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# What Has Changed in Ukrainian Politics?

## *Assessing the Implications of the Orange Revolution*

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The Orange Revolution did not solve all of Ukraine's political problems. Changing leaders is not the same as changing institutions. It remains to be seen whether modifications made to Ukraine's constitution will be sufficient to ensure liberal democracy.

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THE events that followed the second round of Ukraine's presidential election on November 21, 2004, are now known as the Orange Revolution. However, it is not clear whether a revolution has, in fact, taken place. The term "revolution" implies that politics in the country have fundamentally changed. In one sense, this is true. The defeat of Prime Minister Viktor Yanukovich and the ejection of the Kuchma political machine from power changed the practical possibilities of Ukrainian politics. At the same time, however, there has been only modest institutional change, and some of it has arguably been for the worse.

Ukraine's progress toward becoming a consolidated liberal democracy is not guaranteed. There remains a great deal to do in terms of political reform, and the process could easily grind to a halt. This is true not only because there are still political forces in Ukraine that oppose reform in principle. Equally important, there are important divisions within the coalition that overthrew Kuchma concerning how the country should now be governed. Most important, the institutional basis for liberal democracy in Ukraine is still incomplete. Therefore the dramatic events of late 2004 should be seen as having opened up the possibility for revolutionary change but not, by themselves, completing the revolution.

This article explores the implications of the Orange Revolution, giving special attention to institutional

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change. While personalities clearly matter, it would be a mistake to focus only on President Viktor Yushchenko versus Kuchma and Yanukovich. The institutional changes that accompanied the Orange Revolution will have far-ranging effects. These changes, more than any single individual, are likely to determine the future course of Ukrainian politics.

Some of the institutional changes in Ukraine are very significant, but they should not be overestimated. Institutionally, Ukraine underwent a tweaking of its constitution, not a “revolution.” Moreover, some of the new institutional arrangements look ominously like the arrangements that prevailed from independence in 1991 through the adoption of the new constitution in 1996. That period was characterized by institutional stalemate, and it provided the justification for the subsequent arrangements that gave so much power to Leonid Kuchma.

In the realm of foreign policy, however, the effects of the Orange Revolution may indeed be revolutionary. The events of late 2004 caused a fundamental re-evaluation of Ukraine by key actors, including the European Union, the United States, and Russia. Better relationships with the West, and membership in NATO and the World Trade Organization (WTO) became real possibilities with the fall of Kuchma. At the same time, Russia’s efforts to control Ukraine seemed to have been decisively rejected. Opponents of a pro-Western foreign policy continue to have influence, however, and as Ukraine becomes more democratic, their power to hamper Yushchenko’s reform efforts will increase. Ukraine’s international transformation will depend crucially on the extent of further domestic reform. What occurred in late 2004 was not enough.

For these reasons, neither the domestic nor the international transformation of Ukraine can be considered complete or consolidated. The discussion that follows will explore in detail the changes that have taken place and the continuing challenges that confront Ukrainian reformers. It concludes by considering an agenda for further reforms that must be undertaken if Ukraine is to make a genuine break with its past.

## **Machine Politics in the Post-Kuchma Era: Key Questions**

*Will Constitutional Reforms Be Overturned?* As part of the compromise to rerun the controversial second round of the 2004 presidential election, some of the anti-Kuchma coalition joined with the “party of power” to pass a constitutional reform that substantially reduced

the powers of the president, and correspondingly augmented the powers of the prime minister and parliament. Yushchenko clearly went along with this decision only as a last resort, and there has been continuing speculation that another parliamentary act will overturn the changes.

It went largely unnoted in the heat of moment that the adopted constitutional changes are similar in substance to changes proposed by Kuchma in May 2004. In other words, the outcome of the election—Yushchenko takes over a weakened presidency—is one that Kuchma found acceptable all along.

It has also been insufficiently emphasized that the position of the “national democrats” on presidential power has been rather ironic, if not wholly contradictory, since independence. Those who are generally regarded as reformers, and not the leftists from eastern Ukraine, were responsible for giving Kuchma the power he abused so effectively. The 1996 constitution was passed with the support of the right over the opposition of the left. Because the left controlled parliament at that time, the right sought to reduce its powers, choosing political expediency over a longer-term commitment to a division of powers.

