

# *Chapter One*

## **Politics and Democracy in Ukraine**

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For most of its two decades of independence Ukraine's political regime has been stuck in the "grey zone" between a developed democracy and a consolidated autocracy.<sup>1</sup> The state's attempts to limit the space for independent political activities and consolidate autocratic rule were successfully resisted by mobilized society actors and vocal opposition groups. The Orange Revolution was expected to put an end to Ukraine's "hollow decade" and push it decisively in the European direction. However, the equilibrium of "partial reforms" proved more resilient than observers imagined at the time. The new post-revolutionary authorities avoided costly institutional reforms that would have harmed particularistic interests, but could have strengthened state capacity and promoted democratic consolidation. As a result, Ukraine's political regime under Viktor Yushchenko's presidency turned into 'feckless pluralism'—one variation of "grey zone" politics—marked by broader space for political contestation, but also destructive elite competition and pervasive corruption. This allowed his successor Viktor Yanukovich to reverse quickly the few democratic gains of the Orange Revolution and move Ukraine to a more authoritarian 'dominant-power' model based on the political monopoly of one political force, the Party of Regions.

This chapter will first look at the political legacy of Yushchenko's presidency that prepared ground for an authoritarian revival. It will then analyze key political reversals under Yanukovich focusing on the closure of main arenas for political contestation and enhanced capacity of the new authorities to neutralize civil society mobilization. The chapter will conclude by outlining a set of recommendations on how

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<sup>1</sup> Thomas Carothers, "The End of the Transition Paradigm," *Journal of Democracy*, Vol. 13, No. 1 (January 2002), pp. 5-21.

to deter Ukraine from turning into a full-blown authoritarian regime and promote its greater political openness.

### **The Legacies of Yushchenko's Presidency**

Yushchenko came to power in January 2005 on the heels of the strongest popular democratic movement in Ukraine's history. It coalesced around the promises to introduce political freedoms, eliminate corruption, end oligarchic influence on politics, establish clear and transparent rules equally applicable to everyone and integrate Ukraine into Euro-Atlantic structures. Most of these promises, however, proved to be mere campaign rhetoric. The new authorities maintained a symbiotic relationship with big business, preserved the rent-seeking traditions of their predecessors, used administrative levers to influence courts and failed to make any substantial progress in relations with NATO and EU. While abstaining from direct coercion of their opponents or attempts at media censorship, they did not introduce any institutional changes that would strengthen government accountability or the rule of law. The fierce competition for power and rents between former allies produced the breakdown of the Orange coalition and a virtual paralysis of policy-making. Frequent changes of government and several attempts by the president to disband the parliament only exacerbated the major deficiencies in governance. In a fashion typical of "feckless pluralism," competing political forces "traded the country's problems from one hapless side to the other."<sup>2</sup> Incessant corruption scandals, which were never properly investigated, contributed to the dramatic decline in public trust in all branches of government and the country's leadership. In 2009 only 6.7% trusted the Cabinet of Ministers, 5.3% trusted the courts, 4.7% trusted the President and 4.2% trusted the parliament.<sup>3</sup> As a result, five years of Yushchenko's presidency became an era of "lost opportunity" for political or economic reforms.<sup>4</sup> This dismal governance failure opened the path for a comeback in 2010 of the Kuchma era officials grouped

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<sup>2</sup> Carothers, p. 10.

<sup>3</sup> *Stan Koruptsii v Ukraini. Porivnialnyi analiz zagalnonatsional'nyh doslidzhen'*: 2007-2009 (Kyiv: International Institute for Sociological Studies, 2011), p. 15: [http://kiis.com.ua/img/pr\\_img/20110920\\_korup/Corruption%20in%20Ukraine\\_2007-2009\\_2011\\_Ukr.pdf](http://kiis.com.ua/img/pr_img/20110920_korup/Corruption%20in%20Ukraine_2007-2009_2011_Ukr.pdf), accessed on October 15, 2011.

around the Party of Regions and led by ex-Prime Minister Viktor Yanukovich.

Five legacies of Yushchenko's presidency made possible Ukraine's authoritarian reversal under Yanukovich. Firstly, democracy as a model of governance has been tarnished in the public perception due to the poor governance record of democratic forces. According to 2009 Pew Research poll, Ukrainians had the lowest support for a multiparty system and one of the lowest levels of satisfaction with democracy in Europe.<sup>5</sup> Only 30% of Ukrainians approved of a shift to a multiparty system and 70% said they were dissatisfied with democracy. Also, less than half believed in the importance of the freedom of speech and free media. The one democratic principle Ukrainians valued most—a fair judicial system—was also the one that remained a distant ideal even under Yushchenko's presidency.<sup>6</sup>

