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6 Ukrainian Constitutional Politics: Neopatrimonialism, Rent-seeking, and Regime Change

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The institutional environment—the set of political interaction rules, established relations, and recurrent practices—is of key importance for the political process. Institutions create incentives for political players, shape how they organize, and influence the "price" of any political action (by reducing or driving up the associated costs). The most fundamental formal institution is the constitution, supported by constitutional law.

The post-Soviet states tend to be characterized by weak constitutions, subject to frequent changes and a continuing process of constitutional engineering and experimentation. Constitutions and constitutional law arise to reflect specific constellations of political forces as political forces strike deals on the distribution of power and patronage. Constitutions and constitutional laws therefore change according to the political climate and the factional interests of certain political players and groups. Such fluid constitutions thus reinforce political arrangements only temporarily. The balance is disturbed when, for some actors, the benefits from changing the rules of the game begin to exceed the costs required for such changes, at which point they begin to manipulate the constitution and laws. Constitutional politics, therefore, is subject to stops, turns, and cycles driven by the current political agendas of those who hold power.

Ukraine is unique among post-Soviet states, however, in its pattern of constitutional dynamics. First, in Ukraine, all attempts to build a superpresidential regime that concentrates formal and informal power in an unified center of authority have failed. All such efforts have ended in political crises that resulted

in a radical regime change and brought to power new political groups. This was the case in 1994, 2004, and 2014. Second, constitutional policy in Ukraine is an important and supple element in the bargaining among political elites about the distribution of power and the rules guiding the functioning of the political system. The dominant Ukrainian actors use constitutional policy as an instrument to expand and strengthen their political influence and also as a method to codify compromise agreements (political pacts) for stabilizing their dominance.

What are the sources of these unique dynamics? To a significant degree they result from the "neopatrimonial" structure of the political and economic systems and the prevalence of informal institutions (institutions that are not written down or considered official) over formal institutions (institutions that are officially codified and explicitly recognized) (Helmke and Levitsky 2006). A core feature of "patrimonialism" is that ruling groups regard society as their private domain and think that their public offices are legitimate means for them to enrich themselves. In such systems, the national leader generally controls the political and economic life of the country, and for others in society, personal "client" relationships with the leader play a crucial role in amassing personal wealth, or in the rise and decline of members of the political elite. Accordingly, patron-client bonds, rather than rational-legal relations, play the key role in public sphere power relations, since they regulate access by neopatrimonial players to various resources on the basis of personal loyalty and capital exchanges. What distinguishes "neopatrimonialism" from simple "patrimonialism" (an older concept) is a symbiosis of patrimonial and modern rational-bureaucratic rule, in which the formal institutions of political democracy (for example, the parliament, a multiparty system, and electoral competition) function but yield and adapt to the larger patrimonial logic as to how the political system operates as a whole.

In contrast to Latin America and southern and East Central Europe, where democratization took place after a process of nation-building and rational-legal state-building, initial democratization efforts in the post-Soviet states (with the exception of the Baltic region) preceded both nation-building and rational-legal state-building (Kuzio 2001; Grzymala-Busse and Jones Luong 2002; Ekiert and Hanson 2003; Bunce 2003; Kopstein 2003). In this context, neopatrimonial modes of ruler and state-society relations compensated for the unfinished process of modern state-building and nation-building. According to Shmuel Eisenstadt, postcolonial rulers in newly independent states reintroduce

patrimonial methods of political relations in the face of increasing problems with state-building and national consolidation during the postindependence period (Eisenstadt 1973, 7–30, 50–68). Applying the neopatrimonial framework to our analysis emphasizes the informal features of Ukrainian constitutional politics and places them in the wider political and historical context of the different trajectories of transition to modernity that have been well studied in western Europe, Asia, Africa, and Latin America.

Why and how have Ukraine's constitutions changed? What are the forces driving these changes? What explains the nature of Ukrainian constitutional policy? Which constitutional configurations facilitate the development of democracy in Ukraine, and which lead to the development of authoritarianism and political crises? What are the prospects for constitutional reforms in Ukraine after the Euromaidan Revolution of 2013–14, and what recommendations can we give Ukrainian reformers? The following pages address these questions.

Patronal Presidents versus Rent-seeking Entrepreneurs

The key players in Ukrainian constitutional policy are the *patronal presidents* and *rent-seeking entrepreneurs*, who support contradictory political-constitutional strategies to strengthen their particular formal and informal influence. Compromise among them (the zone of their mutual interests) is codified in formal constitutional agreements, the main content of which defines the principles for the informal division of resources.