Today, again, it is the “pro-Western” or “democratic” forces that seek to restore the “imperial presidency” of the 1996 constitution. The logic is that Yushchenko should have as much power to undo the damage done by Kuchma as Kuchma had to inflict it. If the constitution were to revert to the 1996 model, the Orange Revolution would not be much of a revolution at all—the result would be little different than if the election had been held fairly in the first place. The danger of such a development is that the electoral process would be the only barrier against a return to Kuchma-era politics. One can easily imagine any number of factors that might diminish Yushchenko’s popularity over the next five years, ushering in someone less savory. More broadly, as many scholars of democratization have argued, a strong presidency makes every election an all-or-nothing affair in which the incentives to extremism and cheating are very powerful. For Yushchenko to run for a strong presidency, and win a weak one, is obviously unfair to him. However, it is probably better for Ukraine in the long term.

While there will certainly be a move to restore the old version of the constitution, it is unlikely to pass, because the new version is now the “default.” A constitutional change requires 300 votes in parliament. The new amendments gained the necessary 300 votes. To block a further revision would require only 151 votes

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(enough to prevent a two-thirds majority in a 450-seat parliament). In other words, Yushchenko would need to persuade a huge number of deputies to change their votes. Given that many members of parliament strongly supported Kuchma, this seems highly unlikely.

There has been speculation that the constitutional changes might be overturned on the basis that they were not adopted according to the constitutionally specified process. They were not voted on in a first and then a second reading in two separate parliamentary sessions. However, if Yushchenko were to seek to overturn these changes, it would completely fragment his fragile political coalition before the 2006 parliamentary elections.

***Will Parliament Legislate Effectively?*** One reason why some politicians advocated more presidential power (cited often by Kuchma himself in 1995–96 discussions of the constitution) is that parliament was completely ineffective. With only very brief and unstable exceptions, the Ukrainian parliament has never had a stable, working majority. As dangerous as a hyper-powerful president can be to a new democracy, a dysfunctional, fragmented parliament is no better.

What are the prospects for building a working-majority coalition in a parliamentary system? In the longer term, the prospects have been enhanced by the adoption of a fully proportional election law, to take effect for the parliamentary election in 2006. The elimination of a great number of independents from parliament will surely make it easier to obtain a 226-seat majority.

However, party discipline remains a considerable challenge. In “normal” parliamentary systems, such as those in Western Europe, a coalition is formed according to an agreement whereby the members of the participating parties agree to vote for a certain legislative program. If party leaders cannot reliably deliver their members’ votes, others have no reason to make concessions in return for the promise of those votes. This has always been a problem in Ukraine, where party discipline has been nearly non-existent, due in large part to the president’s ability to instigate defection from opposition parties. Yushchenko will face the same incentives to do this as did Kuchma, although it appears that he will use a narrower range of tactics.

Even as the dust from the 2004 presidential election and the Orange Revolution settles, political actors in Ukraine are looking toward the 2006 parliamentary elections, barely a year away. Whether or not the constitutional changes stick, parliament is likely to be a more powerful force under Yushchenko than it was under Kuchma, simply because Yushchenko is expected to

have and to use less of the means of machine politics to control it. If the constitutional changes remain in effect, then this election will be crucial in determining the country’s future.

Several dynamics are worth watching. First, to what extent will the Kuchma/Yanukovych forces reorganize themselves to make a strong run in the elections? Currently, they seem to be a spent force, and even at the height of their power they performed poorly in 2002. However, they have immense resources at their disposal, and Yushchenko’s rise may have galvanized and energized their base in eastern Ukraine.

The early indications are that the parliament is no more effective under Yushchenko than it was under Kuchma. A series of key measures that would allow Ukraine to join the WTO failed to pass in July 2005. Yushchenko was widely viewed as having bungled the process. He was not even able to secure the votes of all the members of his own parliamentary faction. This series of debates was enlivened by a return to the Ukrainian tradition of fisticuffs on the floor of parliament.

The standard interpretation of these events is that they demonstrate the importance of the 2006 parliamentary elections, because these could give Yushchenko a more reliable majority. However, as the defection of members of Yushchenko’s own party indicates, there is a basic problem in coalition cohesiveness. If Yushchenko wins more seats but the members still defect, he will have difficulty passing legislation.

