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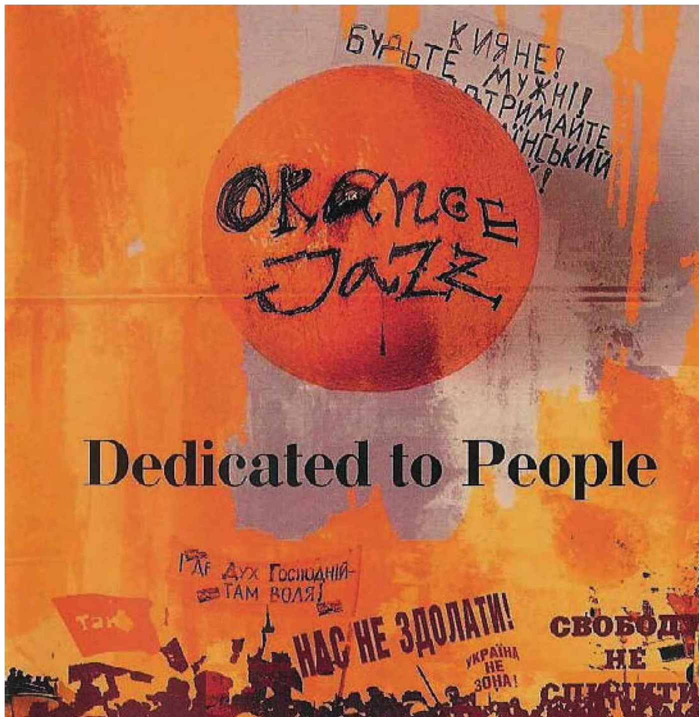
Aspects of the Orange Revolution III

The Context and Dynamics of the 2004 Ukrainian Presidential Elections

Edited by Ingmar Bredies, Andreas Umland and Valentin Yakushik



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Contents

Introduction

Approaches to a 'Watershed' in Ukrainian Politics
Ingmar Bredies, Andreas Umland and *Valentin Yakushik* 7

1 Prelude to a Mass Rebellion

Fraud before the 'Revolution': Special Precincts in Ukraine's 2002 Parliamentary Election
Erik S. Herron and *Paul E. Johnson* 13

2 Why and How It Happened

Orange Ukraine Chooses the West, but Without the East
Dominique Arel 35

Regional Political Cleavages, Electoral Behavior, and Historical Legacies in Post-Communist Ukraine
Ivan Katchanovski 54

Shades of Orange: The Electoral Geography of Ukraine's 2004 Presidential Elections
Ralph S. Clem and *Peter R. Craumer* 78

3 The Context of a Mass Uprising

The Legal Evolution behind the Orange Revolution
Hartmut Rank and *Stephan Heidenhain* 111

The Cyberpolitics of Music in Ukraine's 2004 Orange Revolution
Adriana Helbig 176

Foreign Intervention in the 2004 Elections: 'Political Technology' versus NGOs
Andrew Wilson 200

Introduction

Approaches to a 'Watershed' in Ukrainian Politics

Ingmar Bredies, National University of Kyiv – Mohyla Academy
Andreas Umland, National Taras Shevchenko University of Kyiv
Valentin Yakushik, National University of Kyiv – Mohyla Academy

A considerable number of investigations devoted to various aspects of the Orange Revolution has been published by now.[1] The Ukrainian events of 2004 raised tremendous expectations as well as sympathy from citizens of Ukraine and external observers likewise. The outcome, impact and achievements of this event have become matters of dispute. Many informed authors see the Orange Revolution as a turning point in Ukrainian politics that marked an irreversible commitment towards democracy.

The third volume of *Aspects of the Orange Revolution* widens the variety of approaches towards explaining the emergence, course and results

1 See, for example, the following collected volumes and monographs, in chronological order: 'Spetsvypusk: Pomarancheva revoliutsiia,' *Moloda natsiia*, 10, 1(34) (2005): 8-298; Helmut Kurth and Iris Kempe, eds., *Presidential Election and Orange Revolution: Implications for Ukraine's Transition* (Kyiv: Friedrich-Ebert-Stiftung, 2005); Andrew Wilson, *Ukraine's Orange Revolution* (New Haven, CT: Yale University Press, 2005); Ingmar Bredies, ed., *Zur Anatomie der Orange Revolution in der Ukraine: Wechsel des Elitenregimes oder Triumph des Parlamentarismus?* Soviet and Post-Soviet Politics and Society 13 (Stuttgart: ibidem-Verlag, 2005); Anders Aslund and Michael McFaul, eds., *Revolution in Orange: The Origins of Ukraine's Democratic Breakthrough* (Washington, DC: Carnegie Endowment, 2006); Florian Strasser, *Zivilgesellschaftliche Einflüsse auf die Orange Revolution: Die gewaltlose Massenbewegung und die ukrainische Wahlkrise 2004*. Soviet and Post-Soviet Politics and Society 29 (Stuttgart: ibidem-Verlag, 2006); Taras Kuzio, ed., 'Democratic Revolution in Ukraine: From Kuchmagate to Orange Revolution,' *The Journal of Communist Studies and Transition Politics*, 23, 1(Special Issue) (2007): 1-179; Iurii Shapoval, ed., *U kol'orakh 'pomaranchevoï revoliutsiï'* (Kyïv: Ek-sOb, 2007); Ingmar Bredies, *Institutionenwandel ohne Elitenwechsel? Das ukrainische Parlament im Kontext des politischen Systemwechsels 1990-2006*. Osteuropa: Geschichte, Wirtschaft, Politik 41 (Münster: LIT, 2007).

of the Orange Revolution. As Erik Herron and Paul Johnson point out in the first chapter, fraud and manipulation in elections at any level occurred in Ukraine much earlier than in 2004.[2] A wide spectrum of 'imaginative' technologies had been developed which is illustrated here, by the authors, using the example of the parliamentary election campaign in 2002. The shady success of the pro-presidential election megabloc 'For a United Ukraine' was due to the mobilization of voter contingents in special precincts dependent on the state authorities. Despite several protests, the regime held its ground. Why was the mass protest triggered by the second round of the presidential elections on 21 November 2004 successful while civic unrest before had been ineffective? Why had election manipulation proven to be a stabilizing factor for the political regime earlier, but led to its disintegration in 2004?

Part two goes some way towards answering these question and makes assessments on the basis of electoral analysis, yet from different perspectives. In his contribution, Dominique Arel explains the Orange Revolution with the emergence of a viable civil society in Ukraine. The author accentuates the interdependence between civil society and national consciousness as an indispensable prerequisite for social inclusion and mobility.[3] He argues that the 'Orange' agenda was not policy-centered and that the movement should, instead, be characterized as the 'birth of the

2 Dominique Arel and Andrew Wilson, 'Ukraine under Kuchma: Back to "Eurasia"?,' *RFE/RL Research Report*, 3, 32 (1994); Sarah Birch, *Elections and Democratiation in Ukraine* (London: Macmillan, 2000); Eberhard Schneider, 'Die ukrainische Parlamentswahlen und die neue Werchowna Rada,' *SWP-Aktuell*, 18 (2002): 1-8; Bohdan Harasymiw, 'Elections in Post-Communist Ukraine, 1994-2004: An Overview,' *Canadian Slavonic Papers*, 47, 3-4 (2005): 191-239; Kimitaka Matsuzato, 'All Kuchma's Men: The Reshuffling of Ukrainian Governors and the Presidential Election of 1999,' *Post-Soviet Geography and Economics,* 42, 6 (2001): 416-439; Mikhail Myagkov and Peter C. Ordeshook, 'The Trail of Votes in Ukraine's 1998, 1999, and 2002 Elections,' *Post-Soviet Affairs,* 21, 1 (2005): 56-71; Andrew Wilson, 'Ukraine's 2002 Elections: Less Fraud, More Virtuality,' *East European Constitutional Review*, 11, 3 (2002): 91-98; Kerstin Zimmer, 'The Comparative Failure of Machine Politics, Administrative Resources and Fraud,' *Canadian Slavonic Papers*, 47, 3-4 (2005): 361-384.

3 See also John O'Loughlin and James E. Bell, 'The Political Geography of Civic Engagement in Ukraine,' *Post-Soviet Geography and Economics*, 40, 4 (1999): 233-266; Martin Åberg, 'Putnam's Social Capital Theory Goes East: A Case Study of Western Ukraine and L'viv,' *Europe-Asia Studies*, 52, 1 (2000): 295-317; Nadia Diuk, 'The Triumph of Civil Society,' in: Aslund and McFaul, *Revolution in Orange,* 69-84; Taras Kuzio, 'Civil Society, Youth and Societal Mobilization in Democratic Revolutions,' *Communist and Post-Communist Studies*, 39, 3 (2006): 365-386.

Ukrainian political nation'. At the same time, due to Ukraine's inherited regional distinction with its divergent historical, socioeconomic, ethnic and linguistic imprints, the Orange Revolution may have also aggravated geographic, polarizing element within the political conflict.[4] As this event is usually viewed as a 'joint success' of Central and Western Ukraine, the article analyzes the struggle for a legitimacy of the political outcomes of the Orange Revolution which remain contested in other parts of the country.

Following a similar approach, Ivan Katchanovski relates political cleavages and electoral behavior to historical legacies.[5] To back up the relevance of this interrelation, the author focuses, primarily, on historical events and attitudes towards their valuation. By attributing these orientations and general preferences to the voter basis of Ukrainian political parties on presidential and parliamentary elections since 1991, Katchanovski detects drastic political cleavages between Ukrainian regions. According to his argument, political cleavages congruent to historically distinct landscapes are unlikely to disappear in contemporary Ukraine, and thus will not only determine future election outcomes, but may also pose a threat to Ukrainian statehood.[6]

In terms of electoral geography, the Orange Revolution stands for a remarkable shift in voters' preferences.[7] Ralph Clem and Peter Craumer

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4 Valentin Yakushik, 'Politicheskie i tsivilizatsionnye aspekty ukrainiskoi revoliutsii 2004-2005 gg.,' *Politicheskaia ekspertiza*, 2, 2 (2006): 289-298, http://politex.info/content/view/196/40/. For information on public support for the Orange Revolution see *IFES: Public Opinion in Ukraine – November 2005*: 12, http://www.ifes.org/publication/4c771cbbcd8da236235ecd38bd1bbe7a/Ukraine-Survey_3-14-06_Full.pdf. See also Dominique Arel, 'The Hidden Face of the Orange Revolution: Ukraine in Denial Towards its Regional Problem,' Paper presented at the Conference 'Nezalezhna Ukraïna: dosvyd, uroky,perspektyvy,' Institut istoriï Ukraïny NANU, 26-28 October 2006.

5 Lyudmyla Pavlyuk, 'Extreme Rhetoric in the 2004 Presidential Campaign: Images of Geopolitical and Regional Division,' *Canadian Slavonic Papers*, 47, 3-4 (2005): 293-316; Steven D. Roper and Florin Fesnic, 'Historical Legacies and Their Impact on Post-Communist Voting Behaviour,' *Europe-Asia Studies*, 55, 1 (2003): 119-131; Paul Kubicek, 'Regional Polarisation in Ukraine: Public Opinion, Voting and Legislative Behaviour,' *Europe-Asia Studies*, 52, 2 (2000): 273-294; Stephen Shulman, 'National Identity and Public Support for Political and Economic Reform in Ukraine,' *Slavic Review*, 64, 1 (2005): 59-87.

6 Ivan Katchanovski, *Cleft Countries: Regional Political Divisions and Cultures in Post-Soviet Ukraine and Moldova.* Soviet and Post-Soviet Politics and Society 33 (Stuttgart: ibidem-Verlag, 2006).

7 For surveys on the electoral geography of previous elections see: Sarah Birch, 'Electoral Behaviour in Western Ukraine in National Elections and Referendum's,

scrutinize in their contribution peculiarities of the electoral geography based on the election results of the 2004 three rounds. The authors emphasize that the regional cleft with its specific demographic and socio-economic factors is more complex than implied by a simplified East-West dualism. Nonetheless, they acknowledge the relevance of this pattern in terms of an 'overarching descriptor'. Taking into consideration previous election campaigns, 2004 turned out to be a 'battle for the center of the political spectrum and the central part of the country'. Drawing upon empirical data on voters' socio-economic, ethnic, economic and educational background derived from four Ukrainian macroregions, the authors give a profound and comprehensive explanation of the election outcome.

Part three goes further in explaining the causes, course and results of the Orange Revolution, but focuses on the circumstances in which the elections and uprising happened. The contribution of Hartmut Rank and Stephan Heidenhain is a deep investigation into the Ukrainian court system and electoral legislation since 1990. This analysis and the Appendices with relevant key decisions and legal provisions provide the authors with a solid basis for answering the question how to assess the role the Ukrainian Supreme and Constitutional Courts as well as the completion of the electoral legislation during the Orange Revolution. The authors conclude that, considering the incompleteness of Ukrainian electoral legislation and time pressure under which they had to make decisions, the courts behaved, in general, adequately, yet missed the chance to use their rulings for a detailed general interpretation of certain ambivalent constitutional and other norms.

Referring to the success of the 'coloured revolutions' in Eastern Europe, many authors allude to new media and information sources as factors in the breakdown of super-presidential political regimes. Adriana Helbig introduces in her contribution the term of 'cybermusicality' to stress the liaison of music and the Internet which played a prominent role in the course of the Orange

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1989-1991,' *Europe-Asia Studies*, 47, 7 (1995): 1145-1176; Peter R. Craumer and James Clem, 'Ukraine's Emerging Electoral Geography: A Regional Analysis of the 1998 Parliamentary Elections,' *Post-Soviet Geography and Economics*, 40, 1 (1999): 1-26; Taras Kuzio, 'Kravchuk to Kuchma: The 1994 Presidential Elections in Ukraine 1994,' *The Journal of Communist Studies and Transition Politics*, 12, 2 (1996): 117-144; John O'Loughlin, 'The Regional Factor in Contemporary Ukrainian Politics: Scale, Place, or Bogus Effect?' *Post-Soviet Geography and Economics*, 42, 1 (2001): 1-33.

Revolution.[8] Thanks to this new protest technology and the talent of many of the involved protagonists absorbing impressions in a 'catchy', but nonetheless sophisticated way, 'musical activism' unleashed considerable energy for social mobilization. Before the Orange Revolution, the Internet had only a small impact on shaping public opinion in Ukraine. As newspapers and broadcast media were functioning only under considerable constraints, the Internet proved to be the only way to massively express anti-government dissent.

Critics of the 'coloured revolutions' in Eastern Europe allege that these events do not at all mirror a home-grown political situation, and accentuate their contrived character. In this respect, the Orange Revolution is sometimes referred to as the result of a veiled import of Western values and lifestyle.[9] These allegations also concern the role of external actors in democratization processes, in general, and Western support of Ukrainian civil society actors, in particular.[10] On the other side, there are those who emphasize the role of non-Western foreign actors, first of all of Russia.[11]

In his contribution, Andrew Wilson illustrates the scope and tools of political technology in the countries of the CIS, especially with regard to Russia's political process and Ukraine's Orange Revolution. Assessing the involvement of external actors in the election campaign 2004, Wilson is aware of the fact that technologists' methods have been applied by both sides of the electoral process. In general, Russian interference tended to be more obvious and rampant. Western aid and assistance was predominantly targeted on implementing public projects and transparent in financial terms. Nonetheless, the line between political technology concentrating on the election outcome, on the one hand, and promotion of democracy and civil society, on the other,

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8 See also Bohdan Klid, 'Rock, Pop and Politics in Ukraine's 2004 Presidential Campaign,' *Journal of Communist Studies and Transition Politics*, 23, 1 (March 2007): 139-158; Myroslaw J. Kyi, 'Internet use in Ukraine's Orange Revolution,' *Business Horizons*, 1 (2006): 71-80; Olena Prytula, 'The Ukrainian Media Rebellion,' in: Aslund and McFaul, eds., *Revolution in Orange,* 103-124.

9 Jonathan Steele, 'Ukraine's postmodern coup d'etat,' *The Guardian*, 24 November 2004. http://www.guardian.co.uk/comment/story/0,,1359969,00.html.

10 Andreas Umland, 'Westliche Förderprogramme in der Ukraine: Einblicke in die europäisch-nordamerikanische Unterstützung ukrainischer Reformbestrebungen seit 1991. Mit einem Nachwort von Astrid Sahm,' *Forschungstelle Osteuropa Bremen: Arbeitspapiere und Materialien*, 63 (2004): 43 pp., http://www.forschungsstelle.uni-bremen.de/images/stories/pdf/ap/fsoAP63.pdf.

11 Taras Kuzio, 'Russian Policy toward Ukraine during the Elections,' *Demokratizatsiya*, 13, 4 (2005): 491-517.

is thin. For instance, Wilson does not exclude that protagonists of the Orange camp might have 'disguised' their real interests by way of posing as a pro-Western, democratic opposition. That, at least, would explain why leaders of the Orange Revolution in its aftermath did, sometimes, not pursue their declared political agenda. Wilson even thinks that the fusion of Western-style democracy promotion, creating a democratic façade, as well as old-established patterns of manipulating and 'guiding' political processes and election results is a distinctive feature of democratic transitions in the post-Soviet area.[12] This curious combination surely complicates reliable prediction of the further course of Ukraine's political transition.[13]

12 Andrew Wilson, 'Ukraine's New Virtual Politics,' *East European Constitutional Review*, 10, 2-3 (2001): 60-66; Andrew Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World* (New Haven/London: Yale University Press, 2005).

13 Valentin Yakushik, 'Prognoz razvitiia politicheskoi situatsii v Ukraine,' *Evraziiskii dom*, n. D., http://www.eurasianhome.org/xml/t/expert.xml?lang=ru&nic=expert&pid=22; Ingmar Bredies, '"Staatszerfall" in der Ukraine? Ursachen und Konsequenzen der gegenwärtigen Krise,' *Ukraine-Analysen*, 22 (2007): 2-3, http://www.ukraine-analysen.de/pdf/2007/UkraineAnalysen22.pdf; Andreas Umland, 'Im Zickzack gen Europa: Zur Rolle der jüngsten Wahlen für die Nationalstaatsbildung und Demokratisierung der Ukraine,' *Ukraine-Analysen*, 29 (2007): 6-7, http://www.ukraine-analysen.de/pdf/2007/UkraineAnalysen29.pdf.

1 Prelude to a Mass Rebellion

Fraud before the 'Revolution'

Special Precincts in Ukraine's 2002 Parliamentary Election[1]

Erik S. Herron, University of Kansas
Paul E. Johnson, University of Kansas

Introduction

The 'Orange Revolution' directed substantial international attention to manipulation and fraud in Ukrainian elections. Administrative resources and media ownership created an uneven playing field; voter intimidation, ballot box stuffing, protocol alteration, and other abuses led to 'victory' for Viktor Yanukovych in the second round. The subsequent public protests, coupled with defection of high ranking officials and security forces to the opposition, secured a 'third round' victory for Viktor Yushchenko. While the circumstances of the 2004 presidential campaign garnered international media coverage and galvanized the opposition, it was not the first Ukrainian election under scrutiny for vote theft. The quality of the 2002 parliamentary election was also criticized by domestic and international observers, and the forms of fraud employed presaged the events of 2004.

1 Earlier versions of this chapter were presented at the 2004 American Association for the Advancement of Slavic Studies Conference and the 2004 Southern Political Science Association Conference. The authors thank Ken Benoit, Maria Carlson, Federico Ferrara, Ron Francisco, Taehyun Nam, Brian Silver, and Alex Tsiovkh for comments and assistance.

Perpetrators of election fraud have a wide variety of methods at their disposal and the means to conceal much of their work. For example, to increase support for a candidate or party, votes could be added to ballot boxes, voters could be coerced to support a candidate or party, election results could be reworked outside polling stations, or cast ballots could be exchanged for forged ballots. To decrease support for an opponent, ballots could be spoiled, invalidated or destroyed, and voters could be coerced to stay away from the polls or to shift their vote to another candidate. Scholars have also noted that special accommodations for voters can contribute to vote theft.[2]

In most elections, balloting is conducted in facilities that are geographically proximate to the population assigned to the precinct and that have ample space for officials, observers, voters, polling booths, and ballot boxes. Schools, clubs, theaters, and similar institutions serve as polling stations. But, elderly or infirm voters may be accommodated by a mobile ballot box; the ill or disabled may have polling stations located in residential hospitals or convalescence centers; prisoners may be provided the opportunity to vote in penitentiaries; military personnel may vote near barracks or on ships; and expatriates or foreign service workers may cast ballots in embassies or consulates on foreign soil. Because voters casting ballots under special conditions often rely on the state for their well-being and are subordinate to agents of the state, they may be more vulnerable to coercion.[3] While the number of voters casting ballots under these conditions may be small, they can affect vote outcomes, especially in close races. If votes cast in special polling facilities do not reflect the intentions of the voters, then accommodations for marginalized populations are not accomplishing the normative objective of guaranteeing equal protection under the law to all citizens.

This chapter assesses the role of fraud in Ukraine's 2002 parliamentary election by focusing on the role of special polling stations. Using precinct-level data from thousands of polling stations and reports from election

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2 A. A. Sobianin and V. G. Sukhovolskii, *Demokratiia, ogranichennaia falsifikatsiiami: vybory i referendumy v Rossii v 1991-1993 gg.* (Moscow: Project Group for Human Rights, 1995).

3 While fraud may be perpetrated in precincts, protocols may be altered as votes are aggregated from the territorial to national electoral commissions. However, we focus on precincts as our main unit of analysis in this chapter.

observers, the chapter evaluates whether voting outcomes for *Za Yedinu Ukrainu* (ZaYedU), the pro-government bloc, were unusually high in special precincts at the same time that outcomes were unusually low for the opposition.

Ukraine's 2002 Parliamentary Election Rules

Ukraine's law 'On Elections of People's Deputies of Ukraine' that was enacted for the 2002 parliamentary election modified the law that governed the 1998 election, bringing it into compliance with earlier Constitutional Court decisions.[4] The mixed electoral system was retained, with 225 seats allocated to proportional representation with a national list and 4% threshold, and 225 seats allocated to single-member districts with plurality rules.

In addition to establishing standard polling sites, the law notes that precincts can be formed in 'in-patient medical institutions, on vessels which on the day of elections are out of port and flying the state flag of Ukraine, at polar stations of Ukraine, at diplomatic and other representative offices and consular missions of Ukraine abroad, in military units stationed outside Ukraine, in penitentiary institutions and other places of temporary stay of voters with restricted capacity for movement' (Chapter V, Article 30, Paragraph 4).

Chapter III of the law defines the rules about districts and precincts. Constituency electoral commissions were given primary responsibility for establishing polling stations under the following conditions (Chapter III, Article 17, Paragraphs 3-5):

3) Constituency election commissions shall form polling districts at inpatient medical establishments, vessels flying under the State Flag of Ukraine on the day of elections, Ukrainian polar stations and in other locations of temporary residence of voters with restricted capacity of movement directly at the location of the respective establishments or

4 Prior to the 1998 elections, the Constitutional Court determined that some provisions, such as dual candidacy, violated the Constitution.

organizations or at ports/points of registration of vessels and polar stations.

4) Military servicemen shall vote in polling districts located outside military units (formations). The Central Election Commission may form polling districts on the territory of a military unit (formation) in exceptional cases, on application of a respective constituency election commission.

5) Polling districts at diplomatic and other representative offices and consular missions of Ukraine abroad, military units (formations) stationed outside Ukraine shall be formed... by the Central Election Commission which shall designate the single-mandate constituency to which said polling district is assigned.

In addition to establishing special polling stations for voters with 'restricted capacity of movement,' a mobile ballot box would be dispatched to voters under the following conditions (Chapter X, Article 67, Paragraph 1):

1) A voter who cannot personally come to the voting premises due to health reasons shall have the right to apply to the appropriate polling district election commission with a written request to grant him/her the opportunity to vote outside the voting premises...

Political Conditions

The 2002 election was held after a particularly contentious period in Ukrainian politics. The parliament elected in 1998 was fractious; its authority was challenged by President Leonid Kuchma in a referendum in April 2000, and it was the forum in which serious allegations of misdeeds were aired against the president. In November 2000, leader of the Socialist Party of Ukraine, Oleksandr Moroz, played audio tapes that allegedly revealed connections between Kuchma and the murder of journalist Georgii Gongadze, as well as challenges directed at local authorities to deliver the vote for Kuchma in the

1999 presidential election. Further evidence surfaced of illegal arms trade with Iraq. Executive-legislative relations and the party system were heavily influenced by these matters between 1998 and the election in March 2002.[5]

While Ukrainian parties may be divided into various categories based on ideology, regional preferences, and level of institutionalization, it is most instructive to categorize parties based on their relationship to the president in the context of the 2002 campaign.[6] The primary dimension of conflict leading up to the 2002 elections was the division of parties into 'pro-presidential' and 'anti-presidential' camps.[7] Some parties were clearly pro-presidential, including For a United Ukraine (ZaYedU), Women for the Future (Women), and Democratic Union (DU).[8] Other generally pro-administration parties drifted, particularly after the release of the Melnychenko tapes. The opposition to President Kuchma can be subdivided into at least three types. Viktor Yushchenko's Bloc, Our Ukraine (NU), was part of the 'soft' opposition. NU was critical of the president, but more conciliatory than other opposition groups. The 'hard' opposition was composed of the Bloc of Yuliya Tymoshenko and Moroz's Socialist Party (SPU). The 'left' opposition included the Communist Party of Ukraine (KPU) and less influential groups like the Bloc of Nataliya Vitrenko (See Appendix for a list of parties and acronyms).

Members of the opposition in 2002 warned that the 'party of power'[9] would use fraud to 'steal' the elections.[10] Yuliya Tymoshenko emphasized this problem, indicating that the law on election of parliamentary deputies would

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5 For an analysis of voting in earlier Ukrainian elections, see Sarah Birch, *Elections and Democratization in Ukraine* (New York: St. Martin's Press, 2000).

6 The party system has also been divided along different dimensions. A. Bilous identified a left-right dimension and international integration-isolationist dimension. See A. O. Bilous, *Polityko-pravovi systemy: Svit i Ukraïna* (Kyiv: AMUPP, 2000). P. D'Anieri, R. Kravchuk and T. Kuzio arrayed parties along a left-right dimension that incorporated nationalism. See Paul D'Anieri, Robert Kravchuk and Taras Kuzio, *Politics and Society in Ukraine* (Boulder: Westview Press, 1999).

7 This characterization oversimplifies the divisions among Ukraine's parties, but it generally describes the nature of partisan conflict in March 2002.

8 The term 'parties' in this paper refers to a range of electoral associations (parties and blocs of parties) that contest seats.

9 The 'party of power' is a term used to describe parties with close connections to central power in post-communist states. In Ukraine, the People's Democratic Party (NDP) was the previous party of power. ZaYedU was the party of power in 2002.

10 In 1999, Oleksandr Moroz's supporters circulated a flier entitled 'How Will Leonid Kuchma Win?' The flier warns that non-participants' votes will be cast for L. Kuchma and that voters should report fraud if they observe it.

'work for the team of the Ukrainian president'.[11] Opposition parties were concerned about the potential for the president to employ 'administrative resources' to manipulate the vote.[12] Administrative resources could be used to affect the campaign in many ways, including the provision of privileged access to the state-run media, registration and de-registration of candidates and parties appointed election commissions, and various forms of coercion aimed directly at the voters.

Table 1: Results of the 2002 Ukrainian Parliamentary Elections

Party	*% PR Vote*	*PR Seats*	*% PR Seats*	*SMD Seats*	*% SMD Seats*	*Total*	*% Total Seats*
NU	23.6%	70	31.1%	40	18.0%	110	24.8%
ZaYedU	11.8%	35	15.6%	66	29.7%	101	22.6%
Independents	--	--	--	93	41.9%	93	20.8%
KPU	20.0%	59	26.2%	7	3.2%	66	14.8%
SPU	6.9%	20	8.9%	2	0.9%	22	4.9%
SDPU(o)	6.3%	19	8.4%	5	2.3%	24	5.4%
Tym	7.3%	22	9.8%	0	0.0%	22	4.9%
DU	0.9%	0	0.0%	4	1.8%	4	0.9%
Yednist'	1.1%	0	0.0%	3	1.4%	3	0.7%
NER	0.0%	0	0.0%	1	0.5%	1	0.2%
Marine	0.1%	0	0.0%	1	0.5%	1	0.2%
Total		225		222[13]		447	

Source: Central Electoral Commission of Ukraine (http://195.230.157.53/pls/vd2002/webproc0v).

Table 1 shows the results of the 2002 elections. ZaYedU received 16% of the PR seats and 23% of the SMD seats. In addition, many of the 93 independent

11 'Kuchma Set to Sign New Election Law.' *Poland, Belarus and Ukraine Report.* RFE/RL, October 23, 2001.

12 The president appoints local governors and other officials and is associated with businesspeople in the media and other industries. Administrative resources refer to the ability of the political elite to influence local decision-making using political machines.

13 Elections in districts 18, 35 and 201 were invalidated. By-elections were held to fill the seats.

candidates allied themselves with pro-presidential parliamentary factions after the elections. By contrast, NU received 70 seats in PR and 40 in SMD. The KPU received 59 seats in PR, but only 7 in SMD. Pre-election polls predicted that the opposition would perform slightly better and the pro-government party slightly worse in PR.

International observers and local NGOs noted questionable decisions by local electoral commissions, coercion of voters, and other violations of basic principles of free and fair elections in the campaign. While the accusations were plausible, they were also anecdotal. The publication of precinct-level data, however, affords us the opportunity to evaluate the election returns to determine if any systematic effects appear to have influenced the outcomes.

Expectations

The rules establishing special precincts concerned parties, candidates, and observers. An effective place to employ administrative resources is in polling stations where voters are directly subordinate to state agents and rely upon the state to fulfill their basic needs. Special precincts, noted above, are particularly suitable environments for the effective exploitation of administrative resources. Because the central government generally has oversight over the institutions in which special precincts are located, we would expect the 'party of power' to perform better in these precincts if pressure is being employed. This expectation and the nature of available data lead to our testable hypothesis:

Hypothesis: In the presence of fraud, the party of power (ZaYedU) will perform better in special precincts (prisons, hospitals, ships, and embassies) than in standard polling stations. Opposition parties (KPU and NU) will perform worse in special precincts than in standard polling stations.

Precinct-level performance can be affected by other factors that we control for in the analysis. Specifically, the performance of pro-government and

opposition parties may be influenced by nomination patterns in the SMD races (that is, the nature of the choice set in SMD), the quality of competition at the district level, and variation in electoral support across regions. These alternate hypotheses are controlled for in the analysis by variables detailed below. If we find support for the hypothesis in the presence of controls for alternate hypotheses, it provides strong (although circumstantial) evidence of systematic effects on the vote in special precincts that plausibly can be attributed to fraud.

Data and Variables

The data used in this analysis were compiled from electronic versions of precinct-level protocols provided by the Ukrainian Central Electoral Commission.[14] The CEC reports that 33,113 polling stations existed; we have data for 32,790 of these precincts. In some cases, data are only reported for one of the PR or SMD ballots in a precinct, however.

The analysis focuses on three political parties in Ukraine's 2002 elections: ZaYedU, KPU and NU. These parties were selected because they are the major groups that contested seats and because they fall on opposite sides of the main dimension of conflict. In addition, as the 'party of power,' ZaYedU is likely to have greater capacity to commit fraud than other parties.[15]

Dependent Variable

The dependent variables in the multivariate analyses are the performance of three parties, ZaYedU, KPU, and NU in the PR and SMD components of the mixed electoral system, aggregated at the precinct level. The data are reported as the proportion of the vote received and range from 0 to 1.0.

Independent Variables

<u>Candidate Placement and Features:</u> Candidate nomination can affect vote outcomes in both PR and SMD. A substantial body of work about mixed electoral systems shows that placement of candidates in SMD races

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14 Available online at: http://195.230.157.53/pls/vd2002/webproc0v.

15 However, this observation does not rule out the possibility that other parties may commit fraud. Local control of election commissions could allow parties in the opposition or pro-presidential camp to systematically influence precinct level results.

positively affects affiliated party performance in the corresponding PR race.[16] We control for this effect in our models of PR performance by coding each precinct '1' where a candidate affiliated with the party in question appeared on the ballot.

Performance in the elections could be affected by patronage politics or natural party strongholds as well. Controls for parliamentary experience and candidates with national-level or local-level positions are included in the analysis. A candidate was coded 1 for parliamentary experience if the candidate served in the national Rada from 1994-2002. Candidates who occupied governmental posts in the executive branch, security service or other national office were coded 1 for national-level office. Local mayors, members of local assemblies and other executive positions were given a score of 1 for local-level office. Others were coded with a 0. Further, the positions are distinguished by party affiliation.[17]

In the model of PR performance (Table 4), we include candidate features of the party whose results are under analysis in the model. In the model of SMD performance (Table 5), we also include features of other candidates. Votes in SMD may be affected substantially by the choice set presented to voters. PR uses a single national district; all parties compete on the ballot in each district. But, parties do not nominate candidates in every SMD constituency. Consequently, voting choice in SMD may be affected by the available alternatives. We include the variables: ZaYedU Parliament, ZaYedU National, ZaYedU Local, KPU Parliament, KPU Local, NU Parliament, NU National, and NU Local in each model to account for the nature of competition in the district.[18]

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16 Erik S. Herron and Misa Nishikawa, 'Contamination Effects and the Number of Parties in Mixed-Superposition Electoral Systems.' *Electoral Studies*. 20 (March 2001): 63-86; Karen E. Cox and Leonard J. Schoppa 'Interaction Effects and Mixed-Member Electoral Systems: Theory and Evidence from Germany, Japan and Italy.' *Comparative Political Studies*. 35(9) (2002): 1027-1053; Federico Ferrara, Erik S. Herron and Misa Nishikawa, *Mixed Electoral Systems: Contamination and Its Consequences* (New York: Palgrave, 2005).

17 Coding decisions were based on candidate biographies published by the Central Electoral Commission.

18 No KPU candidate qualified as KPU National.

Region: Ukraine's regions are included in the analysis to control for the possibility of regional strongholds affecting outcomes. Ukraine's regions have been subdivided in many ways in previous studies. We follow an eight-region approach[19] to maximize the number of regions while harnessing the benefits of clustering regions with similar demographic, historical and other features into macro-regional units.[20]

Special Polling Stations: Each polling station is required to record basic information about the vote (number of voters, votes cast for each party and candidate) and the facility (address and other identifying information) and to forward these documents to the district electoral commission where the results are compiled and transmitted to the Central Electoral Commission. The electronic versions of the protocols are thus formal records of the official vote tallies in the polling stations.

Precinct officials inconsistently provided information about polling stations. In many districts, the address was accompanied by a description of the facility, identifying it as a club, school, prison, ship, hospital, embassy, or other structure. In other cases, only an address or other basic identifier was provided. Although some observers reported that the number of voters casting votes in special polling stations approached 5%,[21] we could account for only 153,626 voters (0.7%) in special polling stations due to the record-keeping of local electoral commissions.[22]

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19 Lowell W. Barrington and Erik S. Herron, 'One Ukraine or Many?: Regionalism in Ukraine and its Political Consequences.' *Nationalities Papers*. 32 (2004): 53-86.

20 The regions are East (Donetsk, Luhansk), Eastcentral (Kharkiv, Zaporizhzhia, Dnipropetrovsk), Krym (Crimea and Sevastopol), South (Kherson, Mikolaïv and Odesa), Northcentral (Chernihiv, Sumy, Poltava, Cherkasy, Kirovohrad, Kyiv City and Oblast), Westcentral (Khmel'nytskyi, Zhytomyr, Vinnytsia, Rivne, Volyn'), West (Ivano-Frankivs'k, L'viv, Ternopil'), and Southwest (Chernivtsi, Zakarpattia).

21 'Findings from Election Day.' (NORDEM, 2002). Available online at: http://www.humanrights.uio.no/forskning/publ/nr/2002/06/nordem_report-Findings-2.html.

22 These calculations are based on reported precinct level results for SMD. In PR, 161,028 voters, or 0.6% of the total, were accounted for in our coding. The potential gap between the actual number of special precincts and our coding raises an important methodological question. If we have 'sampled' a subset of special precincts, is our 'sample' adequately representative of the population? It is possible that the sample is not random. If government officials selectively reported outcomes, we would expect the state to withhold the most unflattering data. Thus, we would expect the available data to be biased downward. Under this assumption,

Prison precincts were identified by various terms in Ukrainian and Russian, including *vypravna kolonia* (виправна колонія) and *ispravitel'naia kolonia* (исправительная колония), as well as acronyms such as *VK* (ВК) and *IK* (ИК). We coded 48 polling stations as penitentiaries in the dataset.