His second legacy has been a severe weakening of all state institutions exacerbated by the semi-presidential model that fueled infighting among political elites. The constitutional amendments introduced in December 2004 produced an overlap of many executive functions between the president and the government. The president's failure to secure a loyal majority in parliament led to the rotation of combative Prime Ministers (Yulia Tymoshenko in 2005 and 2007-10; Yanukovich in 2006-07), who attempted to accumulate additional powers at the expense of the presidency. In response, Yushchenko used his power to suspend government resolutions in order to subordinate the Cabinet of Ministers and regain some influence over policy-making. During his one term Yushchenko tried to stop over hundred government resolutions or five times more than Kuchma vetoed during his ten years in office. Given that he lacked other levers to influence the government's

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<sup>4</sup> Taras Kuzio, "With or Without Baloha, Yushchenko's Unelectable," *Kyiv Post*, May 28, 2009.

<sup>5</sup> "The Pulse of Europe 2009: 20 Years after the Fall of the Berlin Wall," <http://pew-global.org/2009/11/02/end-of-communism-cheered-but-now-with-more-reservations/>, accessed on September 1, 2011.

<sup>6</sup> According to a Pew poll, 67% of Ukrainians believed in the importance of a fair judicial system. For the analysis of Ukraine's judiciary system under Yushchenko see Alexei Trochev, "Meddling with Justice: Competitive Politics, Impunity, and Distrusted Courts in Post-Orange Ukraine," *Demokratizatsiya: the Journal of Post-Soviet Democratization*, Vol. 18, No. 2 (Spring 2010), pp. 122-147.

policies, such as the power to fire disloyal Cabinet members, Yushchenko resorted to the one that had the most destructive effects on government's work. Moreover, with the President maintaining the power to appoint oblast governors the government also faced difficulties implementing its decisions on the local level. As a result, Ukraine's amended constitution, which expanded the role of the parliament and could have potentially strengthened horizontal accountability, was discredited as a recipe for dysfunctional governance.

Yushchenko's third legacy has been further polarization among elite groups and the fracturing of the national-democratic forces. President single-handedly promoted a number of divisive issues, particularly the honoring of the World War II nationalist movement and accelerated integration with NATO. This deepened Ukraine's regional divisions and heightened the intensity of political conflict. Furthermore, Yushchenko also set against himself most of his former allies in the Orange camp by making erratic appointments and entering into suspect deals with shady oligarchs. His attempts to undermine Tymoshenko's government in 2008-2009 produced a series of political crises that led to a final breakdown of the Orange coalition. As a result, public support for a pro-presidential party 'Our Ukraine' dwindled, while many of the President's earlier supporters started their own political parties (Vyacheslav Kyrylenko, Anatoliy Grytsenko, Mykola Katerynychuk) or joined forces with Tymoshenko (Yuriy Lutsenko, Borys Tarasyuk).

Another legacy of Yushchenko's presidency has been the overall alienation of society from the state reflected in rising political apathy and cynicism. This has been partially the result of the economic crisis hitting Ukraine in late 2008, but it also reflected society's sense of powerlessness to affect the status quo. Frequent elections failed to improve the quality of governance or produce new leaders. At the same time, protest actions became largely discredited as a mechanism of change due to a widespread practice of hiring protesters and the lack of impact on government. The rising popularity of the radical nationalist party "Svoboda" ("Freedom") in Western Ukraine in 2009-2010 was another way that voters expressed their disillusionment with the inability of a national-democratic leadership to deliver.<sup>7</sup>

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<sup>7</sup> Anton Shekhovtsev, "The Creeping Resurgence of the Ukrainian Radical Right? The Case of the Freedom Party," *Europe-Asia Studies*, Vol. 63, No. 2 (March 2011), p. 222.

Finally, the lack of unity among top government officials in Ukraine and their inability to implement promised reforms produced 'Ukraine fatigue' among Western leaders. Despite their general approval of Yushchenko's record on democracy, Ukraine's integration with the EU and the development of strategic partnership with the US have been sidetracked by poor governance and continued corruption on the highest levels of government. With no clear negotiating partner in Kyiv and continuous policy zig-zags, the West could not pursue any coherent policy towards Ukraine.