***Will the Anti-Kuchma Coalition Remain Intact?*** The coalition of forces that opposed Kuchma and Yanukovych was united only by the goal of getting rid of Kuchma. Even on that they were unable to come together until fairly recently. Yushchenko was hesitant about allying himself with Prime Minister Yulia Tymoshenko and socialist leader Oleksandr Moroz. Many of Yushchenko’s allies on the right are even more leery of Tymoshenko.

Most interesting will be the roles of Tymoshenko and Moroz. Both are much more leftist in orientation than Yushchenko, and they favored much more confrontational policies toward Kuchma. Moroz in particular seems an unlikely ally now that Kuchma has been defeated. Throughout the 1990s, he was viewed by reformers as more a part of the problem than a part of the solution, using his position as speaker of the 1994–98 parliament to block many efforts at reform. Moreover, he has been a leader of the effort to shift Ukraine to a parliamentary system, which has been opposed by Yushchenko.

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There is no good reason, therefore, to assume that the coalition that elected Yushchenko and drew so many people into the streets will be able to remain a united political force.<sup>1</sup> The proportional election system, with its 3 percent threshold, gives relatively small political parties some reason to believe that they can enter parliament individually. Leaders of small parties will be tempted to maximize their political leverage by bringing them into parliament separately rather than negotiating a spot on a single list like Yushchenko's Our Ukraine coalition list, which did so well in 2002. In sum, both genuine disagreements about policy and political maneuvering may make coalition maintenance a central preoccupation for Yushchenko. For that reason, he will have strong incentives to use the powers of the presidency to cajole potential supporters into line.

***Will Machine Politics Continue?*** While the Orange Revolution was inspiring and miraculous to some, Viktor Yushchenko will probably find that throwing out the falsified election results was the easy part, as compared to governing the country.<sup>2</sup> He will face immense pressure to use the levers of power controlled in the executive branch to accomplish several urgent tasks, including passing legislation, undoing Kuchma's misdeeds, and winning a favorable majority in the 2006 parliamentary elections.

Yushchenko is not expected to try to re-establish the control over the media once held by Kuchma and his allies. It would be impossible to do this in any event. One wonders, however, how far he will go, and what tactics he will use, to undo some of the ownership changes that took place under Kuchma. In particular, there will be a strong incentive to put pressure on media outlets controlled by Viktor Medvedchuk, the last head of Kuchma's Presidential Administration, especially if they continue to be used for political purposes, and even more so as the parliamentary elections approach. What tactics will be used? There may be sound legal reasons to question the ownership or other aspects of some of these entities, but Kuchma generally employed legal challenges to harass the media. It may be impossible to distinguish a "legal" proceeding against one of these firms from a "political" one.

The same issue is even more relevant in relation to the many commercial assets distributed to allies of Kuchma during his decade as president. There are three reasons why Yushchenko might pursue a redistribution. The first, and most legitimate, is justice—if the assets were privatized illegally or unfairly in the first place, justice might require reprivatization.

A second incentive for redistribution is to curb the economic power of Yushchenko's political rivals. Since economic power is so closely linked to political power in Ukraine (as in most countries), the forces that supported Kuchma continue to be powerful, and can use their economic resources to mount a powerful political challenge to reform efforts in the 2006 parliamentary elections and beyond.

A third incentive for redistribution is the expectation by Yushchenko's many supporters that they will be rewarded financially for having supported him. This is not just a question of rewarding those who supported him in the past. It will also be crucial to maintain their support for the 2006 parliamentary election and for Yushchenko's re-election bid in 2009.

Thus far, Yushchenko's team has vacillated on the question of redistributing property illegally privatized under Kuchma. His team is clearly divided between advocates of a far-reaching redistribution (the number of 3,000 enterprises is often mentioned) and those who only want to go after a small number of the most egregious cases.

It may be difficult to distinguish between legitimate redistribution of resources that were illegally acquired and a politically motivated drive to use the levers of government to build support for Yushchenko's party. However, the pattern of redistribution will provide much evidence. Will those who opposed Yushchenko have fair access to new privatizations? Will Yushchenko's supporters have their past business practices and acquisitions scrutinized as closely as his opponents?

The point here is neither to impugn Yushchenko's integrity nor to imply that all politicians are the same. The point, rather, is to assert that the Orange Revolution does not mean the end of politics in Ukraine. It does not mean an end to the competition for power, to the links between economic influence and political influence or to the desire of many economic actors—not all of them "evil"—to influence government policy in ways that benefit them economically. Lastly, it does not mean an end to the incentives that induce even the most publicly minded officials to use government resources to ensure and expand their hold on power.