When coding hospital precincts, we were most concerned with in-patient facilities rather than first-aid clinics.[23] First-aid facilities are more likely to operate like standard polling stations; in rural areas, they may be the only available institution to accommodate voting. However, larger hospital precincts with in-patient care tend to serve voters receiving some kind of long-term or emergency treatment. We included Ukrainian and Russian terms such as: *likarnia* (лікарня), *poliklinika* (поликлиника), *roddom* (роддом), and *dispanser* (диспансер) for general treatment as well as special treatment (i.e., facilities for tuberculosis or cancer patients). We identified 360 patient-care facilities as hospitals.

While some areas of Ukraine (i.e., Sevastopol) are more likely to have military voters, none of the precincts provided enough information to conclude that voters were soldiers. But, many ships served as polling stations; voters casting ballots in these stations are likely to be members of the merchant marine or navy. We identified 89 ships, but results were available for only 37. Lastly, precinct-level protocols labeled embassies, consulates and foreign missions. These polling stations serve Ukrainian expatriates as well as state employees stationed abroad. We identified 89 foreign diplomatic posts.

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our estimates might understate the effects of special precincts. Another possibility is that, instead of being unreported in the data, unlabeled special precincts may be included incorrectly among 'standard' precincts. If these mislabeled precincts are biased toward pro-government forces, our estimates would understate the effects of these precincts. If their results are no different from standard precincts, our estimates would overstate the effects of special precincts. Based on our analysis of the data, however, we believe that it is more likely that the uncoded special precincts would provide support to our hypotheses.

23 Facilities called *fel'dshersko-akusherskii punkt* (фельдшерско-акушерский пункт) were not coded as a hospital. These facilities are unlikely to house large numbers of patients; rather, they are likely to be 'first aid' clinics in small municipalities. '*Punkt*' implies a small facility; likely it is a gathering point rather than a larger facility that houses patients.

Table 2: Precincts with 100% Vote for a Single Candidate

District	*Precinct*	*Precinct Winner*	*No. of Votes in Precinct*	*District Winner*	*District Margin of Victory*	*Type of Precinct*
100	249	DU	56	DU	65,410	Village
116	86	NU	5	NU	78,444	Hospital
126	65	NU	9	NU	3,798	Uncertain
126	86	NU	12	NU	3,798	Village
185	48	SDPU(o)	3	Independent	9,578	Hospital
55	45	ZaYedU	35	ZaYedU	58,270	Prison
106	67	ZaYedU	1,392	ZaYedU	16,658	Prison
106	103	ZaYedU	1,265	ZaYedU	16,658	Uncertain
108	60	ZaYedU	2,053	ZaYedU	1,695	Prison
108	112	ZaYedU	1,267	ZaYedU	1,695	Prison
108	117	ZaYedU	1,021	ZaYedU	1,695	Prison
110	138	ZaYedU	604	ZaYedU	30,322	Prison
111	69	ZaYedU	1,781	ZaYedU	50,248	Prison
111	70	ZaYedU	413	ZaYedU	50,284	Prison
114	147	ZaYedU	648	ZaYedU	17,961	Uncertain
126	146	ZaYedU	182	NU	3,798	Village
126	166	ZaYedU	12	NU	3,798	Village
131	144	ZaYedU	97	Independent	20,153	Prison
132	19	ZaYedU	349	ZaYedU	36,263	Prison
139	128	ZaYedU	19	ZaYedU	11,843	Ship
144	198	ZaYedU	163	ZaYedU	36,039	Village
155	18	ZaYedU	72	NU	57,334	Uncertain
179	29	ZaYedU	77	Independent	5,864	Prison
224	87	ZaYedU	8	ZaYedU	508	Ship
224	88	ZaYedU	5	ZaYedU	508	Ship
224	90	ZaYedU	3	ZaYedU	508	Ship
225	93	ZaYedU	65	ZaYedU	9,031	Ship
225	94	ZaYedU	107	ZaYedU	9,031	Ship
225	96	ZaYedU	57	ZaYedU	9,031	Ship

Source: Central Electoral Commission of Ukraine (http://195.230.157.53/pls/vd2002/webproc0v).

Analysis of Election Results/Discussion

Special precincts are typically association with unusual results. Table 2 shows precincts in which 100% of the vote was recorded for a single candidate, along with the party affiliation, overall margin of victory, and type of precinct. Notably, special precincts are prominently featured among these precincts.

Prison Precincts

Among the more controversial accommodations for voters with restricted movement was the provision to establish polling stations in penitentiaries. Because these voters are under direct state supervision and control, some observers expressed concerns that voting behavior would be coerced. International observers, in fact, noted direct monitoring of ballots cast by prisoners. The OSCE stated that 'a prison guard inspected marked ballots before they were deposited in the ballot box'.[24] Norwegian observers also indicated that prison ballots were checked by guards.[25]

Based on CEC data, we counted 42,945 votes cast in prisons.[26] ZaYedU received 44% of the SMD vote and 82% of the PR vote in prisons. The main opposition parties fared poorly in penitentiaries, with KPU receiving 7% of the SMD vote, and 2% of the PR vote and NU receiving 2% on both ballots.

Table 3 displays the standardized vote scores for the three parties of interest. The values are the standard deviation from the grand mean in all precincts.[27] Only ZaYedU performed above its mean in prison precincts: ZaYedU scored 4.5 standard deviations above the mean in PR and 1.8

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24 *Ukraine Parliamentary Elections*. Organization for Security and Cooperation in Europe. 2002 (Warsaw: ODIHR, 2002), 21.

25 'Findings from Election Day.' (NORDEM, 2002). Available online at: http://www.humanrights.uio.no/forskning/publ/nr/2002/06/nordem_report-Findings-2.html. One of the authors served as an international observer during the 2002 Ukrainian parliamentary election. Another observer who visited a prison in Kirovohrad also witnessed this behavior in a prison facility and related it to the author in a personal conversation, April 1, 2002.

26 Based on PR protocols. The SMD protocols reported 43,539 votes.

27 That is, the mean for party *i* in all precincts.

standard deviations above the mean in SMD. Both KPU and NU performed below their grand means in prisons.

Table 3: Deviation from Mean Levels of Support in Special Precincts

Party/Ballot	*Prison*	*Hospital*	*Ship*	*Embassy*
ZaYedU/PR	+4.50	+0.57	+1.58	+0.99
ZaYedU/SMD	+1.86	+0.19	+1.67	-----
KPU/PR	-1.09	-0.02	-0.75	-0.81
KPU/SMD	-0.42	-0.10	-0.46	-0.58
NU/PR	-0.97	-0.28	-0.90	0.12
NU/SMD	-0.63	-0.18	-0.77	0.07

Note: Units on Table 2 are standard deviations from the party's grand mean in all precincts.

Hospital Precincts

Participation in elections tends to be lower among the disabled and elderly. To accommodate and enfranchise these voters, residential medical facilities are equipped to be polling stations and mobile ballot boxes are made available in all polling stations. But, voters residing in medical facilities are under the continuing care of state employees. Anecdotal evidence suggests that voters in hospitals have been subjected to overt and subtle forms of coercion.

As an election observer during the 2002 elections, one of the authors visited hospital precincts. He received credible reports of hospital staff instructing voters to select ZaYedU, particularly the candidate affiliated with that party in the district. The mobile ballot box was dispatched throughout the hospital, violating guidelines on its proper use. The author was informed by other observers that during visits to patient rooms, nurses pressured patients to vote for ZaYedU. In another precinct, the mobile ballot box was dispatched to a psychiatric hospital to collect almost 300 votes. The paperwork supporting these requests were patient lists initialed by physicians (not requests from the voters to use the mobile box). Upon further investigation at the hospital by the author, the mobile ballot box could not be located.

Based on our calculations of hospital precincts, 98,545 PR ballots were cast in patient-care facilities.[28] ZaYedU received 16% of the vote in SMD; 19% in PR in hospitals. Once again, the pro-government party fared better than the opposition, but not as dramatically as in prisons. KPU received 7% of the SMD vote and 18% of the PR vote. NU received 11% in SMD and 19% in PR.

The standardized vote scores for hospital precincts are also displayed in Table 3. ZaYedU's vote totals were above its mean in both PR and SMD; .57 standard deviations above the mean in PR and .19 in SMD. By contrast, opposition parties were below the mean, although they were quite close to their mean scores.

Maritime Precincts

While we cannot directly control for military voters, votes that were cast on ships are readily identifiable. Vessels designated as precincts are those that fly the Ukrainian flag; many of which are likely to be part of the navy or merchant marine. Unfortunately, most of the data for maritime precincts were unreported, as noted above. In the 37 ships that reported results, 2,228 voters cast PR ballots.[29]

ZaYedU received 1,706 votes in SMD (or 70% of the vote) and 796 (36%) in PR. The KPU received 160 votes in SMD (7%) and 185 (8%) in PR while NU received 5 (0.2%) and 54 (2%) votes, respectively. ZaYedU, once again, performed far better than its main competitors. ZaYedU scores on ships were over 1.5 standard deviations above the mean.[30]

Embassy/Consulate Precincts

Foreign service employees and expatriates are given the opportunity to cast ballots in an embassy, consulate, or foreign mission. Voters not only select parties in PR, but missions are assigned SMD races as well. All identifiable foreign polling stations were either assigned to district 217 or 222. ZaYedU

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28 87,391 cast votes in SMD.

29 2,442 cast votes in SMD.

30 It should be noted that these scores were generated with proportions. Since maritime precincts are small, performance could be exaggerated. However, it is clear from the raw vote count that ZaYedU received a disproportionate share of the votes in these precincts.

did not nominate a candidate in these districts, so no votes are reported for it in SMD.

Some existing literature notes that voters casting their ballots outside the country may not fully reflect the tendencies of domestic voters. For instance, Taylor (2003) indicates that US citizens abroad seem to lean toward Republican candidates and this may be due to the proportion of the military vote among the international ballots that are cast. In the case of Ukraine, we might expect foreign service employees to be more inclined to support the pro-presidential party because they rely on the executive for their jobs, or are sympathetic with the administration. While support may also reflect coercion, we must interpret the results from embassy precincts with particular care.

ZaYedU received 27% of the PR vote in diplomatic outposts. The KPU garnered 5% in both SMD and PR. Unexpectedly, NU performed quite well in these precincts, collecting 11% of the PR and 37% of the SMD vote. ZaYedU outperformed its competitors, with its PR votes approximately 1 standard deviation above the mean. KPU scored well below the mean, while NU scored slightly better than its average vote.

Multivariate Analysis

Data from special precincts, reported above, provide preliminary support for our hypothesis. ZaYedU performed consistently better than the opposition, and better than its overall mean, in special precincts. Opposition parties performed worse overall in special precincts with some exceptions. To account for alternate hypotheses that explain party performance in elections, we conducted multivariate analyses on two dependent variables. We report Ordinary Least Squares (OLS) results for models of PR support (Table 4) and SMD support (Table 5) for ZaYedU, KPU and NU. The results on both tables support our hypothesis. Additional tests using Seemingly Unrelated Regression confirm the robustness of results.[31]

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31 Other scholars have noted that employing standard Ordinary Least Squares (OLS) to assess outcomes in multiparty elections generates two problems: 1) OLS may produce nonsensical predictions since the distribution of the dependent variable is typically bound by 0 and 1.0, and 2) the performance of party *i* is not independent of other parties' performance (Jonathan Katz and Gary King, 'A Statistical Model for Multiparty Electoral Data.' *American Political Science Review*. 93 (1999): 15-32; Michael Tomz, Joshua A. Tucker and Jason Wittenberg, 'An Easy and Accurate Regression Model for Multiparty Electoral Data.' *Political Analysis*. 10 (2002): 66-83.

Table 4: Support in PR for ZaYedU, KPU and NU

	ZaYedU	*KPU*	*NU*
Constant	0.027***	0.023***	0.658***
	(.001)	(.002)	(.004)
Candidate	0.010***	0.000	0.017***
	(.002)	(.001)	(.002)
Deputy	0.048***	0.040***	0.076***
	(.003)	(.003)	(.004)
High	0.059***	-----	0.072***
	(.005)		(.009)
Local	0.004	0.026***	0.120***
	(.002)	(.005)	(.005)
North	0.071***	0.128***	-0.451***
	(.002)	(.001)	(.004)
Southwest	0.065***	0.045***	-0.233***
	(.003)	(.002)	(.006)
East Central	0.099***	0.310***	-0.608***
	(.002)	(.002)	(.003)
East	0.262***	0.318***	-0.643***
	(.003)	(.002)	(.003)
South	0.105***	0.277***	-0.597***
	(.003)	(.003)	(.004)
West Central	0.076***	0.094***	-0.282***
	(.002)	(.001)	(.004)
Krym	0.025***	0.320***	-0.561***
	(.003)	(.003)	(.005)
Prison	0.676***	-0.248	-0.144***
	(.029)	(.019)	(.024)
Hospital	0.085***	-0.042***	-0.039***
	(.013)	(.025)	(.006)
Ship	0.303***	-0.264***	-0.057***
	(.074)	(.025)	(.013)
Embassy	0.195***	-0.083***	0.082***
	(.024)	(.008)	(.022)
MSE	0.140	0.105	0.131
R^2	0.255	0.566	0.744
N	31988	31988	31988

Dependent variable: valid proportion of the vote in PR.
*** = p<.01; ** = p<.05; * = p<.10

The results on Table 4 report the effects of candidate characteristics, region and special precincts on PR outcomes aggregated at the polling station level. Having an affiliated candidate in the corresponding SMD race positively

Seemingly Unrelated Regression addresses these issues, but creates complications with the interpretation of results. Because the SUR results were substantively similar to OLS, OLS is reported for ease of interpretation.

affected PR results for two of the three parties. Candidates with parliamentary experience performed better, on average, than their counterparts without experience. The coefficients for parliamentary experience were statistically significant and positive in sign for all three parties. Candidates who held national posts also benefited their parties, evidenced by the significant positive parameter estimates. Candidates in local posts generally improved PR outcomes; coefficients were positive and significant for KPU and NU.

Regional variables affected party performance in the expected direction; ZaYedU received more support, on average, in the east and south. The KPU also received strong support in the east, east central, south, and Crimea, evidenced by the large positive coefficients. NU performed best in the west; negative coefficients for the remaining dummy variables reflect NU's support in the excluded category.

Coefficients for special precincts were consistently positive in sign and significant for ZaYedU. The coefficient was particularly large for prisons; ZaYedU tends to receive, on average, 68% more of the vote in prisons than in other precincts. By contrast, coefficients for special precincts were negative in sign for the KPU. In the NU model, parameter estimates for special precincts were negative and significant for prisons, hospitals and ships, but not embassies. Rather, NU performed better in foreign outposts than in other polling stations situated in Ukraine.

The analysis of SMD results produced similar results. Support for SMD candidates was affected in the expected way by the characteristics of the candidate (parliamentary experience, national or local office) as well as the characteristics of competitors. For example, ZaYedU candidates tended to receive more votes if they had previous parliamentary experience or held national office. They tended to perform better in districts with competitors from the KPU, unless those candidates had parliamentary or local experience. ZaYedU candidates tended to perform worse if there were competitors from NU. Region also affected performance in the expected manner. ZaYedU candidates tended to do best in the east, KPU in the east, eastcentral, and Crimea, and NU in the west.

Table 5: Support in SMD for ZaYedU, KPU and NU Candidates

	ZaYedU	*KPU*	*NU*
Constant	0.257***	0.015***	0.456***
ZaYedU Candidate	-----	-0.009***	-0.014***
ZaYedU Parliament	0.060***	0.008***	-0.001
ZaYedU National	0.108***	0.010***	0.056***
ZaYedU Local	0.001	0.012***	0.035***
KPU Candidate	0.023***	-----	0.032***
KPU Parliament	-0.048***	0.047***	-0.030***
KPU	-0.250***	-0.000	-0.029***
Local			
NU Candidate	-0.085***	0.001	-----
NU Parliament	-0.057***	-0.004**	0.125***
NU	-0.203***	0.001	0.125***
National			
NU	-0.119***	-0.001	0.076***
Local			
Northcentral	0.021***	0.065***	-0.363***
Southwest	-0.092***	0.007***	-0.278***
Eastcentral	0.082***	0.145***	-0.427***
East	0.323***	0.160***	-0.454***
South	0.094***	0.093***	-0.453***
Westcentral	0.078***	0.050***	-0.263***
Crimea	-0.082***	0.122***	-0.389***
Prison	0.348***	-0.086**	-0.054**
Hospital	0.041**	-0.031***	-0.011
Ship	0.481***	-0.082***	-0.023***
Embassy	-----	-0.038***	0.074***
MSE	.189	.082	.137
Adjusted R^2	0.321	0.348	.640
N	16818	26313	22954

Dependent variable: valid proportion of the vote for affiliated candidates in SMD.
*** = p<.01; ** = p<.05; * = p<.10

The coefficients for special precincts provide additional support for the hypothesis. ZaYedU candidates received, on average, 35% more of the vote in prisons, 4% more in hospitals and 48% more on ships than in standard precincts. The KPU and NU consistently performed worse in special precincts than in standard precincts, with the exception of NU in embassies. While

voters on foreign soil may be state employees, they also include expatriates who may favor center-right opposition parties.

In sum, the analysis of PR and SMD performance for the three main parties contesting Ukraine's 2002 parliamentary election shows that voting in special precincts systematically benefited the pro-presidential party. But, can we conclude that fraud was the cause of these outcomes? In our analysis, we controlled for alternate explanations of the vote: ballot effects, the quality of competing candidates in SMD, and region. In the presence of these controls, special precincts consistently benefited ZaYedU. While we might expect the pro-government party to perform better among foreign service personnel and military personnel, its performance in hospitals and prisons is more difficult to explain benignly. Moreover, in eleven prisons we could identify, ZaYedU received 100% of the vote. Given the level of competition in the election, it is difficult to explain why thousands of prisoners would unanimously select ZaYedU over the alternatives. Having ruled out alternate explanations of the unusual vote outcomes in special precincts, the most plausible explanation is coercion and fraud. This conclusion is consistent with reports from international and domestic observers that noted evidence of fraud in special precincts.

Conclusions

This chapter has provided evidence that voting in special precincts disproportionately benefited the party of power in the 2002 parliamentary election. Special precincts serve a small number of voters, but their impact on election results is not inconsequential. Credible evidence suggests that outcomes in some district races were influenced by votes in special precincts. For example, the margin of victory for the candidate in district 108 was 1,695; the winner received 4,249 votes in prisons with questionable vote tallies. While only an anecdote, this example suggests that votes in special precincts can play a decisive role in election outcomes.

International and domestic observer reports from 2002 send a cautionary note: while fraud may not have been organized and implemented throughout Ukraine on a massive scale, plausible cases of fraud influenced

outcomes and affected election quality. Instead of moving toward international standards for free and fair elections, however, Ukraine moved away in 2004, experiencing extreme cases of organized vote fraud. If Ukrainian officials learned any lessons from the electoral process in 2002, it was that fraud can be used to influence election outcomes. But, the elections of 2004 showed that there may be a threshold: when the stakes are higher and fraud is more widespread, the public and many political elites will not accept clearly manufactured results.

Appendix: Party Acronyms

Party Name (English)	*Party Name (Ukrainian)*	*Acronym*
Bloc of Yuliya Tymoshenko	Виборчий блок Юлії Тимошенко	Tym
Communist Party of Ukraine	Комуністична партія України	KPU
Democratic Party of Ukraine – Democratic Union	Демократична партія України – партія Демократичний союз	DU
For a United Ukraine	За Єдину Україну!	ZaYedU
Green Party of Ukraine	Партія Зелених України	PZU
Our Ukraine	Наша Україна	NU
Party of National Economic Revival	Партія національно-економічного розвитку України[32]	NER
Social Democratic Party of Ukraine (United)	Соціал-демократична партія України (об'єднана)	SDPU(o)
Socialist Party of Ukraine	Соціалістична партія України	SPU
Ukrainian Marine Party	Українська морська партія	Marine
Unity	Єдність	Yednist
Women for the Future	Жінки за майбутнє	Women
Yabluko	Яблуко	Yabluko

32 NER did not contest PR seats.

2 Why and How It Happened

Orange Ukraine Chooses the West, but Without the East

Dominique Arel, University of Ottawa

The Orange Revolution was the single most momentous political event in Eastern Europe since the fall of the Berlin Wall,[1] but it rests on a paradox. The Revolution was about the creation of a political nation, about changing the nature of the political regime in Ukraine, and redirecting the flow of political development towards an 'open society,' which, in the current political vocabulary, is synonymous with one word: Europe. And yet, the Orange Revolution owes its existence to a strong national movement in Ukraine – *national* as in nationalism.

The 'minority faith,' to use the title of a well-known book by Andrew Wilson, has not, in fact, led 'nowhere,' to use the title of a rather infamous article by a former American diplomat.[2] The national faith actually became an electoral majority, albeit in unexpected ways, and its success in achieving the hardest of feats, organized and sustained collective action, cracked the old regime down the middle. We have come a long way since Hans Kohn, for whom nationalism in the East was all emotion and irrationality, and a threat to

1 The chapter is based on the Third Annual Stasiuk-Cambridge Lecture on Contemporary Ukraine delivered at Cambridge University on February 25, 2005. The author wishes to thank David R. Marples, Hubertus F. Jahn and Alex Orlov for their kind invitation, as well as Natalka Patsiurko and Sarah Malik for their assistance.

2 Andrew Wilson, *Ukrainian Nationalism: A Minority Faith* (Cambridge: Cambridge University Press, 1996); Jack F. Matlock, 'The Nowhere Nation.' *The New York Review of Books* 47:3 (24 February 2000): 41-45.

open society.[3] The Orange Revolution took place in what for Kohn was the deep East, as his East began at the French-German border. And yet, if Ukraine is now on the road to an open society, it is largely thanks to the strength of its nationalism.

The complicating factor is that Ukrainian society is suffering a severe crisis of legitimacy. The non-Orange part of the electorate – 44 percent, in the final round of elections on December 26 – refused to accept that the popular uprising in Kyiv's Central Square (the Maidan) was legitimate. The Orange electorate – just a touch over the majority threshold, at 52% – refused to accept non-Orange grievances as legitimate. This could be dismissed as the normal dynamics of a winner/loser electoral outcome, except for the fact that the Orange and non-Orange constituencies are strikingly geographically polarized.

Ukraine had been geographically polarized once before, during the last round of presidential election that brought Leonid Kuchma to power in 1994.[4] The fact of the matter is, Ukraine is far more polarized now than it was in 1994. At the same time – and this is no contradiction, as I will explain later – the huge level of rejection of Viktor Yushchenko in Eastern Ukraine is virtually identical to that of Leonid Kravchuk in 1994, at a time when there was no Orange Revolution. I would venture that there is something deeper at work, namely, the fear of exclusion. In this respect, the fact that the first Orange Cabinet of Ministers, appointed in January 2005, virtually excluded Eastern Ukraine, a first since the creation of Soviet Ukraine in the 1920s, is quite significant.

The Orange Revolution began on November 22, 2004, when it became clear that the old regime had stolen the election. Falsifying an electoral outcome in a competitive context is an art, but there was nothing artful in how Donetsk, the power base of then Prime Minister Yanukovych, falsified the results. Donetsk reported an overwhelming majority for Yanukovych (96 percent), which was not entirely implausible, as similar near-unanimous support for Yushchenko could be found in the Galician provinces of Western

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3 Hans Kohn, *The Idea of Nationalism: A Study in Its Origin and Background* (New York: The Macmillan Company, 1944).

4 Dominique Arel and Valeri Khmelko, 'The Russian Factor and Territorial Polarization in Ukraine.' *The Harriman Review* 9:1-2 (Spring 1996): 81-91.

Ukraine. Where Donetsk overreached was in reporting an enormous turnout of 97 percent, 10 percent higher than any other oblast outside of the Donbas, 16 percent higher than the national average, and 19 percent higher than the turnout obtained in the same Donetsk oblast just three weeks earlier.

What a statistician would cautiously call implausible, the Maidan and, in quick succession, Western governments called impossible. At least three-quarters of a million votes had been fabricated in Donbas (Donetsk and neighboring Luhansk) and that alone called into question the small official lead (2.9 percent) enjoyed by Yanukovych in the national results.[5] Sure enough, there were also allegations of thousands of violations throughout eastern and southern Ukraine. In a large country, the impact of these violations in local precincts on the aggregate national result is difficult to assess. Evidence soon surfaced based on taped phone conversations that the Presidential Administration had intercepted results sent by territorial electoral commissions and altered them before they were eventually received by the Central Electoral Commission.[6] Establishing the authenticity of taped conversations, however, takes time.

What jolted Western governments and the Organization for Security and Cooperation in Europe (OSCE) such that they refused to recognize the result of the second round,[7] and most likely served as the initial impetus for people to fill the Maidan, was the obvious and gross violation in Donetsk. One Russian in Donetsk, who was observing the election in Yanukovych country for a European organization, was shocked less by the violations themselves, than by the fact that they were committed so openly and brazenly.[8] This

5 On voting fraud in the 2004 presidential election, see Mikhail Myagkov, Peter C. Ordeshook and Dimitry Shakin, 'Fraud or Fairytales: Russia and Ukraine's Electoral Experience.' *Post-Soviet Affairs* 21:2 (April-June 2005): 91-131.

6 Andrew Wilson, *Ukraine's Orange Revolution* (New Haven, CT: Yale University Press, 2005): 1-6.

7 The OSCE's International Election Observation Mission in its 'Statement of Preliminary Findings and Conclusions,' issued on November 22, 2004, announced that the second round 'did not meet a considerable number of OSCE commitments and Council of Europe standards for democratic elections,' adding that 'Overall, State executive authorities and the Central Electoral Commission (CEC) displayed a lack of will to conduct a genuine democratic election process'. The report is available at http://www.osce.org/documents/odihr/2004/11/3811_en.pdf.

8 Aleksandr Kynev, 'Vybory po poniatiiam.' *Agentstvo politicheskikh novostei*, 25 November 2004, translated as 'Elections According to "The Rules".' *The Ukraine*

arrogance – let's call it the hubris of incompetence – ultimately doomed the regime.

This occurrence, however, required sustained social pressure. It is precisely on this point that absolutely everyone, beginning with Yushchenko, was in the dark. This is why, although they do contain a grain of truth, stories about the Orange Revolution being the result of Western intervention ultimately miss the point by a wide margin.[9] The backbone of Orange, the PORA student movement, was indeed impressively organized, and no doubt greatly benefited from the training it received from Serbian and Georgian colleagues, as well as from American foundations. Sustaining a Tent City in downtown Kyiv costs money, and a fair amount of it, but it is far more likely that these resources came from a group of wealthy Yushchenko allies, who, incidentally, later formed the core of Tymoshenko's Cabinet, than from the ubiquitous Uncle Sam. There was a lot of money circulating in Ukraine, and not all in the camp of the Yanukovych-aligned oligarchs.[10]

Yet what everybody expected was for a relatively small following to disrupt business as usual in the center, much like the small demonstrations of 'Ukraine Without Kuchma' four years earlier, during the Gongadze crisis, with pressure placed on Western powers not to recognize the election.[11] What happened instead was a mass outpouring into the streets and swelling instead of diminishing numbers. One can dispute how many exactly there were in the streets, but one had only to look at the Maidan to think Berlin, Prague and Bucharest 1989. Or Belgrade 2000, and Tbilisi 2003. As the saying goes, a picture is worth a thousand words.

In the perspective of rational choice analysts, the 'tipping point' had been reached, the point after which the benefits of engaging in collective action surpass the costs. That, no one could foresee. It was not supposed to

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List 285 (26 November 2004). [Note by the editors: UKL is an email newsletter compiled by Dominique Arel.]

9 For a detailed analysis, see Graeme P. Herd, 'Colorful Revolutions and the CIS: 'Manufactured' Versus "Managed" Democracy?' *Problems of Post-Communism* 52:2 (March/April 2005): 3-18.

10 Lucan Way, 'Ukraine's Orange Revolution. Kuchma's Failed Authoritarianism.' *Journal of Democracy* 16:2 (April 2005): 131-45.

11 The best account of the Ukraine Without Kuchma movement can be found in Myroslava Gongadze and Serhii Kudelia, *Rozirvanyi nerv* (Kyiv: Fundatsiia 'Vidkryte suspil'stvo', 2004).

happen in Ukraine. All the seminars in Ukrainian studies in the past few years, including one hosted by the author a month before the second round agreed on one thing: civil society in Ukraine was too weak to stand up to the rise of a post-Soviet authoritarian regime. Prague 1989 in Kyiv? Not in your wildest dreams. And yet it happened. The Revolution was first and foremost a revelation: that Ukrainian society had, in fact, profoundly changed since independence.

With a mass, but peaceful uprising in downtown Kyiv, the nerve center of the government, the old regime elites, rather than Western governments, were the ones who came under massive pressure. With so many people in the streets, and the obvious falsification in Donetsk, the decision by the West not to recognize results was far easier to make, even though France and Germany, ever mindful of their oil interests in Orange-challenged Russia, could have lived without the problem. From that point, with the tipping point passed in terms of street demonstrations, and with Ukraine shunned by the West, the fate of the Orange Revolution rested on the cohesion of the old regime elite.

As Darden argues in his much-cited conceptualization of Kuchma's Ukraine as the 'Blackmail State,' the old regime (which I use here as a shorthand, but was not, in fact, that old, rather the peculiar creation of a post-Soviet environment) was all about the subversion of state institutions (security, fiscal, regional, educational) to the benefit of one particular leader and of his coterie.[12]

In one sense, the rise of Our Ukraine, Yushchenko's political vehicle, is the story of individual officials who served the Kuchma regime and were either forced out, or became disillusioned, and then banded together to challenge the regime, beginning with Yushchenko himself, followed by Yulia Tymoshenko, one-time Vice-Premier Anatolii Kinakh, and so on. The Orange Revolution, on the other hand, is the story of high-powered elites who defected from the Kuchma regime while still in control of their institutions. Prior to the first round, only Volodymyr Lytvyn, a former Kuchma Chief of Staff who was supposed to have become his henchman as parliamentary

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12 Keith A. Darden, 'Blackmail as a Tool of State Domination: Ukraine under Kuchma.' *East European Constitutional Review* 10:2/3 (Spring/Summer 2001): 67-71. Available at http://www.law.nyu.edu/eecr/vol10num2_3/focus/darden.html.

Speaker, was on the verge of defecting, a predilection that was sealed on November 27, when parliament voted not to recognize the second round.[13]

Under street pressure, the defections snowballed. University rectors challenged the regime and allowed their students to demonstrate. Regional councils proclaimed they would not acknowledge the results. Diplomats posted abroad denounced the falsification. Media magnates, the so-called 'oligarchs,' began to loosen the administration's control of their news broadcasts. Crucially, the security forces refused to follow orders to use force. The Western media reported that such an order had been given, when the Revolution was a week-old, and that the SBU made it clear that it would confront Army or Interior Ministry troops if it had to.[14] Whether an order was actually given remains unclear, yet, by all indications, the regime knew, by the second week, that it could no longer count on the support of its security service. The last straw was the decision of the Supreme Court invalidating the second round and ordering a third one, in defiance of the expressed preference of President Kuchma.[15]

Before Orange, Ukraine watchers knew the probability that Ukraine could 'turn the corner' was contingent on a critical mass of elites defecting from the old regime. What would trigger this spiral of defections was impossible to predict. Which is another way of saying that Orange was impossible to predict. What is Orange? The Orange Revolution was not about policy issues that are normally front and center in electoral contests, but pertained to a process. It was neither about a joyful acceptance of the neo-liberal economic model, nor about American geostrategic interests, but rather about the systemic abuse of executive power in Ukraine, and the disingenuousness of proclaiming a strategic course of European integration, while regressing on all political, economic, and legal indicators of Europeanness. The Orange Revolution was about the creation of a civil society in real time, in front of our eyes, in the sense that, for the first time in Ukrainian history, an organized society acted as a counter-weight to the state.

13 On Lytvyn's role during the Orange Revolution, see Peter Savodnik, 'Ukraine: The Washington Connection.' *The New York Review of Books* (10 February 2005).

14 C. J. Chivers, 'Back Channels: A Crackdown Averted. How Top Spies in Ukraine Changed the Nation's Path.' *New York Times* (17 January 2005).

15 The ruling of the Supreme Court, in the original Ukrainian, can be accessed at http://pravda.com.ua/news/2004/12/3/14476.htm.

Twelve days of huge demonstrations, between November 22 and December 3 (the day the Court ruled), cannot be fabricated.

But where did that civil society come from? We still know little about the social foundations of Orange, and, no doubt, sociological and anthropological studies will do much to inform our understanding in the years ahead. But two factors appear to have played a critical role: the generational and the national. Orange began with PORA, a group of students who were children or teenagers at the time of independence, and ended with the nomination of what appeared to be the youngest Cabinet since the Bolshevik Revolution, with an average age of 44. To be sure, people of all ages were on Maidan. Nevertheless, it seems fair to point out that the driving force, both at ground level and at central command, was a generation that had not been in a position of authority during the Soviet era. That generation, it could very well be, is anything but *homo sovieticus* in how it views the state. This is most disturbing to neighboring autocrats, beginning with Russia, in their assessment of the export potential of the Orange Revolution. Given a similar opportunity, why would post-Soviet youth in Russia behave any differently?

The mitigating factor, however, is nationalism. Nationalism is a term of opprobrium to many, and is very often used selectively (in the sense that nationalism always seen to define what the *other* group is doing, not the one we are identifying with). Yet it has value as a concept of comparative political analysis. Let me be very clear as to what I mean here. Nationalism is a claim of political sovereignty based on a claim of cultural distinctiveness. The French model of the nation is generally presented as contradicting this assertion but, in the last analysis, the French defined the French as whoever spoke French and nothing else.[16] They were, and remain, quite intolerant on the issue of linguistic diversity. In Ukraine, nationalism is a factor, because one constituency is far more cohesive than another in its vision of the nature of Ukrainian cultural distinctiveness. That constituency is strongest in Western Ukraine, territories that were not part of a Russian Imperial or Soviet

16 Legally and politically, France recognizes only a French 'national' identity, and the collection of data on the basis of race, ethnicity, or language is prohibited. In practice, the ability to speak French became a *sine qua non* of French national identity. Moreover, as riots in the cités (the 'outer' ghettos) revealed to the world in Fall 2005, the formal equality of all within the nation appears to mask a reality of social exclusion based on ethnic origins.

state until the Second World War (with one regional semi-exception).[17] Western Ukrainians did not fill the square on their own, but there is little doubt that they, Galicians in particular, were overrepresented, in the backbone of Maidan, particularly in the crowds that were blocking government buildings and Kuchma's dacha. Remove them from the equation and you have a serious organizational problem.

But leave them alone on the square and you have an even bigger problem. The Orange Revolution is not a Galician coup. It is rather about Western Ukrainians and Central Ukrainians *really* coming together for the first time, not simply symbolically, as happened in 1919.[18] In electoral arithmetic, there is no question, as I will show in a moment, that Yushchenko's breakthrough was specifically in Central Ukraine. On Maidan, one has to assume, based on various testimonies, that the bulk of non-Western Ukrainian demonstrators were from areas of Central Ukraine. At the elite level, the composition of the first Orange Ukrainian Cabinet, until Tymoshenko's dismissal is September 2005, is once again instructive. Of the 23 ministers, only four were from the East, but only four were from the West. Nearly two-thirds were from Central Ukraine. The Donbas media has frequently raised the specter of Galicia taking over Ukraine, but only a single minister was actually from Galicia (the Minister of Culture, not exactly a 'power' ministry). It is Central Ukraine that dominated post-Orange Ukrainian politics.

Why is this important? The civil society revealed by the Orange Revolution has taken root precisely in the areas where Ukrainian national consciousness is more cohesive. Historically, of course, nationalism can graft

17 Five of the seven provinces of Western Ukraine were not part of a Russian or Soviet state until 1939. Two others, Volyn' and Rivne, were annexed by Imperial Russia after the Partition of Poland in the 1790s, before reverting to a Polish state in the interwar period.

