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Law, Authority, Emotion: An Analysis of the Maidan through Legal Acts

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Legal acts, illegal actions, and disputes over them so propelled the Maidan movement of 2013-2014 and its afterlives that a narrative could take structure from acts taken in the name of law and law enforcement!:

- The law enforcement action of November 30, 2013 to disperse demonstrators from the Maidan Square in Kyiv.
- Public security measures legislated January 16, 2014, including banning the wearing of helmets in public.
- A resolution passed on February 22, 2014, stripping Viktor Yanukovich of presidential powers.
- A referendum on the status of Crimea and the Russian parliament's subsequent legislation in response.
- Declaration of a Donetsk and a Luhansk People's Republic.

A straightforward chronicle of legal acts would miss their primary significance, however. In each, legality itself becomes a focus of dispute. Consider the November 30 law enforcement action, for example. Legality emerges as a central interpretive frame for an action debated as excessive (i.e., beyond that legally allowed, illegal) force against people making, in their actions, a legal assertion to a right to gather in a public space. Each legal act raises a set of related questions: Did law enforcement have the right to act in certain ways? Did the executive branch legally issue certain orders to troops? Did the parliament act Constitutionally in passing its "helmet laws" or in stripping Yanukovich's powers? What authority, if any, did Russian political institutions have in regard to Crimea or the Donetsk republic? These questions all relate to authority and political institutions. They expose institutions, and authority, in formation.

Further examination of these legal acts reveals another valence of significance. The use of force against demonstrators on November 30 was understood as meaning to intimidate; conversely, it inspired. The Maidan demonstrations gained numbers and energy. The

1. The legislation and other legal acts referred to here appear with full citation in the appended catalogue.

“helmet law” measures -- seen as a force-multiplier for repressive techniques -- instilled fear, resistance, disgust on one side; and, we must admit, aroused encouragement on the other. Legal measures stripping Yanukovich of presidential powers brought elation, trepidation, anxiety, jubilation. In other words, at the same time that legal acts were meant to have practical effect, they also had emotional effect. The Maidan of 2013-2014 gained intensity from them. Law mobilized emotions.

This essay takes as its definitional background that “the Maidan” of 2013-2014 was an assemblage of speech acts, incidents, performances, institutions, and emotions of supporters and opponents alike. To understand it better, this analysis uses legal acts as data in two investigations drawing methods from linguistic and cultural anthropology. The first, into law as a tool in disputes over political institutions and authority, looks at relationships between law, legitimacy, and authority. The second, into relationships between law and emotion in formations of the Maidan, contextualizes warmth and fear to consider milieux wrought by legal discourse that give form and shape to emotion. Finally, the paper will briefly consider these two investigations -- on law and the production of authority within political institutions, and on law and the production of emotion -- in conversation with each other. They suggest findings on crucial relationships, for example between authority and authoritarianism, between spontaneity and political institutions, and between emotion and political community.

Authority

That catalogue of legal acts that reads like a chronicle of the Maidan -- from the first trickle of protesters to the center of Kyiv to the flood of abdications, resignations, and interim replacements that marked the fall of the Yanukovich government -- raises a series of questions regarding legality, legitimacy, and authority. The first: Can a legal act be illegal?

The standard positivist hypothesis is that a law is valid regardless of its content (absurd, morally repugnant, what have you) as long as it has been enacted in accordance with the

formal criteria for valid law.² This parallels the standard performativity analytic³ which foregrounds following “accepted conventional procedure”⁴ as a felicity condition for performative effect. Legality hinges on procedure; for the citizen of a modern state, does legitimacy, Max Weber observes.⁵ Per Weber, for the public of a contemporary state, legitimacy is collapsed into legality.⁶ Compelling evidence for a belief in the importance of legality: even in the hardening repression of January 2014, the Yanukovych government bothered to pass legislation criminalizing certain protest practices,⁷ seeking to establish through legality the legitimacy of its crackdown measures.

In the face of modernity’s seeming unanimity over positivist legality, the law itself dissents. In providing for constitutional courts, for example, law admits the possibility that a legal speech act by an authorized speaker following recognized convention may nonetheless not be found “legal.” A legal act may be illegal even if the procedure by which it was adopted survives scrutiny, at least in the sense of violating a higher order law like a Constitution.

From its first days, the 2013-2014 Maidan movement challenged positivism’s procedure fetish and the Weberian equivalence of legality and legitimacy. Protests against the violent dispersal of November 30 did not focus on whether the President or the Interior Minister had followed the correct procedure in issuing orders for a crackdown. The more legalistic focused on whether the orders broke higher-order law by violating Constitutional rights to assembly. Most, however, came to the Maidan on December 1 out of inchoate shock at state violence against citizens. Legitimacy, not legality, was foremost in mind.