One area in which the patterns of politics will be contested most severely is in the state and local government apparatuses. Kuchma used his ability to appoint lower-level officials in the regions to gather large amounts of votes. Yushchenko will need, at a minimum, to remove whatever latent pro-Kuchma bias exists in the lower levels of the state administration. Beyond that, he will have a strong incentive to use personnel policy to build support for himself and his party.

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## Institutional Change: Assessing the 2004 Reforms

The changes adopted in December 2004, combined with those made earlier in the year, mean that Ukraine's political institutions will undergo significant modification in the next year, as both new constitutional arrangements and a new election law come into effect. The constitutional changes will take effect in January 2006. The changes to the electoral law will govern the parliamentary elections scheduled for March 2006. The key question is how they will influence the practice of politics. This section summarizes the changes and speculates on their likely effects.

***The Shift to a Presidential-Parliamentary System.*** The changes reflect a compromise between a very strong presidency and a shift to a fully parliamentary system. Under the provisions of the 1996 constitution, the prime minister was appointed by the president. The prime minister then had to get the president's approval for ministerial appointments, and ministers could be dismissed by the president. The president, therefore, had effective control over the prime minister and the Council of Ministers.

The new system takes some power from the president and gives it to parliament. Under the new amendments, parliament will have the power to approve most—but not all—of the ministers, and to dismiss them individually or collectively. However, several key posts will continue to be appointed by the president: the ministers of defense and foreign affairs, the heads of the Security Service, the National Security and Defense Council, and the National Bank, and the procurator general. Thus, the ministers will serve at the pleasure of both the president and parliament. The term of office of the cabinet of ministers has been changed to coincide with the parliamentary rather than the presidential elections. When a new parliament is elected, a new cabinet will be named, strengthening the influence of parliament over the cabinet.

Although the president will formally retain the power to nominate the prime minister, new provisions will put the prime minister under parliamentary control. The new amendments stipulate that parliament will establish a majority within sixty days of a new sitting, and that the president will consult with the majority in naming a new prime minister. The prevailing interpretation is that the parliamentary majority will, in practice, name the prime minister. In that respect, the system will look like a parliamentary system.

The virtue of these changes is that they will undermine the constitutional basis for hyper-presidential rule. Allowing the prime minister to appoint most of the ministers will strengthen the prime minister relative to the president. Allowing parliament to dismiss individual ministers without throwing out the entire cabinet and forcing a crisis will strengthen parliament's control. This will make it harder for the president to use the government to harass political adversaries.

The new changes, however, seem to be a case of "back to the future." They will create a system somewhat similar to the one that prevailed in Ukraine from 1991 to 1995, when parliament and president were engaged in a constant struggle for control of the government.

In that era, the prime minister nominally headed the cabinet of ministers, but parliament and president shared control over the prime minister and the government. Parliament and president fought to control the prime minister, while the prime minister struggled for independence from both. The result, through much of 1991–95, was immobility. The response was the 1996 constitution, which gave immense power to the presidency.

The problem with this arrangement is that it created overlapping powers rather than establishing a system of checks and balances and a separation of powers. At this stage, it is impossible to predict how these changes will work in practice. However, it appears that system will be prone to competition over the selection of ministers. Moreover, with the powers over actual policy unclear, one can envision a constant struggle between parliament and president to control the actual behavior of the government.

How well (or poorly) the system functions will be determined by who controls the various institutions and how inclined they are to collaborate. If parliament and the presidency are controlled by the same forces, and stay united, the prime minister and the ministers might work closely with the president. Already there is evidence that pro-reformist forces in Ukraine have difficulty remaining united. If the presidency and parliament are held by opposing forces, the danger of immobility will only increase.

***Adoption of a Proportional Electoral Law.*** Early in 2004, well before the Orange Revolution, Ukraine enacted a fully proportional election law to replace the "mixed" system used in the 1998 and 2002 parliamentary elections. The new proportional system will increase parliament's ability to function effectively and help to strengthen political parties. These two developments

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will make parliament a more effective counterweight to the presidency.

There is one significant problem with the new system, however—it lowers the threshold for entering parliament from 4 percent to 3 percent. This gives Ukraine one of the lowest proportional-representation thresholds in the world. The lower threshold will almost certainly reduce the incentives for parties to merge and thus, over time, will lead to a larger number of parties—especially small parties—in parliament. This may not occur immediately, but the relationship between the threshold and the number of parties in parliament is clear.