18 On January 22, 1919, the Kyiv-based Ukrainian National Republic, which had declared independence from Bolshevik Russia a year before, and the L'viv-based West Ukrainian National Republic, which had declared independence from a restored Poland, solemnly proclaimed the unity (sobornist') of all Ukrainian lands in a ceremony held in Kyiv. The declaration had no practical effect, since the territory claimed by the West Ukrainian National Republic was eventually annexed by Poland, while the lands claimed by the Ukrainian National Republican became part of Soviet Ukraine. See Paul Robert Magocsi, *A History of Ukraine* (Seattle: University of Washington Press, 1996): 495.

itself on any political ideology. In interwar Western Ukraine, Ukrainian nationalism had appropriated for itself an authoritarian model of society that was rampant in Central Europe.[19] In the early years of independence, mainstream nationalists appeared to be more interested in the trappings of statehood than in substantive reforms. But the Kuchmagate scandal, four years ago, revealed that the only constituency capable of presenting an organized resistance to the subversion of democracy, even if unsuccessful at the time, were the nationalists. The fringe elements notwithstanding, the nationalists, in that defining moment, revealed themselves to be democrats, in fact, the only democrats.[20]

The question we have to ask ourselves is why is it that people mobilized, then and now, in some regions (West and Center), and not others (East and South)? My answer has to do with how people relate to their national identity. Ukrainians in Central and Western Ukraine have a more cohesive view of their identity, and this greater sense of solidarity is a facilitating factor in their ability to undertake collective action. Nationalism acts a vehicle for the realization of a project, and that project has become that of an open society, as we know it in Europe. It is high time for us to leave the experience of 'integral' nationalism in the closet, in the historical closet—once again, fringe outbursts notwithstanding. Nationalism produced the Orange Revolution which, as I said at the outset, took the form of a popular uprising for an open society.

But Orange conquered only half of the country, and that half is highly geographically concentrated. What are the facts about that polarization? Ukraine is divided into twenty-seven territories: twenty-four provinces or *oblasts*, one autonomous republic (Crimea), and two cities with a special territorial status (Kyiv, the capital, and the naval port of Sevastopol, whose facilities are leased to the Russian Fleet). In the final round of December 26, Yanukovych won in ten territories, comprising just under half of the national electorate (48 percent). Yushchenko won in seventeen territories, comprising

19 Alexander J. Motyl, *The Turn to the Right: The Ideological Origins and Developments of Ukrainian Nationalism* (Boulder, CO: East European Monographs, 1980).

20 Dominique Arel, 'Kuchmagate and the Demise of Ukraine's Geopolitical Bluff.' *East European Constitutional Review*. 10:2/3 (Spring/Summer 2001): 54-59. Available at http://www.law.nyu.edu/eecr/vol10num2_3/focus/arel.html.

just over the other half (52 percent). In the territories that he carried, Yanukovych received 75 percent of the vote. In the territories carried by Yushchenko, his score was 80 percent. In only one of all twenty-seven territories was the vote relatively close: the Southern oblast of Kherson, where Yanukovych beat Yushchenko 51 percent to 43 percent. In all other twenty-six territories, the margin of victory by one or the other candidate was enormous. After Kherson, the closest race in the whole country was in Kirovohrad, a Central Ukrainian oblast which straddles the Center and the South (partly located in an area that was historically known as Novorossia), where Yushchenko defeated Yanukovych by 31 percentage points, 63 percent to 32 percent, which in any country would be considered a landslide.

Another way to look at it is to divide Ukraine into regions. There is an interesting debate in the literature as to how best to delineate Ukraine's regions, but for the sake of continuity, let me resort to a dividing principle that I have been using for a decade, focused on five regions, with Kyiv in brackets. In that grouping, the Yanukovych zone is divided into an industrial East and a semi-industrial, semi-agricultural South, while the predominantly agricultural Yushchenko zone is divided into three regions according to their distinct periods of incorporations into a Moscow-dominated state: the Left Bank (1640s), the Right Bank (1790s), and the West (1940s).[21] The Kyiv metropolis, as an industrial magnet, is a huge exception in this agricultural landscape. On December 26, Yanukovych carried 79 percent of the East and 70 percent of the South, while Yushchenko carried 72 percent of the Left Bank, 78 percent of Kyiv, 78 percent of the Right Bank, and 89 percent of the West.

The geographical polarization is stark, and it is starker than it was ten years ago. In the presidential election of July 1994, former Prime Minister Leonid Kuchma unexpectedly edged incumbent Leonid Kravchuk by six percentage points, 51 percent to 45 percent. The election was not about

21 As Ihor Shevchenko pointed out during a discussion of a talk based on this chapter at the Harvard Ukrainian Research Institute in April 2005, the geographical line between the Yanukovych zone (East/South) and the Yushchenko zone (Left Bank/Right Bank/West) happens to correspond to the historic frontier of the Polish-Lithuanian Commonwealth. In other words, Kharkiv (*Slobodanshzhyna*) and Donbas may have had very different historical trajectories, but what they have in common, other than being heavily industrialized, is the fact that never belonged to a Polish-dominated state.

democracy, as it took place in a relatively fair and free fashion, and the legitimacy of Kuchma's victory was not contested. A comparison of the regional breakdown of the vote with the 2004 election is instructive. The support for Kuchma and Kravchuk, compared to Yanukovych and Yushchenko, was virtually the same in 1994 and 2004 for the East, South, and West: 75 percent for the winner in the East and South, 90 percent for the winner in the West. Nearly all the changes took place at the Center—Left and Right Bank, and in the capital. The Left Bank declared itself two to one in favor of Kuchma (66 percent to 31 percent), and that was the biggest puzzle at the time, since pre-election polls had forecast a pro-Kravchuk in these provinces. In 2004, however, it voted for Yushchenko three to one (72 percent to 24 percent). The Right Bank evolved from a relatively close contest (54 percent to 42 percent in favor of Kravchuk) into a sweep, four to one (78 percent to 19 percent) for Yushchenko. Critics of the polarization model argued back then that Central Ukraine (Right Bank and Left Bank) acted as a buffer between the polarized East and West. But there is no such buffer anymore, except for tiny Kherson (Table 1).[22]

Between 1994 and 2004, one social stratum significantly altered its electoral orientation: the peasantry. Until recently, the peasantry was nationally-oriented only in Western Ukraine, that is, in areas that did not experience the social cataclysms of collectivization and famine in the 1930s. In the agricultural heartland of Central Ukraine, the peasantry tended to vote Socialist or Communist. It was 1917-1918 all over again: the national movement conquered the West, the capital and some urban areas of the Center, but could not penetrate the countryside. Yushchenko's greatest achievement was his capacity to rally rural Ukraine under his banner. This began with the parliamentary elections of 2002 and became nearly hegemonic with the final round of the 2004 presidential saga.[23]

What we do not know yet is how exactly the peasantry became Orange.

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22 Sherman W. Garnett, *Keystone in the Arch: Ukraine in the New Political Geography of Europe* (Washington, DC: Carnegie Endowment for International Peace, 1997): 19.

23 Aleksei Popov, 'Gde proizoshel perelom. Ekspress-analiz 3-ogo tura.' *Analitik.org* (30 December 2004), translated as 'Where Did the Sudden Change Happen?' *The Ukraine List* 332 (11 January 2005). Available at http://www.ukrainian studies.uottawa.ca/ukraine_list/ukl332_7.html.

Once again, serious field research is required. There are three possible story lines. The first is the activation of a social class that had essentially been broken in the 1930s with the collectivization and famine. In the past decade, the peasantry may have developed a political consciousness which makes it critical of the authorities and receptive to the Orange message. The peasantry may not have been stomping the ground on Maidan in November-December, but it is its determination to vote for change that sealed the fate of the Old Regime. For the first time in Ukrainian history, the peasantry may have become a politically active component of the emerging political nation.

A second explanation focuses on elites. Perhaps the peasantry, as a legacy of the 1930s, and as a reflection of its economic dependence, is still, on the whole, largely obedient to local authorities, but what changed in the past decade is how local authorities orient themselves. With all the talk about how 'administrative resources,' that is, the improper use of local administrative offices to promote the candidate of the regime, distorted the results of the first round of election in October 2004 – a round that already produced a geographically polarized result, with the polarization increasing in each round – no one could satisfactorily explain to me why *adminresursy* would allegedly work in Eastern and Southern Ukraine, but not elsewhere. Particularly under conditions where all local administrations were under massive pressure from the center to produce results favoring Yanukovych, and where Yushchenko was shut out from the main TV channels that are broadcast nationally, i.e. in all regions. Why couldn't the *blackmail state* blackmail everybody, especially in remote rural areas?

In a perceptive paper, Allina-Pisano has pointed to the breakdown of social control in the countryside as the key to understand peasant electoral behavior. For her, the decline of the state as a provider of social services has been far more acute in rural areas, with the demise of collective farms, than in cities of the industrial heartland. Left to their own devices, the peasantry had little to lose in eliciting a protest vote.[24] Still, the psychological hold that rural elites may have on a peasantry having experienced seven decades of a

24 Jessica Allina-Pisano, 'Informal Institutional Challenges to Democracy: Administrative Resource in Kuchma's Ukraine.' Paper presented at the First Annual Danyliw Seminar in Contemporary Ukrainian Studies, University of Ottawa, September 2005.

quasi-feudal system may go beyond institutional decline. How elites communicate among themselves, and to their constituencies (in that case, the peasantry), may be of paramount importance in this case.

This is the route taken by Way, who argued that the project of autocratic restoration in post-Soviet republics in the 1990s, seemingly successful in Putin Russia, faced a structural problem in Ukraine, namely the division of its elites along the national question. In spite of the *blackmail state*, before Orange, Ukraine had a relatively more autonomous parliament and relatively more contested electoral process than Russia. For Way, Ukraine had developed as a case of 'democracy by default,' a democracy whose rules were constantly assaulted by the executive branch, but which was strong enough to prevent the regime from safely controlling the results of an election in its favor.[25]

Back in October 2004, no one could predict the Orange Revolution, but no one either, including the regime itself, could predict exactly how the election would play out. (The doomsayers of the Ukrainian intelligentsia were predicting a dark apocalypse, and they were proven spectacularly wrong).[26] This was the real story, pre-Orange: despite the Herculean efforts by the Kuchma regime to subvert the election, they could not prevent a challenger from making a credible bid to win. That degree of pluralism in the system, annihilated in Belarus, considerably enfeebled in Russia, but intriguingly potent in Moldova and Ukraine, Way ascribed to the existence of a structural division at the elite level over nationalism. The neo-Soviet state was unable to fully re-centralize, to re-establish what Russians and Ukrainians call the 'vertikal' of state power, because of an incentive for elites to coalesce around two poles, an incentive that instilled a degree of pluralism in the system, 'by default.'

Why were elites in rural Ukraine able to withstand the infamous '*adminresursy*' pressures from the center? Is it because they sensed a profound change of allegiance among their constituents? Or is there

25 Lucan Way, 'Authoritarian State Building and the Sources of Regime Competitiveness in the Fourth Wave: The Cases of Belarus, Moldova, Russia, and Ukraine.' *World Politics* 57:2 (January 2005): 231-61.

26 For an incisive critique of pre-election apocalyptic appeals, see John Paul Himka, 'Apocalypse Tomorrow: Some Remarks on Two Texts on the Ukrainian Elections.' *The Ukraine List* 254 (27 October 2004).

something else at work that makes them receptive to the Orange discourse? This is where I would like to introduce the variable of language. Ukraine is a bilingual country – not as a matter of state policy, but in terms of sociological observations – whose inhabitants have a complex relationship with language. Ukrainians make distinctions between the language they identify with, the language they actually prefer to speak when given the opportunity, and the language they would like their children to learn in school.[27] What we know is that there is a remarkable correlation between language of preference and support for Yanukovych or Yushchenko in regions. In Central and Western Ukraine, the proportion of people using Ukrainian as their language of preference is within the range of 75-80 percent, and their support for Yushchenko is within the same range. In Eastern and Southern Ukraine, 75 to 80 percent of the people prefer to speak Russian, and the support for Yanukovych is similarly within that range. The Orange Revolution caught fire in Ukrainian-speaking areas, where 'speaking' refers to empirical behaviour, rather than symbolic attachment. Using the empirical criteria, the peasantry in Central Ukraine, the group that brought Yushchenko to victory, is 99 percent Ukrainian-speaking. Which brings us back to our question: What makes the peasantry and/or the rural elite recipient to an Orange message? Could it have to do with the fact their world is predominantly Ukrainian-speaking?

Between the second and third rounds of election, the national media opened up, as observers noted that the coverage of the two campaigns became balanced, and Yanukovych, suddenly on leave from his post of Prime Minister, lost the support of the much-vaunted administrative resources. Remarkably enough, three weeks of Orange fever had no discernable effect in Eastern and Southern Ukraine. The fabricated turnout of Donetsk was readjusted, to be sure, plunging from 97 percent to 84 percent, still seven percent higher than the national average, but this time with plausibility. Support for Yanukovych remained virtually the same in these predominantly urban areas and what little change there was occurred, once again, in rural areas. In Central Ukraine, however, the Yanukovych vote, already quite low, collapsed. Once the turnout falsification in Donetsk was accounted for, the main difference between the second and third round was

27 Dominique Arel, 'Interpreting "Nationality" and "Language" in the 2001 Ukrainian Census.' *Post-Soviet Affairs* 18:3 (July-September 2002): 213-49.

the Orange zone becoming even more Orange, furthering the polarization.[28]

What should we make of that polarization? One approach in Ukrainian studies is to dismiss it as illegitimate, that is to say, to consider, on the one hand, the vote for Yushchenko in the third round as reflecting the true preferences of his electors, while, on the other hand, refusing to consider the vote for Yanukovych as reflecting the true preferences of his own electors.[29] In other words, the Yushchenko vote is valid, but the Yanukovych vote is questionable. But what exactly is the point of sending planeloads of foreign observers (more than 12,000, apparently), deploying them predominantly in the Yanukovych zone, having the international monitoring organizations they were working with, and even the indigenous Committee of Voters, declare the process fair and free, yet still somehow cling to the notion that the Yanukovych vote was illegitimately inflated?[30] By any reasonable standards, no systematic pattern of falsification, enough to significantly impact on the national vote, was uncovered in the third round. Nevertheless, once turnout was accounted for, the preference for Yanukovych in the East and South remained identical to what it had been on November 21.

A variation of the argument, one that appears to animate Yulia Tymoshenko and probably Viktor Yushchenko, is as follows: while the voting count in the third round was legitimate, the conditions that led people to vote the way they did were not. Civil society has not taken root in Eastern and

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28 Between the second (November 21) and third (December 26) round of elections, support for Yanukovych decreased by only 2.6 percent in the East (from 81.7 to 79.1 percent) and by only 1.1 percent in the South (from 71.0 to 69.9 percent). In 'Orange County,' on the other hand, the Yanukovych vote plunged by 6.8 percent in the Left Bank (from 30.6 to 23.8 percent), 8.2 percent in the Right Bank (from 27.1 to 18.9 percent), and 4.6 percent in the West (from 13.3 to 8.7 percent). The Orange effect of Maidan, in other words, was limited to the already massively Orange areas. In Kharkiv oblast, in Eastern Ukraine, Popov, *op.cit.,* shows that Yushchenko's small progression between the two rounds was limited to the countryside and that his vote in the capital remained the same.

29 Stephen Velychenko, 'Behind the Scenes in the Provinces (The Final Phase). Why We Must Remember.' *The Ukraine List* 332 (11 January 2005), available at http://www.ukrainianstudies.uottawa.ca/ukraine_list/ukl332_8.html.

30 The Committee of Voters of Ukraine (*Komitet vybortsiv Ukraïny*) announced, on December 27, that it recorded 'relatively few violations' on election day, in complete contrast with its report issued following the November 21 vote. See 'Holovni fal'syfikatory buly u Shcherbania i u votchiny Yanukovycha.' *Ukraïns'ka pravda* (27 December 2004), translated as 'Main Election Violators were from Shcherban and in the Yanukovych Region.' *The Ukraine List* 328 (27 December 2004).

Southern Ukraine and people are far more vulnerable to being manipulated by their elites. The Yanukovych vote is illegitimate because it is the product of a closed society. Opening up the system will alter significantly popular preferences in the East and this will take care of the polarization. Since the drive for an open society originates from Central and Western Ukraine, systemic reform must be imposed from outside Eastern Ukraine. The corollary of this premise is the formation of a Cabinet which mostly excludes Eastern Ukrainians, something that has never happened in the past. Politicians recognized by the Eastern electorate as representing them were virtually absent from the Cabinet in the first year after the Orange Revolution.

This approach certainly has merits, as one is struck by how asymmetrical the Yanukovych and Yushchenko zones are in terms of their capacity for social organization. If civil society revealed itself in Central Ukraine during the Orange Revolution, it hardly exists in the East and South. It is as if Ukraine is inhabited by two different worlds: one aiming to break with the Soviet societal model, the other, even if undergoing profound economic changes, still devoid of initiative vis-à-vis the state. What makes its population so resistant to change? After all, we are talking about a highly educated population, by world standards. What makes its younger generation apparently less open to change than its counterpart in Central and Western Ukraine?

I would suggest that we look beyond the assumption of people not yet realizing what their true interests are and factor in the national question. The geographical polarization in Ukraine is not ethnic. The majority of the population in Eastern and Southern Ukraine has internalized a Ukrainian identity, as promoted by Soviet nationality policy.[31] This is why the specter of separatism is nonsense, since it is hard to imagine why people who self-identify as Ukrainians would want to separate from a territory called Ukraine, and which they have essentially run for eighty years. The one exception here is Crimea, where ethnic Russians still form the majority, and where a

31 According to the 2001 Ukrainian census, ethnic Ukrainians form majorities in eight of the nine oblasts of the East and South – the exception being Crimea, with only 24.3 percent. Ukrainian majorities vary from 56.9 percent in Donetsk and 58.0 percent in Luhansk, the two oblasts of the Donbas, to 81.9 percent in Mykolaiv and 82.0 percent in Kherson, the two relatively more agricultural oblasts of the South.

secessionist movement had real potential in the 1990s.[32] But Crimea remained passive throughout Orange and its turnout, contrary to the Donbas, was lower than the national average.

Eastern Ukrainians call themselves Ukrainians, but not in the same way as Western Ukrainians do.[33] Eastern Ukrainians tend not to think of identity in exclusive terms. In the Soviet era, they felt simultaneously Ukrainian *and* Soviet.[34] With the disappearance of the Soviet identity, they feel adrift, unsure of where to affix their Ukrainian identity. Western Ukrainians, by contrast, think far more in exclusive terms. And the last decade may very well have crystallized Ukrainian identity in Central Ukraine. What I am emphasizing here is national identity cohesion, how people situate their identity in the larger whole. Cohesion breeds self-confidence. And self-confidence generates an entirely unique manner of dealing with Russia, something the Russian government, and Russians more generally, are not accustomed to, and something Eastern Ukrainians are not comfortable with.

Eastern Ukrainians are not Russians, but in their interpretations of their past and future they feel intimately connected to Russia. Western Ukrainians do not feel that connection, or, if they do, they do so to a far lesser degree. The crux of the matter is this: Western Ukrainians tend to believe that this two-layered sense of identity in the East can be reshaped. This is what could be called 'nation-building' in the ethnic sense; in the language of national activists: making 'true' Ukrainians out of Eastern Ukrainians. But it could very well be that there is something resilient in the Eastern regional experience that makes this project illusory. This is not a matter of language per se, but of language situated in a given historical region. Eastern Ukrainians look at the Orange Revolution through the prism of their perceived regional experience, and the language they speak, Russian, becomes a symbol of that self-

32 Edward Ozhiganov, 'The Crimean Republic: Rivalries for Control.' In: Alexei Arbatov, Abram Chayes, Antonia Hanfler Chayes, and Lara Olson, eds., *Managing Conflict in the Former Soviet Union: Russian and American Perspectives* (Cambridge, MA: The MIT Press, 1997): 83-136.

33 As a shorthand, for this concluding section, 'Eastern' refers to Eastern and Southern Ukrainians, while 'Western' refers to Central and Western Ukrainians

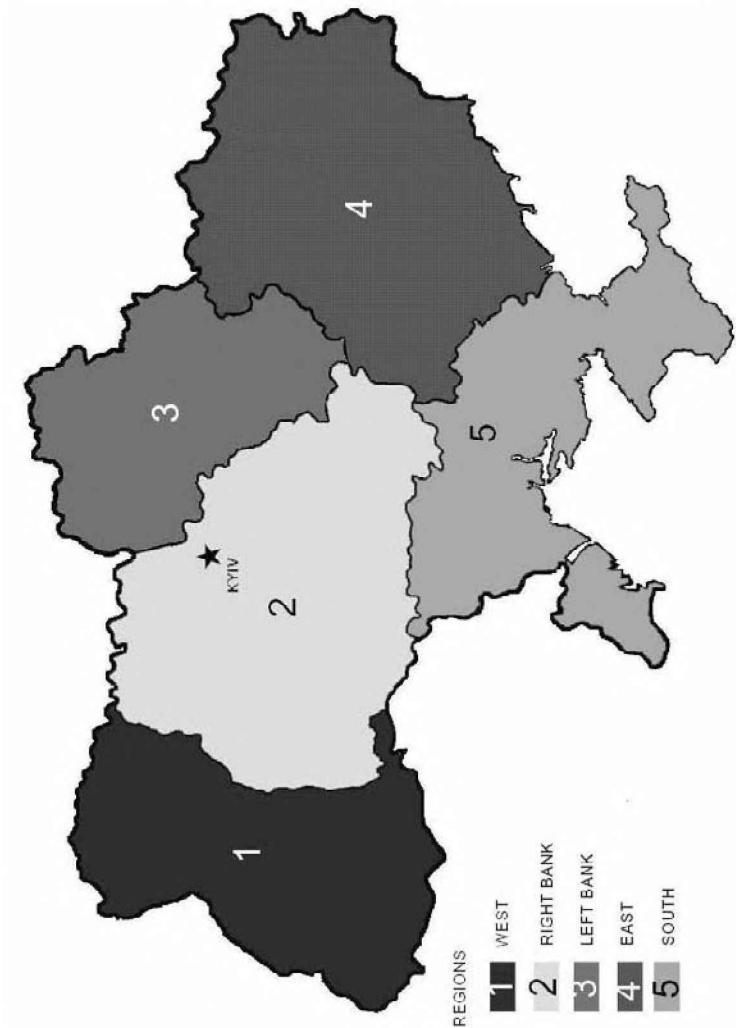
34 Yaroslav Hrytsak, 'National Identities in Post-Soviet Ukraine: The Case of Lviv and Donetsk.' In: Zvi Gitelman, Lubomyr Hajda, John Paul Himka and Roman Solchanyk, eds., *Cultures and Nations in Central and Eastern Europe. Essays in Honor of Roman Szporluk* (Cambridge, MA: Harvard Ukrainian Research Institute, 2001): 263-81.

perception. They reject Orange, not because they are innately inimical to the project of an open society, but because of a sense that this is a project that excludes them.

The Orange Revolution was about the birth of the Ukrainian political nation, that is, of the capacity for a population to organize independently of the state and, in times of crisis, to defy the state. Yet this political nation is, as of yet, circumscribed to specific historical regions: the West and the Center. Ukraine's biggest challenge, in the years ahead, is to extend the political nation to the East and South, to make that population feel that it belongs to Ukraine in an *active* sense, to put substance to their citizenship (or civic identity). But inclusion in the political nation can hardly come from a unilateral vision of how national identity ought to be construed. If Russians in Russia have to understand that they cannot unilaterally impose their vision of Ukrainian identity on Ukrainians, Western Ukrainians [again, used as a shorthand for Western and Central] cannot unilaterally impose their vision of Ukrainian identity on Eastern Ukrainians. This is all about accommodating identity-based differences. Perhaps we should begin deciphering all these claims for 'federalism' in the East as a codeword for accommodation. What we need to bear in mind is that Eastern Ukrainians most likely interpreted the signals of the post-Orange era – with Yushchenko associating the very word 'federalism' with a criminal act and the Tymoshenko Cabinet including no one deemed by the East as representative of the region – as a self-fulfilling prophecy: the heroes of the Orange Revolution are bent on excluding them.

Table 1: Regional Polarization, 1994-2004 (in %)

	1994		**2004**	
	Kuchma	**Kravchuk**	**Yanukovych**	**Yushchenko**
East	76	22	79	17
South	73	25	70	26
Left Bank	66	31	24	72
Kiev City	36	60	18	78
Right Bank	42	54	19	78
West	10	87	09	89
Ukraine	**51**	**45**	**44**	**52**


KYIV
1
2
3
4
5
REGIONS
1 WEST
2 RIGHT BANK
3 LEFT BANK
4 EAST
5 SOUTH

Regional Political Cleavages, Electoral Behavior, and Historical Legacies in Post-Communist Ukraine

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Previous Studies and Research Questions

Regional cleavages in electoral behavior and political attitudes form one of the central features of politics in post-Soviet Ukraine. In all presidential and parliamentary elections held since Ukraine became independent in 1991, Western regions have backed nationalist and pro-Western parties and politicians, while Eastern regions have tended to vote for pro-Communist and pro-Russian parties and politicians. For example, official results of the repeat second round of the presidential elections in December 2004 showed that Viktor Yushchenko received more than 93 percent of the vote in three Galicia (Halychyna) regions in Western Ukraine and 4 to 6 percent in two Donbas regions in Eastern Ukraine. Conversely, Viktor Yanukovych received more than 90 percent of the vote in the Donbas regions and less than 5 percent of the vote in the Galicia regions.[1] Numerous surveys of public opinion conducted since 1991 demonstrate that, for many political issues, there is a divide between Ukrainians in Western regions and Ukrainians in Eastern regions. For example, a survey conducted by the Kyiv International Institute of Sociology in 2005 shows that two fifths (42 percent) of all Ukrainians who

1 See Sarah Birch, *Elections and Democratization in Ukraine* (New York, St. Martin Press, 2000); Bohdan Harasymiw, 'Elections in Post-Communist Ukraine, 1994-2004: An Overview,' *Canadian Slavonic Papers*, 47, 3-4, 2005: 191-239; Ivan Katchanovski, *Cleft Countries: Regional Political Divisions and Cultures in Post-Soviet Ukraine and Moldova* (Stuttgart: ibidem-Verlag, 2006); *idem*, 'Regional political divisions in Ukraine in 1991-2006,' *Nationalities Papers*, 34, 5, 2006: 507-532. This chapter is, partly, an updated and revised version of my 2006 article.

have a definite opinion consider an East-West division in Ukraine as a divide between hostile sides.[2]

Many academic studies have examined various aspects of regional political divisions in post-Soviet Ukraine. These studies have identified major cultural, religious, ethnic, and economic factors that affect regional electoral behavior and political attitudes in Ukraine.[3] A growing number of studies link the regional cleavages in Ukraine to differences in political culture, in particular to distinct historical and religious legacies. Ukraine consists of regions whose historical development, religious traditions, and political systems were significantly different before World War II.[4]

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2 Iuliia Mostova and Serhii Rakhmanin, 'Rik pislia Maidanu: Povtorennia neproidenoho,' *Dzerkalo tyzhnia*, November 19, 2005.

3 See Lowell Barrington, 'The geographic component of mass attitudes in Ukraine,' *Post-Soviet Geography,* 38, 10, 1997: 601-614; Lowell Barrington and Erik Heron, 'One Ukraine or many? Regionalism in Ukraine and its political consequences,' *Nationalities Papers*, 32, 1, 2004: 53-86; Sarah Birch, 'Interpreting the regional effect in Ukrainian politics,' *Europe-Asia Studies,* 52, 6, 2000: 1017-1042; Peter R. Craumer and James I. Clem, 'Ukraine's emerging electoral geography: A regional analysis of the 1998 parliamentary elections,' *Post-Soviet Geography and Economics,* 40, 1, January/February, 1999: 1-26; Ivan Katchanovski, *Cleft Countries*; Ivan Katchanovski, 'Regional political divisions in Ukraine in 1991-2006;' Valerii Khmelko and Andrew Wilson, 'Regionalism and ethnic and linguistic cleavages in Ukraine,' in: Taras Kuzio (ed), *Contemporary Ukraine: Dynamics of Post-Soviet Transformation* (Armonk, M.E. Sharpe, 1998): 60-80; Paul Kubicek, 'Regional polarization in Ukraine: Public opinion, voting and legislative behaviour,' *Europe-Asia Studies,* 52, 2, 2000: 273-294; Vicki Hesli, 'Public support for the devolution of power in Ukraine: Regional patterns,' *Europe-Asia Studies,* 47, 1, 1995: 91-121; Oksana Malanchuk, 'Social identification versus regionalism in contemporary Ukraine,' *Nationalities Papers*, 33, 3, 2005: 345-368; William Miller, Stephen White and Paul Heywood, *Values and Political Change In Post-Communist Europe* (New York, St. Martin's Press, 1998); Arthur Miller, Thomas Klobucar and William Reisinger, 'Establishing representation: Mass and elite political attitudes in Ukraine,' in: Sharon Wolchik and Volodymyr Zviglyanich (eds), *Ukraine: The Search for a National Identity,* (Lanham, Rowman and Littlefield Publishers, 2000): 213-235; Stephen Shulman, 'Asymmetrical international integration and Ukrainian national disunity,' *Political Geography,* 18, 8, 1999: 913-939; *idem*, 'Cultural comparisons and their consequences for nationhood in Ukraine,' *Communist and Post-Communist Studies*, 39, 2, 2006: 247-263.

4 See Birch, *Elections*; *idem*, 'Interpreting the regional effect in Ukrainian politics;' Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York, Touchstone, 1996): 138, 165; Katchanovski, *Cleft Countries*; *idem*, 'Regional political divisions in Ukraine in 1991-2006;' Steven Roper and Florin Fesnic, 'Historical legacies and their impact on post-Communist voting behaviour,' *Europe-Asia Studies,* 55, 1, 2003: 119-131.

Religious divisions, primarily between Orthodox Christians and Greek Catholics, are sometimes identified as a separate factor in regional cleavages. Galicia and Transcarpathia in Western Ukraine are mostly Greek Catholic, in contrast to the predominantly Orthodox regions of Eastern Ukraine. However, the religious differences are also linked to historical legacies, because the Greek Catholic Church and the Russian Orthodox Church contributed in the past to the evolution of distinct political cultures in regions of Ukraine.[5]

Ethnic and linguistic theories attribute regional political divisions to differences and rivalries between ethnic or language minorities and majorities. These theories emphasize the large number of ethnic Russians and Russian speakers in the Eastern part of Ukraine.[6] Another group of theories attributes regional political divisions in Ukraine to economic differences and rivalries. These theories trace regional political cleavages to higher levels of urbanization, industrialization, and income in regions of Eastern Ukraine as compared to Western Ukraine.[7]

Previous studies of regional political divisions in Ukraine mostly analyze the results of only one election and survey. There are some major exceptions.[8] However, the studies that analyze the results of all national elections in regions of Ukraine require updating because of significant changes that occurred after the 'Orange Revolution' in 2004 and the 2006 parliamentary elections. In particular, the regional results of the 2006 parliamentary elections and subsequent abandonment by the Socialist Party of the Orange coalition in favor of a parliamentary coalition with the Party of Regions and the Communist Party represent major developments in Ukrainian politics.

Previous studies focus mostly on regional variation in the vote for political parties and presidential candidates and on regional differences in attitudes towards contemporary political issues and foreign policy issues.

5 See Huntington, *The Clash of Civilizations*; Katchanovski, *Cleft Countries.*

6 Dominique Arel, 'Ukraine: The temptation of the nationalizing state,' in Vladimir Tismaneanu (ed.), *Political Culture and Civil Society in Russia and the New States of Eurasia* (Armonk, M. E. Sharpe, 1995): 157-188.

7 Craumer and Clem, 'Ukraine's emerging electoral geography;' Hesli, 'Public support for the devolution of power in Ukraine.'

8 Birch, *Elections*; Katchanovski, 'Regional political divisions in Ukraine in 1991-2006'; *idem*, *Cleft Countries.*

There are few academic analyses of regional differences in attitudes towards historical issues, in particular, towards events that have shaped modern Ukrainian history and political culture. Many historical issues have become political issues in post-Soviet Ukraine. For example, President Yushchenko asked the parliament to declare the artificial famine of 1932 and 1933 a genocide of Ukrainians and to recognize former Ukrainian Insurgent Army (UPA) partisans as war veterans. The Communist Party of Ukraine, the Party of Regions, and many other pro-Communist and pro-Russian parties opposed these proposals.

A survey-based study conducted by the Institute of Politics in 2003 found significant regional divisions in public evaluations of historical events during Russian and Soviet rule and World War II and attitudes towards historical Ukrainian, Russian, and Soviet leaders. A similar survey-based study conducted in 2006 found no radical changes in the overall attitudes towards these historical events and leaders. However, the authors of these studies, with some exceptions, reported only selected results for particular regions.[9] These surveys indicate that, compared to the older generations, the youngest generation of respondents is disposed somewhat less favorably towards the Soviet period of Ukrainian history, Soviet leaders, and somewhat more positively towards Ukrainian nationalist and pro-independence leaders, but these generational differences appear to be much smaller than the regional differences.[10]

Another study concludes that the Ukrainian national identity is significantly strengthened by the Ukrainophile historical school, which is represented primarily by scholars from Western and Central regions and which is associated with pro-nationalist and Ukrainocentric orientation. The Ukrainophile historical school has dominated academic discourse, the education system, and military and militia education in post-Communist Ukraine. The study argues that the Sovietophile historic school, which is

9 Mykola Tomenko, one of the authors of both studies, claimed that the divisions concerning historical issues do not extend to attitudes of Ukrainians concerning present-day issues, specifically the vote for major political parties, and he dismissed as quasi-academic theories of two Ukraines. See Mykola Tomenko, 'Vstupne slovo,' in *Rehional'na Ukraïna* (Kyiv, Geoprynt, 2003): 5.

10 See Serhii Makeev, 'Sotsial'no-kul'turna spetsyfika rehioniv Ukrainy,' in *Rehional'na Ukraina*: 7-27; 'Materialy do press-konferentsii 'Heroi, tsinnosti ta mify suchasnoi Ukrainy',' January 10, 2007, http://www.tomenko.kiev.ua/.

associated with the Communist Party and pro-Soviet orientation, and the Russophile historic school, which is associated with small pro-Russian pan-Slavic parties and pro-Russian orientation, became marginalized in Ukraine after Ukraine became independent in 1991. The so-called Eastern Slavic historic school, which is regarded as a compromise between the Ukrainophile and the Russophile schools of history and is associated with the Party of Regions and centrist parties, politicians, and orientations, has greater popularity in Eastern regions than in the West and the Center, but is nevertheless weaker than the Ukrainophile school.[11]

The question is, when the latest political developments such as the switch by the Socialist Party are taken into account, how significant is the role of historical legacies compared to the other factors in the regional electoral behavior in post-Communist Ukraine in the period from the end of 1991 to the end of 2006? A related question is to what extent do historical legacies affect public attitudes towards crucial events, periods, and leaders in modern Ukrainian history? This study quantitatively assesses the effect of historical legacy, compared to other factors such as ethnicity, economy, and religion, on the vote for pro-Communist/pro-Russian parties and presidential candidates and pro-nationalist/pro-Ukrainian parties and candidates in all national presidential and parliamentary elections in Ukraine in the period from 1991 to 2006. The paper also analyzes the effect of different historical legacies in regions of Ukraine on contemporary attitudes towards major historical issues and historical leaders.