Patronal presidentialism, by definition, involves a president elected by a nationwide popular vote who wields wide formal powers derived from constitutions and informal powers based on patron-client relations and the institutionalization of the link connecting political power with control over economic assets (Hale 2005a, 2006a). Standing at the center of the political system and serving as a focal point for the expectations and orientations of political elites in the post-Soviet states, patronal presidents wield considerable powers but are forced (at least formally) to legitimize their claims to power in the course of periodic nationwide popular elections. Such presidents draw support from their personal patron-client networks, which are composed primarily of economic and regional elites. These networks help the president implement decisions and serve as a "reelection machine"—that is, the elites provide financial and informational support and mobilize votes in the regions in exchange for protection

of their property and wide discretion in implementing policies at the regional level. The presidential monopoly on the law enforcement and fiscal sectors of the state, particularly personnel policies and privatization management, ensures that this deal remains in place.

Patronal presidents can maintain control over the party system through the establishment of a dominant party or the creation of a parliamentary majority and local authorities loyal to the president by means of bureaucratic patronage and individual co-option. Similarly, the president must retain wide powers in the executive branch to ensure that the prime minister either remains loyal or has little ability to act independently. He must control coercive and fiscal powers and retain influence over the judicial branch as a basis for monopolizing property rights and protecting the rents of the big political players. Likewise, he must have a system in place to control and punish individuals who breach the established balance, and maintain an ability to fight the opposition (Darden 2008).

In addition to the patronal presidency, the post-Soviet institutional environment contributed to the growth of a new kind of political actor—*rent-seeking entrepreneurs*. The key features of these actors include the neopatrimonial privatization of public offices and associated rents and privileges, devotion to partial reforms (Hellman 1998), and diversification of political risks. Rent-seeking entrepreneurs participate in the state-building process mostly as a potential opposition to the centralizing tendencies of patronal presidentialism. In other words, despite the fact that they tend to participate in the patron-client network of the president, at least theoretically they represent forces that are able to organize and support another polity-building project—parliamentarization, which means power-sharing among party players and their mutual containment. In fact, rent-seeking entrepreneurs encounter the same problems and challenges that various elite groups (aristocracy, oligarchs) historically ran into during the state-building process when they opposed the centralizing and redistributive initiatives of polity leaders (tyrants, absolutist monarchs) (Tilly 1992, 1975; Spruyt 1994; Ertman 1997).

Understanding Ukrainian Constitutional Dynamics

The main focus of Ukrainian constitutional policy is the battle between patronal presidents and their competitors among the rent-seeking entrepreneurs for control over the central office of the constitutional system—the office of

president, which sits atop the patronage system pyramid (Hale 2011). Ukraine's political regimes are characterized by a concentration of power in the hands of an individual ruler who maintains control mainly by distributing patronage to a network of various rent-seeking actors such as political entrepreneurs, economic magnates, regional barons, loyal elites, particular societal groups, cronies, and relatives. The neopatrimonial center encourages popular political participation through joining patron-client networks, different corporatist arrangements, or a formal "party of power." Within the "party of power," the core positions belong to the "presidential clan," which holds the key position in the polity and controls profitable industries. The binding element within this clan is a system of personal ties, centered on the president and based primarily on regional or ethnic unity, as well as on present-day rent-seeking interests. The neopatrimonial ruler completely dominates and controls the political and administrative elite around him. The formal constitutions define to what extent the neopatrimonial system is centralized or how much decentralization is possible and what kind of limits can be placed on the president.

Essentially, Ukrainian politics follows the logic of the neopatrimonial political process: it is not a struggle of political alternatives in the context of parliamentary contestation but a struggle carried out by different factions of rent-seeking entrepreneurs to monopolize the main segments of patron-client networks. The neopatrimonial elite in Ukraine is divided, above all, over who has access to patronage and the ruler-controlled clientelistic distribution of "fiefs and benefices." Ukrainian party/elite cleavages may be defined according to who is inside and who is outside the pork-barrel and spoils system (Bratton and van de Walle 1997; Snyder and Mahoney 1999).

The rent-seeking entrepreneurs who emerged in the wake of postcommunist reforms usually do not aspire to engage in autonomous political activity beyond the patronage network set up by the state ruler, rarely support alternative political forces, and, generally, do not show interest in the democratic transformation of the political sphere whereby democratic rules would govern political and economic competition. However, they do maneuver between the costs and benefits of retaining patronal presidentialism, through which they can lobby their particular interests via a single patron-client network, versus parliamentarization, a system that requires them to lobby their interests among several divided patron-client networks.