### **Ukraine under Yanukovych**

Elected in February 2010, Yanukovych inherited a dysfunctional state and a divided society. However, rather than reforming the inefficient bureaucracy, strengthening the rule of law and engaging civil society in policy-making, Yanukovych opted to introduce an authoritarian 'dominant-power' model without precedents in Ukraine's independent history. Even at the height of Kuchma's autocratic rule Ukraine's political regime maintained a competitive nature,<sup>8</sup> allowing political contestation in several key arenas, particularly in the electoral field, the legislature and the media. The opposition could stage mass protests and demonstrations in Kyiv and elsewhere across Ukraine, while parliament could successfully resist some of the president's key initiatives. Moreover, Kuchma's regime was characterized by a limited scope of control over the economy with a diverse distribution of private wealth among business groups outside of the authorities' direct influence. The organization of the political elite under Kuchma was weakened by the lack of a single ruling party that could coordinate the activities of key elite actors. Instead, Kuchma allowed various political parties to engage in bitter competition for patronage and rents. This

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<sup>8</sup> Steven Levitsky and Lucan Way, "The Rise of Competitive Authoritarianism," *Journal of Democracy*, Vol. 13, No.2 (April 2002), pp. 51-65; Taras Kuzio, "Ukraine's Orange Revolution. The Opposition's Road to Success," *Journal of Democracy*, Vol.16, No. 2 (April 2005), pp. 117-130; and Paul D'Anieri, "The Last Hurrah: The 2004 Ukrainian Presidential Elections and the Limits of Machine Politics," *Communist and Post-Communist Studies*, Vol. 38, No. 2 (June 2005), pp. 231-249.

made it easier for the opposition to attract private funds and encourage elite defections prior to, and during, the Orange Revolution.<sup>9</sup>

By contrast, Yanukovich has sought to manage political contestation, constrain civil society, subordinate the private sector and enhance the organization of the ruling elite. The lessons from Kuchma's failed authoritarianism, the successful example of Russia's relatively stable autocracy and Yanukovich's own experience as a governor of Donetsk (1997–2002) provided the new Ukrainian authorities with an institutional know-how to build a stable, authoritarian regime.

### *The Parliamentary Arena*

Over the first year of Yanukovich's presidency the Ukrainian parliament turned into a rubber-stamp body with minimal political authority. Although the Party of Regions failed to form the majority coalition following 2007 elections after Yanukovich became President his entourage resorted to a mixture of threats and bribery to encourage the defection of several dozen deputies from other factions. A change in the procedural rules for coalition-formation allowed the new ruling party to form a pro-presidential majority in parliament and vote on the new government. The new cabinet included mostly Yanukovich's loyalists from the Party of Regions with his long-standing ally Nikolai Azarov at the helm. The weakness of the two opposition factions in the parliament became further apparent when they failed to prevent the ratification of the Russian-Ukrainian Accords extending Russia's lease of the Black Sea Base in Sevastopol for another 25 years. Finally, October 2010 ruling of the Constitutional Court annulled the 2004 constitutional reforms returning Ukraine to the semi-presidential system of the 1996 constitution, that transferred control over the government from parliament to the president. As a result, Yanukovich could now select and fire the Prime Minister, appoint and dismiss cabinet members as well as veto government resolutions. The president also regained decisive influence over agencies of coercion with his power to dismiss single-handedly any top law-enforcement officials without parliament's consent.

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<sup>9</sup> Lucan Way, "Authoritarian State-Building and the Sources of Regime Competitiveness in the Fourth Wave. The Cases of Belarus, Moldova, Russia and Ukraine," *World Politics*, Vol. 57, no. 2 (January 2005), pp. 231-261.

With renewed subordination of the government directly to the president the legislature lost much of its earlier political weight.

The pro-presidential parliamentary factions also acquired total control over the legislative process. The Rada's (Parliament's) new procedural rules adopted in October 2010 left opposition factions without any oversight mechanisms to control the government's decision-making and state budget expenditures. They also lost their earlier powers to influence the agenda of parliamentary sessions. The two opposition factions—Bloc of Yulia Tymoshenko (BYuT) and Our Ukraine-Self-Defense (NU-NS)—currently lack strong leadership and remain deeply fractured. They have also been weakened by the jailing of their two leaders Tymoshenko and Lutsenko, which encouraged further defection of their members to the pro-presidential Stability and Reforms coalition.

A strong and independent legislature is vital for jump-starting the reform process in Ukraine. A number of comparative studies have demonstrated that a post-communist countries with a parliamentary system have been most successful in reforming their economies and consolidating democracy.<sup>10</sup> Coalition governments could minimize the influence of rent-seekers on decision-making, prevent the monopolization of the political process and promote consensus-building within the polity.