Historical Legacies in Ukrainian Regions

Historical experience or legacy represents a major source of regional political culture, which here refers to the values and norms that are shared by many individuals in a particular region. Political culture theories imply a relatively stable pattern of basic political values or general political orientations over a long period of time. Shared historical experiences shape the values and

11 Taras Kuzio, 'Nation-state building and the re-writing of history in Ukraine: The legacy of Kyiv Rus,' *Nationalities Papers*, 33, 1, 2005: 30-58; *idem*, 'National identity and history writing in Ukraine,' *Nationalities Papers*, 34, 3, 2006: 407-427.

norms of individuals in the same direction, while different histories have the opposite effect. Socialization within family, school, church, and circles of friends serves as a mechanism to transmit these values and norms from one generation to another.[12]

This study links the historical legacy to differences in modern historical development of regions that now constitute Ukraine. The present territory of Ukraine was divided between the Russian Empire and the Habsburg (Austro-Hungarian) Empire by the end of the eighteenth century. Lviv, Ivano-Frankivsk, and most of Ternopil became part of Galicia province under the Habsburg Empire in 1772. Except for its eastern part, the Chernivtsi region (Bukovyna) came under Habsburg rule in 1774. Transcarpathia belonged to the Kingdom of Hungary and the Hungarian part of the Austro-Hungarian Empire from the Middle Ages until World War I. In contrast, regions of Eastern Ukraine and the Volyn and the Rivne Regions (Volhynia) in Western Ukraine were incorporated into the Russian Empire by 1795. In the period between the two world wars, regions of Western Ukraine belonged to Poland, Romania, and Czechoslovakia. These regions were incorporated into the Soviet Union as a result of the Soviet-Nazi pact of 1939 and World War II. In contrast, regions of historical Eastern Ukraine, that is, all regions located to the east of historic Western Ukraine, were ruled by the Russian Empire after the end of the eighteenth century and then by the Soviet Union.

The division of Ukraine, first between the Russian Empire and the Austro-Hungarian Empire in the late eighteenth century and then between the Soviet Union and Poland, Romania, and Czechoslovakia in the early twentieth century, represent crucial junctures in the emergence and evolution of distinct regional political cultures. These territorial divisions coincided with an important period in the formation of national identity because local, religious, and status-based identities were dominant in Ukrainian regions before mass education and nationalism began to spread in the late

12 Larry Diamond, 'Causes and effects,' in Larry Diamond (ed.), *Political Culture and Democracy in Developing Countries* (Boulder, Col., L. Rienner, 1993): 229-249; Daniel Elazar, *American Federalism: A View from the States* (New York, Crowell, 1966); Katchanovski, *Cleft Countries*; Seymour Martin Lipset, *Continental Divide: The Values and Institutions of the United States and Canada* (New York, Routledge, 1990); Robert Putnam, Robert Leonardi and Raffaella Y. Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton, Princeton University Press, 1993).

eighteenth and early nineteenth centuries. Historical conditions, in particular more democratic political systems and language, education, and religious policies in the Austro-Hungarian monarchy and in interwar Czechoslovakia, Poland, and Romania enabled the emergence and activity of a variety of Ukrainian parties, newspapers, and educational, cultural, and religious organizations, such as the Greek Catholic Church in Galicia. These conditions were generally more favorable for the spread of Ukrainian nationalism and the development of a Ukrainian national identity in Western Ukraine than in the Ukrainian parts of the Russian Empire and the Soviet Union.[13]

The artificial famine of 1932 and 1933 which claimed the lives of several million peasants in Soviet Eastern Ukraine but did not affect Western Ukrainian regions, which were then under Polish, Romanian, and Czechoslovak rule, illustrates the role played by different historical experiences. Many Eastern Ukrainians did not attribute the famine to deliberate Soviet policy, because the Soviet state censored information about the famine in mass media and other sources, and through mass media, the education system, and enterprises – all completely controlled by the state – propagated a Stalinist version of the Communist ideology in the 1930s. In contrast, many Western Ukrainians in the 1930s became aware of the mass artificial famine in Soviet Ukraine from local Ukrainian mass media, organizations, and other sources, many of which portrayed the Soviet Union as a reincarnation of the Russian Empire and attributed the famine to deliberate Soviet policy aimed at mass elimination of ethnic Ukrainians.

The Soviet totalitarian policies were aimed at significantly reducing or eliminating regional differences after Western Ukraine was incorporated into the Soviet Union as a result of the 1939 Soviet-Nazi pact and the Soviet victory in World War II. Similarly, the governments of independent Ukraine, with help from the education system, attempted to reduce regional differences and to create a common national identity. However, socialization within family units and socialization with friends, neighbors, religious communities, and the like helped to sustain distinct regional political cultures in Ukraine during Soviet rule and after independence. Earlier generations thus continued to

13 See Katchanovski, *Cleft Countries*; Orest Subtelny, *Ukraine: A History* (Toronto: University of Toronto Press, 2000).

influence the political socialization of generations born during the Soviet time and of generations that grew up in or were born in independent Ukraine.

Data and Methodology

This study uses both official election data on regional voting behavior and survey data on attitudes towards major historical issues. Data on the vote for pro-Communist/pro-Russian and pro-nationalist/pro-Western parties and presidential candidates in regions of Ukraine are derived from the results of all presidential and parliamentary elections held between 1991 and 2006. Parties and presidential candidates that emphasize their pro-Communist/pro-Russian orientation or pro-nationalist/pro-Western orientation are identified on the basis of previous studies, Ukrainian and Western media publications, and field research in Ukraine.

This paper employs factor and regression analysis of results of all national elections held in Ukraine from 1991 to 2006. The study uses cross-tabulation analysis of attitudes towards major historical issues in regions of Ukraine. The data came from national surveys conducted by the Institute of Politics in 2003, the Kyiv International Institute of Sociology in 2006, and the World Values Survey, which was conducted in Ukraine by the Social Monitoring Center and the National Institute for Strategic Studies in 1996. Regional results of the 2003 Institute of Politics Survey concerning attitudes towards major historical issues, Ivan Mazepa, and Mykhailo Hrushevsky are recalculated for purposes of the comparison of Western Ukrainian and Eastern Ukrainian regions. Attitudes of Eastern Ukrainians towards other historical leaders are estimated from the survey results for Ukraine as a whole and results for Western regions.[14]

The 1996 World Values Survey, which in contrast to the other surveys makes its original dataset available to other researchers, is used to conduct the regression analysis of approval of the past Soviet political system in Ukraine. The multiple regression analysis makes it possible to determine the

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14 The survey data are obtained from Serhii Makeev, 'Sotsial'no-kul'turna spetsyfika rehioniv Ukrainy' and various Ukrainian publications that reported its selected results.

effects of historical legacy on attitudes towards this historical issue when other factors, such as age, ethnicity, language, the level of education, and income, are held constant. The other surveys are not available for the regression analysis, because their authors have not provided the datasets.

The factor analysis of the regional vote for parties and candidates from 1991 to 2006 is used to create the pro-Communist/pro-Russian vote index and the nationalist/pro-Western vote index in 26 regions of Ukraine.[15] Both the pro-Communist/pro-Russian vote index and the pro-nationalist/pro-Western vote index have very high reliability coefficients (0.96 and 0.98 respectively). These indexes differ from similar indexes employed in earlier studies.[16] Unlike the earlier studies, the indexes deal only with the vote for parties and presidential candidates; they do not include the results of referendums on the independence of Ukraine and the preservation of the Soviet Union that were held in 1991.[17]

The pro-Communist/pro-Russian vote index represents the average percentage of votes in national elections in 1991-2006 for successor parties of the Communist Party of the Soviet Union and parties that favor closer ties with Russia and presidential candidates who were supported by these parties in the final rounds of the presidential elections. The index includes the proportion of mandates received in 26 regions by the Communist Party of Ukraine, the Socialist Party, the Peasant Party, and the Slavic Unity party in the 1994 parliamentary elections and the proportion of the vote received by the Communist Party, the Socialist and Peasant parties Bloc, and the Progressive Socialist Party in the 1998 parliamentary elections; by the Communist Party, the Communist Party of Workers and Peasants, the Communist Party (Renewed), the Progressive Socialist Party, the Socialist Party, and ZUBR (for the Union of Ukraine, Belarus, and Russia) in the 2002 elections; and by the Party of Regions, the Communist Party, the Socialist Party, Nataliia Vitrenko's 'People's Opposition' Bloc, and several smaller parties and electoral blocs in the 2006 elections. The pro-Communist/pro-Russian vote index also includes the proportion of the regional vote obtained

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15 Sevastopol city is included in the data for Crimea.

16 Katchanovski, 'Regional political divisions in Ukraine in 1991-2006;' *idem*, *Cleft Countries*.

17 The inclusion of the referendums do not change the principal results.

in the final rounds of the presidential elections by the following candidates: Leonid Kravchuk in 1991, Leonid Kuchma in 1994, Petro Symonenko in 1999, and Viktor Yanukovych in 2004.

In contrast to a similar earlier study, the pro-Communist/pro-Russian vote index in this paper includes the vote for the Socialist Party in the 2006 parliamentary elections, because this party joined a parliamentary coalition with the Party of Regions and the Communist Party several months after the elections.[18] Some studies and surveys indicate that, even though the Socialist Party conditionally supported Viktor Yushchenko during the final rounds of the 2004 presidential elections and joined the Orange coalition after the 2004 elections, a large section of the party leadership and the Socialist voters did not abandon their previous pro-Communist and pro-Russian political orientation.[19]

The pro-nationalist/pro-Western vote index represents the average percentage of the vote received by nationalist parties and blocs, and by presidential candidates who advocated relatively more pro-nationalist ideas and pro-Western orientation compared to their opponents and who were supported by the main nationalist parties in the final round of the presidential elections. The index combines the percentage of deputy mandates or votes received in parliamentary elections in 1994-2006 by such parties or electoral blocs as the ‘Our Ukraine’ Bloc, *Rukh*, the People’s Movement of Ukraine, the Ukrainian People’s Party, the Ukrainian Republican Party, the Congress of Ukrainian Nationalists, the Ukrainian National Assembly, and smaller nationalist parties. This index also includes the proportion of the regional vote in the final rounds of presidential elections received by the following presidential candidates: Viacheslav Chornovil, Levko Lukianenko, and Ihor Yukhnovsky in 1991; Leonid Kravchuk in 1994; Leonid Kuchma in 1999; and Viktor Yushchenko in 2004.

Historical legacy in regions of Ukraine is measured by the number of years of non-Russian/non-Soviet rule and by the Western Ukrainian dummy variable. The first variable is based on the number of years a region was not

18 Katchanovski, ‘Regional political divisions in Ukraine in 1991-2006.’

19 See *idem*, ‘The Orange Evolution? The political realignment and regional divisions in Ukraine,’ paper presented at the 11th Annual World Convention of the Association for the Study of the Nationalities, New York, March 23-25, 2006; *idem*, *Cleft Countries*.

under the Russian/Soviet control in the period 1793-1944. Because culture evolves slowly, short periods of Russian and Soviet rule, mainly during World War I, its aftermath, and the first years of World War II, are not included in the total. The year 1793 is chosen as an approximate point in time by which the present territory of Ukraine had been divided between the Russian Empire, which by that time incorporated all regions of Southern Ukraine, and by the Austro-Hungarian Empire. This variable captures variations in the length of historical experience in different regions of Western Ukraine.

The Western Ukrainian region dummy, as the omitted variable in regressions, is used for the comparison of historically Western Ukraine with three separate Eastern Ukrainian regions (Center, South, and East), which have been identified by some scholars as geographically and culturally distinct.[20] The Catholic variable measures both the effects of culturally transmitted religious legacies and contemporary religious affiliation on the regional cleavages. The other independent variables are derived from aggregate data on the ethnic and linguistic composition of the population, and levels of economic development and urbanization in 26 regions of Ukraine, as well as individual-level data on ethnicity, language, religion, income, education, class, age, and gender.

The ethnic Ukrainian variable measures the proportion of ethnic Ukrainians in the regional population in the 1989 and 2001 censuses. The relative economic development variable measures the level of the region's economic development relative to Ukraine as a whole. This variable represents the mean value of the relative regional per capita national income in 1990 and the gross regional product in 2004.[21] The urbanization variable represents the average proportion of urban residents in 1989 and 2001.

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20 See Lowell and Herron, 'One Ukraine or many?'

21 Andrii Revenko, 'Asymetrii rehional'noho rozvytku,' *Dzerkalo tyzhnia*, May 13, 2006.

Regional Differences

The pro-nationalist and pro-Western vote index shows that support for pro-nationalist and pro-Western candidates and parties is much higher in regions of Western Ukraine than in regions that were located within the August 1939 borders of the Soviet Union. The average support received by nationalist and pro-Western candidates and parties ranges from 73-76 percent in three regions of the former Galicia province to 54 and 61 percent in two regions of historical Volhynia, 49 percent in historic Bukovyna, and 43 percent in Transcarpathia. In contrast, in regions of historical Eastern Ukraine, the index ranges from 40 percent in both Kyiv city and the Kyiv Region to 10 and 12 percent in two regions of Donbas and 13 percent in Crimea (Table 1).

Conversely, the average vote for pro-Communist and pro-Russian candidates and parties is much higher in regions of historically Eastern Ukraine than in regions of Western Ukraine. The vote in Eastern Ukraine ranges from 67 percent in the Luhansk Region, 61 percent in the Donetsk Region, and 59 percent in Crimea to 26 percent in Kyiv city and 32 percent in the Kyiv Region. It is noteworthy, that Kyiv city which became the center of 'the Orange Revolution,' is closest among Eastern regions in its electoral behavior to Western Ukraine. The pro-Communist/pro-Russian vote index varies between 5 and 7 percent in regions of historical Galicia, 17 and 18 percent in Volhynia, 21 percent in Transcarpathia, and 23 percent in Bukovyna (Table 1).

Table 1: Electoral behavior indexes in regions of Ukraine, 1991-2006 (%)

Region	Pro-nationalist/pro-Western vote index	Pro-Communist/pro-Russian vote index
Western Ukraine		
Ivano-Frankivsk	76	7
Ternopil	76	5
Lviv	73	6
Rivne	61	18
Volyn	54	17
Chernivtsi	49	23
Transcarpathia	43	21
Eastern Ukraine		
Kyiv city	40	26
Kyiv Region	40	32
Khmelnytsky	37	37
Vinnytsia	33	38
Cherkassy	32	40
Zhytomyr	31	40
Sumy	29	45
Poltava	27	47
Kirovohrad	26	46
Chernihiv	25	47
Kherson	21	52
Dnipropetrovsk	20	48
Mykolaiv	20	52
Odesa	19	51
Kharkiv	18	53
Zaporizhzhia	17	56
Crimea	13	57
Donetsk	12	61
Luhansk	10	67

Table 2: Attitudes towards historical issues in regions of Ukraine (%)

	Galicia, Bukovyna, Transcarpathia	*Volhynia*	*Kyiv city*	*Crimea*	*Donbas*	Other Eastern regions[22]
Incorporation of Ukraine by Russia in 1654						
Positive	20	27	54	86	87	64
DK/NS	16	25	22	9	10	17
Negative	64	48	24	5	3	19
Total, percent	100	100	100	100	100	100
Bolshevik Revolution of 1917						
Positive	14	28	24	50	59	43
DK/NS	11	29	26	20	22	20
Negative	75	43	50	30	19	37
Total, percent	100	100	100	100	100	100
Ukraine's inclusion in the Soviet Union						
Positive	23	46	50	83	87	66
DK/NS	9	14	18	10	8	12
Negative	68	40	32	7	5	22
Total, percent	100	100	100	100	100	100
UPA veterans should be granted status of war veterans						
Agree	76	62	33	11	16	26
DK/NS	10	16	42	22	33	33
Disagree	13	22	25	67	51	42
Total, percent	100	100	100	100	100	100
N	586	401	400	402	628	2203

Source: 2003 Institute of Politics Survey.

Regional attitudes towards major historical events produce a similar pattern of division. For instance, the 2003 Institute of Politics Survey shows that the majority of respondents in Donbas, Crimea, Kyiv city, and other regions in

22 Unweighted average.

Eastern Ukraine (87, 86, 54, and 64 percent respectively), compared to the minority in Galicia, Bukovyna, and Transcarpathia (20 percent) and Volhynia (27 percent), express a favorable attitude towards the incorporation of Ukraine by Russia in 1654. Positive evaluations of the Bolshevik Revolution prevail over negative evaluations in Eastern Ukraine, with the notable exception of Kyiv city. In contrast, Western Ukrainians display negative attitudes towards the Bolshevik Revolution (Table 2).

The 2003 Institute of Politics Survey shows that positive attitudes towards the whole period of Ukraine's inclusion in the Soviet Union prevail in Eastern Ukraine, while respondents in Galicia, Bukovyna, and Transcarpathia have an overwhelmingly negative attitude towards its inclusion. In Volhynia, the difference between positive and negative views on the Soviet era is close to the statistical margin of error. The 1996 World Values Survey demonstrates that the minority of respondents in Volhynia (17 percent) and other regions of historical Western Ukraine (7 percent) express a positive attitude towards the political system that existed in the Soviet times. Approval of the past Communist system is much higher in Eastern regions (between 35 and 51 percent), with the exception of Kyiv city (19 percent) (Table 3).

Table 3: Attitudes towards the political system in Communist times in regions of Ukraine (%)

	Galicia, Bukovyna, Transcarpathia	*Volhynia*	*Kyiv city*	*Crimea*	*Donbas*	*Other Eastern regions*
Bad	71	57	61	34	29	37
Mid-range	22	26	20	25	20	28
Good	7	17	19	41	51	35
Total (%)	100	100	100	100	100	100
N	347	147	119	111	397	1386

Source: 1996 World Values Survey.

Similarly, the majority of residents of Galicia, Bukovyna, and Transcarpathia (76 percent) and Volhynia (62 percent) agree that veterans of the UPA, which under the leadership of radical nationalists fought against the Soviet Union during World War II and in the aftermath of the war, should be granted status as war veterans. In contrast, the minority of Eastern Ukrainians, ranging from 11 percent in Crimea to 33 percent in Kyiv city, support this proposition (Table 2).

Table 4: Attitudes towards the artificial famine in regions of Ukraine (%)

	West	*Center*	*South*	*East*
Directed against ethnic Ukrainians	30	13	7	8
Directed against all residents of Ukraine irrespective of their ethnicity	36	42	32	21
Do not know/Not sure	8	9	6	6
Do not consider famine as deliberate or do not know about the famine	27	36	55	67
Total, percent	100	100	100	100

Source: 2006 Kyiv International Institute of Sociology Survey.

A survey conducted by the Kyiv International Institute of Sociology in 2006 shows that a significantly higher proportion (30 percent) of respondents in the West of Ukraine (seven Western Ukrainian regions and the Khmelnytsky Region) than in the geographic South, East, and Center (7, 8, and 13 percent respectively) agree that the famine of 1932/1933 was directed against ethnic Ukrainians. Conversely, a much higher proportion of Ukrainians in the geographic East, South, and Center (67, 55, and 36 percent respectively), compared to the West (27 percent), either do not consider the famine as having been deliberately imposed or do not know about the famine (Table 4).

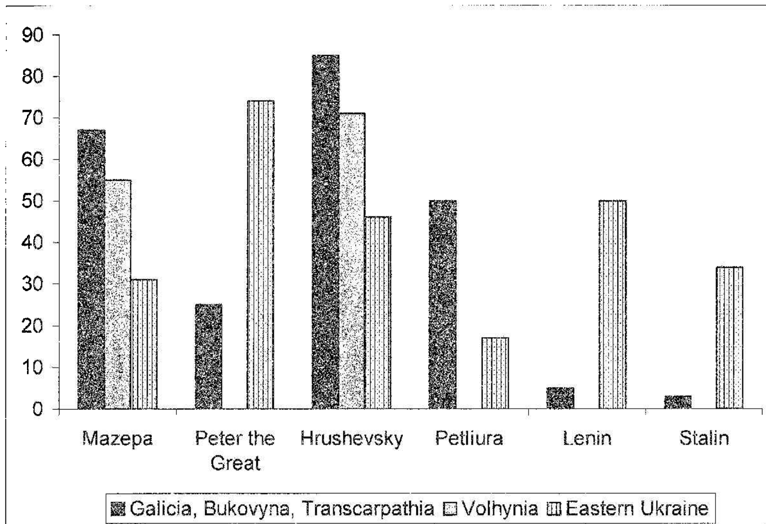
The 2003 Institute of Politics Survey shows that historic Ukrainian nationalist and pro-independence leaders are much more popular in Western

Ukraine than in Eastern regions, while the attitude towards Soviet Communist leaders and Russian tsars shows the opposite regional pattern. For example, the absolute majority of respondents in historic Western Ukraine (67 percent in Galicia, Bukovyna, and Transcarpathia, and 55 percent in Volhynia), compared to the minority of respondents in historic Eastern Ukrainian regions (31 percent), express a positive attitude towards Ivan Mazepa, a Ukrainian Cossack Hetman who favored Ukraine's independence from the Russian Empire and led a rebellion against Peter the Great, the Russian tsar, in the early eighteenth century (Figure 1).

Similarly, 85 percent of respondents in Galicia, Bukovyna, and Transcarpathia and 71 percent in Volhynia, compared to 46 percent in Eastern Ukrainian regions, express a positive attitude towards Mykhailo Hrushevsky, who led the independent Ukrainian People's Republic but later returned to the Soviet Union after having emigrated. The public view of Symon Petliura, a leader of the Ukrainian People's Republic, and Stepan Bandera, a leader of the radical Organization of Ukrainian Nationalists (OUN) from the 1930s to the 1950s, follow the same regional pattern, but their overall popularity is much weaker in both Western and Eastern Ukraine compared to the popularity of Mykhailo Hrushevsky and Ivan Mazepa. For instance, half of the respondents in Galicia, Bukovyna, and Transcarpathia, compared to about one sixth of the respondents in historically Eastern Ukraine, have a positive attitude towards Symon Petliura (Figure 1).

The overwhelming majority of Eastern Ukrainians express a favorable opinion of Peter the Great, the Russian tsar, while the minority of Western Ukrainians have a positive view of this historical leader. About half of the respondents in Eastern Ukraine, compared to a small minority of Western Ukrainians, express a favorable attitude towards Vladimir Lenin, the first leader of the Soviet Union. About one third of the respondents in Eastern Ukraine, including 47 percent in Donbas and 43 percent in Crimea, in contrast to about one twentieth of Western Ukrainians, have a positive view of Iosif (Josef) Stalin, another Soviet dictator. (Figure 1).

Figure 1: Favorable attitudes towards historical leaders in regions of Ukraine (%)



Note: Estimated from the 2003 Institute of Politics Survey. Separate data for Volhynia are not available for all leaders.

Regression Analysis

The regression analysis shows that the historical legacy significantly affects the nationalist/pro-Western vote index in regions of Ukraine. The historical experience variable, expressed as the number of years of non-Russian/non-Soviet rule, has the strongest effect on the regional pro-nationalist and pro-Western vote in the period 1991-2006. This variable is statistically significant at 0.05 level, and it has the biggest standardized (Beta) coefficient, which shows the relative influence of different factors. Keeping other variables constant, 100 years of non-Russian/non-Soviet rule increases the pro-nationalist/pro-Western vote in Ukrainian regions by almost 15 percent (Table 5).

Table 5: Determinants of the pro-nationalist/pro-Western vote index in 1991-2006 in regions of Ukraine

	Model I		*Model II*	
	Coefficient	*Beta*	*Coefficient*	*Beta*
Years of non-Russian/ non-Soviet rule	.145*	.412		
Center			-25.085***	-.633
South			-32.640***	-.611
East			-41.586***	-.850
Catholic	.249	.267	.295***	.317
Ethnic Ukrainian	.424**	.369	.273*	.238
Relative economic development	.069	.103	.022	.032
Urbanization rate	-.200	-.155	.280	.217
Constant	.177			
Adjusted R square	.80		.93	
N	26		26	

*** $p \leq .001$, ** $p \leq .01$, * $p \leq .05$.

The use of the Western historical regions dummy variable instead of years of non-Russian/non-Soviet rule produces similar regression results. Three Eastern Ukrainian regional dummy variables, which are evaluated against the omitted Western historical regions dummy variable, are statistically significant at the 0.001 level, and their Beta coefficients show that they have the biggest effect on the nationalist/pro-Western vote index. Differences between Western Ukraine and the Center, South, and East are much larger than

differences among these three regions within historical Eastern Ukraine (Table 5).

The ethnic Ukrainian variable has a positive and statistically significant effect on the pro-nationalist/pro-Western vote index in both regression models. When the Ukrainian ethnicity variable is substituted for the Ukrainian native language variable in the regression, major results remain similar.[23] The positive effect of the Catholic variable, defined as the proportion of Catholics in the population, on this index is statistically significant only in regression Model II. The average rate of urbanization and the relative economic development are statistically insignificant determinants of the pro-nationalist/pro-Western vote index. (See Table 5.)

Historical legacy variables are the strongest predictors of the pro-Communist/pro-Russian vote index in regions of Ukraine in both regression models. The number of years of non-Russian/non-Soviet rule and regional dummy variables have the biggest Beta coefficients, and they are statistically significant at the 0.01 and 0.001 levels respectively. When other factors are kept constant, 100 years of non-Russian/non-Soviet legacy lower the vote for pro-Communist and pro-Russian parties and presidential candidates by 17 percent. Differences between Western Ukraine and the Center, South, and the East are much larger than differences among these three regions. (Table 6).

The ethnic Ukrainian variable has the second largest negative effect on the pro-Communist and pro-Russian vote index in Model I, but it is a statistically insignificant factor in Model II. The negative effect of the proportion of Catholics in the population on this index is statistically significant in Model II. The level of economic development and the urbanization rate have no statistically significant effects on the pro-Communist and pro-Russian vote index in Ukrainian regions. (See Table 6.)

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23 Because the proportion of native Ukrainian speakers is extremely highly correlated with the proportion of ethnic Ukrainians in 26 regions, both these variables cannot be included in the same regression model.

Table 6: Determinants of the pro-Communist/pro-Russian vote index in 1991-2006 in regions of Ukraine

	Model I		*Model II*	
	Coefficient	*Beta*	*Coefficient*	*Beta*
Years of non-Russian/ non-Soviet rule	-.170**	-.538		
Center			24.458***	.685
South			32.920***	.684
East			41.849***	.949
Catholic	-.078	-.093	-.179*	-.213
Ethnic Ukrainian	-.354*	-.342	-.169	-.163
Relative economic development	-.129	-.213	-.084	-.138
Urbanization rate	.287	.247	-.152	-.131
Constant	66.679**		47.836***	
Adjusted R square	.78		.92	
N	26		26	

*** $p \leq .001$, ** $p \leq .01$, * $p \leq .05$.

Regression analysis shows that the historical legacy variables have the strongest effects on approval of the Soviet political system by the respondents to the 1996 World Values Survey in Ukraine. The years of non-Russian/non-Soviet rule and the regional dummies have the largest standardized (Beta) coefficients in the respective regression models. These variables are statistically significant at the 0.001 level. One hundred years of non-Russian/non-Soviet rule in a region decreases support for the Soviet political system by 1.2 points on the 10 point scale. The differences among respondents from the three geographic regions of historically Eastern Ukraine are much smaller than their differences from respondents in historical Western Ukraine (Table 7).

Table 7: Determinants of approval of the past Communist political system, the 1996 World Values Survey

	Model I		*Model II*	
	Coefficient	*Beta*	*Coefficient*	*Beta*
Years of non-Russian/ non-Soviet rule	-.0118***	-.229		
Center			1.542***	.275
South			1.437***	.178
East			1.800***	.318
Catholic	-.818**	-.077	-1.025***	-.097
Ukrainian speaker	.112	.021	.299	.056
Ethnic Russian	.351	.037	.402	.042
Other ethnic minority	-.018	-.003	-.009	-.001
Class	-.107	-.032	-.067	-.020
Education	-.088**	-.067	-.080*	-.061
Income	-.044	-.038	-.061*	-.053
Age	.019***	.111	.018***	.104
Male	.532***	.099	.503***	.093
Constant	5.108***		3.425***	
Adjusted R square	.12		.13	
N	1895		1895	

*** $p \leq .001$, ** $p \leq .01$, * $p \leq .05$.

The average Catholic is significantly less likely to express positive attitudes towards the Soviet system than is the average non-Catholic. Age, gender, and education have statistically significant effects on support for the past Communist system in both regression models. Age is positively associated with approval of this system, while the effect of the education level is negative. The average male respondent has a significantly more favorable view of the Soviet system than does the average female respondent. The effects of ethnicity, language, and class on attitude towards the Soviet political system are statistically insignificant. (See Table 7.)

Conclusion

Statistical analyses of the voting results from all national parliamentary and presidential elections held between 1991 and 2006 and survey data concerning attitudes towards major historical issues confirm the existence of strong and persistent regional cleavages in post-Soviet Ukraine. Western Ukrainian regions, which differ significantly in terms of their historical legacies from regions in Eastern Ukraine, are much more supportive, compared to Eastern Ukraine, of pro-nationalist and pro-Western parties and politicians, and they are much less supportive of pro-Communist and pro-Russian parties and politicians.

Similarly, Eastern Ukrainians, compared to Western Ukrainians, express much more favorable attitudes towards the incorporation of Eastern Ukraine by Russia in the seventeenth century, the Bolshevik Revolution, the whole period of Ukraine's inclusion in the Soviet Union, the past Communist political system, Russian tsars, and Soviet political leaders. People from Western Ukraine are much more likely than the residents of other regions to regard the artificial famine of 1932/1933 as a result of deliberate Soviet policy directed against ethnic Ukrainians. Western Ukrainians demonstrate much more favorable views than their Eastern Ukrainian counterparts towards the UPA and historical Ukrainian nationalist and pro-independence leaders.

Regression analysis shows that historical legacies, linked to different historical experiences before Soviet unification, have the largest effect, compared to other factors, on electoral behavior and on attitudes towards

historical issues. Keeping other factors, such as ethnicity and the level of economic development constant, the history of Austro-Hungarian, Polish, Romanian, and Czechoslovak rule is the biggest determinant of the regional pro-nationalist/pro-Western vote index, the pro-Communist/pro-Russian vote index, and individual attitudes towards the past Soviet political system.

Catholic religion and Ukrainian ethnicity also affect the regional electoral behavior indexes but to a lesser extent and less consistently than the historical legacy does. Age, education, Catholic religion, and gender are significant determinants of attitudes towards the Soviet political system. However, their effects are weaker compared to the effects of historical legacy variables.

This study concludes that the regional political cleavages in post-Communist Ukraine reflect primarily cultural differences that emerged as a result of distinct historical experiences in Ukrainian regions in the periods before World War I and World War II. These findings imply that the regional differences in electoral behavior and attitudes towards major historical issues will not disappear in Ukraine in the near future.

Shades of Orange

The Electoral Geography of Ukraine's 2004 Presidential Elections

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Introduction

It could reasonably be argued that the dissolution in 1991 of the world's largest country, the Union of Soviet Socialist Republics, was one of the most profound, if not *the* most profound changes in the international political landscape during the 20th century. In an era that witnessed several dramatic realignments in political geography, such as those occurring in the wake of the First World War in Europe and the Middle East or the decolonization of Africa and South Asia after the Second World War, the transformation of the core of Eurasia from one state entity to 15 new sovereign states certainly commands our attention. This is especially the case when taken together with the end of Soviet domination in Central and Eastern Europe and, as we moved into the new millennium, the further expansion eastward of NATO and the enlargement of the European Union (EU) to incorporate several of these states, including three (Estonia, Latvia, and Lithuania) that were formerly components of the USSR itself.

Yet, despite the initial optimism for a new wave of democratization and the emergence of market economies that accompanied the creation of these ex-Soviet states, it has proven disappointing to say the least that all five of the new states of the former Soviet Central Asia have lapsed into authoritarian regimes, as has Azerbaijan and, most notably, Belarus; Moldova is crippled by a Russian-backed separatist element; Armenia has been in and out of political turmoil and economic chaos and saddled with the ongoing dispute

with Azerbaijan over Nagorno-Karabakh; and the future of democracy in all-important Russia is very much an open question, not to mention the ongoing hostilities in Chechnya.[1] Only the three Baltic countries (Estonia, Latvia, and Lithuania), whose incorporation into the USSR was relatively late and not universally recognized, and which had some experience of independence if not full-fledged democracy in the inter-war period, have emerged from the wreckage of the Soviet Union as viable states in the contemporary European sense. In late 2003, however, events in the former Soviet Republic of Georgia created anew the hope that at least some semblance of democracy might be a realizable goal in that country, as the corrupt and inept government of Eduard Shevardnadze was ousted by a spontaneous popular movement headed by the charismatic and avowedly reformist Mikhail Saakashvili, whose mandate was confirmed by elections in 2004. Although it is easy to overstate the nature of the shift in political power in Georgia, this series of events, which came to be called the 'Rose Revolution,' certainly gained widespread notice in other post-Soviet states, most importantly in Ukraine.

It is, on the other hand, difficult to overstate the importance of Ukraine in the emerging geopolitical structure of Eastern Europe or of Europe in general. Larger in land area than any current member state of the EU, with a population exceeded in number only by Germany, the United Kingdom, Italy, and France among the EU countries, Ukraine possesses vast mineral wealth, a huge agricultural base, and occupies key strategic ground astride the European-Russian transition zone. Sadly, after Ukraine's independence in 1991, this potential has been squandered by pervasive corruption, a badly mismanaged privatization of state enterprises, and the rise both of a wealthy 'oligarchic' class and poverty, inadequate economic reforms, and a political system marred by electoral irregularities and the abuse of power.[2]

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1 For an excellent overview of Russia's position in the post-Soviet era in relationship to the geopolitical 'Heartland' concept, especially as regards its economic situation, see Michael Bradshaw and Jessica Prendergrast, 'The Russian Heartland Revisited: An Assessment of Russia's Transformation.' *Eurasian Geography and Economics* 46:2 (March 2005): 83-122.

2 For background and a review of policies undertaken by Ukraine's new government, see Anders Åslund, 'Ukraine's Return to Economic Growth.' *Post-Soviet Geography and Economics* 42:5 (July-August 2001): 313-328; Anders Åslund, 'The Economic Policy of Ukraine after the Orange Revolution,' *Eurasian Geography and Economics* 46:5 (July-August 2005): 327-353.

It comes as no surprise, therefore, that there was great interest in the presidential election in Ukraine in 2004, as the twice-elected incumbent, Leonid Kuchma, left office. Ukrainian electoral law as it applies to presidential elections specifies that absent any one candidate obtaining a simple majority of votes cast, a second round will be conducted between the two highest vote-getters. In the simplest terms, the central question in the 2004 election was whether or not Kuchma's hand-picked, status quo candidate, Viktor Yanukovych, would prevail over the principal challenger, Viktor Yushchenko, who represented reform and a reorientation of Ukraine toward Europe. But nobody foresaw the high drama that was to ensue as one of the most spectacular reversals of political fortune in recent times unfolded, with Yushchenko poisoned in a bizarre plot that nearly killed him and threatened to derail his campaign, tens of thousands of Ukrainian citizens taking to the streets to protest electoral misconduct, a previously untested judiciary invalidating the apparent election of Yanukovych and forcing a decisive repeat of the second round, and the fate of this vital country hanging in the balance. With Yushchenko's ultimate victory in the re-vote and the triumph of his 'Orange Revolution,' the stage is now set for a new administration, one that espouses reform and greater accountability. Whether this turns out to be so is, certainly, an open question, but at least the possibility exists that this will prove to be a watershed event in the political history of Eastern Europe and therefore deserving of intensive study.

Our purpose here is to describe and analyze the electoral geography of the three rounds of the Ukrainian 2004 presidential race in an effort to shed light on the underlying demographic and socio-economic correlates of the vote in this pivotal contest. Given the widespread allegations of fraud in the second round of the election, and the subsequent overturning of that result in the third round, special attention will be paid to changes among the rounds. In doing so, we will utilize a methodology based on aggregate data in spatial units at different geographic scales, a technique widely used in political geography and previously employed by us and others to study referendums and parliamentary and presidential elections in Russia and Central and

Eastern Europe.[3] Typically, such studies use regression techniques to gauge the degree of association between or among 'compositional' variables usually derived from censuses or government statistics that characterize the population in the individual regions as independent variables (e.g., age, income, or urban/rural residence) and voting outcomes (e.g., party, candidate, or issue preference) as the dependent variable.[4] Thus, findings such as the strong relationship between the rural, older, less-educated population of agricultural areas and a higher percentage of votes for communist or post-communist parties and candidates in Russia and other post-Soviet countries has been well established. In most cases we also find that the results of these studies closely match the same kinds of relationships probed via individual-level survey analyses, lending greater efficacy to the inferences drawn from aggregate data.[5] Further, aggregate data often permit retrospective or historical analyses in situations where no survey data are available, and allow the researcher to examine in detail regional differences in electoral behavior usually not dealt with by political scientists; given the highly uneven spatial distribution of most electorates and the kinds of differences in political preferences and voter turnout usually found from place to place (e.g., 'Red and Blue America'), it is imperative that the regional factor be taken into consideration.