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2. See, e.g., David Dyzenhaus, *Herman Heller and the Legitimacy of Legality* 16 Oxford J. Legal Stud. 641, 643 (Winter 1996) (describing the standard positivist hypothesis) [hereinafter Dyzenhaus, *Legitimacy of Legality*].
 3. Austin coins the term “performative utterance” for cases in which words create social reality, as distinguished from those (“constative utterances”) in which language is used to represent reality. J. L. Austin, *How to Do Things with Words* 47 (photo. reprint 1967) (1962) [hereinafter Austin, *How to Do Things with Words*].
 4. *Id.* at 14, 26. Austin refers to convention elsewhere by such terms as “ceremon[y],” *id.* at 76, or “formula,” *id.* at 60.
 5. “Today the most usual basis of legitimacy is the belief in legality: the readiness to conform with rules that have been enacted according to the formally correct and accepted procedures.” Max Weber, *Economy and Society* (G. Ross and C. Wittich eds.) vol. I at 37 (1978 (1922)) [hereinafter Weber, *Economy and Society*].
 6. Dyzenhaus, *Legitimacy of Legality*, *supra* note 2 at 643.
 7. See Appendix, entry for January 16, 2014.

Thus arose a second question: Can a legal act be illegitimate? The question itself again challenges the premise of positivism, taking on law in substance rather than procedure. The answer comes from the President's own faction. In the first defection from Yanukovich's Party of Regions, prominent party member Inna Bohoslovska left the parliamentary faction on November 30 to protest the bloodshed and exhorted other members of parliament to join her. The verdict on the legitimacy of tactics, even among his own party, eventually gathered momentum against Yanukovich. Parliament repealed most of the "helmet laws" twelve days after they passed. In bloodier days between February 19 and February 21, so many parliamentarians left the president's faction that it lost its parliamentary majority. Perhaps the crowning testimony against legitimacy, or at least acknowledgment of the importance of its contested status, comes in Yanukovich's own flight from office and country.

Can a legal act originate outside of legal authorities? This is the final challenge of the Maidan to the positivist legality and the modernist link between legality and legitimacy. While discourse was its lifeblood, (to its credit) the Maidan was not a debating society. Posing formalistic questions and formulating philosophically coherent answers was not its calling. However, in the spontaneous speech acts of its Bakhtinian carnival of December and early January, and through the increasingly battle-hardened commitments to experimentation in late January into February, I identify three stages at which we can perceive an "answer" emerging from the Maidan via its performances and ethical commitments.

Beginning (as discussed above) by contesting whether some laws or orders were per se illegal or illegitimate, Maidan demonstrations took authority itself as their object. In this, the 2013-2014 demonstrations differed from prior mass demonstrations in Ukraine that may have taken electoral outcomes⁸, particular policies,⁹ or political maneuvering¹⁰ as their object. Prior mass demonstrations tended to serve one side in disputes between elite political and economic social formations. From any demonstration "against," one could infer a personified "for." Not this time. At a deeper level, this Maidan did not target an election, policy, or particular maneuver but rather the "authority" from which law is authored.

8. For example, the Orange Revolution of 2004.

9. For example, the pro-EU demonstrations of November 21-30, 2013.

10. For example, Party of Regions demonstrations against President Yushchenko's dissolving the parliament in spring 2007.

A second step in the evolution of authority on the Maidan involved limits. The concept of “jurisdiction” connotes an intersection of territory and authoritative speech acts: a jurisdiction is a territory within whose boundaries the speech acts of a certain category of speakers have performative effect. *Maidantsi* established a perimeter within which law enforcement was not welcome and within which the procedurally-correct speech acts of state authorities ceased automatically to have performative effect. The “Maidan” (soon encompassing central areas of Kyiv beyond the literal Independence Square, replicas in some other city and town Squares, and nomadically as an AutoMaidan) formed an island within the normal jurisdiction of the state, a limit on the extension of state authority.

A third step in the evolution of authority on the Maidan involved roles. Law posits a particular relationship between author and authority. Synechdochic logic governs in law, wherein an authorized speaker -- a judge giving a holding, an executive officer issuing an order, representatives passing legislation -- issues an utterance on behalf of the whole public, a phenomenon of synechdochic performativity. By January, the Maidan had instituted a *Rada* and was running regular mass meetings, the *sich*, to ratify courses of action. Instead of synechdochic performativity, through the *sich* there was no part that stood for the whole; the whole stood for the whole. More importantly, authority throughout the Maidan territory was not bureaucratized or even necessarily organized so as to confine it. Seized, performed, and abandoned, authority became one of many creative performances without a fixed or restricted set of performers.

