ECONOMY			
5 year growth rate	2011	4.4%	2.7%
Confidence in financial institutions? ¹ (% yes)	2012	76.5%	59.5%
Satisfaction with living standards? ² (% yes)	2012	24.4%	58.2%
72 ENTREPRENEURSHIP & OPPORTUNITY			
R&D expenditure (% of GDP)	2011	0.8%	0.8%
Mobile phones (per 100 ppl)	2012	109.2	103.9
Will working hard get you ahead? ³ (% yes)	2012	70.0%	81.0%
44 GOVERNANCE			
Confidence in the government? ¹ (% yes)	2012	74.9%	51.5%
Confidence in the judiciary? ² (% yes)	2012	67.5%	52.1%
Government effectiveness ¹	2011	0.55	0.04
67 EDUCATION			
Gross secondary enrolment rate	2009	86.2%	79.3%
Satisfaction with education quality? ² (% yes)	2012	79.1%	66.3%
Perception children are learning? ³ (% yes)	2012	70.8%	70.2%
92 HEALTH			
Self-reported health problems? ¹ (% yes)	2012	41.5%	23.9%
Hospital beds* (per 1000 people)	2011	2.9	3.1
Satisfaction with health? ² (% yes)	2012	51.5%	78.2%
60 SAFETY & SECURITY			
Human flight? ²	2012	5.2	5.3
Safe walking alone at night? ³ (% yes)	2012	92.0%	62.8%
Property stolen in past 12 months? ³ (% yes)	2012	5.0%	16.5%
73 PERSONAL FREEDOM			
Civil liberties ³	2012	5	4.7
Tolerance for ethnic groups? ² (% yes)	2012	75.5%	68.0%
Satisfaction with freedom of choice? ² (% yes)	2012	65.9%	71.7%
138 SOCIAL CAPITAL			
Volunteered time in past month? ² (% yes)	2012	18.2%	20.1%
Donated to charity in past month? ² (% yes)	2012	2.5%	28.3%
Helped strangers in past month? ² (% yes)	2012	39.1%	47.9%

NOTES: ¹ Gov. effectiveness values range from -1.66 to 2.25, higher values indicate higher effectiveness. ² Human flight values range from 1 to 10, higher values indicate higher levels of human flight. ³ Civil liberties values range from 1 to 7, lower values indicate lack of civil liberties. *Survey data are taken from Gallup World Poll.



HELPING PEOPLE LEAD MORE PROSPEROUS LIVES

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