***The “Imperative Mandate.”*** The “imperative mandate” is a rule that requires members of parliament to give up their seats if they leave the party on whose list they were elected. Ukraine’s adoption of the imperative mandate has not received much attention, but it will have far-reaching effects for the functioning of parties and parliament. This rule, which exists in several other countries, is intended to overcome the tendency toward party fragmentation that has plagued the Ukrainian parliament since independence. When deputies were free to abandon their parties without losing their seats, party discipline was minimal. Moreover, the incentives for various forces to bribe or blackmail deputies to defect were considerable. Corruption in parliament was endemic, and the resident routinely coerced deputies in various ways.

However, it is uncertain how the imperative mandate will function in practice. A member who leaves a party will lose his or her seat. But can a party expel members and take their seats away against their will? Apparently this will not be permitted. But without such a possibility, deputies might be able to routinely vote against their party as long as they do not actually quit.<sup>3</sup> Thus, the effect on party discipline may not be as strong as anticipated. If that is the case, then only the threat to leave defectors off the party list at the next election will ensure party discipline. Until now, party discipline has been a weak link in Ukrainian politics, because there have always been new parties on whose lists defectors could find a place.

The imperative mandate may make party leaders too powerful. Given the weakness of Ukraine’s party organizations, it is not clear how or to whom party leaders would be accountable. If party leaders are able to expel deputies, then members of parliament will have little independent influence. Nor is it clear how the members of a political party would control their leaders in such a system. Thus, there is a need to build

more democratic and mass-based party organizations (as discussed below).

## **An Agenda for Further Reform**

These three institutional changes address, in one way or another, three of Ukraine’s major institutional problems—the power of the president has been reduced, parliament has been given the ability to play a stronger role, and the tendency for the fragmentation of parties within parliament has been reduced. However, formal rules have not always effectively or predictably shaped political behavior in Ukraine. Only time will tell how these reforms influence politics in practice.

Moreover, these institutional changes address only a few major institutional shortcomings. Further changes will be needed if Ukraine is truly to undergo a revolution, and become a normal, or consolidated, liberal democracy. The changes adopted in 2004 make it less likely that a future Kuchma could subvert the system into authoritarianism. The possibility remains, however, because many of the factors that empowered Kuchma remain. Even if the changes made in 2004 have reduced the chance of authoritarianism, it does not necessarily follow that they will lead to an effective liberal democracy. Stalemate is a real possibility.

Further reform is needed, both in terms of specific policies and in terms of broad political changes. This final section elaborates an agenda for further political reform in Ukraine. While not definitive or complete, it should suffice to highlight how much remains to be done to transform Ukraine into a functioning liberal democracy.<sup>4</sup>

***Mass-Based Parties.*** One of the most stunning developments in late 2004 was the apparent emergence of “civil society” in Ukraine. Many Ukrainians, and most observers outside Ukraine, believed that Ukraine’s people could not be mobilized sufficiently to overthrow the Kuchma regime. Indeed, before November 2004, one often heard the claim that “Ukraine is not Georgia,” indicating that Ukrainians would not rebel the way Georgians had in November 2003.

Instead, hundreds of thousands of Ukrainians poured into the streets of Kyiv and other cities. The numbers involved had three important effects. First, they created a sense of legitimacy that earlier, smaller protests had lacked. No one could claim, as Kuchma had in response to earlier protests, that the protesters were an extremist minority who ought to be ignored. Second, the large number of protesters made repression an implausible

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if not impossible strategy. Forcing the protesters out of downtown Kyiv without major bloodshed would have been very difficult, and resorting to violence might not have won the contest. Third, the huge number of protesters created an implicit threat that if Kuchma and Yanukovich did not yield, government buildings might be overrun by force. Central questions for the future are whether this Ukrainian society will continue to play an active role, and if so, how it will be organized.

The question now is whether Ukraine's political parties can connect with the newly mobilized public to become mass-based political parties. As noted above, Ukraine's political parties are, in general, tightly controlled by their leaders. The leaders determine the party's course. There is not much chance for rank-and-file members to influence the composition of the leadership, the party platform, or the electoral lists. As a result, political parties have served as mechanisms by which elites contest elections, but not to aggregate and express mass-based societal interests.