By the end of the January, a role reversal had taken place. The Maidan was inserting itself as an alternate source of authority based on *sui generis* procedures. The role of discourse in creating or destroying political and state institutions became a fundamental -- for some, a life-and-death -- matter. An institutional analysis alone thus misses an important aspect. Weber again provides a helpful counterpoint. He understood the normal politics of a liberal constitutional democracy to be a system of political compromise. When conflict could not be resolved by compromise and threatened to exceed the bounds of legal order, the charismatic authority of a political leader (in a democracy, an elected political leader) would be the exceptional last resort to bridge the gap, at least temporarily.¹¹ What is notable in the

11. Weber, *Economy and Society* *supra* note 5 at 266-71, summarized in Dyzenhaus, *Legitimacy of Legality*, *supra* note 2 at 644.

Maidan setting, due in part to disenchantment (another Weberian term) with a succession of elected political leaders, was a marked commitment not to look for a particular leader and even to eschew the individual leader model. In the Bakhtinian carnival of the Maidan of December and early January, participants in the Maidan describe intense experiences of belonging, conscious sensations of being needed and needing others even when surrounded by strangers. A setting for the cultivation of charisma emerged, but it was a collective charisma, not vested in one political leader but distributed throughout the crowd.

This short review of the progression of the Maidan movement shows some novel modifications in the relationship between discourse and the institutions that produce discourse. The “legal acts” that punctuate the winter were marked by Maidan contestations of their legality; the means and outcomes of those contests yielded new forms of authority and, potentially, legitimacy. Maidan народоластиє (*narodovlastie*, “people power”) and самопоміч (*samopomich*, “self reliance” where the “self” may be a collective self) emerged as vibrant forms of political expression, authority, and legitimacy. Time has yet to tell of their sustained viability or of their potential hijacking by would-be authorities.

Emotion

The legal acts that drew people to the physical Maidan and that punctuated its dispersed replications and virtual existences produced emotions not commonly associated with law. Why a catalogue of emotions is impossible to produce is an interesting research question in itself. In brief, an emotion is such an individual (and often fleeting) experience that a survey would be inadequate to collective experience. Instead of attempting to catalogue emotions produced within this milieu, I offer two concepts, one regarding affect and the other, emotional register to suggest a relationship between emotion and legal acts.

Affect: Pathos

For our investigation, following Paul Rabinow and Anthony Staviranakis, I distinguish emotion from affect in several respects. Affect is a structure milieu in which emotions and rep-

resentations are shaped within specific forms. Affect, unlike emotion, is a relational state and not an interior one, and it does not emanate from the subject.¹²

The inherently relational (rather than interior) qualities of *pathos*, one such affective state, may be understood through domains in which it found classical expression, theater and medicine. Witness *pathos* in medicine, for example, in the doctor-patient scene in which “bodily materiality, suffering, and attempts to understand and compensate for disease, suffering, and finitude take their place.”¹³ With *pathos*, “its presence is diagnostic in the sense that something seems wrong: a form of care is called for.”¹⁴ Witness a call to the Maidan.

*I woke up Sunday morning after just a few hours' sleep and immediately saw my facebook and phone flooded with images of bloody students on the Maidan. There were no questions; there were no words. I just knew somehow I had to go to the Maidan. I did not really know what I was going to do there. I got on the bus in my neighborhood. I'm never out early on Sunday morning, so I didn't know if the others on the bus were regulars or what. But then we all got out at the subway station and we all boarded the in-bound metro and at every station, no one got off. And as the metro got closer to the center, more and more people got on at every station and no one got off. We all started to look at each other and realize we were all going to the same place, for the same reason. I don't know about the others, but I was scared. I was terrified. It didn't matter. Somehow, after seeing those pictures of those students from just a few hours before, I had to be there with them.*¹⁵

Transcribing this interview was the first time writing this essay brought me to tears. Such is *pathos*. People came to the Maidan on December 1 moved by images received via text and social media of protesters clubbed by law enforcement. The experience of *pathos* was linked, I propose, to an assessment of legality and legitimacy of the executive branch's order to use force against demonstrators. Law enforcement actions were seen as

12. Paul Rabinow and Anthony Stavrianakas, *Designs on the Contemporary: Anthropological Tests* 105 (2014).

13. *Id.* at 105-106.