Accordingly, Ukrainian constitutional policy can be described as a battle between patronal presidents, who fight against attempts to limit their power by

rent-seeking entrepreneurs, who tend to support projects to switch to a parliamentary system and increase the role of parliamentary parties in determining the composition of the cabinet of ministers, appointing the heads of state corporations, and naming regional leaders. In the Ukrainian context, parliamentarianism means the creation of a power-sharing system with divided executive rule and the cohabitation of competing patron-client networks and party holdings. Entrepreneurs try to achieve these goals through the support of opposition parties, the establishment of their own party substitutes (Hale 2005b) in the form of party holdings of financial and industrial groups or regional political machines, or the mobilization of grass-root protests, which have proven, as the color revolutions showed, to be a key resource. Successful opposition to the president requires the cooperation of a wide counterelite coalition, whose formation means overcoming a variety of conflicting interests and ideologies, and solving the collective action problem.

In this battle, Ukrainian presidents have employed three strategies:

- Building a large presidential party, capable of winning, at a minimum, a relative majority of seats in the parliament by deploying the national and local bureaucracies and representatives of regional patron-client networks;
- Strongly controlling the regional elite, much of which views their provinces (*oblasti*) as patrimonial domains (*votchyna*), through appointing regional governors and district (*raion*) heads, as well as the chiefs of local law enforcement, the secret service, judiciary, and prosecutors' offices.
- Limiting the influence of powerful rent-seeking entrepreneurs (oligarchs) through blackmail politics (Darden 2001) on the basis of their control over central coercion and fiscal state bodies.

As a rule, attempts to widen the presidential base of support have led to short-term stabilizations of the regime and expanded the influence of the patronal presidents by co-opting many influential competitors into the party of power (Kuchma 1997–99, 2002–4; Yushchenko 2005–6; Yanukovych 2010–12). Efforts to strengthen the influence of the presidential hierarchy rely on successfully incorporating influential representatives of local clans into the president's orbit, both formal (propresidential party) and informal (co-option into patron-client networks through appointments to influential posts). Such outreach to local clans strengthens both the vertical penetration of the presidential hierarchy into the regions and its horizontal expansion by including representatives of

local patron-client networks from areas beyond the core regions of the president's base support.

In Ukraine, efforts to build a "party of power" around the president have, as a rule, led only to the short-term consolidation of the propresidential forces and only whetted the appetite of the rent-seeking entrepreneurs, who preferred to unite in battle against the president, mobilizing their supporters in influential regional bases and resolving the collective action problem. This was seen in the standoff between the president and parliament during the 1994–95 crisis, the 2004 Orange Revolution, and the 2013–14 Euromaidan. To prevent antipresidential consolidation among rent-seeking entrepreneurs, Ukrainian presidents have often had to compromise and appoint representatives of competing patron-client networks as prime ministers. Thus Leonid Kuchma tapped Pavlo Lazarenko in 1996–97, Leonid Kuchma appointed Viktor Yushchenko for 1999–2001, and Viktor Yushchenko backed Viktor Yanukovych to serve in 2006–7.

Setting the Rules of Game: The 1996 Constitution and Its Consequences

In contrast to its neighbors, Ukraine suffered through a drawn-out constitution-writing process because of a stalemate that prevailed among various elite political groups, each of which lacked the necessary resources and influence to strengthen and formalize their institutional position in the constitutional rules of the game. Because of this stalemate, with no strong institutional player or dominant political/economic elite group, the adoption of the Constitution in 1996 was preceded by a series of political crises. The chain of crises and subsequent agreements reflected efforts by the various players to overcome the stalemate by changing the political landscape for their own benefit and installing new constitutional arrangements that would guarantee the gains that they had made. Thus, the confrontation between President Leonid Kravchuk, Prime Minister Leonid Kuchma, and the parliament (Verkhovna Rada) in 1993 led to a compromise between the three parties: calling early parliamentary and presidential elections in 1994. The crisis between Kuchma and the Verkhovna Rada of 1994–95 was resolved by adopting a constitutional agreement that was valid for one year. When that agreement expired on June 28, 1996, the Verkhovna Rada adopted a new constitution with considerable presidential powers but also featuring a prime minister as the operational head of government (a system known widely as "semipresidentialism" (Duverger 1980).

The process for adopting the constitution was determined by the existing political situation, in which Kuchma managed to strengthen his own powers and began to build a patron-client network that aimed to turn a formally semipresidential system into what was sometimes called a "superpresidential" one. The process of promoting of this superpresidentialism meant a concomitant weakening of the parliament. Witnessing the rise of the president, some members of parliament started participating in the formation and expansion of the president's patron-client network. Nevertheless, the main task of the parliament (and its elite support base) was to retain its status and block the buildup of superpresidential power. In this regard, the Verkhovna Rada hastily tried to anchor the existing political status quo at the constitutional level through various compromises among the parliamentary delegations (for example, through package voting for the status of Crimea and state flag of Ukraine). The president was never able to build up a strong parliamentary base, and his patron-client network unsuccessfully tried to form a formal party of power (the People's Democratic Party) in a situation in which multiple clan networks dominated the Verkhovna Rada.