More important, Ukraine's political parties still tend to be based on a single individual rather than on an ideology or platform. This is especially true of the two parties that made up the core of the Orange Revolution—the Our Ukraine bloc of Viktor Yushchenko and the “Yulia Tymoshenko bloc.” The reliance of these parties on single individuals will make it hard for them to be sustained if those individuals falter, retire, or just die. Ironically, the party that has the largest mass base is also the one that is most retrograde politically: the communists.

In order for parties to be strengthened *as parties*, and not just as vehicles for powerful elites, they will need to become more rooted in their rank-and-file memberships. It is not clear whether such changes might arise through decisions by elites or through a rebellion by party members against their leaders. When parties have larger bases among the public, the costs to elites of defecting from one party and starting a new one will increase. Defection from a party will mean losing an established organizational and voting base.

Strong, mass-based parties will also help ameliorate some of the dangers of the imperative mandate. The imperative mandate threatens to make party members—at least at the parliamentary level—completely dependent on party leaders, who thus will have a great deal of power. If party leaders could be checked from below by an active rank-and-file, this danger would be reduced.

At present Ukraine's parties do not seem willing or able to adopt the measures needed to recruit a mass fol-

lowing. Rather than being built from the bottom up, almost all of the parties are organized from the top down. National-level party meetings are often held before local-level meetings. As a result, “marching orders” go from the national to the local organizations rather than vice versa. Similarly, the national organization has more control over local appointments than the local party organizations have over national appointments.

**Campaign Finance Reform.** Despite the enormous sums of money spent on the 2004 presidential campaign and the 2002 parliamentary elections, campaign finance reform is rarely discussed in Ukraine or in external analyses of Ukraine. Perhaps there would be no point in such a discussion, since whatever rules are adopted will very likely be universally ignored. Limiting the influence of money in elections is very difficult. As the U.S. case indicates, shrewd people will find their way around nearly any mechanism that limits the use of money in political campaigns.

However, a campaign finance system does not have to work perfectly in order to significantly influence behavior. The most important agenda item for Ukraine is to reduce the ability of wealthy individuals to single-handedly (or in small groups) control an entire political party. The goal would be to force politicians and party leaders to pursue a broader range of funding sources. This would be another step toward broadening the popular basis of party support. An additional aim would be to level the playing field for candidates of all stripes. Lastly, campaign finance reform might reduce the incentives for government to extort contributions from businesses and wealthy individuals.

**Election of Regional Governors and Local Administration Heads.** Ukraine's unitary state structure facilitated Kuchma's turning the state apparatus into a massive machine to amass votes and attack political adversaries. Kuchma controlled the regional governments by appointing their governors, and the governors in turn controlled smaller units of administration. The entire government, from Kyiv down to the local level, became a patronage machine collecting votes for Kuchma and Yanukovich.

If regional leaders (governors) were elected, they would have their own bases of power. This would make them independent forces rather than appendages of the presidency. Some of them might support the president, but others would not, and the president would not be able to fire them. This would create a built-in check on presidential power. Giving independent power to regional governors was seen as an important check on the

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national government in constructing the German state after World War II and is also inherent in the U.S. system. Ukraine would not have to fully embrace federalism to have its governors regionally elected.

In electing governors, Ukraine would be moving in the opposite direction from the path Russia took in 2004. President Vladimir Putin was able to obtain constitutional revisions that allow him to name Russia's governors. Before this change, Russia's governors exercised a great deal of autonomy and were able to check many of the president's ambitions. Almost every observer saw this as a major consolidation of Putin's power and as a threat to democracy. But this system has been present in Ukraine all along.

Electing governors might have the negative consequence of allowing corrupt but locally popular governors to bypass their accountability to the central government. In Russia, Putin made just such an argument in support of his plan to make the governors centrally appointed. However, the best cure for corrupt local officials is effective enforcement of anti-corruption laws, not the consolidation of presidential power.

Viktor Yushchenko has opposed the election of governors, for obvious reasons. Like any other leader, he is loath to take steps that will lessen his own influence. One of his first steps as president was to replace Kuchma's governors with individuals of his own choosing. While there can be no doubt that replacing Kuchma's governors was necessary, this weapon poses dangers for the future. A would-be authoritarian will someday still be able to use the "vertical power structure" to consolidate his or her rule.