### *The Electoral Arena*

The electoral process under Yanukovich has been purposefully skewed to favor the ruling party. The new mechanisms to limit the electoral arena included the Rada's legislative innovations that introduced a mixed election system for local councils, expanded the powers of territorial election commissions and adopted new staffing rules for the commissions that benefitted pro-presidential parties in parliament. Although local elections were earlier scheduled for May 2010, parliament voted to postpone them until October 31, 2010. In the mean-

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<sup>10</sup>Joel Hellman, "Winners Take All: The Politics of Partial Reform in Postcommunist Transitions," *World Politics*, Vol. 50, No. 2 (January 1998), pp. 203-234 and Grzegorz Ekiert, Jan Kubik and Milada Anna Vachudova, "Democracy in the Post-Communist World: An Unending Quest?" *East European Politics and Societies*, Vol. 21, No. 1 (February 2007), pp. 7-30.

time, the pro-presidential majority changed the electoral law reviving the mixed system with half of the seats in the local councils filled by the candidates winning in single-member districts (SMD) and another half based on the closed party-list proportional representation. As a result, while winning 39% of votes across Ukraine on the party list, the Party of Regions acquired the majority of seats in *oblast* and city councils in 10 oblasts and formed majority coalition in another 12 oblasts with the help of SMD deputies. Although most of the candidates (45.7%) winning in single-member races were not affiliated with any political party, they overwhelmingly joined the Party of Regions faction upon entering councils.

The Party of Regions and its allies also had majority control in the territorial electoral commissions where opposition parties were severely underrepresented. Using their expanded powers territorial commissions could refuse the registration of party candidates, fire any commission member and certify election results with the minimum quorum of just three members present. Several local opposition candidates were excluded from the election process in 2010 campaign. The authorities also prevented Tymoshenko's *Batkivshchyna* party from participating in local elections in Kyiv and Lviv *oblasts* by refusing to recognize its new local party chairmen, which helped radical nationalists to gain the absolute majority of seats in the Lviv local council.

The new electoral law pre-approved by the president for the October 2012 parliamentary elections revives a similar mixed electoral system on the national level. It will allow the ruling party to form a pro-presidential majority with the support of non-partisan deputies winning in single-member districts, repeating what already happened in 2002. The draft electoral law also raises the electoral threshold to 5% and bans electoral blocs, which would prevent a broad opposition alliance similar to "Our Ukraine" in 2002 from emerging out of a fractured national-democratic field. Finally, the law preserves a closed party list system, which gives the party leadership exclusive powers to decide the candidates who will represent the party in parliament. According to the conclusions of the Venice Commission, the draft law fails to address several critical areas of concern, particularly it lacks clarity on the possibility of challenging election results, lacks provision for full disclosure of funding sources and the amount of contributions and bans anyone convicted of a criminal offense from participation in

the elections. Most importantly, the new electoral law was drafted in a non-transparent manner without any public deliberations or participation of opposition parties and non-governmental organizations, which seriously undermines its legitimacy.

### *The Judiciary*

Yanukovich showed few scruples in using the judicial branch for political purposes. In April 2010 the Constitutional Court confirmed the legitimacy of the new rules of coalition-formation in the legislature that allowed the president to form a loyal parliamentary majority by attracting deputies from opposition factions. This decision was particularly stunning given that the Court issued an opposite ruling less than two years earlier banning individual deputies from joining a majority coalition if their faction ruled against it. Out of eight judges who voted against the April decision, four lost their positions in the run-up to the October court hearings on the 2004 constitutional reforms. All the newly appointed judges of the court voted in favor of annulling the amendments and restoring the Kuchma-era constitution.

Yanukovich also used judicial reform to limit the role of Ukraine's Supreme Court, which was headed by Tymoshenko's ally Vasyl Onopenko. The new July 2010 law on the judiciary transferred most of the Supreme Court's appellate jurisdiction to specialized higher courts, such as a new court for civil and criminal matters, which was controlled by judges loyal to the president. Judicial reform also provided the High Council of Justice, which is run by the president's long-time ally Sergei Kivalov, broad new powers to appoint and remove lower-level judges. As the Council of Europe's Venice Commission noted, given the politicization of the Council this change became a major setback for judicial independence in Ukraine. One particularly progressive element of the law, which received praise from the Venice Commission, was the new procedure for automatic case-assignment. Earlier, the courts' chairmen were in charge of assigning cases to particular judges making the whole process non-transparent and ripe for corruption. However, as the mounting evidence indicates, the automatic system could be circumvented by running the program several times until the "right" judge is selected.<sup>11</sup>

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<sup>11</sup>Marta Dyczok, "The Ukrainian Blues (and Yellows)," *The Wall Street Journal*, August 26, 2011.

The failures of the new program for the selection of judges came to the fore in the criminal cases against opposition leaders Tymoshenko and Lutsenko. In both instances the chief judges were relatively inexperienced and had a history of suspect rulings in the past,<sup>12</sup> making them particularly vulnerable to outside political pressure. The two cases also demonstrated new limits on the judiciary. In semi-authoritarian regimes judges can still rule against the interests of the authorities, as was demonstrated by the refusal of Ukraine's Supreme Court to recognize the April 2000 referendum results as binding or by Tymoshenko's release from prison in March 2001 on the court's order.<sup>13</sup> However, there have been no court decisions during Yanukovych's presidency that have contradicted his personal political interests. The trial of opposition leader Tymoshenko, which the EU's High Representative for Foreign Affairs Catherine Ashton characterized as failing to respect international standards of fairness and independence, only reinforced this trend towards continued manipulation of the judiciary for political purposes.