14. Paul Rabinow, *Anthropos Today: Reflections on Modern Equipment* 6 (2003).

15. Interview with BN, white-collar professional, Kyiv, Ukraine (May 19, 2014).

an illegal violation of demonstrators' Constitutional rights and illegitimate in its departure from Ukrainian norms of non-violent response to mass demonstrations during the prior 22 years of independence. The shock of the illegitimate bred *pathos*; *pathos* motivated ethical response.

This is the relational side of affect. It calls for care. Just as *pathos* drew residents of Kyiv to the Maidan in the thousands on December 1, over the subsequent three months it gave rise to extraordinary feats of care.

Register: Thumos

Pathos may have motivated many to join the demonstrators, to contribute food supplies, blankets and warm clothes, cooking skills, organizational moxie, or medical care. The question then is, what kept them there, especially as repression took a sinister turn unprecedented in previous responses to mass protests in Ukraine.

*They must have been tracing our location from our cell phones. That's all we could figure. Because out of all of those masses, some of us, after we'd spent our first day on the Maidan... well, they somehow knew where we lived and that we had been on the Maidan. They came into our apartment building in the middle of the night and pounded on the door, woke us, shouting they knew where we'd been and if we went again they'd f***ing finish us. It wasn't only me. I started hearing from other journalist friends, across the month of December, that the same thing happened to them. Nothing like that had ever happened to us before, not during the worst parts of Kuchmism, not during the Orange Revolution.¹⁶*

The aim of this essay is not journalism; it is not to verify accounts of surveillance, intimidation, or harm. It is to report some of the experience of the Maidan, account for it, and provide some tools for reflection on it. One of the reasons for the shock was that Ukraine was famed until 2013 among post-Soviet states for its forbearance in politics, remaining patiently embroiled in endless process until disputes sputtered or resolved behind the

16. Interview with PM, journalist, recounting her experience in early December 2013, Kyiv, Ukraine (May 18, 2014).

scenes by negotiators between oligarchic structures. The reports I heard in May 2014 were recounted in furtive whisper, not public bravado: as it was not clear to some interlocutors which, if any, perpetrators still remained in Kyiv, the perception held that they were not completely safe. What is verifiable is that despite growing convictions that there may not have been safety in numbers, that participating in the Maidan exposed them and risked their safety, they still went.

The government announced they were clearing the Maidan starting at 4 p.m. [on February 19]. My class runs from 4-6. We managed to work until 5, but everyone was so distracted that I announced class was over. I walked straight to the Maidan. I didn't even go home to change out of my work clothes. Smoke, sounds of shooting, it was a desperate situation. [So when did you leave?] Leave? [astonished] I never left. I realized it was desperate; we were overwhelmed; and if someone saw me leave, they might also think to leave. So I stayed. I joined a "bucket brigade," passing hand to hand anything we could find in a long line up to the guys at the front. [The front was roughly a block and a half away.] Cobblestones, splintered chairs, anything we could hand over, we did. I stayed all night. I didn't leave until after 7 in the morning. It was crazy. Just outside the perimeter, the rest of Kyiv was starting a normal workday. I was covered with soot and I stank. Walking to the bus stop, and on the marshrutka, others looked at us like we had come from Mars. I went home, washed, had a nap and changed my clothes, and went to teach. I came back again the next night.¹⁷

On the uniformed side of the Maidan, similar feats of bravery were occurring. Both sides had reason to fear; both sides showed up. Different ethical structures are engaged, of course: professional ethics, in addition to citizenship ethics; economic or job incentives possibly intermixed with other motivations on one side, largely absent on the other. When considering the Maidan, against a backdrop of overwhelming disparities in armament and structural power, in the face of our own *pathos*, a persistent niggling perception reminds us that as the struggle intensified, both sides required bravery. One social scientific

17. Interview with NB, recounting her experience of February 19, 2014, in Kyiv, Ukraine (May 27, 2014).

research question that arises in observing such conduct on both sides is, What has gotten into these people?

The virtues of the Maidan seem cast from an earlier mold not readily discernible or legible to contemporary eyes.¹⁸ Striving against great odds echoes a virtue celebrated in Soviet epics of World War II, of course. Here, other kinds of striving join it: striving for others and striving's sake. The former stands unsupported by a *telos* that might have buttressed similar efforts under socialist ethics, in part because the temporality and the spatiality of the Maidan experience narrowed in scope as struggle intensified, in part because "plans" seem outside the temporal sphere of the Maidan. "The future" is not a dominant figure in narratives of those days.