**Civil Service System.** The use of government patronage to collect votes was an important component of Kuchma's control mechanism, and it is prevalent in other neo-authoritarian states in the region. It can only occur in a situation where a superior can credibly threaten to fire workers for political reasons. There is an easy remedy for this problem: a functioning civil service system for the majority of government jobs.<sup>5</sup> In such a system, which is present in one form or another in nearly every liberal democracy, workers can only be fired for cause. While such a system presents its own difficulties, it is the only known way to eliminate the widespread use of patronage to sway elections. In fact, the need to combat patronage politics was a major reason for the adoption of civil service laws in the United States and other countries.

**Measures to Combat Corruption.** Official corruption is a serious problem in Ukraine. It undermines the economy

and the building of liberal democracy in countless ways. In addition to its economic effects, corruption facilitates the concentration of power in the executive, enabling him to use selective law enforcement to coerce actors throughout the system and providing him with an illicit revenue stream. Kuchma used corruption as a strategy for control, and the potential remains for others to do so.

Combating corruption is not simply a matter of writing new rules. In some cases, there are genuine economic barriers to ending corruption. For example, it may

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be difficult to get teachers to stop accepting petty bribes from students if their salaries are too meager to live on. In this respect, Yushchenko's effort to increase the salaries of state employees is an important step, even if it strains the budget.

**Simplification of the Tax Code.** One way to narrow the scope for executive malfeasance is to simplify the tax code, something Yushchenko announced as a priority early in his presidency. A complex tax code is not merely economically inefficient. It also provides opportunities for tax inspectors to take bribes. More important, however, it opens the door wide to selective law enforcement as a means of ensuring support for the executive. Under Kuchma, tax-enforcement actions against the business interests of his opponents were routine. Tax enforcement was also used to harass independent media outlets. The threat of such actions was used to control members of parliament and to keep Kuchma's supporters from defecting. This was facilitated by unpredictable changes in the tax code, some of which had a retroactive effect.<sup>6</sup>

**Ability to Appeal Administrative Penalties.** Selective law enforcement was at the heart of Kuchma's strategy for destroying opposing political forces. This weapon remains available to future leaders, should they seek to use it. Administrative enforcement is so powerful in Ukraine because it quickly bankrupts the firms involved, regardless of the eventual disposition of the case. Two aspects of the system facilitate the use of administrative enforcement as a weapon. First, executive branch officials are allowed to levy a fine or even close a business without any preliminary judicial hearing. Second,

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penalties are administered immediately even if a charge is appealed. A court may subsequently rule for the defendant, but by then the defendant's business may already be destroyed. Thus, the right to appeal was nearly worthless, and the government had the *de facto* power to shut down any business it wanted to. Business owners were easily cowed into supporting Kuchma. It would be relatively easy to change the procedures by which administrative actions can be brought and appealed, but it is not clear whether this is high on anyone's priority list in Ukraine right now.

**Judicial Independence.** Ukraine has the statutory requirements in place for an independent judiciary, but in practice judges have been tightly controlled by the Presidential Administration. Judicial independence was addressed in the constitutional revisions adopted in December 2004 because of the widely perceived urgency of the issue. The appointment process for the Constitutional Court was modified. Previously, the president, parliament, and the Union of Judges each appointed six members. Kuchma controlled the Union of Judges, however, and thus was able to appoint a majority of the judges. In the new system, president and parliament will each name nine judges.

The problem of judicial independence pertains more to norms than to rules. The norm under the Soviet system, and the approach that persists in independent Ukraine, was that the judicial apparatus is part of a unified state structure and an instrument of government policy. There is no notion of the judiciary serving as a check on the other branches of government.

Ukraine needs a judiciary that sees itself, and is seen by society, as an independent branch of government. The Orange Revolution marked important progress in this regard. In December 2004, it was widely anticipated that both sides in the election dispute would accept the ruling of the Constitutional Court. The parties and the public at large accepted the independent role of the judiciary. Equally important, the judges behaved as though they were an independent political force, owing allegiance to the law, and not to either side in the dispute. This was an important attitudinal change. The question now is whether the norm of judicial independence will trickle down through the system, despite considerable incentives for actors on all sides to use the judiciary as a political weapon.

Establishing a judiciary that is independent, especially from the executive branch, and concerned above all with the rule of law, will conflict with the short-term political goal of speedily punishing those who commit-

ted crimes under the Kuchma regime or participated in rigged privatizations. If all these cases are given full due process, some guilty parties may escape responsibility, and all of the cases may drag on for a long time. This will increase pressure for the "right" results to be quickly implemented regardless of the process.