The President currently exerts political influence over the judiciary through the Higher Council of Justice, which is dominated by representatives of the ruling Party of Regions. Hence, the first step towards a genuine judicial independence would require minimizing the role of the Council in judicial affairs. Its powers to select or discipline judges should be transferred to a non-partisan body comprising of authoritative and experienced judges, such as the High Qualifications Commission. Finally, the President's and Parliament's role in appointing or removing judges should also be limited to mere approval of the Commission's recommendations with few clearly specified exceptions.

### *Media and Civil Society*

Media censorship under Yanukovych has not yet reached the level characteristic of Kuchma's presidency. There is no centralized system of agenda-setting for news coverage on major television channels, which existed under Kuchma in the form of '*temnyky*' (talking-points sent by the presidential administration for reporters). However, con-

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<sup>12</sup>Tetiana Chornovil, "Zlochyny ta pokarannia Rodiona Kireeva," *Ukrainska Pravda*, September 1, 2011.

<sup>13</sup>Levitsky and Way, *op. cit.*, p. 56.

trol over the leading television channels by oligarchic moguls close to Yanukovich has produced a more decentralized system of self-censorship. The news reports provide selective coverage and usually portray opposition activities in a negative light. According a study of seven leading Ukrainian TV channels, over 70% of the news broadcasts in 2011 focused on the authorities and less than 20% mentioned the activities of the opposition.<sup>14</sup> Moreover, the news reports covering the opposition tend to be more critical in tone and less balanced in substance. Pro-government television channels ignored the Western condemnation of the sentencing of Tymoshenko. Rather than banning the opposition all together, talk-show hosts often invite moderate opposition figures with little public following. The one television channel which has maintained its independence—TVi—lost some of its broadcasting licenses in a court dispute with the major TV channel “Inter” owned by Security Service of Ukraine (SBU) Chairman Valeriy Khoroshkovskiy. It was also sidelined in the recent distribution of frequencies for digital broadcasting.

The Presidential Administration also introduced new limits on the journalists’ access to the President and high-ranking government officials. Prominent investigative reporters are rarely given a chance to pose direct questions to Yanukovich during his press-conferences, while government officials ignore requests for public information submitted from independent media outlets only pre-selected group of loyal journalists was allowed to participate in a round-table with the President in his private residence outside of Kyiv. Overall, major media outlets in Ukraine have not yet fallen fully under the government’s control, but their independence has eroded substantially due to the excessive interference of owners in news coverage. Only print and internet-based media still function as an instrument of accountability and a source of reliable news. Further international assistance to these outlets is vital for assisting the Ukrainian media maintain some degree of independence.

The authorities have used a variety of administrative levers in order to deter the organization of civic actions or increase participation costs for civic activists. The local authorities have renewed the prac-

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<sup>14</sup>“Telekanaly adresuyut negatyv opozytzii,” *Telekrytyka*, July 20, 2011: <http://www.mediaosvita.com.ua/material/2919>.

tice of appealing to courts to ban opposition demonstrations or protests. Local courts have banned a number of large protest actions, including the rally against the new tax legislation on the *Maidan* (November 2010), tent cities in support of Tymoshenko in Kyiv, Kharkiv, Odesa and Rivne (July 2011), and opposition demonstrations in the Ukrainian capital on Independence Day (August 2011). The courts' verdicts then became a pretext for the use of *spetsnaz* police units to violently disband protests or prevent the demonstrators from mobilizing. Furthermore, the authorities also pursued criminal actions against leading protest organizers, including prominent opposition figures, charging them with illegal activities and resistance to the law-enforcement. These actions serve to threaten civil society activists and deter the public from wider participation in protest actions. International institutions should step up their criticisms of the Ukrainian authorities in order to prevent further emasculation of civic groups and the closing of public space for independent political action.

### *State Power*

The power of the state apparatus is a key indicator of an incumbents' capacity to resist political challenges.<sup>15</sup> Its main components are the level of control over subordinates and the scope of state activity. State control was particularly weak under Yushchenko as the President lost power to appoint his candidates to most government positions, which often resulted in a refusal to subordinate lower-ranking government officials. The strength of control over subordinates has improved markedly under Yanukovich and he has not revoked any government resolutions, an indication of a renewed informal coordination between the Cabinet and Presidential Administration. Higher elite compliance is partially the result of President's renewed power to appoint and fire government officials on all levels. It has also become possible with the President's reliance on the Party of Regions and which serves as a mechanism to select and test political loyalists.