*We did not expect to see morning.*¹⁹

*We never expected Yanukovich to flee. Even at the funeral²⁰ we assumed we had a long fight ahead. When I got the first text from Mezhyhirya,²¹ I thought it was a hoax.*²²

These kinds of effort also stand apart from humanitarianism or other modernist striving inflected by Christianity and the humility within which ambition must be "at the service of" to be respectable among the high-minded. At its most desperate moments, the experience of focused temporality and spatiality increasingly restricted the sense of "greater good" served to the here and now. Striving for its own sake, merging with a sense of striving together, seems to characterize those people of January and February.

The classical vocabulary of the vehement passions may help us to reconceptualize valor and virtue in ways apt to the Maidan. For the ancient Greeks, *agon*, struggle, twinned with

18. Paul Rabinow's work gave me ways to think about Maidan passions and virtues where contemporary English words and concepts failed. The following is informed from Rabinow's discussion of the vehement passions in *Paul Rabinow, Marking Time: on the Anthropology of the Contemporary* 73-100 (2007).

19. Interview with NB, *supra* note 17.

20. I.e., the mass memorialization for fallen *Maidantsi* on February 21, 2014.

21. I.e., reporting the president had fled his residence in the night.

22. Interview with PM, *supra* note 16.

orge, well-placed anger,²³ in the disposition of a great-souled person. And in a virtue that contrasts starkly with the heretofore famed forbearance of Ukrainian politics, *Maidantsi* on both sides of the barricades blazed with *thumos*, “spiritedness.” For Plato, *thumos* is one of three parts of the soul along with the rational and the appetitive; imagine a Freud for whom the third term is not ego but *thumos*.

The performance of vehement passions on the Maidan seems less like sublimation and more like integrity and indeed, for the Greeks, these qualities have public consequences. Striving for striving’s sake heralds a premodern ethic within which cultivation of oneself flows to care for a public. For all of the strife the vehement passions promise, their place in that early democracy was prized. “For Aristotle, one might say, without *thumos*, no free citizens; without *agon*, no excellence.”²⁴

I propose that *thumos*, spiritedness, was the emotional register of the *Maidan*. Assessments of illegality or intuitions of illegitimacy may have sparked the *pathos* that drew crowds to their fellow citizens on the *Maidan*, but *thumos*, I propose, kept them there. *Thumos* is responsible for Maidan self-governance, the quality that gave rise to spontaneous and novel experiments with authority, trust, and play that made the *Maidan* so surprising, even to its participants.

It is not clear if Ukraine will see its own Stoics, designing therapeutic technologies to tame or obliterate the passions. If anger is not for taming and the great-souled is to be dealt with on her own terms, what then? This is a challenge that the Maidan still brings to Ukraine.

Epilogues

In this essay, I suggest that a modern state works by synechdochic performativity and that on the Maidan this relationship, in which certain forms of authority find expression, became inverted. A politics of the whole (at least of the Maidan) assumed authority (at least temporarily) over the part (i.e., elected leadership).

23. Aristotle’s “good tempered person” is characterized by *orge*, “anger,” “angry at the right things and with the right people, and further, as he ought, when he ought, and as long as he ought.” Aristotle, *Nicomachean Ethics* 4:5 cited in Rabinow, *supra note* 18 at 93.

24. *Id.* at 94.

The Maidan's synecdochic inversion has had two strange epilogues. One is the action in Crimea, in which legal forms -- a vote of the Crimean parliament, a referendum -- were deployed as steps in a series that included a vote by the Russian Duma to cleave Crimea from the jurisdiction of Ukraine and annex it. The logic of annexation challenges the premise of the whole for which a part speaks in modern governments, the same premise of the whole upon which modern state sovereignty hinges. Second are the People's Republics of Donetsk and Luhansk (DNR and LNR), in which the self-proclaiming spirit of the Maidan continues. Of many important differences, of course, one is that unlike Maidan authority wherein the whole came to speak for the whole, they mark a return to old forms of authority in which the part speaks on behalf of the whole, but here without ratification by elections and disregarding formal political or legal procedure. In the DNR and LNR, one person speaks without consultation for the public of a region: author without authorization, politics without law, legitimacy orphaned or perhaps readopted.

The milieu of the Maidan -- its catharsis, intensity, procedures, and leftover personnel -- has been swept away by the street-sweepers of Kyiv city government. However, its pathos has not subsided into apathy. The relations of care for self and public find expression in thumos kindled far beyond its campfires and burning tires. In that revolution of authority and spirit of self-governance, the Maidan extends beyond its original perimeters and intentions.