The functioning of Ukraine's political system under the Constitution of 1996 reflects formal semipresidentialism's institutional proclivity toward permanent internal conflict. The vertical structure of power under semipresidentialism may be built by forming a dominant propresidential political party in legislatures, enhancing the advantages of the presidency and leading to the establishment of strong patronal presidentialism. In attempting to create his own dominant political machine, Kuchma was forced to co-opt politicians trying to build their own parties (for example, the influential Kyiv-based clan of the Social Democratic Party of Ukraine [United] of Viktor Medvedchuk). However, the formation of such a broad propresidential coalition (both by personal co-option and through bureaucratic resources) meant that there was considerable opposition to the president within his own party.

From the early 2000s, the superpresidential vertical informal power hierarchy stopped functioning properly, and a critical mass of opposition-minded groups emerged. This emerging opposition pushed the president to actively co-opt regional elites through personal ties as an alternative to building a dominant party, as reflected in the Zlagoda movement in 1999 and the movement ZaEdU (For a United Ukraine) in 2002. As part of the abortive effort to build a dominant party, in 2000 Kuchma replaced the speaker of the Verkhovna Rada, removing Oleksandr Tkachenko in favor of Ivan Plusch. Nevertheless, within

a year, the parliament lacked the votes to implement the results of the 2000 referendum, which had created a potential mechanism for the co-option of the political elite in the form of adding an upper chamber to Ukraine's parliament. The failure of this vote was indicative of the emerging opposition moods within the party of power.

In 2003 Kuchma tried to carry out a constitutional reform, which included establishing a bicameral parliament, institutionalizing a parliamentary majority, and limiting the participation of the president in government formation (on the proposal of the parliament, the president was only to appoint the ministers of emergency affairs, defense, and foreign affairs) while leaving intact the president's influence on key appointments in the security and fiscal areas (appointing the heads of the tax administration, security service, and customs agency) as well as appointments of local authorities. One of the main reasons for this reform was the president's desire, by making a number of significant concessions to the parliament, to create a solid base of support for the president in the form of an upper chamber, to improve presidential levers to counter the parliament (particularly through referendum), and to overcome the "feckless pluralism" (Carothers 2002, 10) in the party system and stabilize the work of the parliament through the institutionalization of a coalition of key propresidential party players.

The 2004 Constitutional Reform and the Triumph of Neopatrimonial Democracy

By end of his second term, Kuchma had become a lame duck, which caused rent-seeking political entrepreneurs to look for an alternative candidate for the presidency. The search for the right candidate resulted in a split among the members of the patron-client network, which led to a sharp political confrontation during the 2004 presidential campaign. The situation evolved from crisis to deadlock, which could only be broken by an elite settlement to carry out a constitution reform and turn Ukraine into a "premier-presidential" regime, a form of semipresidentialism with a very strong prime minister (Shugart and Carey 1992). One of the main motivations behind this constitutional reform was an effort to overcome the electoral crisis of 2004 by lowering the value of the presidential prize and to maintain the political influence of the then ruling party of power in case its candidate lost the presidential election.

The 2004 constitutional reform included (1) measures for strengthening the

position of the parliament by giving it broad powers to form a government and extending its term to five years; (2) incentives to promote party-building (through a party-list proportional representation electoral system) and party discipline (the imperative mandate, a system whereby a deputy cannot change parties after being elected on a party list); (3) institutionalizing a governing coalition of party delegations (called "factions" in Ukrainian parlance); (4) strengthening the position of the prime minister by expanding that post's appointment power and the power to countersign laws; (5) limiting the role of the president in government formation while leaving intact the office's influence on the defense and foreign affairs ministers as well as the fiscal and coercive power hierarchies (prosecutor general, head of Ukraine's Security Service, the National Bank, and the National Security and Defense Council) and extending the grounds on which the president can dissolve parliament.

For influential political and economic actors on every level (national magnates, regional bosses, and autonomous segments of the bureaucracy), the 2004 constitutional reform and the establishing of a premier-presidential regime became a vehicle for making partial changes to the political rules of the game and minimizing the role of the head of state as the principal veto-player (someone with the formal or informal power to stop any major policy move) and focal point in the neopatrimonial hierarchy. The 2004 constitutional reform made it more difficult to implement any kind of winner-take-all policies and stimulated stakeholder cooperation to jointly distribute political dividends proportionate to voting results. This created the basis for a transition from a monopolistic to a power-sharing distribution of governing benefits.