The degree of state monopolization of economic and political power reflects the existence of autonomous power centers outside of state control. One of the most important factors needed to maintain political competition and a vibrant civil society has been large inde-

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<sup>15</sup>Way, *op. cit.*, p. 234.

pendent private business. The high level of economic dispersion in Ukraine and the willingness of wealthy business leaders to fund the opposition helped it to wage a successful campaign in 2004.<sup>16</sup> Political preferences of big business remained divided under Yushchenko with major oligarchs backing competing political leaders and presidential candidates in the 2010 elections. After the first year of Yanukovich's presidency, however, wealth has been increasingly concentrated in the hands of the members of the Party of Regions. According to the estimates of the weekly magazine *Korrespondent*, 25 out of the 100 wealthiest Ukrainians are members of the ruling party<sup>17</sup> and their total wealth has been estimated at \$31.1 billion. By contrast, there were only two businessmen close to the largest opposition party *Batkivshchyna* (Fatherland), with a total wealth estimated at \$3.2 billion. Most of these funds belong to a billionaire Kostiantyn Zhevago, whose businesses have been recently pressured by the tax inspectors and has resigned from the BYuT (Bloc of Yulia Tymoshenko) parliamentary faction. All other major funders of Tymoshenko's presidential campaign, such as banker Oleksandr Buriak and car-maker Taniel Vasadze, defected to Yanukovich following his election victory. The current high level of state control over big businesses is likely to increase even further resulting in the complete cooptation of major businessmen into the ruling party.

### *Elite Organization*

Another factor ensuring the sustainability of authoritarian regimes has been the strength of elite organization. Kuchma relied on diverse elite groups with no coherent organizational structure, which made the regime particularly vulnerable to defections and weakened the level of control over subordinates in the regions. Yanukovich's comeback, first as Prime Minister in 2006 and then as President in 2010, became possible largely because of his reliance on the organizational resources of the Party of Regions. His appointment policy reflects the significance of the party's role. The party leadership controls all of the key positions in the Presidential Administration and the Cabinet of

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<sup>16</sup>Scott Radnitz, "The Color of Money: Privatization, Economic Dispersion, and the Post-Soviet 'Revolutions'," *Comparative Politics*, Vol. 42, No. 2 (April 2010), pp. 127-46.

<sup>17</sup>"Zolotaia Sotnia," *Korrespondent*, June 10, 2011.

Ministers. Azarov, Party of Regions leader, is also the prime minister, while the two Deputy Prime Ministers and the Head of the Presidential Administration are members of the party's highest governing council. Similarly, nineteen out of twenty four chairmen of oblast administrations are members of the Party of Regions. The mergers of the Strong Ukraine party led by Deputy Prime Minister Sergei Tigipko and the People's Party led by Parliamentary Chairman Volodymyr Lytvyn with the Party of Regions would further indicate that the authorities intend to consolidate a dominant-power system in Ukraine.

In the dominant-power systems a single political force maintains strict control over key state resources and a commanding presence in all power branches and on all levels of government.<sup>18</sup> The ruling party is also a focal point coordinating the activities of lower-level officials, which allows for a more efficient use of administrative resources in the interests of the ruling elite. Finally, the existence of a single party of power ensures the redistribution of rents among loyalists, creates a clear mechanism for career promotion and raises the costs of defection to the opposition. The Party of Regions has thus turned into the country's largest patronage network, which limits political competition by controlling the distribution of government positions and providing privileged power access to its members. However, the exclusion of other political groups from the decision-making adversely affects the quality of reform proposals and weakens their public support across Ukraine.

### *Know-How*

The final factor contributing to the stability of an autocratic regime has been the skill with which autocratic leaders can neutralize the opposition and consolidate their power. Yanukovich's team drew lessons both from its own political defeat in 2004 and from the examples of neighboring autocracies in Russia and Belarus. There are five main elements of a successful autocratic model that Yanukovich may try to implement in Ukraine. First of all, reliance on a dominant political party helps to eliminate 'rapacious individualism' that led to persistent political conflicts throughout the last two decades of

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<sup>18</sup>Carothers, op. cit. p. 12.

Ukrainian independence.<sup>19</sup> Second, political control over big business undercuts funding for the opposition and limits negative coverage in the media. Third, consistent use of excessive coercion against protesters helps to deter anti-incumbent mobilization by civil society. Fourth, jailing of key opposition leaders weakens the opposition movement and demoralizes opposition supporters. Fifth, subordination of autonomous institutional power bases such as parliament, local government and the courts marginalizes the opposition leaving it devoid of any legal means to mount a successful challenge to autocratic incumbents. During the first two years of his presidency Yanukovich has been persistently implementing each of the five elements of the model described in this chapter.