Conclusions

Investigations into relationships between law and authority and law and emotion give us several new tools for reflecting on the question, What was the Maidan? One answer is, a space to protest the legality or contest the legitimacy of certain legal acts. In this manifestation, "the Maidan" pops up on Facebook feeds, shares itself in в контакте posts, and shapeshifts in deterritorialized forms of internet meme. A second answer is, a performance space for production of alternative experiences of individual and collective self; of alternative grounds for a public; of alternative practices of governance and self-governance. A corollary follows that the Maidan was a performance space within which was generated alternative structures of authority and procedures for producing performative speech. The synecdochic performativity of the part speaking for the whole was subject to radical

critique and a performance space within which novel forms of collective charisma and new experiences of authority arose. In this respect, though the Maidan form may have been dispersed and replicated different Squares across Ukraine, here location matters; “the Maidan” is a relatively arbitrary performance space that had assumed such symbolic power by mid-January 2014 that people were willing to die, or to kill, for it.

Another answer to a version of What was the Maidan? considers the nature of change. Was the Maidan a coup? The difference between a coup and a revolution lies in that a coup takes the person as its object: it deposes a person but keeps the office; whereas revolution takes the office as its object, altering it in form, or content, or both. Was the Maidan a coup? If it was, it was a coup by Yanukovych against Yanukovych. Was it a revolution, as Timothy Snyder has called it? The extent of change in political institutions, the instantiation of new forms of authority and new processes for producing performative speech, has yet to be determined.

Finally, an answer to What was the Maidan? comes in a series of questions regarding *pathos* and *thumos*. Is “spiritedness” a sustainable form of life and engagement? What will become of the remarkable experiments in citizen self-governance outside of the *chronos* and logics of the physical Maidan? Will they wither in the mundane rhythms of economic life? Displays of *thumos* across Ukraine, some by political opponents of *Maidantsi*, show it to have an unexpected afterlife. In a series of expert reflections in mid-May collected as “Thinking [Ukraine] Together,”²⁵ a question was raised about the southeast: Are those people of the Donbass worth fighting for? A lasting answer to What was the Maidan? may be found in the limits or reaches of *pathos*.

25. Livestream: The Ukraine Thinking Together Conference, available at www.newrepublic.com/article/117784/livestream-ukraine-thinking-together-conference.

Appendix

Chronicle of Legal Acts

- November 21, 2013: President Yanukovich's Cabinet adopts a decision suspending preparations to sign an Association Agreement with the European Union²⁶. Announcement of the Cabinet decision comes two hours after Parliament could not muster a majority to pass legislation allowing jailed former Prime Minister Yulia Tymoshenko to travel abroad for medical treatment. Her release from detention had been a sticking point in negotiations with the EU and medical treatment, a compromise way out; legislation falls short of attracting the minimum 226 votes after the President fails to rally his Party of Regions or the Communist Party faction, both of whom then abstain from voting.²⁷ Several prominent voices call for pro-EU citizens to gather on the Maidan Square via social media. The winter 2013 protests begin.
- November 30, 2013: The Presidential Administration issues an order for law enforcement authorities to disperse protesters spending the night on the Maidan. Images of the uniformed officers' violent attempts to oust protesters circulate through late hours of the night via social media and the press. The following day, residents of Kyiv make their way to the Maidan to demonstrate against violence against protesters. MP Inna Bohoslovka, a leading Party of Regions affiliate, resigns her party membership in protest against the violence deployed against demonstrators.
- January 16, 2014: By the beginning of January 2014, the Maidan institutes a Council (*Rada*) and initiates *sich* meetings to ratify courses of action. On a separate track, in the face of continuing protests and their gaining some mainstream press coverage, members of the President's Party of Regions faction lead pas-

26. Питання укладання Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським Співтовариством з атомної енергії і їх державами - членами, з іншої сторони.

27. "Rada Votes Down All Bills On Allowing Tymoshenko's Medical Treatment Abroad," Interfax-Ukraine (Nov. 21, 2013).

sage of a set of restrictive laws. The most notorious amends a wide variety of laws, seemingly targetting specific practices of the Maidan protests. It disallows public meetings without permission of the Ministry of the Interior or in defiance of a uniformed officer and makes illegal certain Maidan practices (for example, erecting tents or sound-stages or blocking access to buildings or property), including practices protesters adopted in self-protection (like wearing helmets or face-masks).²⁸ It attacks growing practices of transparency and exposure, amending criminal code provisions for defamation to expand the definition and make it punishable by “corrective labor”; makes slander punishable by imprisonment; prohibits distribution of “extremist” materials; restricts NGO activity; permits the government²⁹ to close internet sites without a court order; obliges internet sites to register with the government; and prohibits collecting and storing “confidential information” about law enforcement officers or their families.³⁰ Many point to the extent to which measures targeting n.g.o.s resemble a precursor in Russia. The law designates an NGO receiving funds from abroad a “foreign agent,”³¹ requiring it to register as such with the Ministry of Justice, contain the phrase “foreign agent” in its official title, label all materials it distributes (including any republished by the media) as “distributed by a foreign agent,” and pay taxes (while “Ukrainian” non-profit organizations are tax-exempt).