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3 Ralph S. Clem and Peter R. Craumer, 'Roadmap to Victory: Boris Yel'tsin and the Russian Presidential Elections of 1996.' *Post-Soviet Geography and Economics* 37:6 (June 1996): 335-354; Ralph S. Clem and Peter R. Craumer, 'Spatial Patterns of Political Choice in the Post-Yel'tsin Era: The Electoral Geography of Russia's 2000 Presidential Election.' *Post-Soviet Geography and Economics* 41:7 (September 2000): 465-482; Peter R. Craumer and James I. Clem, 'Ukraine's Emerging Electoral Geography: A Regional Analysis of the 1999 Parliamentary Elections.' *Post-Soviet Geography and Economics* 39:1 (January 1999): 1-26; Jan Fidrmuc, 'Economics of Voting in Post-communist Countries.' *Electoral Studies* 19:2/3 (2000): 199-217; John O'Loughlin, 'The Regional Factor in Contemporary Ukrainian Politics: Scale, Place, or Bogus Effect?' *Post-Soviet Geography and Economics* 42:1 (January 2001): 1-33.

4 O'Loughlin presents both a detailed analysis of the regional factor in the Ukrainian presidential election of 1999 and an explication of a statistical methodology which to a large degree overcomes concerns about the so-called 'ecological fallacy' in aggregate data studies. John O'Loughlin, 'The Regional Factor in Contemporary Ukrainian Politics: Scale, Place, or Bogus Effect?' *Post-Soviet Geography and Economics* 42:1 (January 2001): 1-33.

5 Ralph S. Clem and Marek Jan Chodakiewicz, 'Poland Divided: Spatial Differences in the June 2003 EU Accession Referendum.' *Eurasian Geography and Economics* 45:7 (October 2004): 475-490.

The use of aggregate data in spatial units raises the question of the scale at which the analysis is done. It is important to disaggregate data to the smallest units possible both because larger political-administrative units disguise internal variations that may be important in understanding the relationship among compositional variables and election outcomes and because a larger number of units (i.e., observations, or *N*) makes tests of statistical significance more meaningful. So doing usually improves the strength of the correlation coefficients or, if one simply uses cross-tabulations, makes the associations clearer in tabular form. Such more refined geographic analysis is not always feasible, however, mainly because either election results or the census-type data are not available at larger scales. For example, Ukraine has 225 electoral districts, and voting outcomes are given for these in detail, but we are unable at this time to match socioeconomic data with the election results. Therefore, in the present case, we use units at the first-order civil division scale which, for Ukraine, are referred to as *oblasti* (singular: oblast). At this level we do have access to matching census data and other social and economic indicators. For political-administrative purposes, Ukraine is divided into 24 *oblasti*, one autonomous republic (Krym, or Crimea), and two cities directly subordinated to the national government (Kyiv, or Kiev, and Sevastopol'), for a total of 27 'regions.' This provides us with sufficient spatial resolution to distinguish the important regional variation in both voting results and the socioeconomic data that we employ to probe the underlying population characteristics associated with the election outcomes.

Background

It has now become commonplace to view Ukrainian politics in 'east-west' terms, and there are good reasons for doing so, as electoral maps of that country's elections suggest. In the simplest terms, the country has divided into halves, roughly along the Dnipro (Dnieper) River, over 'the Russian

question'.[6] This issue consists of two elements: (1) the manner in which the independent Ukrainian state deals with its larger and more powerful (and at times hegemonic) neighbor to the east and/or orients itself more toward Europe; and (2) how Ukraine's large Russian ethnic minority is (or is not) integrated into the country's social, economic, and political life. In idealized form, the western parts of Ukraine, where the ethnic Russian presence is very small and Ukrainian ethnicity and nationalism is strongest, see Ukraine's geopolitical and economic future tied to Europe,[7] especially now that the country borders on the EU. On the other hand, the eastern regions, where most of the ethnic Russians live, incline closer to Russia and prefer greater regional autonomy within Ukraine.[8]

The election of 2004 marked the fourth occasion upon which Ukrainians went to the polls to choose a president. In all of these elections, but especially in 1994 and 1999, there was a very general east-west geographical pattern of candidate preference, but not nearly as simple as one might imagine. The first such contest, in December 1991, occurred simultaneously with a national referendum on independence from the USSR (approved by over 90 percent of voters), and resulted in the election of Leonid Kravchuk, who previously was a leading Communist Party official, as the country's first post-Soviet president. Then, in July 1994, Kravchuk was unseated by Leonid Kuchma, formerly director of one of the USSR's most important industrial enterprises. In October/November 1999, Kuchma was re-elected, convincingly, over Petro Symonenko, head of Ukraine's Communist Party.

Kravchuk's victory in 1991 did not display as much of a spatial component as in the later contests, principally because he won outright in the first round, but even here his main competition, the nationalist Vyacheslav Chornovil, ran strongest in the western regions of Ukraine and Kravchuk in the eastern regions, presaging the overall east-west divide in Ukrainian

6 John O'Loughlin, 'The Regional Factor in Contemporary Ukrainian Politics: Scale, Place, or Bogus Effect?' *Post-Soviet Geography and Economics* 42:1 (January 2001): 6-9.

7 Lowell Barrington, 'The Geographic Components of Mass Attitudes in Ukraine.' *Post-Soviet Geography* 38:10 (December 1997): 601-614.

8 Vicki L. Hesli, 'Public Support for the Devolution of Power in Ukraine; Regional Patterns.' *Europe-Asia Studies* 47:1 (January 1995): 91-115.

presidential politics.[9] This east-west dichotomy was fully manifested in the 1994 race, but with an interesting twist: Kravchuk by this time had positioned himself to the right along the political spectrum (i.e., Ukrainian nationalist), leaving the challenger, Kuchma, to stake out the center. After an indecisive first round, Kuchma picked up support from the left when its candidates were eliminated, and thus bested Kravchuk in the second round.[10] Now the spatial divide was clear, with Kravchuk dominating in the western regions and Kuchma in the central and eastern regions. After 1994, in another example of how dramatically the Ukrainian political ground can shift, Kuchma moved toward the right while retaining the center, and his second round opponent in 1999, Symonenko, occupied the left. Now, Kuchma's geographic constituency was primarily in the west, but with pockets of strength in the east, with Symonenko inheriting the rest of the east and some areas in the west. As Hinich and his colleagues found, 'Although one can hardly be surprised by such results, it is clear not only that the east-west divide that has characterized Ukrainian politics in the past persisted through the 1999 presidential contest, but that there is little evidence of its erosion.'[11] Matsuzato, however, suggests a more nuanced view of Symonenko's regional strength, especially in some areas west of the Dnipro, and points to Kuchma's adroit use of political machinery (what he called the 'rampant administrative mobilization of votes') as the main element of his winning strategy.[12]

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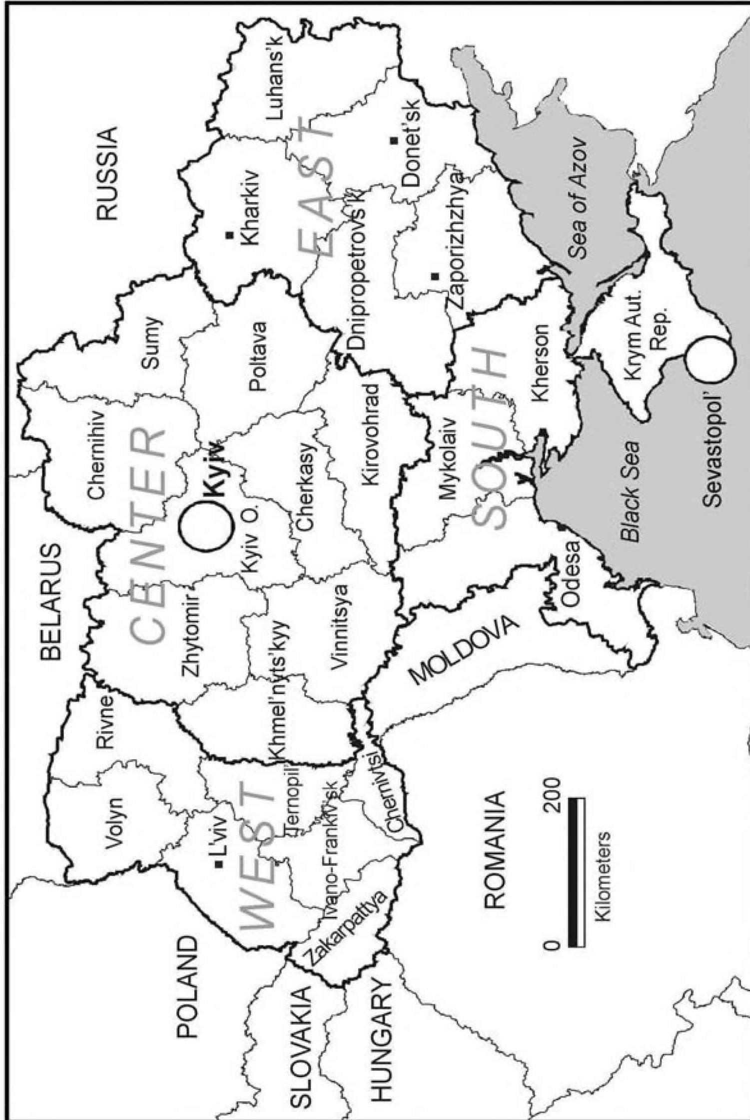
9 Peter J. Potichnyj, 'The Referendum and Presidential Elections in Ukraine.' *Canadian Slavonic Papers* 33:2 (June 1991): 123-38.

10 Sarah Birch, 'The Ukrainian Parliamentary and Presidential Elections of 1994.' *Electoral Studies* 14:1 (March 1995): 93-99; Sven Holdar, 'Torn Between East and West: The Regional Factor in Ukrainian Politics.' *Post-Soviet Geography* 36:2 (February 1995): 112-132.

11 Melvin J. Hinich, Valeri Khmelko and Peter C. Ordeshook, 'Ukraine's 1999 Presidential Election: A Spatial Analysis.' *Post-Soviet Affairs* 18:3 (July-September 2002): 265. Hinich and his colleagues also found that perceptions held by voters of the different candidates' ideological positions were virtually identical between west and east. Please note that their use of the term 'spatial' in that article refers not to geographic space, but rather to 'ideological or criterion space.'

12 Kimitaka Matsuzato, 'All Kuchma's Men: The Reshuffling of Ukrainian Governors and the Presidential Election of 1999.' *Post-Soviet Geography and Economics* 42:6 (September 2001): 416-439.

Figure 1: General reference map of Ukraine



It is clear that 'east-west' may have value as an overarching descriptor, but, as in the case of the Kuchma-Symonenko vote, in order to gain a fuller appreciation of Ukraine's electoral geography, it is important to disaggregate the country progressively into macroregions and then first-order political-administrative units.[13] This is, after all, a vast country with considerable internal variety as regards forms of economic activity (a heavy industrial east and a more rural, agricultural west), ethnic composition and language affinities (a solid Ukrainian west and an east that has a very large ethnic Russian component), and political views shaped by different historical formative experience (parts of the west were formerly Habsburg lands and only annexed by the USSR in 1939, whereas areas in the east, bordering Russia, have had close ties to that country for centuries). As John O'Loughlin has noted, 'Ukraine has a complex regional mosaic developing out of its centuries of division between the Russian (later, Soviet), Austro-Hungarian, and Turkish empires and the imprint of these legacies is still visible in the electoral maps.'[14] It is also important to remember that Ukraine in its present form dates only from 1954, when the Crimea was transferred to it from Russia, with the remainder of the state delimited in 1945.

Accordingly, to take into account the importance of these geographical differences, we will present results here first by macroregions, which are groupings of the first-order units (i.e., *oblasti*) of Ukraine. The component units of the four macroregions are listed in Table 2 and depicted in Figure 1. Certainly, any regionalization scheme is subject to criticism, and we make no claims to perfection, but others have followed this particular taxonomy and it has intuitive appeal.[15] The West macroregion includes seven *oblasti* formerly known as Volhynia (present day Volyn and Rivne oblasts), Galicia (L'viv, Ternopil' and Ivano-Frankivs'k oblasts), Bukovyna (Chernivtsi Oblast) and the Transcarpathian region (Zakarpats'k Oblast). Most of this macroregion was outside the USSR until the Second World War and all but Volhynia was also not part of the Russian Empire; therefore, Ukrainian ethnic identity and

13 John O'Loughlin, 'The Regional Factor in Contemporary Ukrainian Politics: Scale, Place, or Bogus Effect?' *Post-Soviet Geography and Economics* 42:1 (January 2001): 1-33.

14 Ibid.: 5.

15 Sven Holdar, 'Torn Between East and West: The Regional Factor in Ukrainian Politics.' *Post-Soviet Geography* 36:2 (February 1995): 112-132.

language, as well as a relatively strong tradition of enfranchisement are evident here.[16] According to the most recent Ukrainian census (2001), ethnic Ukrainians make up over 90 percent of the population in this area, whereas ethnic Russians account for just 2.7 percent.[17] With the exception of L'viv Oblast, with the eponymous city (the epicenter of Ukrainian culture and nationalism), the other *oblasti* in the macroregion are less than 50 percent urbanized.[18]

The Center macroregion comprises nine *oblasti* and the national capital, Kyiv, and is a mixture of agricultural and industrial activity. Urbanization among these units ranges from one-half to two-thirds, with Kyiv Oblast, including the city of Kyiv, over 80 percent. This macroregion is to some extent an ethnic transition zone, with slightly larger Russian ethnic populations and more Russophone Ukrainians in evidence as one moves from west to east; the city of Kyiv also has a relatively higher percentage of ethnic Russians and Ukrainians who declare Russian as their native language. The East macroregion, with five *oblasti*, is the highly urbanized (over 75 percent), heavy industrial and mining zone of Ukraine, and has a pronounced Russian ethnic and linguistic character owing to the large in-migration of Russians from the late 19th century on to take jobs in those sectors. Finally, the South macroregion encompasses three *oblasti*, the Krym Autonomous Republic, and its main city, the huge port and naval base of Sevastopol'. There is a strong ethnic Russian presence here, as well as an increasingly larger number of the indigenous Crimean Tatars, a group deported *en masse* to Uzbekistan by Stalin during the Second World War and now returning to their homeland.

As is the case with most large countries, Ukraine's population and the electorate is not evenly distributed among the country's regions. The size of regional electorates is important because, combined with the political disposition of people in the regions and the rate at which they go to the polls (voter turnout), the national result is determined. The most salient fact in this

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16 Sarah Birch, 'Electoral Behaviour in Western Ukraine in National Elections and Referendums, 1989-91.' *Europe-Asia Studies* 47:7 (November 1995): 1145-1176.

17 Richard H. Rowland, 'National and Regional Population Trends in Ukraine: Results from the Most Recent Census.' *Eurasian Geography and Economics* 45:7 (October-November 2004): 491-514, Table 7.

18 Ibid.: 491-514, Table 2.

regard is that one-third of Ukraine's approximately 37,613,000 electors are in the five *oblasti* of the East macroregion, a reflection of the fact that these regions are more densely inhabited; Donets'k is the most populous region in the country (and contains 10 percent of the nation's voters), with Dnipropetrovs'k third, Kharkiv fourth, Luhans'k sixth, and Zaporizhzhya ninth out of 25 units.[19] The Center macroregion is almost the same size as the East in terms of population and the size of the electorate, and it includes Ukraine's largest city (Kyiv); among its nine regions, Kyiv Oblast and the city of Kyiv make up the second most populous region in Ukraine. The West macroregion, which attracts considerable attention owing to its overtly Ukrainian nationalist character, has just less than one-fifth of electors, while the South accounts for 15 percent. As one of the authors and James I. Clem demonstrated previously, the heavy weight of the voting population in the East was a key factor in the success of parties of the Left in the Ukrainian parliamentary election of 1998.[20]

Voter turnout, another of the components of the national vote, also has also varied considerably from region to region across Ukraine, as it does in most large countries. There is a gradient in voter turnout from higher in the West to lower in the East and South, manifested in the 1998 and 2002 *Verkhovna Rada* (the Ukrainian national parliament) elections and the presidential election of 1999, such that a range of 25 percentage points or more exists among the *oblasti.* To appreciate just how important the interaction of these three components of the total vote might be, imagine that in the case of Ukraine the political character of the West and East macroregions were reversed; that is, if the strongly Ukrainian nationalist West had one-third of all potential voters instead of the one-fifth that it has in fact, and that voters went to the polls at a rate typical of the West (i.e., 75-90 percent) instead of the lower rates typical of the East (65-75 percent). Given the reality extant, what we might expect to see in the Ukrainian presidential

19 Richard H. Rowland, 'National and Regional Population Trends in Ukraine: Results from the Most Recent Census.' *Eurasian Geography and Economics* 45:7 (October-November 2004): 491-514, Table 1. The Rowland study uses a regional framework of 25 units, as it merges Kyiv city with the surrounding Kyiv Oblast, and Sevastopol' with the surrounding Krym Autonomous Republic.

20 Peter R. Craumer and James I. Clem, 'Ukraine's Emerging Electoral Geography: A Regional Analysis of the 1999 Parliamentary Elections.' *Post-Soviet Geography and Economics* 39:1 (January 1999): 1-26.

election of 2004 is that the Center and South will be the swing areas, with the West and East continuing to favor candidates representing their respective political temperaments.

The 2004 Elections

Preamble

Nearing the end of a decade in power, Leonid Kuchma and his administration were sinking ever deeper into a morass of corruption and abuse of power, what Dominique Arel termed '… a conscious policy of democratic regression' (2001, p. 54). The most notorious aspect of this degeneration was the startling revelation in November 2000 that President Kuchma had personally ordered the Ukrainian security services to kidnap and beat a crusading independent journalist, Heorhiy Gongadze, and that the meeting in which these instructions were given was secretly tape recorded. In the event, Gongadze died at the hands of his kidnappers, and the discovery of his decapitated body and the expert verification of the tapes triggered a political crisis in Ukraine, popularly known as 'Kuchmagate,' that was to shape the outcome of the Ukrainian parliamentary elections in 2002 and, ultimately, the presidential race in 2004.

From this highly volatile political mixture emerged Viktor Yushchenko, formerly Kuchma's prime minister (1999–2001), a charismatic person who forged a broad-based coalition of reformers and nationalists into the 'Our Ukraine' bloc to contest the 2002 elections for the *Rada.* Taking a page from Russian president Vladimir Putin's playbook, Kuchma countered with his own electoral bloc, 'For a United Ukraine,' a direct copy of the highly successful Russian 'Unity' bloc that was formed for the 1999 *Duma* election. Kuchma also installed a new prime minister, Viktor Yanukovych, whose political power base was in the Donets'k region.

There have been both consistencies and some interesting anomalies running through the *Rada* election of 1998, the Ukrainian presidential race of 1999, and the *Rada* contest of 2002, such that clear patterns of party and candidate preference can be traced from one election to the next, while at the

same time irregularities emerge that suggest fraud.[21] Considering the electoral event immediately preceding the 2004 presidential race, the 2002 *Rada* election, we see again that Ukrainian politics is strongly influenced by location, at least when one looks at regional preferences for parties. The Ukrainian parliament, like its Russian equivalent (the State Duma), is composed of 450 deputies, 225 of which are elected on the basis of proportional representation from a national party list, and the other half of whom are elected from single-member districts on a plurality basis.[22]

Because a very high percentage of the district elections are won by independents, this side of the ballot is not very instructive when examining regional political affinities, whereas the proportional representation vote is directly tied to party choice. In the 2002 race, Yushchenko's Our Ukraine bloc performed best in the West and well in the Center, whereas For a United Ukraine and the Communist Party of Ukraine dominated the South and the East. One result that does emerge from the single-member district contests is the concentration of Our Ukraine deputies elected from the West and For a United Ukraine elected from constituencies in the East.[23] If, as most observers believed, Yushchenko would be the standard bearer for the reform/nationalist side and Yanukovych for the status quo in the 2004 contest, then the lines were clearly drawn in the West and in the East, and the real fight would be for the Center and the South. Put another way, Yushchenko would need to seize the very regions that Kuchma won in 1999,[24] whereas Kuchma's heir apparent, Yanukovych, would base his strategy on retaining the East (won by Kuchma's opponent in 1999) and penetrating the South and Center.

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21 Mikhail Myagkov and Peter C. Ordeshook, 'The Trail of Votes in Ukraine's 1998, 1999, and 2002 Elections.' *Post-Soviet Affairs* 21:1 (January 2005): 56-71.

22 At this writing, the Russian Duma is considering a proposal from the Putin administration to eliminate the single-member districts and have all 450 deputies elected via a national party list (proportional representation). This is widely viewed, along with another change that eliminates the popular election of regional governors (they are to be appointed by the president), as part of the process of concentrating power in the executive branch.

23 Serhii Vasyl'chenko, *Geografiia ukraïns'kykh vyboriv: Rezul'taty parlaments'kykh vyboriv u retrospektyvi i u s'ohodenni* [The Geography of Ukrainian Elections: Results of Parliamentary Elections in Retrospect and in the Present] (Kiev: Ukraine: Fond 'Evropa XXI', 2002).

24 Mikhail Myagkov and Peter C. Ordeshook. 'The Trail of Votes in Ukraine's 1998, 1999, and 2002 Elections.' *Post-Soviet Affairs* 21:1 (January 2005): 56-71.

Round 1: October 31, 2004

After a bitter campaign, highlighted by Yushchenko's dioxin poisoning, an unseemly and ill-advised intrusion into the race by officials of the Russian government, a strong presence and high level of activity by Western non-governmental organizations, and charges that Yanukovych was taking unfair advantage of the pro-presidential control over the media, about 75 percent of eligible Ukrainian voters went to the polls to cast ballots for one of 24 candidates; other than Yanukovych and Yushchenko, prominent among the list were Oleksandr Moroz (chairman of the Socialist Party of Ukraine [SPU] and a candidate in 1994 and 1999), Petro Symonenko (head of the Communist Party of Ukraine and a veteran of the runoff against Kuchma in 1999), and Natalya Vitrenko (leader of the Progressive Socialist Party and also a candidate in 1999). Yushchenko and Yanukovych ran virtually neck-and-neck, with neither able to secure the required simple majority for an outright win; Moroz, Symonenko, and Vitrenko made at least decent showings (Table 1). The spatial distribution of the Yushchenko and Yanukovych votes is a virtual mirror image, with the former dominating the West and running strongly in the Center, and the latter decisively winning the East and capturing the lion's share of votes in the South, especially Crimea (Figs. 2 and 3). This is to be expected given the spatial distribution of voters for Yushchenko's Our Ukraine party in 2002 and that of the pro-Yanukovych For a United Ukraine in that same contest. Regardless, the degree of spatial separation of the constituencies of the leading two candidates is striking. Consider that Yushchenko, the winner of round one, garnered only 85,000 votes (less than three percent of the vote) out of the almost 2.9 million cast in Donets'k Oblast, whereas Yanukovych attracted only 39,000 voters out of the 800,000 plus who voted in Ivano-Frankivs'k Oblast (Table 2). Moroz found the majority of his votes (over 60 percent) in the Center with pockets in the East and South, which matches the vote pattern for his Socialist Party of Ukraine in the 2002 *Rada* election.[25] The vote for Symonenko and Vitrenko was concentrated in the East and South, which aligns well with the strength of the former's Communist Party of Ukraine, with the latter appealing to those of the same political persuasion.

25 Vasyl'chenko, *Geografiia ukraïns'kykh vyboriv*: 11.

Table 1: Results of the Ukrainian Presidential Elections, 2004

Candidate	*31 Oct. votes*	*In %*	*21 Nov. votes*	*In %**	*26 Dec. votes*	*In %*
Yushchenko, V. A.	11,188,675	39.9	14,222,289	46.6	15,115,712	52.0
Yanukovych, V. F.	11,008,731	39.3	15,093,691	49.5	12,848,528	44.2
Moroz, O. O.	1,632,098	5.8				
Symonenko, P. M.	1,396,135	4.9				
Vitrenko, N. M.	429,754	1.5				
Kinakh, A. K.	262,530	0.9				
Yakovenko, O. M.	219,191	0.8				
Omelchenko, O. O.	136,830	0.5				
Chernovets'kyi, L. M.	129,066	0.5				
Others	240,746	0.9				

* The overall percentage does not equal 100 percent owing to spoiled ballots and votes cast against all candidates. *Source*: Compiled by the authors from Ukraine, Central Electoral Commission (http://www.cvk.gov.ua).

As noted, voter turnout for Ukraine as a whole was a respectable 74.9 percent, with a range among the oblasts from a low of 64.8 percent in Odesa Oblast to a high of 84.9 percent in Ternopil' Oblast, and with levels generally higher in the West macroregion, trending lower through the Center, and lowest in the South and East (Table 3 and Fig. 4).[26] Higher turnout benefited Yushchenko; among the regions, there was a strong relationship between turnout and the percentage of the vote for Yushchenko ($r = .6738$, significant at the .01 level). On the other hand, Yanukovych did best in regions with lower turnout ($r = -.5973$), which suppressed his national totals, even though, as noted above, these tended to be the more populous units.

26 There are small differences in reported voter turnout among the various tables on the Ukrainian Central Electoral Commission's website for the 2004 presidential elections. These differences are usually within a few tenths of a percent and do not affect the analysis.

Figure 2: Vote for Yushchenko, in percent, round 1, October 31, 2004

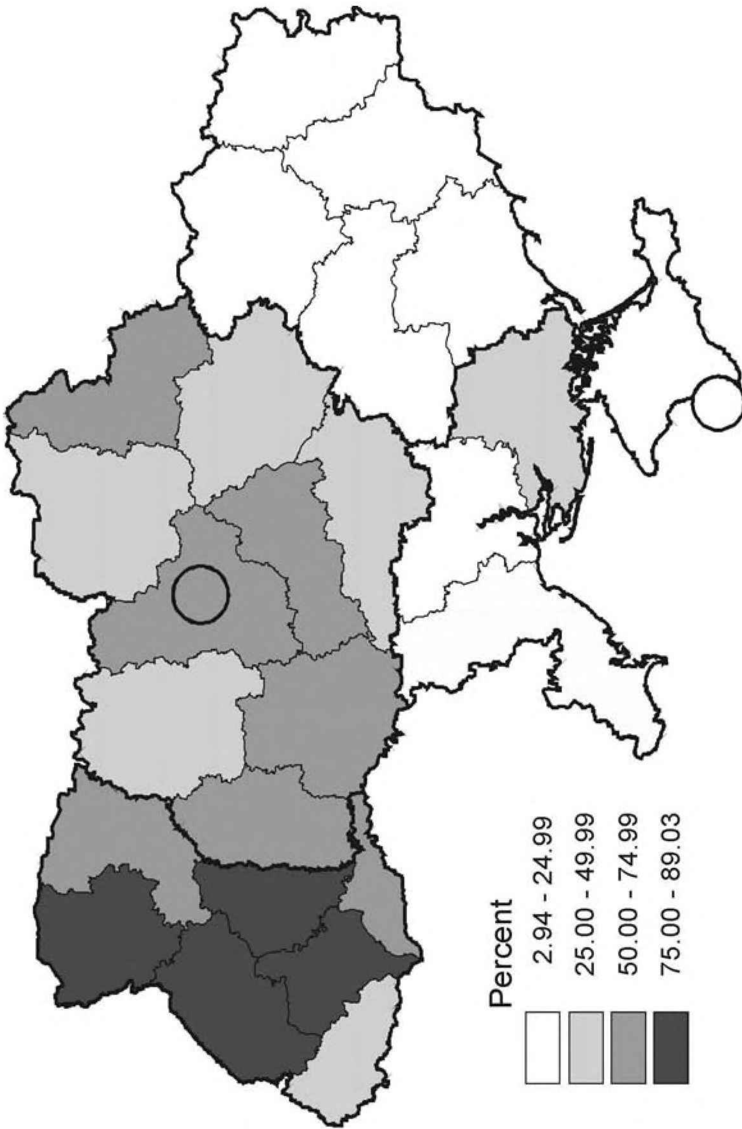


Figure 3: Vote for Yanukovych, in percent, round 1, October 31, 2004

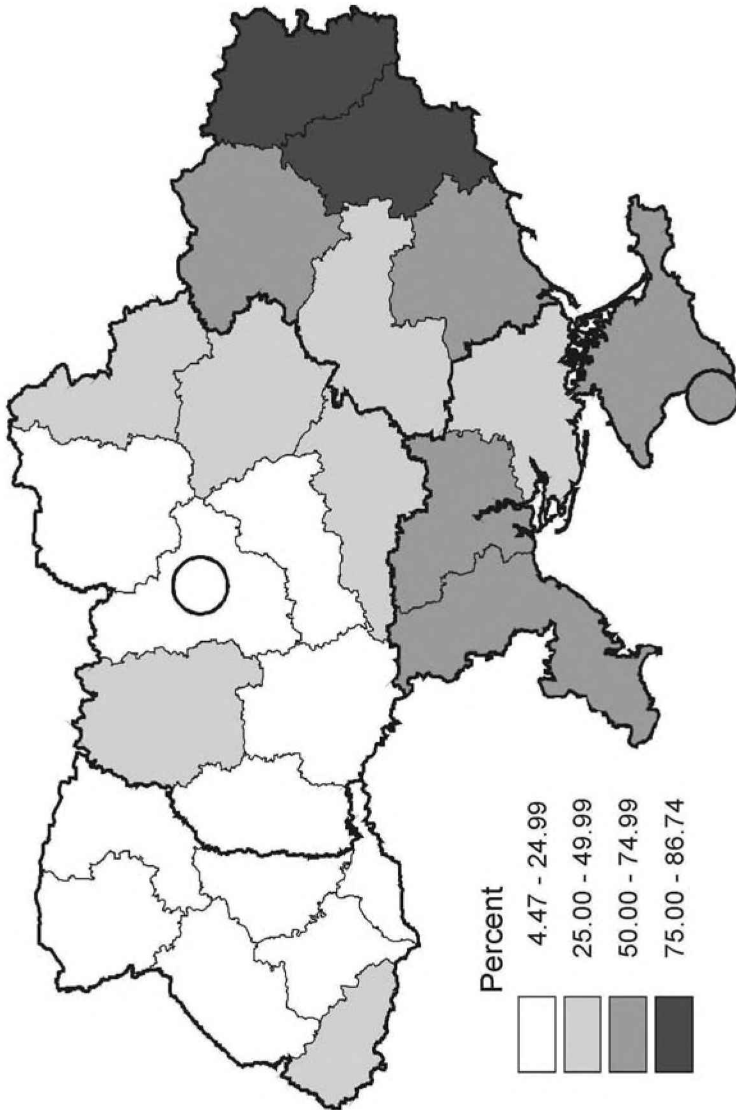


Table 2: Voting (thousand) and Percent by Candidate by Macroregion and Region (Oblast, City, Republic), Ukrainian Presidential Elections, 2004

Macroregion *Oblast*	*31 October* *Yushchenko / Yanukovych*	*21 November* *Yushchenko / Yanukovych*	*26 December* *Yushchenko / Yanukovych*
West	4461 (78.0%) / 679 (11.9%)	4913 (84.3%) / 777 (13.3%)	5256 (89.0%) / 513 (8.7%)
Volyn	503 (77.2%) / 68 (10.5%)	563 (85.8%) / 78 (11.9%)	613 (90.7%) / 47 (7.0%)
Zakarpattya	287 (46.6%) / 232 (37.8%)	341 (55.0%) / 249 (40.1%)	407 (67.5%) / 167 (27.6%)
Ivano-Frank.	770 (89.0%) / 39(4.5%)	829 (93.4%) / 45 (5.1%)	882 (95.7%) / 26 (2.9%)
L'viv	1443 (87.3%) / 96 (5.8%)	1559 (91.8%) / 113 (6.6%)	1616 (93.7%) / 81 (4.7%)
Rivne	489 (69.3%) / 114 (16.1%)	545 / (76.7%) / 143 (20.0%)	603 (84.5%) / 88(12.3%)
Ternopil'	634 (87.5%) / 40 (5.5%)	698 (93.5%) / 39 (5.2%)	731 (96.0%) / 21 (2.7%)
Chernivtsi	335 (66.6%) / 90 (17.9%)	378 (74.5%) / 110 (21.7%)	404 (79.8%) / 83 (16.4%)
Center	5077 (53.5%) / 2009 (21.1%)	6728 (68.8%) / 2627 (26.9%)	7172 (76.1%)/1875(19.9%)
Vinnitsya	634 (59.7%) / 170 (16.0%)	841 (75.9%) / 234 (21.1%)	905 (84.1%) / 139 (12.9%)
Zhytomyr	358 (43.5%) / 241 (29.2%)	503 (60.4%) / 293 (35.2%)	535 (66.9%) / 231 (28.9%)
Kyiv Oblast	668 (59.7%) / 187 (16.7%)	884 (76.4%) / 232 (20.0%)	935 (82.7%) / 156 (13.8%)
Kyiv City	994 (62.4%) / 233 (14.6%)	1229 (74.7%) / 328 (19.9%)	1299 (78.4%)/290 (17.5%)
Kirovohrad	243 (39.0%) / 192 (30.8%)	313 (47.1%) / 309 (46.5%)	380 (63.4%) / 190 (31.8%)
Poltava	431 (43.6%) / 257 (25.9%)	624 (60.9%) / 354 (34.5%)	637 (66.0%) / 281 (29.2%)
Sumy	428 (52.7%) / 209 (25.7%)	564 (69.1%) / 215 (26.4%)	613 (79.5%) / 130 (16.9%)
Khmel'nyts.	511 (57.9%) / 186 (21.1%)	642 (71.5%) / 223 (24.9%)	703 (80.5%) / 140 (16.0%)
Cherkasy	481 (57.7%) / 149 (17.9%)	623 (71.9%) / 208 (24.1%)	651 (79.1%) / 143 (17.4%)
Chernihiv	329 (43.4%) / 185 (24.5%)	505 (65.6%) / 231 (30.0%)	514 (71.2%) / 175 (24.2%)
East	950 (10.5%) / 6191 (68.6%)	1524 (14.3%) / 8675 (81.6%)	1607 (16.7%)/7621(79.1%)
Dnipropetr.	368 (18.7%) / 978 (49.7%)	648 (29.6%) / 1392 (63.6%)	648 (32.0%)/1238 (61.1%)
Donets'k	85 (2.9%) / 2497 (86.7%)	76 (2.0%) / 3571 (96.2%)	133 (4.2%) / 2941 (93.5%)
Zaporizhya	176 (16.6%) / 591 (55.7%)	284 (24.1%) / 825 (70.3%)	277 (24.5%) / 793 (70.1%)
Luhans'k	67 (4.5%) / 1177 (80.0%)	84 (4.8%) / 1626 (92.7%)	102 (6.2%) / 1495 (91.2%)
Kharkiv	254 (15.4%) / 948 (57.4%)	432 (24.1%) / 1261 (70.3%)	447 (26.4%)/1154 (68.1%)
South	672 (18.0%) / 2101 (56.3%)	1007 (24.1%) / 2971 (71.0%)	1017 (25.4%)/2799(69.8%)
Krym Rep.	132 (12.8%) / 712 (69.2%)	175 (14.6%) / 985 (82.0%)	179 (15.4%) / 942 (81.3%)
Sevastopol'	13 (6.0%) / 157 (73.5%)	19 (7.6%) / 221 (89.0%)	19 (8.0%) / 216 (88.8%)
Mykolayiv	122 (17.9%) / 368 (54.0%)	192 (25.4%) / 527 (69.6%)	199 (27.7%) / 482 (67.1%)
Odesa	205 (17.3%) / 631 (53.4%)	345 (26.1%) / 896 (67.8%)	343 (27.5%) / 832 (66.6%)
Kherson	200 (32.1%) / 233 (37.4%)	276 (42.3%) / 342 (52.3%)	277 (43.4%) / 327 (51.3%)
Abroad	29 (46.3%) / 28 (45.2%)	51 (54.7%) / 41 (43.4%)	61 (59.5%) / 40 (38.5%)

Source: Compiled by authors from Ukraine, Central Electoral Commission, [http://www.cvk.gov.ua].