In addition, there has been a new element in autocracy-building possibly introduced in Ukraine. The wide media promotion of the radical right nationalist party Svoboda (Liberty) that won the 2010 local elections in the three Galician *oblasts* of Western Ukraine by sidelining mainstream national-democratic parties may indicate that the authorities were informally backing its campaign. The strengthening of an ultra-nationalist party in the region, which was once a stronghold of the democratic opposition, further weakens democratic forces and helps to rally Yanukovich's voters in Eastern and Southern Ukraine around the Party of Regions who felt threatened by Ukrainian nationalism.

## **Policy Recommendations**

The first step to a goal of an Open Ukraine is reviving the parliament's role in choosing candidates for Cabinet of Ministers positions and giving it strong oversight powers over the executive, particularly by establishing a clear procedure for impeaching the president. The internal rules for coalition-formation should prioritize party factions over individual deputies and provide for the majority coalition based solely on parties that entered parliament. There should also be a strict enforcement of the rules requiring deputies to vote individually and disclose their personal income declarations. In addition, opposition

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<sup>19</sup>Lucan Way, "Rapacious Individualism and Political Competition in Ukraine, 1992-2004," *Communist and Post-communist Studies*, Vol. 38, No. 2 (June 2005), pp. 191-205.

factions in parliament should be guaranteed chairmanship positions in the committees overseeing the law-enforcement, judiciary, media freedoms and budgetary policies and the power to nominate the head of the Accounting Chamber.

An Open Ukraine requires an electoral law that would ensure a level playing field for competing political parties and their fair representation in parliament. Mixed electoral systems prevents this by skewing election results in favor of the ruling party and opening the possibility for distorting society's aggregate political preferences. Proportional representation with open party lists has proven to be the most successful electoral model for post-communist states as it engages citizens in selecting their representatives and minimizes the possibility for usurping power by one political force. It would also help to develop Ukraine's nascent party political system, which still remains highly volatile. Legislation should also minimize the ability of electoral commissions to interfere with the electoral process and make arbitrary decisions that could distort the election outcome. In addition, targeted assistance by international actors, particularly the funding of independent media and monitoring groups, should help to neutralize the structural advantages of the incumbency in Ukraine.

A strategy of moving Ukraine out of its current 'grey zone' and becoming an Open Ukraine should be based on five policy proposals:

*1) Support Dialogue*

By monopolizing political space and marginalizing the opposition the Ukrainian authorities undermine the reform process and weaken public trust in policy outcomes. Hence, international organizations and Western governments should encourage active involvement of opposition parties and leading NGOs in the process of drafting reform strategies and policy proposals. Opposition factions in parliament should also be granted greater oversight powers in order to control budget expenditures and the functioning of the law-enforcement bodies. The President and Prime Minister should rely on consensus-building mechanisms and public dialogue in pushing their legislative initiatives through parliament. Without the opposition's ability to shape the policy-making process and influence the legislative process Ukraine is unlikely to fulfill its obligations under the Deep and Comprehensive Free Trade Agreement with the EU.

*2) Advocate Institutional Reforms*

The European governments, particularly representatives of post-communist countries, should advocate targeted institutional reforms aimed at limiting the powers of the presidency, increasing the government's accountability to parliament and strengthening oversight agencies, such as an independent anticorruption bureau, accounting chamber, the office of the ombudsman and the financial regulatory body. Another major area of reform is depoliticizing the judiciary and the civil service, which are still dominated by vested political and business interests. This requires introducing a transparent and clear mechanism for hiring and promoting judges and civil servants.

*3) Leverage External Pressure*

The U.S. and EU demonstrated impressive unanimity in condemning the trial and the conviction of opposition leader Tymoshenko and issued strong demands for her release. However, Western governments and organizations should act in concert not only in condemning the persecution of the opposition, but also in developing a set of measures that would raise the cost of further undemocratic steps for the Ukrainian authorities. Such measures should include the suspension of Ukraine's membership in the Council of Europe, introducing visa bans for officials responsible for ordering the crackdown against protesters or persecution of the opposition, freezing negotiations on DCFTA and limiting bilateral contacts with top Ukrainian leadership.

At the same time, the EU should make it clear that Ukraine could receive a formal membership offer if it returns to the democratic path. EU conditionality has been most effective when target countries have received a clear promise of EU membership. As long as the EU avoids extending this promise to Ukraine, the Ukrainian government will have little incentive to undertake political and economic reforms. The EU's promise to accept Ukraine as a credible candidate for EU membership may strengthen its authority within Ukrainian society and deter the country's ruling elite from further rollback of democratic freedoms.