Other measures of the January 16 package, also apparently targeting citizen activists, criminalize travelling in a convoy of five cars or more without prior permission of the Ministry of

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28. Закон України від 16 січня 2014 року № 721-VII “Про внесення змін до Закону України “Про судоустрій і статус суддів” та процесуальних законів щодо додаткових заходів захисту безпеки громадян” (“Голос України”, 2014 р., № 10); <http://zakon4.rada.gov.ua/laws/show/721-18>. [hereinafter Змін до процесуальних законів щодо додаткових заходів захисту безпеки громадян] (making offenses cited herein punishable by fine or administrative detention).
 29. The decision would come from one governmental agency, whose name is roughly translated as the National Commission regulating Activity in the sphere of Communication and Information.
 30. Змін до процесуальних законів щодо додаткових заходів захисту безпеки громадян, *supra note* 27.
 31. “An NGO is considered a ‘foreign agent’ if it receives funds or property from foreign states, their governmental agencies, foreign NGOs, international NGOs, foreign citizens, and also participates on behalf of foreign institutions in political activity on the territory of Ukraine,” according to the new law’s amendment to the existing Law on NGOs. Змін до процесуальних законів щодо додаткових заходів захисту безпеки громадян, *supra note* 3.

Internal affairs³²; allow traffic and road use to be vidoesurveilled (extending culpability for any violation to the car owner or, in the case of a company car, enterprise director)³³; and require soccer stadia to install electronic turnstiles to identify and enforce bans against any committing proscribed activity during prior matches³⁴. Forms of contemporary memorialization or reflection on World War II become a lightning rod. A change to Article 297 of the Criminal Code of Ukraine adds responsibility for desecration or ruining monuments in honor of those who fought Nazism during World War II, namely Soviet «soldier-liberators,» partisans and members of underground organizations, victims of Nazi persecution, and «soldier-internationalists» and peacekeepers.³⁵ A second amended the Criminal Code in regard to “denying or justifying the crimes of fascism.”³⁶ One law erodes parliamentarians’ immunity.³⁷ Another amends criminal procedure to allow the accused to be criminally tried in absentia.³⁸ Another, considering laws on free legal assistance passed in 2011, 2012, and 2013, postpones their implementation from January 1, 2014 to January 1, 2015.³⁹

These laws fail to discourage a measurable mass of the protesters. Repression hammered and then faltered. After two protesters are killed on the Maidan and others

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32. Змін до процесуальних законів щодо додаткових заходів захисту безпеки громадян, *supra note* 27.
 33. Закон України від 16 січня 2014 року № 723-VII «Про внесення змін до деяких законодавчих актів України щодо відповідальності за адміністративні правопорушення у сфері забезпечення безпеки дорожнього руху, зафіксовані в автоматичному режимі» («Голос України», 2014 р., № 10).
 34. Закон України від 16 січня 2014 року № 722-VII «Про внесення змін до деяких законодавчих актів України щодо відповідальності за вчинення адміністративних правопорушень під час проведення футбольних матчів» («Голос України», 2014 р., № 10).
 35. Закон України від 16 січня 2014 року № 728-VII «Про внесення зміни до статті 297 Кримінального кодексу України щодо відповідальності за осквернення або руйнування пам’ятників, споруджених в пам’ять тих, хто боровся проти нацизму в роки Другої світової війни - радянських воїнів-визволителів, учасників партизанського руху, підпільників, жертв нацистських переслідувань, а також воїнів-інтернаціоналістів та миротворців» («Голос України», 2014 р., № 10);
 36. Закон України від 16 січня 2014 року № 729-VII «Про внесення зміни до Кримінального кодексу України щодо відповідальності за заперечення чи виправдання злочинів фашизму» («Голос України», 2014 р., № 10).
 37. Закон України від 16 січня 2014 року № 724-VII «Про внесення змін до Регламенту Верховної Ради України» («Голос України», 2014 р., № 10).
 38. Закон України від 16 січня 2014 року № 725-VII «Про внесення змін до Кримінального процесуального кодексу України щодо заочного кримінального провадження» («Голос України», 2014 р., № 10).
 39. Закон України від 16 січня 2014 року № 726-VII «Про внесення зміни до Закону України «Про безоплатну правову допомогу» («Голос України», 2014 р., № 10).