The post-Orange Ukraine of 2005–9 saw a division of neopatrimonial patron-client networks between two major players—the president and the prime minister—and the formation thereupon of two autonomous competing power centers: Yushchenko's patronal presidentialism and Yulia Tymoshenko's patronal premiership. The two parallel power verticals persisted through the control of different apparatuses of the state machinery, including law enforcement, the security services, and the judiciary. This duality prevented one vertical from strong-arming the other. The fact that the rent-seeking political entrepreneurs from the Orange Bloc failed to establish a broad and unified party of power (that is, to institutionalize and centralize patron-client networks solely around President Yushchenko) meant that a pluralistic political system could take shape in Ukraine, with none of the elite groups or social segments securing a majority stake in power. In the absence of his own strong party and in order

to counteract Tymoshenko's influence, Yushchenko was forced to co-opt representatives of Viktor Yanukovych's Party of Regions into governing structures, such as the National Security and Defense Council and even to the premiership (that is, the 2006–7 Yanukovych cabinet).

The Ukrainian political reality after 2004 can best be described as a peculiar hybrid regime of *neopatrimonial democracy*. This regime resulted from the constitutional reform of 2004 that transformed Kuchma's attempt at superpresidentialism into a premier-presidential system. In this context, neopatrimonial democracy is a standard modification of the premier-presidential regime in a clientelistic setting, in which rent seeking is the key motive of politics. Political actors compete through formal electoral mechanisms (for the presidential office and seats in parliament), but their goals still focus on state capture as the primary gain. In fact, the constitutional reform of 2004 secured the coexistence of competing patron-client networks that used their own party machines to derive rents within a pluralistic power-sharing political model. The power balance resulted in permanent conflicts, which ended with crises and new agreements. The state of constant stalemate, defined by the lack of a central political figure and the inability to form an effective pluralistic political model, imposed serious political and economic costs on the rent-seeking political entrepreneurs.

During 2009, Yushchenko initiated a draft law for constitutional reform. This reform envisioned a bicameral legislature (adding a senate), increased presidential influence on local government (the president was to appoint heads of local state administration with no recommendation from the government), national security (broad powers in determining the composition of the National Security and Defense Council), and the process of constitutional change (making the decision to call a referendum on changing the constitution) and would have made former presidents lifetime members of the senate. The idea of dividing parliament into two chambers was an effort by the president to counter the growing influence of the prime minister. According to the reform, the lower house was to provide the support base for the prime minister while the upper chamber would be a base for the president. Similarly, the president would be strengthened relative to the prime minister through the establishment of an alternative center of power (the National Security and Defense Council) and expansion of the president's ability to use referenda as an instrument of presidential power.

This constitutional reform effort reflected the political strategy of Yush-

chenko, who, unlike Kuchma, Yanukovych, and Tymoshenko, made no serious attempts to build a dominant party. This resulted in the breakup of his party Nasha Ukraina (Our Ukraine) and raised the stakes for individual co-option as an alternative strategy to building a dominant party. Yushchenko's focus on co-opting individuals instead of party-building is one of the main reasons for his defeat in the 2010 presidential election, since he had to compete with the more organized political machines of the Party of Regions and the Bloc of Yulia Tymoshenko, which both had a strong resource base to potentially form a patronal presidential system. During the 2010 presidential campaign, the rent-seeking entrepreneurs ultimately decided in favor of Yanukovych, who seemed more tractable to the various rent-seeking interests than Tymoshenko.

Constitutional Dilemmas of Yanukovych's Presidency, 2010–14

The victory of Yanukovych in Ukraine's February 2010 presidential election launched a new cycle of regime change in Ukraine, marked by movement from a premier-presidential system to a superpresidential system dominated by a single principal. Establishing superpresidentialism was made possible through Yanukovych's success in constructing an effective party machine out of the Party of Regions, which became the dominant political party. Thus the rapid move by Yanukovych toward building a single "power vertical" was conditioned not so much by any inherent authoritarianism per se but by the fact that the president—for the first time—did not have to share power with coalition party partners or appoint a compromise prime minister. Yanukovych made much more progress in constructing a propresidential dominant party than did his predecessors Kuchma and Yushchenko. In fact, the existence of the dominant party broke the premier-presidential logic and made possible the establishment of a superpresidential regime. This process was formalized by the decision of the Constitutional Court, which restored the 1996 Constitution and declared invalid the 2004 amendments when it ruled Law IV-2222 unconstitutional. Restoring the 1996 Constitution returned broad powers to the executive branch, placing personnel policy in the hands of the president while weakening other political centers, such as the parliament and the prime minister, who now played a merely technical role.