Round 2: November 21, 2004

Before the second-round runoff on November 21, 2004, allegations of impending fraud on the part of the Yanukovych camp had already begun to surface. These reached major proportions once the result was announced, with Yanukovych receiving 49.5 percent and Yushchenko 46.6 percent of ballots cast. This was at odds with exit polling conducted by non-governmental groups, which showed Yushchenko winning handily. Announcement of the official result triggered massive street protests and civil disobedience and almost instantaneous condemnation of the second-round balloting by the Organization for Security and Cooperation in Europe, the principal election monitoring body and, in short order, a strong rejection of the outcome by the European Union, which termed the outcome 'fraudulent.'[27] After the Ukrainian Supreme Court agreed to hear arguments from the Yushchenko side, the *Rada* adopted a non-binding resolution rejecting the outcome of round two and calling for new elections. Then, in one of the most dramatic days in recent East European history, on December 3 the Supreme Court overturned the November 21 result and ordered new elections between the two contenders on December 26.

In looking at the tallies for round two, the first thing that strikes one is the significant increase in voter turnout over round one (nationally, up six percentage points to 80.9 percent), with almost 2.5 million more ballots cast, helping to generate, along with votes shifted from the unsuccessful candidates in round one, over four million more votes for Yanukovych and just over three million additional for Yushchenko (Table 1). A key question is: from where did these votes come? Yushchenko, predictably, picked up about 55 percent of his new voters from the Center macroregion, with the remainder distributed fairly evenly among the other three macroregions (Table 2). A large part of Yushchenko's increase appears to have come from those who supported Moroz in round one; the SPU allied itself with Yushchenko after round one. This is borne out by the increase in Yushchenko votes in the Center region where Moroz had accrued most of his round one votes,

27 For this reference and others chronicling these events in Ukraine through November and December, the authors recommend a serial reading of the excellent coverage provided by Radio Free Europe/Radio Liberty (RFE/ RL) in its special section on the elections and their aftermath at: www.rferl.org/specials/ukraine/.

especially in Chernyhiv, Poltava, and Vinnytsya oblasts. Correlating the percentage increase in Yushchenko's ballot share between rounds one and two with the percentage of the vote for Moroz by region in round one yields a strong coefficient of .8363, significant at the .01 level.

Figure 4: Turnout, in percentage, round 1, October 31, 2004

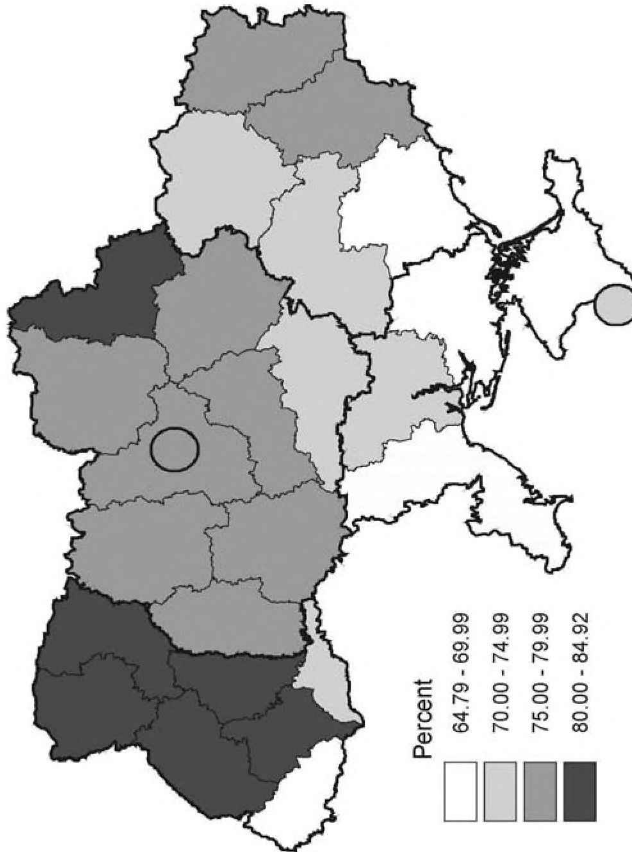


Table 3: Voter Turnout by Region, Ukrainian Presidential Elections, 2004, in percent

Region	*31 Oct.*	*21 Nov.*	*26 Dec.*
West			
Volyn Oblast	82.9	83.8	85.7
Zakarpattya Oblast	66.5	66.9	65.3
Ivano-Frankivs'k Oblast	80.1	82.4	85.6
L'viv Oblast	80.8	83.5	85.2
Rivne Oblast	81.1	81.7	82.2
Ternopil' Oblast	84.9	86.6	87.8
Chernivtsi Oblast	72.0	72.0	72.1
Center			
Vinnytsya Oblast	77.9	80.6	78.4
Zhytomyr Oblast	76.7	76.7	77.9
Kyiv Oblast	76.7	78.6	77.6
Kyiv City	75.8	78.6	79.2
Kirovohrad Oblast	73.9	76.6	70.1
Poltava Oblast	78.1	80.5	76.2
Sumy Oblast	80.7	81.0	77.0
Khmel'nyts'kyy Oblast	79.8	81.0	79.3
Cherkasy Oblast	75.6	77.9	71.5
Chernihiv Oblast	78.6	79.2	74.7
East			
Dnipropetrovs'k Oblast	70.3	77.8	72.1
Donets'k Oblast	78.1	96.7	83.9
Zaporizhzhya Oblast	69.7	76.8	74.0
Luhans'k Oblast	75.6	89.5	83.5
Kharkiv Oblast	71.8	78.2	74.1
South			
Krym Autonomous Republic	66.0	78.2	75.0
Sevastopol' City	70.3	81.9	79.7
Mykolayiv Oblast	71.5	77.8	75.0
Odesa Oblast	64.8	72.2	68.0
Kherson Oblast	68.8	71.8	67.5
Ukraine total	74.9	80.9	77.3

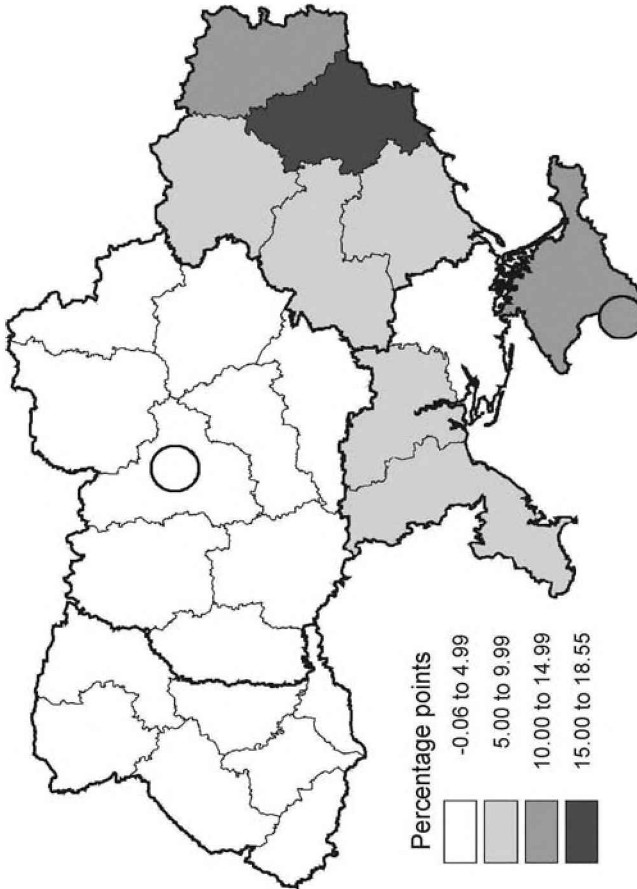
Source: Compiled by authors from Ukraine, Central Electoral Commission (http://www.cvk.gov.ua).

But the real issue is the huge increment in votes for Yanukovych, an increment of such proportions as to raise serious concerns about its validity. A breakdown of the additions to Yanukovych's tally compared with the first round shows that about 60 percent came from the East and another 21 percent from the South; this pattern is not unusual given the regional aspect to his support or that of his party in 2002, as discussed above, but the magnitude is surprising. If we consider vote shifting as one component of the increase in the Yanukovych total for round two, then because Vitrenko backed Yanukovych, some of the higher numbers for him would derive from her support. Symonenko's Communist Party, however, refrained from an outright endorsement of Yanukovych, although communist voters would be more closely allied with him on ideological grounds and, if they voted, probably would have chosen Yanukovych. This accords well with the geographical distribution of Yanukovych votes, because both Vitrenko and Symonenko were strongest in the East. Indeed, simple bivariate correlations between the increase in Yanukovych's vote share between rounds one and two and the percentage of the vote for Symonenko and Vitrenko by region in round one is .8953 and .7232, respectively, both significant at the .01 level. However, if we assume for the sake of argument that in round two Yanukovych picked up *all* of the voters in the East and the South who opted for Symonenko and Vitrenko in round one (1,158,000), then this still leaves an addition of over 1.3 million new voters for him in these two macroregions.

This would mean, of course, that voter turnout would have jumped in the pro-Yanukovych regions as well, and indeed it did (Table 3 and Fig. 5). Double-digit percentage point increases in turnout were registered in Donets'k Oblast (18.6), Luhans'k Oblast (13.9), Crimea (12.2), and the city of Sevastopol' (11.6), with the other regions in the South and East also experiencing major gains in turnout. In an extraordinary change, in round two Donets'k Oblast had, by far, the highest voter turnout among Ukraine's regions (an astonishing 96.7 percent), with Luhans'k Oblast second at 89.5 percent, eclipsing those regions in the West that traditionally have led in this regard (Table 3). If we measure the percentage point change in voter turnout among the regions between rounds one and two compared to the increase in the vote share for Yanukovych over the same period, we find a correlation coefficient of .6126 (significant at the .01 level), indicating that the two were

positively related.

Figure 5: Change in turnout from round 1 to round 2 (November 21, 2004), in percentage points



Another way to look at the same point is to match the increase in voter turnout against the percentage of the vote for Yanukovych in round one, which yields a coefficient of .8889, pointing again to the huge increase in

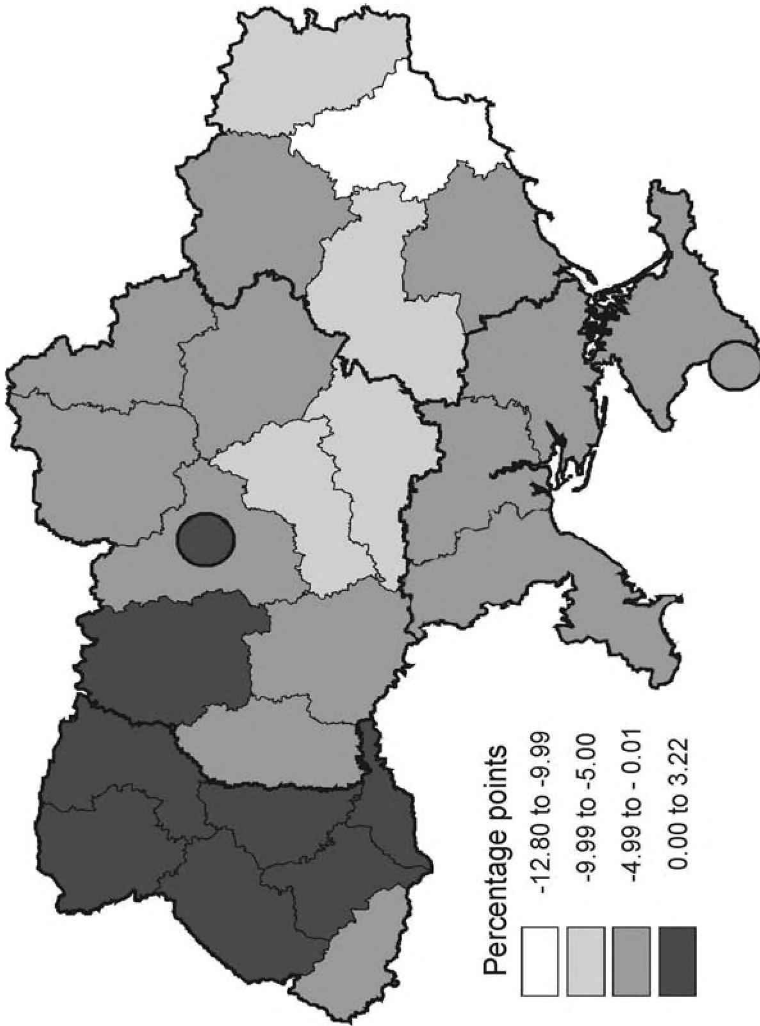
turnout in those regions favoring him. The reverse, incidentally, is also true: there are strong negative coefficients for the increase in Yushchenko's vote share and higher voter turnout, meaning that those areas that voted for him in round one did not experience major gains in voter turnout between the rounds. Rather, Yushchenko appears to have benefited mainly from vote shifting to him from Moroz and others.

In a sense, what the disproportionate gains in turnout in the East and the South did was to reduce the disparity in voting rates across the country seen in round one, although the West remained generally higher. But there are the two major exceptions to this generalization – Donets'k and Luhans'k – and these exceptions were critical to Yanukovych's victory in round two, temporary though it might have been. In Donets'k Oblast alone, Yanukovych received *over one million* additional votes, with over 400,000 more in Luhans'k (and also over 400,000 in Dnipropetrovs'k Oblast). Remembering that the *oblasti* of the East macroregion are heavily populated, and that any shift in voting rates in these units will therefore be magnified in absolute terms, then these huge blocks of Yanukovych votes can be taken in perspective. What is not easily known, however, is whether these numbers represented real voters or were in fact ballots stuffed into boxes or numbers fabricated by local electoral officials, or both (another example of the 'rampant administrative mobilization of votes'). Irrespective of the validity of the votes, which were instantly called into attention, Yanukovych 'won' this election in the East. It remained to be seen if this result would stand.

Round 3: December 26, 2004

Amid intense scrutiny from international organizations and the media, round three evidenced a drop in turnout of about one-and-a-half million votes (and a rate down to 77.3 percent), with Yushchenko receiving almost 52 percent and Yanukovych just over 44.2 percent. This represented an increase of about 893,000 for Yushchenko over round 2 and a decrease of over 2.2 million for Yanukovych.

Figure 6: Change in turnout from round 2 to round 3 (December 26, 2004), in percentage points



The main focus here should be on the decline in the Yanukovych vote, inasmuch as Yushchenko would have bested him in this round with the votes he had in round two. As is clear from Table 2, the major decrement for Yanukovych was in the East, where he lost over a million votes. Donets'k Oblast accounts for about 60 percent of the lost votes, with appreciable declines also registered in Dnipropetrovs'k and Luhans'k *oblasti*. These votes were not shifted to Yushchenko (whose gains in the East were negligible), they simply went away, as is indicated by the drop in voter turnout (Fig. 6 and Table 3). In this last respect, however, we must note that turnout remained high in the East relative to its historical levels, indicating that enthusiasm for Yanukovych was still evident in his regional constituent base. Yushchenko, meanwhile, improved his already dominant position in the West and improved on his strong position in the Center to solidify his win.

Social and Economic Correlates of the Vote

By comparing the social characteristics and indicators of relative economic well-being in the regions with election results, we can gain some insights into the factors that influenced the outcome. We do this first by presenting some simple bivariate correlations describing the relationship between ethnicity and language traits of the population on the one hand and candidate preference on the other. Then we examine, in the same fashion, associations between socioeconomic variables and voting choices. Finally, we summarize results by reference to a multivariate regression analysis to determine which of these various influences contribute the most to explaining differences in the dependent variable, candidate choice.

Ethnicity and Language

Table 4 presents bivariate correlation coefficients for three measures of ethnicity. We recognize that there are different and, at times, divergent views on the broad subject of ethnicity and language, and nowhere more so than in the case of Ukraine;[28] we do not wish to enter this discussion. For our

28 Dominique Arel, 'Interpreting 'Nationality' and 'Language' in the 2001 Ukrainian Census.' *Post-Soviet Affairs* 18:3 (July-September 2002): 213-249.

purposes it is sufficient to use as one variable the percentage of the population declaring Ukrainian as their ethnicity, another variable the percentage of the population declaring Russian as their ethnicity, and a third variable the percentage of the population who declare Ukrainian as their ethnicity but Russian as their native (or principal) language.

Table 4: Bivariate Correlation Coefficients, Ethnic Variables, and Candidate Choice, Ukrainian Presidential Election, 2004[a]

Variables	*Candidate/round*	*Coefficient (pct.)/(pct. of vote)*
Ethnic Ukrainian	Yushchenko 1	.7473*
	Yushchenko 2	.8079*
	Yushchenko 3	.8239*
	Yanukovych 1	−.8305*
	Yanukovych 2	−.8186*
	Yanukovych 3	−.8331*
Ethnic Russian	Yushchenko 1	−.7503*
	Yushchenko 2	−.8106*
	Yushchenko 3	−.8319*
	Yanukovych 1	.8340*
	Yanukovych 2	.8246*
	Yanukovych 3	.8447*
Ukrainian, but Russian native language	Yushchenko 1	−.8032*
	Yushchenko 2	−.8668*
	Yushchenko 3	−.8898*
	Yanukovych 1	.9010*
	Yanukovych 2	.8832*
	Yanukovych 3	.9041*

* Significant at the .01 level

[a] *N* = 27 (oblasts, Krym Autonomous Republic, and cities of Kyiv and Sevastopol’). Electoral results from Ukraine, Central Electoral Commission (http://www.cvk.gov.ua); ethnic and language variables from the 2001 Ukrainian national census (http://ukrcensus.gov.ua).

Based upon previous work on the ethnic mosaic of Ukraine and its relationship to politics as discussed above, we would expect to find that regions with higher percentages of ethnic Ukrainians would align with Yushchenko and regions with more Russians with Yanukovych, a reflection of the divide on 'the Russian question.' Regions where Ukrainians with Russian as their native language should also side with Yanukovych, owing to the fact that the regions with larger Russian ethnic populations are also regions where ethnic Ukrainians tend to declare Russian as their native tongue (that correlation coefficient is .9685). Not surprisingly, the bivariate relationships are solidly in line with expectations. The regions in the West and Center, overwhelmingly ethnic Ukrainian, voted overwhelmingly for Yushchenko. Regions in the East and South, with relatively higher percentages of ethnic Russians and Russian-speaking Ukrainians were solidly in the Yanukovych camp.

Social and Economic Characteristics

When we consider the relationships between some key social and economic indicators and voting, we again generally find predictable results (Table 5). For example, the level of urbanization in the regions relates strongly and positively to Yanukovych's vote share; he ran best in the East where, as we discussed earlier, urbanization levels are higher, and poorest in the West where urbanization levels are lower. Likewise, regions with a relatively larger proportion of workers in industry and mining were pro-Yanukovych areas; Yushchenko did better in the more rural, agricultural regions. In regions such as Donets'k, Luhans'k, and Dnipropetrovs'k in the East, a third or more of the work force is in mining and industry, whereas regions in the West and the Center typically have less than 20 percent so employed. Conversely, in the West many regions have over a third of the work force in agriculture, and in the Center usually over 25 percent, while the agricultural work force in the East is tiny. When one looks at residuals from the correlations, the divergent cases are in the South, which voted heavily for Yanukovych but which has comparatively lower levels of mining and industrial workers, higher levels of employment in agriculture, and moderate levels of urbanization.

Table 5: Bivariate Correlation Coefficients, Social and Economic Variables and Candidate Choice, Ukrainian President Election, 2004[a]

Variables	*Candidate/round*	*Coefficient (pct.)/(pct. of vote)*
Level of urbanization, 2004	Yushchenko 1	-.6676*
	Yushchenko 2	-.6697*
	Yushchenko 3	-.6898*
	Yanukovych 1	.6561*
	Yanukovych 2	.6666*
	Yanukovych 3	.6903*
Industrial and mining work force	Yushchenko 1	-.4668
	Yushchenko 2	-.4648
	Yushchenko 3	-.4643
	Yanukovych 1	.5004*
	Yanukovych 2	.4712
	Yanukovych 3	.4679
Agricultural work force	Yushchenko 1	.6203*
	Yushchenko 2	.6292*
	Yushchenko 3	.6519*
	Yanukovych 1	-.6350*
	Yanukovych 2	-.6296*
	Yanukovych 3	-.6547*
Higher education	Yushchenko 1	-.4569
	Yushchenko 2	-.4665
	Yushchenko 3	-.5021*
	Yanukovych 1	.4287
	Yanukovych 2	.4589
	Yanukovych 3	.5004*

Variables	*Candidate/round*	*Coefficient (pct.)/(pct. of vote)*
Secondary education	Yushchenko 1	.1335
	Yushchenko 2	.1504
	Yushchenko 3	.1939
	Yanukovych 1	-.1739
	Yanukovych 2	-.1651
	Yanukovych 3	-.2064
Income, 2004	Yushchenko 1	-.1587
	Yushchenko 2	-.1404
	Yushchenko 3	-.1618
	Yanukovych 1	.1152
	Yanukovych 2	.1274
	Yanukovych 3	.1554
Income change, 2003–2004	Yushchenko 1	-.3361
	Yushchenko 2	-.3762
	Yushchenko 3	-.3361
	Yanukovych 1	.3510
	Yanukovych 2	.3663
	Yanukovych 3	.3565

* Significant at the .01 level.
[a] *N* = 27 (oblasts, Krym Autonomous Republic, and cities of Kyiv and Sevastopol'). Electoral results are from Ukraine, Central Electoral Commission (http://www.cvk.gov.ua); work force and education variables are from the 2001 Ukrainian national census (http://www.ukrcensus.gov.ua). Level of urbanization is as of December 1, 2004; income 2004 is per capita in hrivna for January–September 2004; income change 2003-2004 is income 2004 compared with the comparable period in 2003. Urbanization and income figures are calculated from Express, 2005.

Among the regions, education relates less well to the voting results than the other social traits. We use here one variable for higher education, and another for secondary education. Rates of higher education correlate positively and significantly with the Yanukovych vote, because Eastern regions have higher percentages for this variable, reflecting no doubt the technical trades in that macroregion. Levels of higher education attainment

are lower in the West and Center (excepting the city of Kyiv), so this variable correlates negatively with the Yushchenko vote. Secondary education does not correlate significantly with preference for either candidate; among the regions, there is little variation for this measure, which reduces the likelihood that it will relate to either Yushchenko or Yanukovych. Finally, measures of income are likewise weakly related to candidate choice, but a variable measuring change in income shows a stronger, but not statistically significant relationship to Yanukovych, suggesting that areas that have done relatively better economically favor him.

Summary

Intuitively, it can be appreciated that most of the measures adduced for the bivariate correlations are themselves related. Thus, in the Ukrainian regional context the Russian ethnic variable, the Russophone Ukrainian variable, the level of urbanization, industrial and mining work force, attainment of higher education, and per capita income are all higher in the East and to some extent in the South and lower in the Center (always excepting Kyiv) and in the West. When taken together in a multiple regression model, the single most powerful variable in terms of explaining regional differences in preference for Yushchenko or Yanukovych is the Ukrainian Russophone measure, followed by the industrial and mining work force variable, and then by the change in income variable, which together generate an r^2 of .8632; that is, these three measures explain virtually all of the variation in the regional voting patterns at this level.[29]

Conclusions

If the Ukrainian presidential election hinged on winning the battle for the center of the political spectrum and the Central part of the country, then Yushchenko won the contest because he did both. There were few surprises from the perspective of electoral geography; both Yushchenko and

29 The individual *r*2 values for these variables are Ukrainian Russophone .8174, industrial-mining work force .2189, and change in income .1264.

Yanukovych won in their respective regional political power bases, and the underlying social and economic rationale for their doing so is clear. Yushchenko's constituency was the ethnic Ukrainian heartland, the more rural, agricultural West, and the Center, also heavily Ukrainian, relatively more urbanized (with the country's largest city, Kyiv) and industrialized in parts. Yanukovych carried the regions where the largest number of ethnic Russians were to be found, as well as Russophone Ukrainians – the East and the South, areas that were in general heavily industrialized and highly urbanized.

John O'Loughlin,[30] looking back at the 1999 election, opined that 'Ukraine continues to offer a significant opportunity to track the development of geographic-based explanations of political behavior in a polity that is still in transition.' After the 2004 election, this seems even more relevant, as much more research remains to be done on this crucial election. Certainly the scale at which further analysis is done can and should be at the 225 electoral-district level, which will provide much better granularity and allow differences within the oblasti to show through. We and others have worked at this level, and lower, for the Russian elections, and found meaningful results,[31] as O'Loughlin has done for Ukraine.[32] A cursory examination of the map of results for round three at the electoral-district level suggests no instances where one candidate 'captured' territory in an oblast won by his opponent, but the contact zone between the Center and the East shows some interesting gradations as one moves toward the macroregion border. The research issue here is to be able to relate the voting outcomes at this level with socioeconomic and demographic data, which are not available for these units and would need to be compiled from second-order civil division (rayony)

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30 John O'Loughlin, 'The Regional Factor in Contemporary Ukrainian Politics: Scale, Place, or Bogus Effect?' *Post-Soviet Geography and Economics* 42:1 (January 2001): 30.

31 Andrei V. Berezkin, Mikhail Myagkov, and Peter C. Ordeshook, 'The Urban-Rural Divide in the Russian Electorate and the Effects of Distance from Urban Centers.' *Post-Soviet Geography and Economics* 40:6 (September 1999): 395-406; Ralph S. Clem, and Peter R. Craumer, 'Urban-Rural Voting Differences in Russian Elections, 1995-1996: A Rayon-Level Analysis.' *Post-Soviet Geography and Economics* 38:7 (September 1997): 379-395.

32 John O'Loughlin, 'The Regional Factor in Contemporary Ukrainian Politics: Scale, Place, or Bogus Effect?' *Post-Soviet Geography and Economics* 42:1 (January 2001): 1-33.

figures that are not easily accessed. Also, the aggregate data analysis should be supplemented by survey data from the period immediately prior to and after the election.

Once the political chicanery of round two was unmasked and a (more) legitimate round three was completed, questions still remained about the long-term effects of this bitter struggle between West (and Center) and East (and South) Ukraine. Not lost on the residents of the East is that the international media exposure, political maneuvering, court deliberations, and publicized mass protests took place almost entirely in the pro-Yushchenko capital, Kyiv (which gave about three-quarters of its round two and round three votes to him). Contrasting opinions or marchers in the street in the East received much less attention. The extraordinary degree of polarization evidenced in the electoral maps of Ukraine portends difficult times ahead for this country, which desperately needs unity for the sake of its citizens. Calls for greater autonomy or even secession in some of the regions of the East before and after round three, in particular in Donets'k, may have subsided, but these divisive tactics and the difficulties associated with state integration clearly will pose serious challenges to the new Ukrainian government.

3 The Context of a Mass Uprising

The Legal Evolution behind the Orange Revolution

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Introduction

The Ukrainian Orange Revolution of November and December 2004, which culminated in the repeat election of 26 December 2004 and the inauguration of President Viktor Yushchenko in January 2005, is history. After the dismissal of Prime Minister Yulia Tymoshenko on 8 September 2005, the press was quick to conclude that 'orange has faded' and 'Ukraine's revolution has lost steam.'[1] Some authors even fear a restoration of the old regime under Kuchma.[2] It is true, to some degree, that Ukraine has become again a normal country – after the revolutionary autumn and winter and the radical post-revolutionary government of Tymoshenko. Already after less than one year, the first accounts were written, some of them very shortly after the revolution,[3]

1 *The Economist*, 10 September 2005.

2 Andrij Bondar, 'Revolution zu verschenken,' *Frankfurter Allgemeine Zeitung*, 5 October 2005; Juri Durkot, 'Der dornige Weg zur Demokratie,' *Konrad-Adenauer-Stiftung: Auslandsinformationen*, 6 (2005).

3 E.g. Nathaniel Copsey, 'Popular Politics and the Ukrainian Presidential Elections,' *Politics* 25:2 (2005): 99-106; Adrian Karatnycky, 'Ukraine's Orange Revolution,' *Foreign Affairs* 84:2 (2005): 35-52; Taras Kuzio, 'From Kuchma to Yushchenko,' *Problems of Post-Communism* 52:2 (2005): 3-17; Taras Kuzio, 'Ukraine's Orange Revolution: The Opposition's Road to Success,' *Journal of Democracy* 16:2 (2005): 117-130.

some like a diary or chronicle of the events,[4] some of them already a bit more reflective.[5] Eventually many of them concentrated on the effects of the Ukrainian Presidential elections in international relations rather than on the events themselves.[6]

So far, only few analyses have focused in more detail on the role of the judiciary and the decisions of the judiciary itself, especially on the decision of the Ukrainian Supreme Court of 3 December 2004[7] and other election-related decisions of the Supreme Court and the Ukrainian Constitutional Court. Some remarks on this subject can be found in the comments by Bohdan A. Futey[8] who highlights the historic decision of the Ukrainian judiciary in the aftermath of the second round of the presidential elections on 21 November 2004, and in the analysis by Beichelt and Pavlenko[9] which concentrates on constitutional reform. But most analyses refer only shortly to the Court decisions, if at all.[10] The Supreme Court decision, sometimes, is not mentioned at all. However, it was the decision of the Supreme Court of 3 December 2004, which opened the way for a repeat election of the second round on 26 December 2004.

This article focuses on the questions what the election-related decisions of the Ukrainian judiciary contain, and what was their *ratio decidendi*, if there was any. One has to admit at the beginning that it is difficult, if not impossible,

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4 Andrei Kolesnikov, *Pervyi Ukrainski – Zapiski s peredovoi,* (Kiev: Vagrius, 2005).

5 Timm Beichelt and Rostyslav Pavlenko, 'The Presidential Election and Constitutional Reform,' in: Helmut Kurth and Iris Kempe (eds.), *Presidential Elections and Orange Revolution* (Kyiv-München: Friedrich-Ebert-Stiftung/CAP, 2005): 50-85; Joanna Konieczna, *The Orange Revolution: An Attempt to Understand the Reasons* (Warsaw: Ośrodek Studiów Wschodnich, 2005).

6 Anna Górska, *What Future for Ukraine / Where are you going, Ukraine?* (Warsaw: Ośrodek Studiów Wschodnich, 2005); Eberhard Schneider and Christoph Saurenbach, 'Kiew's EU Ambitionen,' *SWP-aktuell,* 14 (2005); *Will the Orange Revolution Bear Fruits – EU Ukraine Relations in 2005 and in the beginning of 2006* (Warsaw: Stefan Batory Foundation, 2005); Dmitrii Trenin, 'Rossiia i konets Evrazii,' *Pro et Contra,* 1 (July/August 2005): 6-17; Dominique Arel, 'Ukraina vybiraet zapad, no bez vostoka,' *Pro et Contra*, 1 (July/August 2005): 39-51.

7 For the decision in an English translation, see under I. of the Appendices; under II. of the Appendices, a translation of the most important Ukrainian electoral legislation is given.

8 Bohdan A. Futey, 'Election of the President of Ukraine 2004 – Theories and Practice; Yushchenko v. CEC: The historic decision of the Supreme Court of Ukraine,' *The Action Ukraine Report*, 517 (July 7, 2005).

9 Beichelt and Pavlenko, 'The Presidential Election and Constitutional Reform.'

10 E.g. the lengthy analysis in a German newspaper: Konrad Schuller, 'Der Westen und die Revolution im Osten,' *Frankfurter Allgemeine Zeitung*, 21 September 2005.

to assess what exact effect the crowds on Independence Square, on the Khreshchatyk and the other streets and places in Ukraine had on the 25 judges of the Supreme Court who were in charge of the decision of 3 December 2004. One can only guess that there was a strong psychological effect. In one Ukrainian article, which appeared shortly after the decision of 3 December 2004,[11] it is indicated that the decision of the Supreme Court of 3 December 2004 has to be regarded as a political one. Apart from these considerations, it seems worthwhile to concentrate on these three questions: What role did the judiciary play in the election dispute? What was its starting point in October-December 2004? How did it come to the decision on 3 December 2004 and the two further decisions in December 2004 and January 2005?

Overview on the Ukrainian Court System, the Election Legislature and the Central Election Commission

Brief Introduction to the Ukrainian Court System

To explain the role of Ukraine's different courts which took part in the election-related disputes in November-December 2004 and in 2005, a brief overview of the Ukrainian court system is presented to distinguish its separate powers, composition and access to the relevant bodies.

According to Art.124 of chapter VIII of the 1996 Ukrainian Constitution, judicial proceedings are performed by the courts of general jurisdiction as well as the Constitutional Court. The five branches of general jurisdiction, each consisting of several lower levels (local and district level) each have their counterparts in the Supreme Court,[12] i.e. the judicial chambers on civil, administrative, criminal and economic cases respectively plus the military branch. According to Art.128 of the Ukrainian Constitution, the first appointment of a professional judge to office is made by the President of Ukraine for a five-year term. Supreme Court judges and other judges, except the judges of the Constitutional Court of Ukraine, are elected for permanent

11 Z. V. Romovs'ka, 'Rishennia Sudovoï palaty Vekhovnoho Sudu Ukraïny: pohliad naukovtsia i hromadianyna,' *Visnyk Verkhovnogo Sudu Ukraïnyi*, 12 (2004): 1-12.

12 http://www.scourt.gov.ua (as of 13 November 2005).

terms by the Verkhovna Rada. At present, the Supreme Court of Ukraine comprises more than 80 judges.[13]

A more detailed regulation of the system of courts of general jurisdiction can be found in the Law on Judicial System of Ukraine.[14] It took the Ukrainian Parliament, the Verkhovna Rada, several years to finally pass this law. The 1996 Constitution had provided, in its transitional provision no. 12, a five year transition period to do so.

Another court is worth mentioning in this brief overview, though it will not be of interest for this analysis of election-related legal disputes: the Higher Arbitration Court of Ukraine.[15] It constitutes the highest of several levels of courts responsible for deciding economic disputes arising between juridical personnel and the state (with the exclusion of individuals).

Finally, worth mentioning is the Constitutional Court of Ukraine[16] which had already been created in October 1996, the same year in which the Ukrainian Constitution was adopted. This court is independent from the system of the courts of general jurisdiction and is a key actor in Ukrainian jurisdiction. It has been delivering its decisions from 1997 on. It is important to mention that the court is not authorised to serve as an appellate body standing above all other courts. The jurisdiction of the Constitutional Court bears solely over constitutional matters. It shall guarantee supremacy of the Constitution of Ukraine by examining whether laws and other legal acts are in conformity with the Constitution. One third of the 18 judges of the Constitutional Court are appointed by the Supreme Council (Verkhovna Rada), one-third by the President and one-third by the Congress of Judges of Ukraine for a nine-year term, without the possibility of re-election.[17]

There is one major exception to the rule that constitutional issues (such as the constitutionality of laws and other acts passed by the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine and the Supreme Rada of the Autonomous Republic of Crimea) are only to be

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13 http://www.kmu.gov.ua/control/en/publish/article?art_id=73121&cat_id=32594 (as of 13 November 2005).

14 *Vidomosti Verkhovnoi Rady*, 27-28 (2002), Art.180, http://zakon.rada.gov.ua/cgi-bin/laws/anot.cgi?nreg=3018-14 (as of 13 November 2005).

15 http://www.arbitr.gov.ua (as of 13 November 2005).

16 http://www.ccu.gov.ua (as of 13 November 2005).

17 Art. 9 of the 1996 Law on the Constitutional Court of Ukraine.

ruled upon by the Constitutional Court:[18] The legality of acts of state power authorities are to be examined by the Supreme Court, not the Constitutional Court.[19]

Both the Constitutional and the Supreme Courts have ruled on a number of questions highly controversial both inside and outside Ukraine. In the first place, there is the decision of the Constitutional Court that declared the death penalty in the Ukrainian Criminal Code as unconstitutional (Decision of 30 December 1999) because of a violation of Articles 27 and 28 of the Constitution that affirm the right to life and the right to respect and dignity.[20] Also, the Constitutional Court ruled on 29 March 2003 on the constitutionality of six questions (such as approval of the Constitution by referendum) which it planned to put to popular vote in a referendum scheduled for April 2003. Further, there should be mentioned the controversial decision of 25 December 2003 which would have allowed the then President Kuchma to run for a third term of presidency, since his first term began in 1994 before the 1996 Constitution became effective.[21] However, President Kuchma did not make use of this possibility and did not stand as a candidate in the presidential elections of 2004. Of high relevance for the legal issues of the Orange Revolution to be discussed in the present article are the Supreme Court's decision of December 3, 2004 and the Constitutional Court's decision of December 24, 2004, which will be discussed in the following chapter. That chapter also contains more details on the election laws which were valid for the first and second rounds of the 2004 Presidential election.