*4) Target Support to Civil Society*

The main source of threat for the sustainability of dominant-power systems has been an independent civil society capable of monitoring the authorities and publicizing their transgressions. The U.S. and EU should provide most of their financial aid to support national and local

NGOs and media outlets that ensure government accountability on all levels.

*5) Push for Democratic Elections in October 2012*

Western governments and international organizations should stress the critical importance of a free and fair parliamentary campaign in 2012 early in the process and quickly react to even minor violations of democratic procedures. They should also form a political monitoring team consisting of prominent public figures with a strong reputation in Ukraine. This group should visit the country on a bimonthly basis and provide interim assessments of the electoral process. It is important for the group to visit all of Ukraine's regions and meet local officials to convey the special importance of the upcoming parliamentary election. Finally, international organizations should provide technical assistance in training election observers and electoral commission members representing all political parties. The ability of the new parliament to legislate a progressive reform package critically depends on the legitimacy of the election itself and its recognition as free and fair by all major political actors. A new democratically elected parliament could also act as a stronger counterweight against the excessive political dominance of the President.

## **Conclusions**

Ukraine's competitive authoritarian system, which took the form of 'feckless pluralism' under Yushchenko, has been gradually transformed into a 'dominant-power' model under Yanukovich. Its main characteristics include (1) limiting political contestation through coercion and administrative interference; (2) monopolization of power by the presidency that controls other branches; (3) restricting access to public offices exclusively for members of the ruling party. Heightened repression against the opposition, however, indicates that the political regime in Ukraine risks degenerating into a full-blown autocracy. This trend may accelerate with further decline of popular support behind Yanukovich and his increasing international isolation. Already in the first year of his presidency Yanukovich's approval rating dropped from 40% in May 2010 to 9.7% in June 2011.<sup>20</sup> The loss of support for

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<sup>20</sup> "Idol Sdulsia," *Korrespondent*, July 22, 2011.

Yanukovych has been most substantial in his core electoral areas of Eastern and Southern Ukraine.

If public support behind the president remains at the same low level, Yanukovych will face a dilemma in the run-up to 2012 parliamentary elections. He will either have to accept the possibility of opposition parties gaining substantial representation in the new parliament, or he will have to use administrative levers to an unprecedented degree to interfere with the election process and rig the election results. However, if the Party of Regions understands that it would fail to win fairly the latter option may be increasingly likely. First, Yanukovych needs to have a compliant legislature with a significant pro-presidential majority in order to secure re-election in 2015. Parliament proved to be an effective institutional forum for the opposition in the run-up to the presidential election in 2004. It provided opposition leaders with immunity from persecution and allowed them to resist some of Kuchma's key legislative initiatives. Moreover, the opposition's strong showing in 2002 demonstrated the vulnerability of the existing regime, which encouraged further political resistance and elite division. At the same time, the stakes of the 2015 presidential election for the ruling elites has increased substantially so they can no longer afford to lose it. Having established the precedent of criminal persecution of his predecessors, Yanukovych and his allies are now likely to become the target of similar actions if an opposition candidate wins election in 2015. Moreover, with executive powers again concentrated in the presidency the next presidential race will turn into yet another winner-takes-all contest. Hence, the current ruling party will risk losing most of its influence over decision-making if the president changes.

Finally, the experience of the Orange Revolution may have taught Yanukovych's oligarchic entourage that any transfer of power to an opposition may also threaten their ownership rights and lead to a redistribution of property. Given that the key oligarchic groups within the Party of Regions have gained major new assets under Yanukovych's presidency, they will be keen on maintaining him in office at any cost as long as he could guarantee the safety of their property. Another lesson Yanukovych may have drawn from his campaign in 2004 is that unless the opposition is marginalized early on it

can turn into a serious challenge at a later stage. Hence, real presidential contenders, such as Tymoshenko, need to be excluded from the election process prior to the launch of the presidential race. This will be much easier if they end up being either in jail or outside parliament.

International efforts to deter Ukraine's further backsliding should combine the threat of costly sanctions against the ruling elite with demands for greater involvement of opposition parties in policy-making and a targeted assistance to key actors in civil society and calls for specific institutional reforms that would lead to a more balanced political system in Ukraine. Outside pressure on the Ukrainian authorities clearly has its limits and the main brunt of responsibility for the evolution of Ukraine's political regime lies on domestic actors. However, as the Orange Revolution also demonstrated, Western influence can restrict the range of options available for the authorities in fighting the opposition and weaken the internal legitimacy of some of the government's anti-democratic policies. Given that the balance of power has been strongly in favor of the authorities, a harder line by the West combined with a promise of EU membership may strengthen those civil society actors and opposition figures who have been resisting Ukraine's autocratic reversal.