Yanukovych's politics during 2010–13 might be understood as a "dual spiral" consisting of an efficient combination of two political strategies. The first was a party-building strategy based on incorporating the remnants of alternative

patron-client networks into the dominant party (the Party of Regions). Combined with executive control over parliament, this move prevented the semi-presidential regime from getting caught in a stalemate between two branches of government. The second strategy was to use bureaucratic resources, both sticks and carrots, to expand the executive vertical of power. These efforts allowed for an ever-widening propresidential coalition in both parliament and local government, producing a spiraling growth in presidential power. This strategy chipped away at the regional bases of the Yulia Tymoshenko Bloc and encouraged its investors and influential members to move toward the new party of power. The constitutional rollback gave the president direct control over cabinet formation. This new power strengthened the executive's hand vis-à-vis not only parliament but also his own party coalition and political investors.

From 2011 to 2013, Yanukovych placed his bets on strengthening his own domain and co-opting political actors to enhance his top-down power by utilizing bureaucratic resources. The main beneficiaries were "The Family," which included his sons and some of their friends. Yanukovych's administration forced a redistribution of economic spheres (both legal and shadow) among the different groups involved in the presidential patron-client network. Because of the lack of a real mechanism for developing the economy, which was one of the consequences of the "winner take all" monopolization, no significant new assets appeared; rather, the Yanukovych era witnessed the redistribution of existing assets, while rents were derived by establishing control over the fiscal policy of the state. In this situation, the president and his closest associates became a main beneficiary of the new fiscal policy. The result was that basic resources, previously owned by other elite political-economic groups, were redistributed in favor of the president and his close associates.

This system, however, contained the seeds of its own demise. The situation posed a real danger for some members of the presidential patron-client network: not only was there no longer a balanced allocation of resources, but some members of the elite began to serve as "donors" who were forced to further strengthen the president's family. This presidential strategy caused the emergence and enhancement of opposition groups within the dominant party and among political entrepreneurs associated with the president's patron-client network. Thus, at the end of 2013 patronal presidentialism in Ukraine faced the emergence of a field for confrontation within the party of power and the possibility of supporting opposition party projects. For Yanukovych, the only possibility to retain an elite support base was to carry out a new constitutional

reform, which would bring Ukraine back to the premier-presidential form of government that existed in 2004, with possible institutional adaptations and modifications.

After the Euromaidan Revolution: A New Pendulum Cycle or Breaking the Teeter-totter?

The 2013–14 Euromaidan revolution resulted in the collapse of Yanukovych's superpresidential regime and opened a way for political and economic reforms toward a more pluralistic political system. In February 2014, Ukraine returned to the 2004 premier-presidential constitution that significantly limited presidential powers in favor of the prime minister and members of a parliamentary coalition. In May 2014 early presidential elections were held, and for the first time in Ukrainian political history a new president, Petro Poroshenko, was elected without needing a runoff to gain the necessary majority of votes. Then, in October 2014, early parliamentary elections were held. The majority of the seats were taken by pro-European democratic parties, which formed a new ruling coalition that had around three hundred members (representing two-thirds of the MPs, which is enough to pass constitutional changes).

What changed and what has remained the same in Ukrainian politics after the Euromaidan revolution? Beyond doubt, the political regime became more democratic and open because of enhanced competition between several power centers, the rise of civic sector activism, and the absence of a dominant party of power. On the other hand, the patrimonial nature of the political regime, its organizing principles, and its functioning remained the same. Informal institutions continue to dominate formal institutions. Patron-client ties, personal loyalty, and clan membership (relatives and/or business partners) still persist as organizing principles of the system. These patrimonial principles determine the formation of political parties, define the majority of public office appointments, and structure relations among political actors at national and regional levels.

The new political regime has three key elements. First, right after the Euromaidan revolution in February 2014, the Yatsenyuk-Klitchko-Tyahnybok triumvirate (representing the key Euromaidan parties) supported by Oleksandr Turchynov (then chairman of the Verkhovna Rada and acting president of Ukraine) passed a law re-establishing the 2004 premier-presidential constitution, which renders the concentration of power in the president's hands institutionally impossible. A crucial element on which the new interelite consensus

rests is the belief that building a single pyramid of power, vesting the president with wide formal and informal powers, is a threat to the democratic development of Ukraine.