## Conclusion

In considering Ukrainian politics after the Orange Revolution, it is necessary to determine what has really changed and what has not. While the reforms are significant, they could be misunderstood. The most significant change, the ejection of Kuchma's group from power, has far-reaching implications. Another significant development, the discovery by Ukrainians of their own civil society, is likely to have profound effects in the future, although what they may be is still uncertain.

Institutionally, the changes in Ukraine have been significant but not revolutionary. Ukraine is moving from a hyper-presidential form of government to a parliamentary-presidential system. It remains to be seen how this system will work in practice. In the long run, however, the change will have a powerful influence on Ukrainian politics, and on the perceived success or failure of the Orange Revolution. If the ability of a strong president to accumulate authoritarian power is permanently restrained, it will not be because Ukraine has a more honest president in the short term, but because the fundamental basis for the distribution of power will have changed.

In foreign policy, which was not discussed in this article, there is also an opening for revolutionary change.<sup>7</sup> Ukraine now has the potential to integrate in far-reaching ways with Western Europe and with the world more broadly. While EU membership is as unlikely as ever, some less-than-total integration with the EU seems attainable. Membership in NATO, which would fundamentally realign Ukraine's international position, is also now imaginable.

However, for these goals to be obtained, Ukraine's domestic politics (and economy) must be further transformed. Throughout the past decade, the Western powers have made it clear that Ukraine's integration with the West depends not simply on its foreign policy orientation, but on its domestic political and economic order. By all accounts, its domestic order is still on shaky ground. The failure of parliament to pass legislation that would pave the way to WTO membership is just one example.

The danger in the short term is not authoritarianism

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but stalemate. It was stalemate in the early 1990s that created the predisposition toward hyper-presidentialism in the late 1990s. If a solid pro-reform coalition prevails in the 2006 parliamentary elections, the path to further reform may be established. However, the danger remains that parliament and president will fall to squabbling over control of the government.

Ukrainians may be disappointed that the miraculous events of late 2004 were not by themselves sufficient to create a liberal democracy or to bring their country finally and unquestionably into the European mainstream. Nonetheless, the Orange Revolution and its aftermath laid an important foundation. It is important for both Ukrainians and their supporters in the West to recognize this.

### Notes

1. See Taras Kuzio, "Movement Toward Unification of Pro-Yushchenko Camp Stalls," *Eurasia Daily Monitor* (February 16, 2005).
2. The characterization of Ukraine under Kuchma as "machine poli-

tics" is discussed in Paul D'Anieri, "The Last Hurrah: The 2004 Ukrainian Presidential Elections and the Limits of Machine Politics," *Communist and Post-Communist Studies* 38, no. 2 (June 2005): 231–49.

3. Ihor Koliushko and Viktor Tymoshyk, "A vy chytali proyekt 4180? Krytychna otsinka politychnoi reformy" (Have You Read Bill 4180? A Critical Assessment of Ukrainian Political Reform), *Ukrayinska pravda* (December 15, 2004).

4. A broad agenda for reform in Ukraine was elaborated by the Blue Ribbon Commission for Ukraine, "Proposals for the President: A New Wave of Reform," 2005 ([www.carnegieendowment.org/files/BRCReport121204Eng2.pdf](http://www.carnegieendowment.org/files/BRCReport121204Eng2.pdf)).

5. Main Department of Civil Service of Ukraine, "Main Approaches to Civil Service Reform in Ukraine," January 2005, available at [www.guds.gov.ua/document/39132/Buklett\\_GUDSU\\_new\\_back\\_engl\\_red.pdf](http://www.guds.gov.ua/document/39132/Buklett_GUDSU_new_back_engl_red.pdf).

6. "Barriers to Investment in Ukraine" (Kyiv, European Business Association, 2004), p. 9, available at [www.eba.com.ua/files/Investment\\_paper/Barriers\\_to\\_Investment\\_in\\_Ukraine\\_Jan\\_2005\\_Eng\\_final.pdf](http://www.eba.com.ua/files/Investment_paper/Barriers_to_Investment_in_Ukraine_Jan_2005_Eng_final.pdf).

7. See Taras Kuzio, "Neither East Nor West: Ukraine's Security Policy Under Kuchma," in this issue of *Problems of Post-Communism*.

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