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18 Art. 13 of the 1996 Law on the Constitutional Court of Ukraine.

19 Art. 14 of the 1996 Law on the Constitutional Court of Ukraine.

20 See 'Report of the Council of Europe´s Secretariat assistance and information mission to Ukraine,' *SG/Inf,* 27 (6 September 2001), point 77, http://www.coe.int/t/e/SG/Secretary-General/Information/Documents/Numerical/2001/SGInf(2001)27E.asp#TopOfPage (as of 13 November 2005).

21 'Decision of the Constitutional court of 24 December 2003,' http://www.ccu.gov.ua/pls/wccu/P000?lang=0 (as of 13 November 2005); in this respect, see as well the interesting compilation of the Council of Europe (CoE) 'Political crisis in Ukraine,' Doc. 10058. Also, see Freedom House's *Nations in Transit 2004 Ukraine Report*, p. 15, http://www.freedomhouse.org/research/nitransit/2004/ukraine2004.pdf (as of 13 November 2005).

Overview: Ukrainian Election Legislation as of 31 October 2004

Constitutional Law on Electoral Matters: Regulations concerning elections in Ukraine are to be found first of all in the Ukrainian Constitution. In accordance with major universal and international covenants,[22] Art. 71 of the Ukrainian Constitution names free elections, universal, equal and direct suffrage, and secrecy of the ballot as fundamental principles. Citizens have 'the right to freely elect and to be elected to bodies of state power and bodies of local self-government' according to Art. 38. Apart from elections, the will of the public can be exercised in a referendum 'and other forms of direct democracy'. In order to hold an All-Ukrainian referendum, three million Ukrainian citizens have to sign the request for it. Whereas an alteration to the territory of Ukraine can take place only through a referendum,[23] a number of other questions – such as those concerning the budget or taxation – may not be put to a referendum.[24]

The minimum active and passive voting age is 18 (Art. 70 section 1 of the Constitution). Through a court decision, citizens can be deprived of their right to vote. However, only Ukrainian citizens of at least 35 years of age are eligible for the post of President of the Ukraine. In addition, they must enjoy voting rights, must have a command of the state language and must have resided in Ukraine not less than the last ten years prior to election day. The President may not serve for more than two consecutive terms. Yet, this principle was not applied to President Kuchma although he served from 1996 till 2004 under the current Constitution.

Half of the deputies to the 450 seat unicameral national Parliament are elected for four years by a majority system in 225 single mandate constituencies. The remaining 225 seats are allocated in proportion to the votes cast for the parties taking part in the parliamentary election. This

22 E.g.: Art. 21 of the Universal Declaration of Human Rights; Art. 25 of the International Covenant on Civil and Political Rights; Art. 3 of the First Protocol to the European Convention of the Protection of Human Rights and Fundamental Freedoms; Paragraph 6-7 of the Document of the 1990 Copenhagen Meeting of the Human Dimension of the CSCE.

23 Art. 73 of the 1996 Constitution.

24 Art. 74 of the 1996 Constitution.

electoral system was, however, changed by amendments passed on December 8, 2004.[25]

More detailed norms about election-related issues are first of all contained in the Laws 'On Election of the President of Ukraine', 'On the Central Election Commission', 'On Political Parties' and 'On Election of People's Deputies of Ukraine'. The latter two legal sources will not be a subject of this article, nor will be the special laws dealing with municipal elections and those elections held only in the Autonomous Republic of Crimea.[26]

The Verkhovna Rada and the Central Election Commission have the right to adopt resolutions referring to election-related questions too. In accordance with Art. 103, section 5 of the Constitution, the Verkhovna Rada decreed to hold the 2004 Presidential elections on October 31, 2004.[27] The Central Election Commission in 2004 passed almost 1,400 resolutions, some of which became prominent after the second round of the presidential elections.[28]

Election-related Legislation in the Ukrainian Criminal Code: The Criminal Code of Ukraine provides for comparatively high punishment directed against perpetrators of election irregularities in its Articles 157, 158 and 159. Members of election commissions can be sentenced to an imprisonment of up to twelve years, if the violation influences the results of an election considerably.[29] Violating the secrecy of the vote is punished with a fine or imprisonment of up to three years. Quotes of the three mentioned articles were on public display

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25 Cf. the amendments in the Law of 8 December 2004; an English translation can be found on the web-site of the Venice Commission http://www.venice.coe.int (as of 13 November 2005); an analysis is contained in the Venice Commission's Opinion 339/2005 of 13 June 2005.

26 See Chapter X of the 1996 Constitution. As the Autonomous Republic of Crimea enjoys a number of rights not granted to other regions, it for instance has its own Supreme Council.

27 Resolution No. 1616-IV of the Verkhovna Rada of Ukraine, March 18, 2004.

28 Resolution No. 1264 of the CEC, Nov. 24, 2004 'On the results of the Ukrainian presidential elections which took place on November 21, 2004,' http://www.cvk.gov.ua/postanovy/2004/p1264_2004.htm (as of 13 November 2005); Resolution No. 1265 of the CEC, Nov. 24, 2004 'On publication of the results of the Ukrainian presidential election,' http://www.cvk.gov.ua/postanovy/2004/p1265_2004.htm (as of 13 November 2005).

29 Art. 157 para. 3 Criminal Code.

at the polling stations during the 2004 Presidential election. From a judicial point of view, it has to be mentioned that these articles must be read together with other norms, such as Art. 64 of the Law on Election of the President of Ukraine.[30] There have been concerns about the vagueness of the wording of some pieces of criminal prohibitions as well as possible variations in interpreting liability provisions.[31]

As a key player, the former Central Election Commission chairperson Serhii Kivalov, who was replaced before the 26 December 2004 repeat vote, is the one who, according to analysts and interested parties,[32] would have had to be held responsible prior to accusing lower ranking election officials. Yet so far, as to the authors' knowledge, there have been no criminal convictions of former election officials.[33] This is surprising in so far as one of the most popular elections slogans of the Yushchenko campaign in the pre-electoral campaign was 'Bandits to prison'.

After the reunification of the German Democratic Republic and the Federal Republic of Germany, there have been a number of trials against high-ranking officials of the former ruling party of the GDR, the SED (*Sozialistische Einheitspartei Deutschlands*), including accusations of the falsification of elections (e.g. the municipal elections in the GDR in spring 1989). These resulted eventually in 1995 in convictions of up to 9 months

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30 In Art. 64 para. 6 of the Law on Elections of President of Ukraine the objective side of the crime of bribery of voters is defined as 'giving out money or providing services, works, securities, credits or lotteries on preferential terms or free of charge, which are accompanied by calls or suggestions to vote or not to vote for certain candidate or mentioning his/her name'.

31 Serhii Kal'chenko, 'Vote buying – Another look at Certain Provisions of the new Law on Election of the President of Ukraine,' *Yurydychna Hazeta*, 8(20) (April 2004), an English translation is available at http://www.vybory.com/eng/coments/2analit/pidkup.htm (as of 13 March 2005).

32 Olga Dmitricheva is referring to statements of one of Yushchenko´s lawyers in the Supreme Court case, Oleksii Reznikov, according to whom it is essential, that a penalty is imposed upon the key figures of the falsification project. See Olga Dmitricheva, 'Bandits to prison,' *Zerkalo Nedeli*, 1(529) (January 2005).

33 The case was initially investigated by the Secret Service of the Ukraine (SBU): http://www.gazeta.lviv.ua/articles/2005/04/27/4818 (as of 13 November 2005). Just recently, the head of the presidential administration, Oleg Rybachuk, said that Kivalov will not be granted amnesty, http://www.niko.fm/newsline/173/3840/3821 (as of 13 November 2005).

prison sentence (released on licence) and a fine of DM 5,000.00.[34] However, as it quite often happens after politically dramatic changes all over the world, criminal liability of members of the previous government and other high-ranking members of the old system can be subject to political considerations that may prevent them from conviction. The cases of former heads of government fleeing the country or facing a truth commission rather than criminal persecution or a trial are countless.

The Central Election Commission

The Central Election Commission[35] is responsible for preparing and carrying out not only presidential, but also parliamentary, municipal and other elections such as the elections to the Verkhovna Rada of the Autonomous Republic of Crimea. Further, it administers local and all-Ukrainian referenda as well.[36] The powers of the CEC regarding the organisation of elections of the President of Ukraine are enumerated in Art. 17, 18 of the Law on the Central Election Commission. According to Art. 85 para. 21 of the Ukrainian Constitution, the members of the Commission are – following a proposal by the President of Ukraine – appointed by and also released from office by the Verkhovna Rada. The Commission works on a permanent basis and has 15 members.[37] It is also supposed to be independent from any other authorities.[38] The membership in the CEC shall to a certain degree take into consideration the suggestions of factions in the Verkhovna Rada.[39] According to Art. 13 of the Law on the Central Election Commission, decisions taken by the CEC are obligatory for commissions on lower levels. After the Supreme Court decision of 3 December 2004, the following four members of the Central Election Commission were replaced on 8 December 2004: CEC chairman Serhii Kivalov, CEC members Valerii Anatoliiovych Bondyk (in charge of representing the CEC before courts), Yurii Mykolaiovych Danylevs'kyi and Mykola Fylymonovych Rubachuk. The new chairman became the

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34 Jörg Arnold, *Strafrechtsprobleme der deutschen Vereinigung*, 181-182, http://mpicc.de/verlag/online/Band_S62_1/4-Strafrechtsprobleme.pdf (as of 13 November 2005).
35 http://www.cvk.gov.ua (as of 13 November 2005).
36 Art. 1 of the Law on the Central Election Commission.
37 Art. 6 para. 3 and 7 of the Law on the Central Election Commission.
38 Art. 3 para. 1 Law on the Central Election Commission.
39 Art. 6 para. 2 Law on the Central Election Commission.

longstanding CEC member and former deputy chairman of the CEC, Yaroslav Vasyliovych Davydovych.

The Compromise of 8 December 2004 and the Court Decisions of December 2004 and January 2005

The Second Round on 21 November 2004 and the Supreme Court Case 'Yushchenko vs. the CEC'

The Second Round of the Presidential Elections on 21 November 2004: On 21 November 2004, the second round of the Ukrainian Presidential Elections took place. The conditions of this direct competition between Prime Minister Yanukovych and the candidate of the opposition Yushchenko was covered extensively by the world media and is chronicled extensively by various observers (see *Aspects of the Orange Revolution IV-V*). In addition, the second round of the Presidential Elections on 21 November 2004 was observed by various observer groups: national Ukrainian ones (e.g. the Committee of Voters of Ukraine[40] the members of which, due to Ukrainian election legislation, could observe only in the capacity of journalists[41]) and many international observer groups. Most prominent among those were the observation missions deployed by OSCE/ODIHR, the CIS and also ENEMO[42]. Immediately after the election day, widespread demonstrations began in Kiev and various other Ukrainian cities.

The results of the second round were officially announced by the CEC on 24 November 2004 with the Decision No. 1264 'On the results of the elections of the President of Ukraine on 21 November 2004 and electing the President of Ukraine'. According to this CEC decision, Yanukovych received 49.46% and Yushchenko 46.61% of the votes. As the relative majority suffices in the second round, the CEC issued on 25 November 2004 the Decision No.

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40 http://www.cvu.org.ua/ (as of 13 November 2005).

41 Some 10.000 CVU observers had only the status of reporters of the *Tochka Zoru* newspaper, but not the one of officially accredited election observers, cf. shttp://www.cvu.org.ua/?menu=fp&po=doc&lang=eng&date_end=&date_beg=&id=718 (as of 13 November 2005).

42 See e.g. the reports of the groups listed before: http://www.osce.org/odihr, http://www.ec-cis.org/main.aspx?uid=170, http://www.enemo.org.ua (as of 13 November 2005).

1265 'On the Promulgation of the Results of the Election of the President of Ukraine'. However, the demonstrations were mounting and the country was facing a major political crisis because national and international observers had reported widespread irregularities. Already on 25 November 2004, Yushchenko had launched his action with the Supreme Court, and in the evening of the same day, the Supreme Court forbade the CEC to publish the results of the elections. On 27 November 2004, the Verkhovna Rada had issued a declaration not to recognize the result of the second round because it did not correspond to the will of the voters.

In the meantime, various protests against the decisions of the CEC and various local regional elections commissions had been launched before the higher election commissions and the Courts. At the Supreme Court, the lawyers of Yushchenko had begun their proceeding against the decisions of the CEC already on 25 November 2004.

Eventually, amidst the many meetings of various emissaries of the OSCE, the EU (especially from Poland and Lithuania) as well as from Russia and other countries, the Supreme Court completed its hearings. The proceedings culminated in the decision of the Ukrainian Supreme Court on 3 December 2004.

The Decision of the Ukrainian Supreme Court on 3 December 2004: The decision of the Ukrainian Supreme Court on 3 December 2004[43] cleared the way for a repeat 2nd round in a 'significant ruling'[44] having 'without exaggeration, historic importance: a real confirmation of the constitutional rights of the citizen and the principles of the judiciary'.[45]

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43 See http://www.scourt.gov.ua/clients/vs.nsf/0/2A1C4C7D8C6241CBC3256F9D00228DA5?OpenDocument&CollapseView&RestrictToCategory=2A1C4C7D8C6241CBC3256F9D00228DA5. and http://www.scourt.gov.ua/clients/vs.nsf/0/EF5071C7E804D844C3256F9D0022F356?OpenDocument&CollapseView&RestrictToCategory=EF5071C7E804D844C3256F9D0022F356 (as of 13 November 2005), both in Ukrainian; an unofficial English translation of the decision is included in the OSCE International Observer Guide for the Repeat Elections, Kiev, December 2004.

44 *OSCE Final Report 11 May 2005*, 6, http://www.osce.org/documents/odihr/2005/05/14224_en.pdf (as of 13 November 2005).

45 Z. V. Romovs'ka, 'Rishennia Sudovoï palaty Vekhovnoho Sudu Ukraïny: pohliad naukovtsia i hromadianyna,' *Visnik Verkhovnogo Sudu Ukraïny*, 12(52) (2004): 1-12, esp. 10.

In fact, the Ukrainian Supreme Court issued two decisions on 3 December 2004: there is a 'decision' of the Ukrainian Supreme Court ('rishennia') by which several acts of the Central Election Commission were recognized as illegal. The above mentioned resolutions No. 1264 and No. 1265 (both of 24 November 2004) 'On the results of the elections of the President of Ukraine on 21 November 2004 and electing the President of Ukraine' and 'On promulgation of the results of the election of the President of Ukraine' were repealed. Further, the Central Election Commission was directed to conduct a new presidential election within three weeks (according to the Art. 85 cl. 1 of the Presidential Election Law).

The second decision, a so called 'Okrema ukhvala' ('distinct decision'), repeated the reasoning of the first decision and stated that the decision should be directed to the Verkhovna Rada, the President and the General's Prosecutor's office, for relevant steps to be taken. As a result, the head of the CEC, Serhii Kivalov, was replaced by Yaroslav Davydovych on 8 December 2004, and the Verkhovna Rada decided on the same day on a compromise package: a change of the election law on the President of the Ukraine and a change of the Constitution.

However, it is worthwhile to look a bit deeper into the decisions of the Supreme Court of 3 December 2004. In a first step, the Supreme Court declared the resolutions No. 1264 and No. 1265 of the CEC to be invalid. The reason given was that it was in the opinion of the Supreme Court 'impossible to determine the results of the voters' will in the single nationwide election constituency' because of the irregularities and the violations which had occurred in the electoral process. As the Court could not determine any result of the voting of 21 November 2004, it was not able to declare a winner according to Art. 85 cl. 8. A recounting of the votes was no real option because of major violations in the election process. Thus, the problem of the second round was not only the tabulation of the results, but also the conditions under which the voting took place, especially the absentee ballot which should never have been cast under normal circumstances. The Supreme Court did not discuss whether a complete re-run – i.e. a repeat first and a repeat second round – would have been more appropriate. However, it dealt with this possibility *impliciter* by referencing that there had been no complaints about the results of the first round brought to the Courts or to the relevant organs.

And, as Romanovska points out, the Supreme Court did not have any verifiable proof that there were irregularities in the first round.[46]

The Court reached the distinct decision that 'a major part of the violations had been allowed by the CEC itself, other subjects of the electoral process or state organs in consequence of a passive supervision of the CEC or its above mentioned members'. Further, the Court gave examples of these violations of all electoral subjects, such as an 'uncontrolled use of the absentee voting certificates; the forcing of workers of enterprises, ... or organizations as well state employees to vote with absentee voting certificates; the organized transport of big numbers of voters for voting from one region to another, who were given the absentee voter certificates by executive power'. Further, the Supreme Court refered in the distinct decision to the fact that these violations had been recorded by the 'media, official observers and voters', and that the Verkhovna Rada had recognized this problem by changing the law for the Elections of the Ukrainian President before the 'repeat round' (meaning the repeat round on 21 November 2004). In the decision ('rishennia'), the Court argued similarly. In the end, it ruled in favour of all five claims that had had been made by the lawyers of Viktor Yushchenko.

After the invalidation of the decisions of the CEC concerning the second round of voting on 21 November 2004, the Supreme Court had to deal with the problem that Art. 85 of the Law 'On Elections of the President of Ukraine' did not foresee that it would be impossible, on the basis of the bulletins of the second round, to determine which candidate had received more votes. In addition, the Court had to cope with the problem that the Law 'On Elections of the President of Ukraine' did not contain the possibility of holding a repeat election except for the highly hypothetical case that the two candidates would get exactly the same amount of votes or only one candidate participating in the elections would get no more than half of the votes (Art. 85 cl. 10). Further, in Art. 15 cl. 4 Nr. 1, a repeat election is foreseen 'if neither (of the no more than two candidates) has been elected'. The invalidation of a whole round because of irregularities and falsifications was simply not foreseen by any article of the Law 'On Elections of the President of Ukraine'. However, the

46 Ibid.: 10.

Supreme Court decided that because of 'Art. 8, 71, 103 and 124 of the Ukrainian Constitution, Article 98 of the Law "On Elections of the President of Ukraine" – and Art. 13 of the European Convention of Human Rights' – and (in the distinct decision) – because of 'numerous violations of the fundamental principles of the election process, expressed in the Art. 38, 69 and 71 of the Ukrainian Constitution, further in the Articles 2, 3, 6, 9, 11 of the Law "On Elections of the President of Ukraine", there should be a repeat 2nd election according to Art. 85 cl. 1 of the Law "On Elections of the President of Ukraine"'. The date of the election should be calculated proceeding from the date of 5 December 2004 according to Art. 85 cl. 1 of the Law 'On Elections of the President of Ukraine' which meant within three weeks, i.e. 26 December 2004.

The Supreme Court concluded (in the distinct decision) that 'the principles of rule of law, of legality, of objectivity, of competency, of professionalism and of collegiality of discussion and decision of questions, of reasoning of decisions, of openness and publicity, incorporated in Art. 2 cl. 2 of the Law "On the Central Election Commission", had been violated by the CEC'. The Court continued that it became clear during the proceedings – from a written statement of the head of the institution which secured the security programs of the CEC within the voting and the counting of the votes, that with the permission of the head of the CEC, the 'codes for the admission to the system were given out to third persons, which could lead to a manipulation of the results and their falsification with the following inclusion of these data in the final protocols'.

In fact, the Supreme Court did not give detailed reasoning about the various articles of the Ukrainian Constitution or the laws either in the decision or in the distinct decision. The Supreme Court quoted many articles only *en bloc* and concluded from all quoted principles and articles together. But the Supreme Court did not develop the principles and the dogmatic of the quoted articles. The conclusion of the Supreme Court was that the only solution to dealing with a situation in which there was no majority in favour for either candidate in the second round would be a repeat election of the second round according to Art. 85 cl. 1 of the Law 'On Elections of the President of Ukraine'.

However, the Supreme Court was in a dilemma. On the one side, there was the principle of the rule of law, the *Rechtsstaatsprinzip*, the principle that

the judiciary (and the executive power) are bound by law. But on the other side, the applicable law did not allow a re-run of the second round, as it did not contain such a possibility. To find a solution, the Supreme Court recognized the principle of the superiority of constitutional rights to simple laws. Eventually, the Supreme Court chose to ensure the constitutional rights of the individuals and the citizens against the written letter of the election law, which did not foresee a re-run. This can be interpreted as a 'political act'.[47] But it must be stated that the Supreme Court did not make this choice very clear. The Supreme Court did not deduct the exact rights of the individuals and the citizens from the constitutional articles, nor did it discuss the problem of the rule of law and superiority of constitutional principles in length. The Supreme Court referred only very broadly to a set of articles of the constitution and ruled in favour of a re-run of the second round 'according to Art. 85 cl. 1 of the Election Law', even though this law does not foresee such a consequence.

Legal Reform after the Decision of the Supreme Court on 3 December 2004

A very important part of the compromise after the decision of the Supreme Court on 3 December 2004 was the adoption of the Law 'On Peculiarities of Applying the Law of Ukraine "On Elections of the President of Ukraine" during the Repeat Voting on 26 December 2004' (further: Law on Peculiarities). The Law on Peculiarities was the cornerstone of the compromise which consisted of the constitutional reform and of personnel changes.

One can distinguish a personal, organizational and material part of the Law on Peculiarities. The most important personal part were stipulations which prepared the change of the personnel of the Central Election Commission. After the irregularities on 21 November 2004 and the reports of widespread fraud and abuse of the electoral process to secure a result favourable to one of the candidates, it was clear that the Central Election Commission was not trusted by both candidates to organize a re-run of the second round. Thus, it was necessary to install a new Central Election Commission which would allow all political constituencies to participate in that process. Art. 1 and Art. 2 of the Law on Peculiarities provide for a mechanism

47 Ibid.: 10.

to elect a Central Election Commission which gives a role to the Verkhovna Rada, the President and both candidates (the latter especially in appointing the members of territorial election commissions). The right to submit a candidate for a new Central Election Commission laid still with the President. In fact, a new composition of the Central Election Commission was elected by the Verkhovna Rada on 8 December 2004, after the old one had been dismissed. The Central Election Commission had then the right to appoint new territorial election commissions. One guiding principle was that both candidates of the repeat second round should have the same rights in appointing new members of election commissions on all levels.

The organizational part of the Law on Peculiarities is characterized by the elements: securing the voter lists (Art. 3), eliminating the possibility of the abuse of the absentee voter certificates (Art. 4 and 5), clarifying and extending the rights of the observers of the elections (Art. 8) and giving detailed rules on the organization of the election, the tabulation of the results of the elections (Art. 12 – 14) and the complaints procedure (Art. 15). Within roughly one week (10 days before election day, which was set on 26 December 2004), the territorial commissions had to produce new voter lists which had to be based on the lists of the first round (Art. 3 cl. 1) and which had to contain no voters who had voted on the basis of absentee certificates (Art. 3 cl. 1) in the two previous rounds. Further, all voters on the lists had to be numbered and had to be checked against those persons who lived as of 31 March 2004 in the given territory on the basis of the data of the civil registration authorities. Those voters who had died after 31 March 2004 were to be listed especially and had to be removed from the registers.

These measures have to be understood in connection with the widespread allegations and proofs of 'dead souls' participating in the first two rounds of the presidential elections. To prevent manipulation on election day, election commissions were only entitled to correct obvious mistakes ('inaccuracies and technical mistakes in the list of the voters', especially spelling mistakes, wrong house numbers etc.). However, election commissions were not entitled to further add voters to the voters list on election day in case that a voter was not included in the voters list of her or his constituency. In fact, according to the Law on Peculiarities voters could be added to the voters list on election day only on the grounds of a court decision

(Art. 3 cl. 8). Art. 4 and Art. 5 of the Law on Peculiarities contain very detailed stipulations on the use of absentee certificates which enable voters to vote outside their residence. As those absentee certificates had been identified as one main source of manipulation in the second round on 21 November 2004 (there have been issued several millions of absentee certificates), the rules in Art. 4 and Art. 5 of the Law on Peculiarities are very strict and detailed. Art. 4 cl. 1 limits the number of absentee certificates to '0.5% of the entire number of voters'. Furthermore, absentee certificates had to be applied for by the deadline of Friday, 24 December, 8 p.m. (Art. 4 cl. 3). An application for and voting with absentee certificates was possible only in certain electoral commissions (Art. 5 cl. 4). By these requirements, the abuse of absentee certificates was to be prevented.

A further safeguard against abuse were stricter rules against the possibility of using the so-called mobile voting box for voting at home. The persons eligible for applying for voting with the mobile box were limited 'to disabled individuals of the 1st category' (Art. 6 cl. 1). All other individuals were not eligible. These new stipulations, along with the limited use of absentee cards, was aimed at preventing irregularities practiced in the previous two round and was challenged in the Constitutional Court – partly successfully (see the decision of the Constitutional Court of 24 December 2004).

The further stipulations of the Law on Peculiarities were more of a technical character (tabulation of the results, transport of the protocol from the polling stations to the territorial commissions). These were to prevent any further manipulation of the election result. These stipulations too were a result of the experience with the previous two rounds.

Judging from its contents, the Law on Peculiarities was more significant for securing an exit from the political crisis than the reform of the Ukrainian Constitution which was adopted the same day and became effective only on 1 January 2006. Because the Law on Peculiarities was very technical in nature, it had a fundamental impact on securing a fair outcome of the repeat round and creating political stability since the suspicion of manipulation had been eliminated.

Only two stipulations of the Law on Peculiarities seem to be unjustified: the exclusion of all groups of disabled voters except those of the 1st category,

and the limitation of the number of absentee cards to 0.5% of the total number of voters.

The second part of the reform package adopted by the Verkhovna Rada on 8 December 2004 was a reform of the Ukrainian Constitution of 1996 to rebalance the powers of the President and the Verkhovna Rada. Plans to reform the Constitution emerged already in the end of the 1990s, but have always been subject to specific political constellations.[48] The closer the 2004 presidential election came, the more intense the discussion of possible changes to the Constitution, such as introducing a second chamber of the Parliament, became. Changes were proposed, but, before the elections, there was no sufficient majority to agree on one of the different proposals.[49] However, as a part of the compromise after the second round of the 2004 election, a constitutional reform was adopted which brought Ukraine closer to a parliamentarian type of government instead of the previous presidential-parliamentarian one.

Compared to other former Soviet republics, it took a relatively long time in Ukraine to adopt a new Constitution.[50] Kuchma replaced Kravchuk in 1994. Only on 28 June 1996, the current Constitution was adopted. It was from the very beginning a compromise between a presidential and a parliamentarian model. It vested the President with numerous legislative and executive powers, but gave the Verkhovna Rada at least *de-jure* a strong position as well. According to the Constitution, ministers were responsible to the President. Both the appointment and the resignation of the Cabinet of Ministers were to be accepted by the President.[51] However, the powers of the President, the government and the Verkhovna Rada were overlapping. This

48 See Tina Kowall, 'Experimente mit der Macht. Die Ukraine vor einer Verfassungsänderung,' in: *'Neues Europa?' – Osteuropa 15 Jahre danach: Beiträge für die 12. Brühler Tagung junger Osteuropa-Experten*. Arbeitspapier und Materialien 60 (Bremen: Forschungsstelle Osteuropa, 2004): 52-55.; Juri Durkot, 'Verfassungsreform in der Ukraine – die Qual der Wahl,' *Wostok,* 4 (2002).

49 An informative chronology is available at http://www.ukrweekly.com/Archive/2004/020415.shtml (as of 13 November 2005).

50 For the details of the genesis of the Ukrainian constitution of 1996 see Kataryna Wolczuk, 'Ukraine: A Tormented Constitution-Making,' in: Jan Zielonka (ed.), *Democratic Consolidation in Eastern Europe. Volume 1: Institutional Engineering* (Oxford: Oxford University Press, 2001), 243-68.

51 Art. 114 para. 2 and 3, 115 para. 5 of the 1996 Constitution.

became a constant cause of frustration with the Ukrainian constitutions and the various proposals to change it.

Amendments to the 1996 Constitution are required to pass two initial stages prescribed in Chapter XIII of the Constitution. First, the amendment has to be submitted by the President of Ukraine or by a certain quorum of the Parliament's members. It must then be adopted in one session by Parliament. In a third stage, it needs no less than two thirds of the membership of the Verkhovna Rada to vote in favour of the changes in the next regular parliamentary session.[52] Moreover, Art. 159 of the Constitution requires draft amendments to the Constitution to receive a necessary approval from the Constitutional Court. Some principles of the Constitution are regarded as so fundamental that they are unchangeable, such as territorial indivisibility.[53] Whereas ordinary changes require an adoption by a simple majority of the members of the Verkhovna Rada and a favourable vote of at least two-thirds of the members of the Verkhovna Rada, changes to the general principles (Chapter I), changes to the elections laws (Chapter III) and changes in procedures for amending the Constitution (Chapter XIII) have to be proposed by a two-thirds-majority already in the initial stage. In addition, such changes have to finally pass an all-Ukrainian referendum in order to become law.

Since the controversial all-Ukrainian referendum in 2000, which gave the President more powers, Ukraine has been confronted with a power struggle between different state organs – mainly the President, the government (cabinet of ministers) and the Verkhovna Rada.[54] There had been several attempts to change the Constitution before parliament eventually adopted the changes on 8 December 2004.

In March 2003, President Leonid Kuchma submitted a draft law to the Verkhovna Rada which was, however, later withdrawn by him. The draft law 3027-1[55], submitted 1 July 2003 to the Verkhovna Rada, as well as draft laws 4105[56] and 4180[57], submitted on 4 and respectively 19 September 2003,

52 Art. 155, 156 of the 1996 Constitution.
53 Art. 157 of the 1996 Constitution.
54 Venice commission, http://www.venice.coe.int (as of 13 November 2005), opinion CDL-AD (2003) 019.
55 Ibid., CDL (2003) 79.
56 Ibid., CDL (2003) 80.
57 Ibid., CDL (2003) 81.

provided for considerable changes to the balance of the constitutional system in Ukraine. They redistributed the powers of the President, the Verkhovna Rada and the government in an effort to strengthen the parliamentary powers by weakening the President's position. However, the proposed constitutional reforms and especially their timing were criticized for being politically expedient in the near term.[58]

Along with other proposals, draft law 3027-1 included the right of the Verkhovna Rada to interpret laws – a questionable suggestion in the light of the principle of separation of powers. Parts of the draft were considered to be in contradiction with Art. 157 of the Constitution. Draft laws 4105 and 4180 were almost identical in their wordings with differences only in the final provisions. The most significant amendment identical in both draft laws was the stipulation that the President should be elected by two-thirds of the Verkhovna Rada, in a secret ballot – instead of the popular vote prescribed in the 1996 Constitution.[59] That would have meant that both the President and the Prime Minister would be elected by the Verkhovna Rada. The logic behind such a system of dividing executive power between the President and the Government, when both derive their legitimacy from Parliament, was questioned by the Venice Commission.[60]

Draft law 4180 envisaged parliamentary elections only in 2007 – thus effectively prolonging the term of the acting legislative body for one year. Draft law 4105 in turn contained a provision to have the presidential elections (that is, those scheduled *after* the elections of October 2004) already in 2006. Since both drafts in the end were not finally approved, the question remains whether proposing two such similar draft laws within just two weeks constitutes a violation of Art. 156 para. 2 of the current Constitution.

Draft law 4105 on 8 April 2004 failed to receive the required majority of two thirds of the members of parliament. Only 294 votes were cast in favor of the changes. Draft law 4180 passed only the first stage before the parliament's summer break in 2004.

The amendments which were finally adopted on 8 December 2004 received an overwhelming 90% support in parliament. Whereas only 300

58 Ibid., opinion CDL-AD (2004) 030.
59 Art. 103 in both of the draft laws.
60 http://www.venice.coe.int, opinion CDL-AD (2003) 019.

votes (a two thirds majority) were necessary, law 2222-IV received 402 ayes, 21 nays while 19 MP abstained. Interestingly enough, it was Yuliya Tymoshenko's bloc that voted against the proposed amendments. The reason for the change of the position of the Tymoshenko Bloc was that the planned amendment would have limited the powers of the probable new President Yushchenko.[61] Beforehand, Timoshenko's faction was in favor of the proposed limitations on the President's powers.

The most remarkable changes of the Constitution are those related to the national deputies' mandate. In order to form a more stable configuration, a deputy's mandate is to be terminated as soon as the respective MP either fails to join the faction of the party he or she has been elected for, or leaves her or his faction.[62] However, this stipulation was severely criticized by the Venice Commission because members of Parliament 'represent the people and not their parties'.[63]

As mentioned before, the amended constitution enhanced the position of parliament. After the amendments took force, every minister had to be approved by parliament.[64] Parliamentarian terms are five years, once the amendment becomes effective.[65] The mixed system of electing the 450 Verkhovna Rada's deputies by a proportional and the other half by a majoritarian electoral system respectively was be replaced by a system based only on proportionality according to party lists.[66] While draft law 4180 still would have shifted the right to appoint heads of local state administrations to

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61 See the analysis of Eberhard Schneider and Christoph Saurenbach, 'Ukraine – Die zweite Transformation,' *SWP aktuell*, 59 (2004): 4.

62 New Article 81 para. 2 (6), English translation available at http://www.venice.coe.int, CDL (2005) 036.

63 Cf. Venice Commission, Opinion no. 339, CDL (2005) 015. In the draft laws discussed before, the respective article even envisaged the termination of mandate upon an MP's dismissal from the parliamentary faction he or she belonged to at the time of election (Draft Law 4180, Art. 81 para. 2 (6)).

64 Cf. new Article 85 (12) of the Constitution. In the wording of the 1996 Constitution, the Verkhovna Rada was solely able to give its consent to the appointment of the Prime Minister.

65 Cf. new wording of Articles 76 para. 5 and 77 para. 1.

66 Final provision no. 3 of the Law on Amendments to the Constitution of Ukraine adopted on 8 December 2004.

the government,[67] in the law adopted on 8 December 2004, this right remained with the President.

However, since parliament failed to pass the planned law on amending the Constitution which improves the system of local self-government reform[68] in its final reading by the beginning of September 2005, the changes of the Constitution adopted on 8 December 2004 did not take effect as of 1 September 2005, but only on 1 January 2006.[69] For the first time, the new Verkhovna Rada was elected for five years in a multi-mandate national constituency on 26 March 2006.[70]

Many analysts welcomed the changes introduced to the Ukrainian Constitution on 8 December 2004 due to the fact that the system of horizontal checks and balances was strengthened and a part of power was taken away from the President.[71] However, one also suspects that the strengthening of the position of parties and their factions in parliament under the new constitutional framework might also have negative consequences in as far as proper parties with their own characteristic agenda have not emerged yet .[72] Moreover, the problem of overlapping powers, for example the right of legislative initiative of both the President and the government might be a source of unnecessary political conflicts.[73]

The Decision of the Constitutional Court on 24 December 2004 and the Decision of the Supreme Court on 20 January 2005

After the Supreme Court had issued its landmark decision on 3 December 2004 and the compromise had been reached on 8 December 2004, election-related matters were still brought to the Ukrainian judiciary. However, of concern was now less so the repeat election on 26 December 2004, but rather as the constitutionality of the Law on Peculiarities. Thus, the decision of the

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67 See wording of Art. 116 (11) as in Draft law 4180 (English text available at http://venice.coe.int (as of 13 November 2005), Doc. CDL (2003) 081).
68 Draft law 3207-1.
69 Final provision no. 1 of the Law on Amendments to the Constitution of Ukraine adopted on 8 December 2004.
70 *Ibid.*, Final provisions no. 2 and 3.
71 E.g. Beichelt and Pavlenko, 'The Presidential Election and Constitutional Reform;' Schneider and Saurenbach, 'Ukraine – Die zweite Transformation': 5.
72 Ibid.
73 Venice Commission, opinion no. 339, CDL-AD (2005) 015.

Constitutional Court became different from the decision of the Supreme Court of 3 December 2004, as the Supreme Court had not decided on the constitutionality of the Law on Elections of the President of Ukraine as such, but only on the acts of the Central Elections Commission after the second round of the elections on 21 November 2004. In the decision of the Constitutional Court on 24 December 2004, only two days before the repeat election took place, the constitutionality of several stipulations of the Law on Peculiarities was examined.