Second, a crucial component of the present premier-presidential system is the informal arrangement between the future president Poroshenko and one of the members of the triumvirate, Klitchko, the leader of the Ukrainian Democratic Alliance for Reform (UDAR) Party. The arrangement aimed to divide spheres of influence between the two politicians: Klitchko became mayor of Ukraine's capital, Kyiv, and his network retained control over some offices in the national executive branch.

The third element of the new power system was the power-sharing arrangement with the second member of the Euromaidan triumvirate, Arseniy Yatsenyuk, who retained the office of prime minister and received control over the major political and economic levers of the executive branch, including the Interior Ministry, tax service, and custom service. This is a "tandemocracy" regime built on the institutional separation of presidential and premier power verticals through the divided government and competition between Poroshenko's and Yatsenyuk's parties (respectively, Solidarity and People's Front), which peaked just before and immediately after the October 2014 parliamentary elections.

Thus, the post-Euromaidan revolutionary restructuring of Yanukovych's superpresidential regime has again led to the formation of a neopatrimonial democracy in 2014–15. The new regime is built on the combination of the formal and informal competition of various patron-client party networks over the control of key positions in generating rents in state administration and key sectors of the economy. Political parties are formed by political investors not to protect the interests of the electorate but to promote quota-based distribution of the rent-seeking positions in the Cabinet of Ministers and the state apparatus. However, what is specific to the post-Euromaidan neopatrimonial democracy is that the winners are determined in highly competitive political struggles and the results are not known in advance.

For the effective implementation of reform policies, President Poroshenko must overcome the main source of gridlock in any premier-presidential system. Effectively, he must at a minimum transform the prime minister from the president's main rival into his ally and ideally make the prime minister his partisan representative. To achieve that goal, Poroshenko has pursued a three-prong strategy since his election in May 2014:

1. *Building a wide presidential party capable of securing at least a relative majority in elections.*. The strategy for building a presidential party is based on patronage and clientelism, as well as the inclusion of influential regional businesspeople capable of financing local party organizations, into the president's patron-client network. A crucial element of presidential party formation is the absorption of other parties and the networks behind them (Klitchko's UDAR and others). In many ways, the formation of the presidential party resembles Kuchma's attempts to create the propresidential blocs Zlagoda in 1999 and ZaEdU in 2002, Yushchenko's efforts to unite small political parties around Our Ukraine in 2006 and 2007, and the absorption by the Party of Regions of other parties after the 2012 parliamentary election.

2. *Controlling regional elites, some of whom treat their regions as patrimonial domains* and even have their own paramilitary forces. A key element of the presidential decentralization reform is establishing presidential representatives (prefects) to control local regional barons. The regional elites' integration into the presidential sphere of influence is also envisioned through patronage provided for regional party projects capable of uniting and organizing local government people into party structures allied to the president. These regional parties should have a majority in local councils, nominate their heads, and control their local executive branches after decentralization reform.

3. *Restraining the political influence of the principal rent-seeking entrepreneurs by undermining their economic resource base*. The key drama here belongs to the conflict between Poroshenko and influential Ukrainian oligarch Ihor Kolomoiskiy, who was one of the few oligarchs to support the Euromaidan Revolution. Paradoxically, post-Euromaidan neopatrimonial democracy fosters the creation of both formal (premier-presidential divided rule) and informal (patronage networks' contestation) barriers and limitations to the development of a superpresidential regime and transition to personal rule. On the other hand, the same formal and informal rules hinder state capture by the representatives of one oligarchic group and monopolization of the political space at the national and regional levels by a single political and economic clan.

Conclusion and Implications for Reform

Overall, Ukrainian constitutional dynamics is distinguished so far by four cycles of patronal presidentialism.

During the first cycle, 1994 to 2004, the president secured the formal and in-

formal powers of the head of state in the coercive and fiscal spheres. In the second cycle, 2004 to 2010, the Orange Revolution dismantled the superpresidential version of patronal presidentialism and created a pluralistic power-sharing premier-presidential system, within which the president and prime minister were relatively equal in their political influence. The 2004 constitutional reform limited presidential powers, lowering the value of the presidential prize, and secured "cohabitation" and competition between the presidential and the primeministerial patron-client networks. During the third cycle, 2010 to February 2014, the president enhanced his authority by returning to the head of state significant formal and informal powers and established control over the parliament though the dominant Party of Regions' machine. The restoration of the 1996 Constitution in 2010 placed patronal presidentialism's logic back in the center of Ukrainian politics. The 2010 pendulum swing from premier-presidential to presidential-parliamentary constitutions served Yanukovych's goal of authoritarian power consolidation in his hands while simultaneously reducing the power of the parliament. The Euromaidan Revolution of 2013–14 started the new fourth presidential cycle with the restoration in February 2014 of the premier-presidential constitution. In each of the cycles, the change of constitution meant not just the creation of a new system of checks and balances among public authorities but also the establishment of a new system for distributing power among state officials and the various political forces at the national and regional levels around them (Derluguian and Earle 2010).