found tortured outside of Kyiv, parliament repeals the nine of the twelve repression laws on January 28, 2014.⁴⁰

February 19-21, 2014: The Ministry of Internal Affairs announces that it will block transport into Kyiv, including private vehicles, from midnight, February 19.⁴¹ Beginning at 4:00 p.m., February 19, law enforcement authorities attempt to clear the square. By February 20, Minister of Interior Zakharov confirms that he has issued service weapons to Interior Ministry Troops and authorized them to use live fire.⁴²

February 22, 2014: Parliament resolves that President Yanukovich “self-removed himself” from execution of his constitutional duties and officially designates him a person who is not executing his duties, scheduling early elections to replace him for May 25, 2014 “in compliance with Article 85 of the Constitution of Ukraine.”⁴³ Parliament also returns the Constitution to its provisions of December 8, 2004.⁴⁴ The latter, a demand of Maidan protests, returns Ukraine to its earlier parliamentary-presidential form instead of the presidential republic provided by 2010 changes Parliament adopted under Yanukovich pressure. (Under the revived provisions, only the Ministers of Foreign Affairs and Defense and the Prosecutor General are presidential nominees; parliament elects the Prime Minister and forms the rest of his or her Cabinet. Parliament also undertakes a series of personnel actions through other legal acts and resolutions, expressing no confidence in

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40. Закон України від 28 січня 2014 року № 732-VII “Про визнання такими, що втратили чинність, деяких законів України” <http://zakon4.rada.gov.ua/laws/show/732-18/paran2> (repealing January 16 laws 721-VII, 722-VII, 723-VII, 724-VII, 725-VII, 726-VII, 727-VII, 728-VII, 729-VII).
 41. “З метою забезпечення безпеки громадян і громадського порядку, запобігання та припинення правопорушень, з 00.00 годин 19 лютого буде обмежено в’їзд транспорту, у тому числі й громадського, до міста Києва,” announcement on website of Ministry of Internal Affairs of Ukraine (February 18, 2014).
 42. “Ukrainian Police Authorized to Use Live Ammo as Battle Rages,” RIA Novosti (Feb. 20, 2014), <http://en.ria.ru/world/20140220/187726857/Ukrainian-Police-Authorized-to-Use-Live-Ammo-as-Battle-Rages.html>.
 43. Resolution of the Parliament of Ukraine “On withdrawal of the President of Ukraine to perform the constitutional powers and calling early presidential elections in Ukraine,” Resolution № 11, 158 (February 22, 2014).
 44. Про текст Конституції України в редакції 28 червня 1996 року, із змінами і доповненнями, внесеними законами України від 8 грудня 2004 року № 2222-IV, від 1 лютого 2011 року № 2952-VI, від 19 вересня 2013 року № 586-VII , 22.02.2014 № 750-VII.

Prosecutor General Pshonka⁴⁵; appointing personnel to monitor the Prosecutor General,⁴⁶ the Minister of Defense⁴⁷, and the Intelligence Service (Служби Безпеки України (СБУ))⁴⁸; replacing the Minister of Internal Affairs;⁴⁹ acknowledging the resignation of the Speaker of Parliament⁵⁰ and electing Oleksandr Turchynov as Speaker in his place⁵¹ (and the next day electing Turchynov Acting President of Ukraine “in compliance with the Article 112 of the Constitution”)⁵².

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45. Про висловлення недовіри Генеральному прокурору України Пшонці В.П.
 46. Про призначення Махніцького О.І. Уповноваженим по контролю за діяльністю Генеральної прокуратури України.
 47. Про призначення Замани В.М. Уповноваженим по контролю за діяльністю Міністерства оборони України.
 48. Про призначення Наливайченка В.О. Уповноваженим по контролю за діяльністю Служби Безпеки Україниhttp.
 49. Про тимчасове виконання обов’язків Міністра внутрішніх справ України Аваковим А.Б.
 50. Закон України 2014 року № 747-18.
 51. Про покладення на Голову Верховної Ради України виконання обов’язків Президента України згідно із статтею 112 Конституції України.
 52. “Про покладення на Голову Верховної Ради України виконання обов’язків Президента України згідно із статтею 112 Конституції України” (Відомості Верховної Ради (ВВР), 2014, № 11, ст.163).