In selecting a new constitutional model for Ukraine, the drafters should take into consideration the neopatrimonial features of key political actors. There is some space for the swing of the described pendulum of Ukrainian politics within the framework of the current premier-presidential constitution. The 2014 constitutional reform provided the basis for developing a curious institutional hybrid, capable of functioning in two different modes. The first is a dominant party regime of *managed democracy*, whereby a president has control over both parliament and a prime minister from his or her own party and, hence, can potentially monopolize coercive and fiscal tools. The second is a competitive-democratic regime of *neopatrimonial democracy*, existing against the backdrop of a patron-client network divided between two centers and based upon deficient executive control over parliament, weakness in the president's party structure, and a prime minister co-opted from a nonpresidential party or alternative patron-client network.

The crucial question is, however, what is the basis for curbing competitive-

ness in the first case and supporting it in the second? The answer appears to be less the formal premier-presidential system than the mode chosen to reproduce patron-client networks. These networks are reproduced through either formal parties or informal personal patronage and co-option. The degree to which the controlled segments of the patron-client networks are institutionalized (by setting up powerful parties) is the key factor. Political parties become decisive factors for success in electoral competition and interelite bargaining for the office of prime minister. Insufficient party institutionalization became a major cause of Kuchma's and Yushchenko's failure to form a government coalition through patron-client networks and limited their abilities to promote a prime minister.

Will Poroshenko continue investing resources in the expansion of the pro-presidential coalition, with a prospect of forming a dominant party of power (a strategy of *dominant-party presidentialism*), or will he try to buttress his position with administrative-bureaucratic resources, in particular the coercive tools of state machinery (a strategy of *patronal-bureaucratic presidentialism*)? Or will he combine the two, as Kuchma and Yanukovych did previously?

At least three potential prospective scenarios exist:

1. *Electoral Bonapartism*. This is a regime of personal rule based on the monopolization of coercive and fiscal state machinery; zigzagging between the interests of major financial-industrial groups; curtailing electoral competition in favor of plebiscites; developing the executive bureaucratic vertical based on personal loyalty, controls over the regional barons by the president's prefects, and resorting to coercive pressures (via law enforcement, the security service, and the judiciary).

2. *Power-sharing oligarchy*. This is a regime based on power division between key players and their resultant control over patronal-social and regional actors in the political (and likely constitutional) realm, which eventually produces a transition to a situation in which parliament elects the president.

3. *Dominant-party managed democracy*. This is a regime in which the president strives to win pluralities within most social segments rather than the single largest group. Under this type of regime, the president can discipline the national bureaucracy and regional elites through their membership in the party of power. This will involve incorporation into the ruling coalition of most of the remaining rent-seeking entrepreneurs from different political camps.

However, the constitutional reform of 2014 can be viewed in the long term as part of a broader pendulum swing from a superpresidential regime to a pre-

mier-presidential one. This implies a potential for a new swing back toward restoration of the superpresidential model (in the case of an authoritarian-bureaucratic consolidation of the regime). Ukrainian political developments demonstrate that constitutional rules in the neopatrimonial environment are typically retained only for one electoral cycle. The question of re-election emerges in any neopatrimonial system and is resolved through changes in constitutional rules that can ensure succession in the power and security of elite privileges (as with the constitutional reform projects of Kuchma, Yushchenko, and Yanukovych). Long-term rule depends on the ability of political actors to make the transition from ad hoc personal-patron coalitions to steady institutionalized structures that are capable of surviving several election cycles and insensitive to changes in leadership.

The principal survival strategy of Ukraine's political actors (1994–96, 2002–4, 2012–14) has been to neutralize the negative effects of personal rule and institutionalize formal political competition via the development of party holdings. It is the weakness of their own party structures that has always been the Achilles' heel of Ukrainian presidents, and they have had to compensate for this weakness with strategies of co-option, including the summoning of a prime minister from alternative political camps.

From this point of view, the pendulum of Ukrainian politics can swing without the need to change the constitution and constitutional law in a radical way. At this stage, constitutional and political modernization should focus not so much on the redistribution of powers among the president, prime minister, and parliament but rather on subverting the political capacity of patronal presidents and rent-seeking entrepreneurs to "play with the rules" and conduct frequent constitutional experiments.