After the completion of the repeat election on 26 December 2004, the result was challenged by the candidate Viktor Yanukovych in the same way as the result of the second round had been challenged by the candidate Viktor Yushchenko after the second round on 21 November 2004.

The Decision of the Constitutional Court of 24 December 2004:[74] The Constitutional Court issued its decision on the constitutionality of the Law on Peculiarities only two days before the election day on 26 December 2004.

The Constitutional Court had to answer several questions, which were initiated by 46 deputies of the Verkhovna Rada. They claimed that the Law on Peculiarities of 8 December 2004 violated, in an unconstitutional way, the rights of citizens to take part in the elections, especially the rights of disabled persons, and that this would narrow their constitutional rights and make the exercise of these constitutional rights even impossible. They did though not claim the unconstitutionality of the Law on Peculiarities for two reasons: 1) it deviated from the decision of the Supreme Court of 3 December 2004, and 2) the repeat election of the second round should be held ‘in line with the rules accorded by Art. 85 of the Presidential Election Law’. However, as discussed above, Art. 85 of the Presidential Election Law does not foresee a repeat election. The situation, that the CEC would not be able to establish the result of the elections, reaching a decision on which candidate had received the higher amount of votes, was simply not foreseen in Art. 85 of the Presidential Election Law. The Constitutional Court did not see a constitutional problem in this fact. Another problem with the decision of the Supreme Court of 3 December 2004 had been that the decision required holding the repeat

74 See for the decision: http://www.ccu.gov.ua/pls/wccu/indx (as of 13 November 2005).

election ‘in line with Art. 85 of the Presidential Election Law’. But in fact, the rules of the Presidential Election Law had been changed by the Law on Peculiarities, especially as the provisions of mobile voting and voting with absentee cards had been abolished or limited. Thus, the repeat round should be held in fact under another framework. But neither the 46 deputies nor the Constitutional Court did see a problem within the compromise of the Verkhovna Rada to change some rules for the repeat round in the Law on Peculiarities. The Constitutional Court argued in this respect referring to the principle of division of powers between the judiciary and the legislative, and did approve the Law on Peculiarities, in principle.

However, the Law on Peculiarities abolished the possibilities for home voting (mobile voting) for all voters, except those of the first group of disabled persons (Art. 6 cl. 1 of the Law on Peculiarities). The Constitutional Court declared these restrictions as unconstitutional, as it could not find a valid justification for general restrictions of fundamental electoral rights in the Law on Peculiarities.

In practice, the decision of the Constitutional Court caused a considerable degree of confusion, as the elections took place already 26 December 2005, only two days after the decision of the Constitutional Court had been delivered. As a result, on election day, not all polling stations – notwithstanding their affected voters, mostly pensioners and / or disabled persons of the second and third group – were aware of the possibilities to cast votes at home in spite of Art. 6 of the Law on Peculiarities which had been declared unconstitutional and thus null and void by the decision of the Constitutional Court. The situation was even worse, as an application had to be made ‘no later than on 12 am of the day before election day’, i.e. on 25 December 2005. Taking into account that the rules on mobile voting affected mainly pensioners, one can imagine that there were many voters who did not use their constitutional right to participate in the elections, as the decision of the Constitutional Court came simply too late for them.

However, the Constitutional Court did not assess the stipulation in the Law on Peculiarities, which said that the number of absentee cards should not consitute more than 0.5% of the number of voters in the voters list. Obviously, there was no practical problem with that rule, as absentee cards were issued in higher numbers. However, it would have been difficult to justify the refusal

of issuing absentee cards with the limitation of this quota, if more than 0.5% of voters would have applied with reasons which would in principle qualify for the issuance of absentee cards by one territorial election commission.

Decision of the Supreme Court of 20 January 2005: The decision of the Supreme Court of 20 January 2005[75] marked the end of the disputes concerning the 2004 presidential elections in Ukraine. The way in which Viktor Yanukovych challenged the results of the repeat round of the elections on 26 December 2004 was similar to the arguments Viktor Yushchenko had presented after 21 November 2004 – though it was only a bad copy. In fact, Yanukovych was challenging the decisions of the CEC too, especially its Decision No. 14 of 10 January 2005 on the results of the elections of the repeat round on 26 December 2004 and the Decision No. 15 of 10 January 2005 to declare Yushchenko the winner of the elections. Yanukovych even argued for a further repeat round of the elections. In the opinion of the Supreme Court, Yanukovych could not prove any irregularities which led to a situation in which the will of the voters could not be established or which had an effect on the results of the elections. A main point in the argument made by Yanukovych was to challenge an inactivity of the CEC in the course of the preparation of the repeat round. However, that was eventually unconvincing for the Supreme Court. As Yanukovych could not provide evidence of irregularities either, the Supreme Court rejected his action completely.

Final Evaluation

While evaluating the legal issues in the Orange Revolution, it needs to be kept in mind that the circumstances under which the Ukrainian Courts decided upon the cases which were related to the Presidential election campaign of 2004 were hazardous. In fact, nobody knew, at the end of November 2004, where the political crisis, the political and geographical division of the country, and the upheaval in the Ukrainian society would lead to. It would be an issue worth-studying in future socio-political research to establish the interrelation between the revolutionary upheaval and the decision making of the Ukrainian judiciary. In doing so, one needs to be realistic and not proceed from a

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75 For the Ukrainian text see http://www.scourt.gov.ua/clients/vs.nsf/0/97029B548CD0EB71C3256F9D0022D179?OpenDocument&CollapseView&RestrictToCategory=97029B548CD0EB71C3256F9D0022D179 (as of 13 November 2005).

seminarian level of constitutional dogmatism in interpreting the decisions of December 2004 and January 2005, but instead attempt to evaluate the legal aspects behind the quasi-revolutionary developments of November-December 2004.

This analysis has shown that the framework of the Ukrainian election legislation was sufficient for holding democratic elections. Further, the Ukrainian Constitution of 1996 provided a sound general basis with the main elements of election-related constitutional rights and freedoms in place. True, there were frequent attempts to change the Constitution, but these changes rather aimed at a redistribution of powers between the President, the parliament and the government, mostly influenced by the current personal ambition of the respective incumbents. Furthermore, the legal framework of the election-related legislation and of the court institutions appeared to be sufficient to guarantee fair democratic elections. As a result, one can state that the constitutional and legal framework and the necessary institutions were in place to successfully deal with the deep political crisis which evolved in the end of November 2004 – although there were also some major problems.

One problem was that the election laws, especially the Law 'On Election of the President of Ukraine', contained a number of stipulations which made election fraud possible and even easy. This concerns especially the stipulations on absentee voting and on correcting the voters lists on election day. It was the legislature which corrected these deficiencies on 8 December 2004 by adopting the Law on Peculiarities and by shutting these loopholes. However, this happened relatively late: Two rounds of the Presidential election campaign had already taken place. Another problem was the partiality of the heads of the involved institutions, especially of the head of the Central Election Commission and of other officials. There were many officials within the election commissions who were not impartial and who allowed widespread election fraud to take place. What, in most cases, stood behind this behavior was the willingness of the outgoing President, his entourage and his chosen candidate for President, who was also head of the government, to use a variety of inappropriate means to influence the outcome of the presidential elections and to secure the desired result.

There was yet another problem within the legislative framework of elections: the Law 'On Election of the President of Ukraine' did not provide a

possibility to declare the results of one of the rounds invalid even though it had not been possible to establish the election results because of widespread fraud and irregularities. It is clear that in such a situation recounting would not have been a remedy in as far as votes which should never have been cast would have been counted again also. As a result, the Supreme Court had to go beyond the election legislation and had to refer to constitutional principles to declare the results of the second round on 21 November 2004 invalid, opening the way to a repeat election.

Concerning the latter, the methodology of both the Supreme Court and the Constitutional Court should be criticized for its strategy to refer to the constitutional norms in a rather general way in their judgments. Constitutional articles, sometimes up to three or four, were quoted *en bloc.* Thus, the relationship between the different constitutional rights and principles was not elaborated upon. That is a pitty in as far as both institutions had a unique chance to develop constitutional principles in a way as to make clear their importance and their applicability beyond the 2004 election campaign. One could also argue that, with such a vague line of argumentation, the Constitutional Court could as well have decided in the opposite direction.

In the end, the results of this investigation can be said to be mixed: On the one side, one has to admit that the Ukrainian judiciary played a crucial role in finding an exit from the political crisis after the first two rounds of the Presidential elections, which had to be classified as irregular, unfair, and far from democratic standards. The Ukrainian judiciary proceeded, so to say, ‘from a European standpoint’, and was, most likely, influenced by the jurisprudence of the European Court of Human Rights as well as by its exchange with other European courts especially in Poland, Germany and other Council of Europe member countries. However, on the other side, the Ukrainian judiciary, by way of applying *en bloc* constitutional articles, missed an important opportunity to develop the contents of the relevant articles and principles in the Ukrainian Constitution – an approach that could have facilitated further judicial revision. Still, it is an eminent success for Ukrainian society that the legitimacy of the new President of Ukraine, despite all political difficulties, is now not seriously challenged. The Ukrainian judiciary made an important contribution to the legitimacy of the presidential elections.

Appendices

I THE DECISION OF THE SUPREME COURT OF 3 DECEMBER 2004[76]

DECISION

IN THE NAME OF UKRAINE

3 December 2004 Kyiv

The Civil Chamber of the Supreme Court in the following composition

The Chairing Judge: Yarema A.H.
Judges: Baliuk M.I.,
Barsukova V.M.,
Didkivskyi A.O.,
Dombrovskyi I.P.,
Hnatenko A.V.,
Hryhorieva L.I.,
Humeniuk V.I.,
Kryvenko V.V.,
Liaschenko N.P.,
Marynchenko V.L.,
Pantaliienko P.V.,
Patriuk M.V.,
Potyl'chak O.I.,
Prokopchuk Y.V.,
Pshonka M.P.,
Samsin I.L.,
Senin Y.L.,
Shabushin V.M.,
Terletskyi O.O.

76 For the original decision, see under http://www.ccu.gov.ua/pls/wccu/indx (the Supreme Court's website, as of 13 November 2005). This translation was taken from the *International Observer Guide of the OSCE ODIHR for the Presidential Election - Ukraine, Repeat 2nd Round - 26 December 2004,* Annex C, 18.

with Ms. Prokopenko I.A. and Ms. Skachko V.V. as Secretaries,

with participation of Mr. Katerynchuk, proxy of candidate to Presidential Post Mr. Yushchenko in the single nationwide election constituency, and representatives of Mr. Yushchenko: Ms. Kustova, Mr. Zvarych, Mr. Reznikov, Mr. Poludionnyi, Mr. Vlasenko, Mr. Karmazin and Mr. Kliuchkovskyi,

representatives of the Central Election Commission: Mr. Bondyk, Mr. Donchenko, Mr. Kachur, and Mr. Okhendovskyi, and representatives of the interested party – candidate to Presidential Post Mr. Yanukovich: Ms. Lukash, Mr. Havrysh, Mr. Kharchenko, Ms. Yevhrafova, and Ms. Abramenko,

having considered in the court hearing the complaint of Mr. Katerynchuk, proxy of candidate to Presidential Post Mr. Yushchenko in the single nationwide election constituency, on inactivity of the Central Election Commission, its actions of 24 November 2004 as regards establishment of the repeat voting results in the Presidential Election, and the decision to declare Mr. Yanukovych as the elected President of Ukraine,

established the following:

Mr. Katerynchuk, proxy of candidate to Presidential Post Mr. Yushchenko in the single nationwide election constituency, filed the aforementioned complaint with the Supreme Court of Ukraine, in which request the following:

1. To recognize the actions of the Central Election Commission concerning establishing results of the repeat voting in the Presidential Election as illegal and to invalidate the CEC protocol on the repeat voting results of 24 November 2004. To repeal CEC Resolution No. 1264 of 24 November 'On the Results of the Presidential Election of 21 November 2004 and Electing the President of Ukraine' as illegal.
2. To repeal CEC Resolution No. 1265 of 24 November 'On Promulgation of the Presidential Election Results' as illegal.
3. To establish that facts of systematic and gross violations of the election process principles and fundamentals at the repeat voting of the

Presidential of 21 November 2004 make it impossible to credibly establish results of the expression of voters' will in the single nationwide election constituency.

4. To invalidate the repeat voting results at the Presidential Election of 21 November 2004 in the single nationwide election constituency.
5. To recognize as elected President of Ukraine the candidate who gained the largest number of votes on 31 October 2004.

The complaint and representatives of the candidate to Presidential Post Mr. Yushchenko supported the above claims in the court hearings and underpinned them with references to systematic and gross violations of the election process principles and fundamentals at the repeat voting of the Presidential Election of 21 November 2004. They also referred to the fact that the CEC violated requirements of the Presidential Election Law while establishing results of the Presidential Election.

Representatives of the CEC and the interested party rejected the claims. They stated that violations of the election legislation committed during the repeat voting of the Presidential Election did not and could not have influenced the election results. They also argued that the CEC did not violate the effective legislation when establishing results of the Presidential Election.

Having heard explanations of the persons involved in the case and having scrutinized other evidence, the court believes the complaint is subject to granting partial relief on the following grounds.

Repeat voting of the Presidential Election was held on 21 November 2004.

The Central Election Commission compiled a protocol on the repeat voting results and adopted Resolutions No.1264 'On the Results of the Presidential Election of 21 November 2004 and Electing the President of Ukraine' and No.1265 of 24 November 'On Promulgation of the Presidential Elections Results'.

Establishing the repeat voting results, the CEC did not study collegially at its session TEC protocols on tabulation of voting results within territorial election constituencies. Neither did it verify their credibility, correctness and completeness. The same concerns other documents mentioned in paragraph 6, Art. 83 of the Presidential Election Law.

Before establishing the repeat voting results, the CEC did not consider applications and complaints about the breach of procedure by TECs in establishing voting results within territorial election constituencies and the decisions taken by TECs based on their examination.

As of the time when the CEC established repeat voting results, there were complaints still pending in courts. Those were complaints on inactivity, actions or decisions of TECs as regards tabulation of votes within territorial constituencies; they had been lodged in due time and the deadline for hearing those complaints had not expired.

Under such circumstances, the CEC actions run counter to Articles 2, 10, 11, 12, 16 and 17 of the Law of Ukraine ‘On the Central Election Commission’, Articles 25, 28, 83, 84, 86, 93, 94 and 96 of the Law of Ukraine ‘On Election of the President of Ukraine’, and are therefore unlawful. In this connection, the decisions taken by the Central Election Commission shall be repealed.

The Court has also established that the following violations of the Presidential Election Law took place at the repeat voting:

- Art. 34 was violated during compiling and updating voter lists. The violations included multiple entries and inclusion of persons ineligible to vote;
- There were violations of Art. 33 in production, record-keeping and usage of absentee voting certificates, where there was no proper control by the CEC;
- The election campaign in mass media disregarded the principle of equality and contradicted the procedure established by law. The ban on campaigning by executive authorities and local governments, their officials and staff was disregarded. They interfered illegally with the election process;
- The requirements of Articles 23, 24 and 85 on the composition of election commissions were violated;
- The requirements of Articles 68, 69 and 70 on the involvement of official observers in the election process were violated.
- The requirements of Art. 77 on mobile ballot voting were violated;

- PSC protocols on count of votes were compiled disregarding the requirements of Art. 79;
- Transportation of documents to TECs took place in violation of Art. 81.

The above circumstances lead to a conclusion that the principles of electoral law envisaged by Articles 38, 71 and 103 of the Ukrainian Constitution and the principles of the election process defined by paragraph 2, Art. 11 of the Presidential Election Law were violated, which makes it impossible to ascertain the true result of voters' choice in the single nationwide election constituency.

In determining the way to restore the infringed rights and legitimate interests of the participants of the electoral process, the court proceeds from the fact that Art. 98 of the Presidential Election Law states that the subject of consideration of the complaint, having established that decisions, acts or inactivity of the complaint's subject run counter to the Presidential Election Law, either grants requested relief to the complaint by repealing decisions fully or partially, by recognizing acts or inactivity as illegal, by directing the complainant's subject to satisfy the claims of the complainant, or uses another way to restore the infringed rights and legitimate interests of the participant of the electoral process.

The method proposed by the complainant to protect rights which have been violated by granting election victory to the candidate who received the greatest number of votes in the poll on 31 October cannot be used because according to paragraph 3, Art. 84 of the Presidential Election Law, the President elected on polling day is the candidate who received more than half votes cast on polling day, and none of the candidates received the required number of votes.

Given the impossibility of establishing in a reliable manner the will of voters in the single nationwide constituency by drawing up the results of the election runoff and taking into account that the election runoff held on 21 November 2004 did not change the status of the candidates who, in accordance with the results of the election on 31 October obtained most votes, the court regards it necessary to restore the rights of the participants of

the electoral process by holding a repeat vote in line with the rules accorded by Art. 85 of the Presidential Election Law.

Guided by Articles 8, 71, 103 and 124 of the Constitution of Ukraine, Art. 13 of the Convention of Human Rights and Freedoms, Art. 98 of the Law of Ukraine 'On election of the President of Ukraine', as well as Articles 11, 243-10, 243-20 of the Civil Procedures Code of Ukraine, the Civil Chamber of the Supreme Court of Ukraine

has ruled:

To grant partial relief upon the complaint of Mr. Katerynchuk, proxy of candidate to Presidential Post Mr. Yushchenko in the single nationwide election constituency, on decisions, acts and inactivity of the Central Election Commission.

To recognize as illegal the CEC actions as regards establishment of the repeat voting results and compilation of the protocol on the repeat voting results on 24 November 2004.

To repeal CEC Resolution No. 1246 'On the Results of the Presidential Election of 21 November 2004 and Electing the President of Ukraine' dated 24. 11. 2004.

To repeal CEC Resolution No. 1265 'On Promulgation of the Presidential Election Results' dated 24.11.2004.

To direct the CEC to appoint a repeat voting in the Ukrainian Presidential Election within the term envisaged by paragraph 1, Art. 85 of the Presidential Election Law, this term being calculated commencing from 5 December 2004. To hold the repeat voting in the manner established by the Art. 85 of the Presidential Election Law.

To reject the other claims of the complainant.

This ruling is final and shall not be subject to appeals.

The Chairing Judge: /signature/ Yarema A.H.
Judges: /signatures/ Baliuk M.I.,
Barsukova V.M.,
Didkivskyi A.O.,
Dombrovskyi I.P.,

Hnatenko A.V.,
Hryhorieva L.I.,
Humeniuk V.I.,
Kryvenko V.V.,
Liaschenko N.P.,
Marynchenko V.L.,
Pantaliienko P.V.,
Patriuk M.V.,
Potyl'chak O.I.,
Prokopchuk Y.V.,
Pshonka M.P.,
Samsin I.L.,
Senin Y.L.,
Shabushin V.M.,
Terletskyi O.O.

II RELEVANT UKRAINIAN ELECTORAL LEGISLATION

II.1 Ukrainian Constitution of 1996 (excerpt of important Articles mentioned in the article, which have not been changed by the constitutional reform of December 2004)

Art. 8

In Ukraine, the principle of the rule of law is recognised and effective.

The Constitution of Ukraine has the highest legal force. Laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and shall conform to it.

The norms of the Constitution of Ukraine are norms of direct effect. Appeals to the court in defence of the constitutional rights and freedoms of the individual and citizen directly on the grounds of the Constitution of Ukraine are guaranteed.

Art. 38

Citizens have the right to participate in the administration of state affairs, in All-Ukrainian and local referendums, to freely elect and to be elected to bodies of state power and bodies of local self-government.

Citizens enjoy the equal right of access to the civil service and to service in bodies of local self-government.

Art. 69

The expression of the will of the people is exercised through elections, referendum and other forms of direct democracy.

Art. 70

Citizens of Ukraine who have attained the age of eighteen on the day elections and referendums are held, have the right to vote at the elections and referendums.

Citizens deemed by a court to be incompetent do not have the right to vote.

Art. 71

Elections to bodies of state power and bodies of local self-government are free and are held on the basis of universal, equal and direct suffrage, by secret ballot.

Voters are guaranteed the free expression of their will.

Art. 73

Issues of altering the territory of Ukraine are resolved exclusively by an All-Ukrainian referendum.

Art. 74

A referendum shall not be permitted in regard to draft laws on issues of taxes, the budget and amnesty.

Art. 103

The President of Ukraine is elected by the citizens of Ukraine for a five-year term, on the basis of universal, equal and direct suffrage, by secret ballot.

A citizen of Ukraine who has attained the age of thirty-five, has the right to vote, has resided in Ukraine for the past ten years prior to the day of elections, and has command of the state language, may be elected as the President of Ukraine.

One and the same person shall not be the President of Ukraine for more than two consecutive terms.

The President of Ukraine shall not have another representative mandate, hold office in bodies of state power or in associations of citizens, and also perform any other paid or entrepreneurial activity, or be a member of an administrative body or board of supervisors of an enterprise that is aimed at making profit.

Regular elections of the President of Ukraine are held on the last Sunday of October of the fifth year of the term of authority of the President of Ukraine. In the event of pre-term termination of authority of the President of

Ukraine, elections of t he President of Ukraine are held within ninety days from the day of termination of the authority.

The procedure for conducting elections of the President of Ukraine is established by law.

Art. 124

Justice in Ukraine is administered exclusively by the courts. The delegation of the functions of the courts, and also the appropriation of these functions by other bodies or officials, shall not be permitted.

The jurisdiction of the courts extends to all legal relations that arise in the State.

Judicial proceedings are performed by the Constitutional Court of Ukraine and courts of general jurisdiction.

The people directly participate in the administration of justice through people's assessors and jurors.

Judicial decisions are adopted by the courts in the name of Ukraine and are mandatory for execution throughout the entire territory of Ukraine.

II.2 Ukrainian Constitution of 2004/2006 (changes of 8 December 2004; in force as of 1 January 2006; the changes of, and additions to, the 1996 Constitution are indicated in bold letters; the part of the text which was cut or replaced is indicated as erased).[77]

Chapter IV – Verkhovna Rada of Ukraine

(...)

Art. 76

The constitutional composition of the Verkhovna Rada of Ukraine consists of 450 National Deputies of Ukraine who are elected for a four-year term on the basis of universal, equal and direct suffrage, by secret ballot.

A citizen of Ukraine who has attained the age of twenty-one on the day of elections, has the right to vote, and has resided on the territory of Ukraine for the past five years, may be a National Deputy of Ukraine.

A citizen who has a criminal record for committing an intentional crime shall not be elected to the Verkhovna Rada of Ukraine if the record is not cancelled and erased by the procedure established by law.

The authority of National Deputies of Ukraine is determined by the Constitution and the laws of Ukraine.

The Verkhovna Rada of Ukraine is elected for a term of five years.

Art. 77

Regular elections to the Verkhovna Rada of Ukraine take place on the last Sunday of March of the ~~fourth~~ **fifth** year of the term of authority of the Verkhovna Rada of Ukraine.

Special elections to the Verkhovna Rada of Ukraine are designated by the President of Ukraine and are held within sixty days from the day of the

77 The English translation of the constitution was taken from http://www.rada.kiev.ua/const/conengl.htm (as of 13 November 2005). The changed or new sections are taken from http://www.venice.coe.int/docs/2005/CDL(2005)036-e.asp (as of 13 November 2005). Some inconsistencies between the uses of some words as well as numbers of articles are due to the two different sources of translation. This synopsis will only highlight some changes in the constitution, in order to provide the reader with a better understanding. The translated text is therefore not to be regarded as the official one.

publication of the decision on the pre-term termination of authority of the Verkhovna Rada of Ukraine.

The procedure for conducting elections of National Deputies of Ukraine is established by law.

Art. 78

National Deputies of Ukraine exercise their authority on a permanent basis.

National Deputies of Ukraine shall not have another representative mandate or ~~be in the civil service~~ **be in the civil service, hold any other paid offices, carry out gainful or business activity (with the exception of teaching, scientific, and creative activities), or to be a member of the administration/governing body of a profit-seeking enterprise or organisation.**

Requirements concerning the incompatibility of the mandate of the deputy with other types of activity are established by law.

Where there emerge circumstances preventing the National Deputy of Ukraine from fulfilling a requirement concerning incompatibility of the deputy's mandate with other types of activity, the National Deputy of Ukraine shall within twenty days from the date of the emergence of such circumstances withdraw from the business concerned or apply personally for divesting himself or herself of National Deputy powers;

(...)

Art. 81

The authority of National Deputies of Ukraine terminates simultaneously with the termination of authority of the Verkhovna Rada of Ukraine.

The authority of a National Deputy of Ukraine terminates prior to the expiration of the term in the event of:

1) his or her resignation through a personal statement;
2) a guilty verdict against him or her entering into legal force;
3) a court declaring him or her incompetent or missing;
4) termination of his or her citizenship or his or her departure from Ukraine for permanent residence abroad;

5) his or her failure, within twenty days from the date of the emergence of circumstances preventing him or her from fulfilling a requirement concerning incompatibility of the deputy's mandate with other types of activity, to remove such circumstances;

6) his or her failure, as having been elected from a political party (an electoral bloc of political parties), to join the parliamentary faction representing the same political party (the same electoral bloc of political parties) or his or her withdrawal from such a faction;

~~5)~~ 7) his or her death.

~~The decision about the pre-term termination of authority of a National Deputy of Ukraine is adopted by the majority of the constitutional composition of the Verkhovna Rada of Ukraine.~~

~~In the event a requirement concerning incompatibility of the mandate of the deputy with other types of activity is not fulfilled, the authority of the National Deputy of Ukraine terminates prior to the expiration of the term on the basis of the law pursuant to a court decision.~~

The pre-term termination of powers a National Deputy of Ukraine shall also be caused by the early termination, under the Constitution of Ukraine, of powers of the Verkhovna Rada of Ukraine, with such termination of the Deputy's powers taking effect on the date when the Verkhovna Rada of Ukraine of a new convocation opens its first meeting.

A decision on early termination of powers a National Deputy of Ukraine on grounds referred to in subparagraphs (1), (4) of the second paragraph of this Article shall fall within the competence the Verkhovna Rada of Ukraine, while the ground referred to in subparagraph (5) of the second paragraph of this Article shall be a matter to be decided by court.

Where a guilty verdict against a National Deputy of Ukraine enters into legal force or where a court declares a National Deputy of Ukraine incapacitated or missing, his or her powers terminate on the date when the court decision becomes legally effective, while in the event of the Deputy's death on the date of his or her death as certified by the relevant document.

Where a National Deputy of Ukraine, as having been elected from a political party (an electoral bloc of political parties), fails to join the

parliamentary faction representing the same political party (the same electoral bloc of political parties) or withdraws from such a faction, the highest steering body of the respective political party (electoral bloc of political parties) shall decide to terminate early his or her powers on the basis of a law, with the termination taking effect on the date of such a decision.

Art. 82

The Verkhovna Rada of Ukraine works in sessions.

The Verkhovna Rada of Ukraine is competent on the condition that no less than two-thirds of its constitutional composition has been elected.

The Verkhovna Rada of Ukraine assembles for its first session no later than on the thirtieth day after the official announcement of the election results.

The first meeting of the Verkhovna Rada of Ukraine is opened by the eldest National Deputy of Ukraine.

The operational procedure of the Verkhovna Rada of Ukraine is established by the Constitution of Ukraine and the law on the Rules of Procedure of the Verkhovna Rada of Ukraine.

Art. 83

Regular sessions of the Verkhovna Rada of Ukraine commence on the first Tuesday of February and on the first Tuesday of September each year.

Special sessions of the Verkhovna Rada of Ukraine, with the stipulation of their agenda, are convoked by the Chairman of the Verkhovna Rada of Ukraine, on the demand of no fewer National Deputies of Ukraine than one-third of the constitutional composition of the Verkhovna Rada of Ukraine, or on the demand of the President of Ukraine.

In the event ~~of the introduction~~ **that the President of Ukraine declares, by proclaiming a decree, a state** of martial law or of a state of emergency in Ukraine, the Verkhovna Rada of Ukraine assembles within a period of two days without convocation.

In the event that the term of authority of the Verkhovna Rada of Ukraine expires while martial law or a state of emergency is in effect, its authority is extended until the day of the first meeting of the first session of the Verkhovna

Rada of Ukraine, elected after the cancellation of martial law or of the state of emergency.

Rules on the conduct of work of the Verkhovna Rada of Ukraine shall be laid down in the Constitution of Ukraine and the Rules of Procedure of the Verkhovna Rada of Ukraine.

According to election results and on the basis of a common ground achieved between various political positions, a coalition of parliamentary factions shall be formed in the Verkhovna Rada of Ukraine to include a majority of National Deputies of Ukraine within the constitutional membership of the Verkhovna Rada of Ukraine.

A coalition of parliamentary factions in the Verkhovna Rada of Ukraine shall be formed within a month from the date of the first meeting of the Verkhovna Rada of Ukraine to be held following regular or special elections to the Verkhovna Rada of Ukraine, or within a month from the date when activities of a coalition of parliamentary factions in the Verkhovna Rada of Ukraine terminated.

A coalition of parliamentary factions in the Verkhovna Rada of Ukraine submits to the President of Ukraine, in accordance with this Constitution, proposals concerning a person's candidature for the office of the Prime Minister of Ukraine and also, in accordance with this Constitution, proposes candidates for the membership of the Cabinet of Ministers of Ukraine.

Frameworks for forming, organising, and terminating activities of a coalition of parliamentary factions in the Verkhovna Rada of Ukraine shall be established by the Constitution of Ukraine and the Rules of Procedure of the Verkhovna Rada of Ukraine.

A parliamentary faction in the Verkhovna Rada of Ukraine whose members make up a majority of National Deputies of Ukraine within the constitutional membership of the Verkhovna Rada of Ukraine shall enjoy the same rights under this Constitution as a coalition of parliamentary factions in the Verkhovna Rada of Ukraine.

(...)

Art. 85

The authority of the Verkhovna Rada of Ukraine comprises:

1) introducing amendments to the Constitution of Ukraine within the limits and by the procedure envisaged by Chapter XIII of this Constitution;
2) designating an All-Ukrainian referendum on issues determined by Article 73 of this Constitution;
3) adopting laws;
4) approving the State Budget of Ukraine and introducing amendments to it; controlling the implementation of the State Budget of Ukraine and adopting decisions in regard to the report on its implementation;
5) determining the principles of domestic and foreign policy;
6) approving national programmes of economic, scientific and technical, social, national and cultural development, and the protection of the environment;
7) designating elections of the President of Ukraine within the terms envisaged by this Constitution;
8) hearing annual and special messages of the President of Ukraine on the domestic and foreign situation of Ukraine;
9) declaring war upon the submission of the President of Ukraine and concluding peace, approving the decision of the President of Ukraine on the use of the Armed Forces of Ukraine and other military formations in the event of armed aggression against Ukraine;
10) removing the President of Ukraine from office in accordance with the special procedure (impeachment) established by Article 111 of this Constitution;
11) considering and adopting the decision in regard to the approval of the Programme of Activity of the Cabinet of Ministers of Ukraine;

~~12) giving consent to the appointment of the Prime Minister of Ukraine by the President of Ukraine;~~

12) appointing to office - upon the submission by the President of Ukraine - the Prime Minister of Ukraine, the Minister of Defence, the Minister of Foreign Affairs of Ukraine; appointing to office - upon the submission by the Prime Minister of Ukraine - other members of the Cabinet of Ministers of Ukraine, the Chairperson of the Antimonopoly Committee of Ukraine, the Chairperson of the State

Committee on Television and Radio Broadcasting of Ukraine, and the Chairperson of the State Property Fund of Ukraine; dismissing from office the officials mentioned above; deciding on the resignation of the Prime Minister of Ukraine and of members of the Cabinet of Ministers of Ukraine;

12^{1}) appointing to office and dismissing from office - upon the submission by the President of Ukraine - the Head of the Security Service of Ukraine;

13) exercising control over the activity of the Cabinet of Ministers of Ukraine in accordance with this Constitution;

14) confirming decisions on granting loans and economic aid by Ukraine to foreign states and international organisations and also decisions on Ukraine receiving loans not envisaged by the State Budget of Ukraine from foreign states, banks and international financial organisations, exercising control over their use;

~~15) appointing or electing to office, dismissing from office, granting consent to the appointment to and the dismissal from office of persons in cases envisaged by this Constitution;~~

(15) adopting the Rules of Procedure of the Verkhovna Rada of Ukraine;

16) appointing to office and dismissing from office the Chairman and other members of the Chamber of Accounting;

17) appointing to office and dismissing from office the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine; hearing his or her annual reports on the situation of the observance and protection of human rights and freedoms in Ukraine;

18) appointing to office and dismissing from office the Chairman of the National Bank of Ukraine on the submission of the President of Ukraine;

19) appointing and dismissing one-half of the composition of the Council of the National Bank of Ukraine;

20) appointing one-half of the composition of the National Council of Ukraine on Television and Radio Broadcasting;

21) appointing to office and terminating the authority of the members of the Central Electoral Commission on the submission of the President of Ukraine;

22) confirming the general structure and numerical strength, and defining the functions of the Armed Forces of Ukraine, the Security Service of Ukraine and other military formations created in accordance with the laws of Ukraine, and also the Ministry of Internal Affairs of Ukraine;
23) approving decisions on providing military assistance to other states, on sending units of the Armed Forces of Ukraine to another state, or on admitting units of armed forces of other states on to the territory of Ukraine;
~~24) granting consent for the appointment to office and the dismissal from office by the President of Ukraine of the Chairman of the Antimonopoly Committee of Ukraine, the Chairman of the State Property Fund of Ukraine and the Chairman of the State Com mittee on Television and Radio Broadcasting of Ukraine;~~
24) establishing national symbols of Ukraine;
25) granting consent for the appointment to office by the President of Ukraine of the Procurator General of Ukraine; declaring no confidence in the Procurator General of Ukraine that has the result of his or her resignation from office;
26) appointing one-third of the composition of the Constitutional Court of Ukraine;
27) electing judges for permanent terms;
28) terminating prior to the expiration of the term of authority of the Verkhovna Rada of the Autonomous Republic of Crimea, based on the opinion of the Constitutional Court of Ukraine that the Constitution of Ukraine or the laws of Ukraine have been violated by the Verkhovna Rada of the Autonomous Republic of Crimea; designating special elections to the Verkhovna Rada of the Autonomous Republic of Crimea;
29) establishing and abolishing districts, establishing and altering the boundaries of districts and cities, assigning inhabited localities to the category of cities, naming and renaming inhabited localities and districts;
30) designating regular and special elections to bodies of local self-government;
31) confirming, within two days from the moment of the address by the President of Ukraine, decrees on the introduction of martial law or of a

state of emergency in Ukraine or in its particular areas, on total or partial mobilisation, and on the announcement of particular areas as zones of an ecological emergency situation;

32) granting consent to the binding character of international treaties of Ukraine within the term established by law, and denouncing international treaties of Ukraine;

33) exercising parliamentary control within the limits determined by this Constitution;

34) adopting decisions on forwarding an inquiry to the President of Ukraine on the demand of a National Deputy of Ukraine, a group of National Deputies or a Committee of the Verkhovna Rada of Ukraine, previously supported by no less than one-third of the constitutional composition of the Verkhovna Rada of Ukraine;

35) appointing to office and dismissing from office the Head of Staff of the Verkhovna Rada of Ukraine; approving the budget of the Verkhovna Rada of Ukraine and the structure of its staff;

~~36) confirming the list of objects of the right of state property that are not subject to privatisation; determining the legal principles for the expropriation of objects of the right of private property.~~

36) confirming the list of objects owned by the State that are not subject to privatisation; establishing legal principles to underlie the expropriation of objects of private ownership.

The Verkhovna Rada of Ukraine exercises other powers ascribed to its competence in accordance with the Constitution of Ukraine.

(...)

Art. 87

The Verkhovna Rada of Ukraine, on the proposal **by the President of Ukraine or** of no fewer National Deputies of Ukraine than one-third of its constitutional composition, may consider the issue of responsibility of the Cabinet of Ministers of Ukraine and adopt a resolution of no confidence in the Cabinet of Ministers of Ukraine by the majority of the constitutional composition of the Verkhovna Rada of Ukraine.

The issue of responsibility of the Cabinet of Ministers of Ukraine shall not be considered by the Verkhovna Rada of Ukraine more than once during one regular session, and also within one year after the approval of the Programme of Activity of the Cabinet of Ministers of Ukraine **or during the final session of the Verkhovna Rada of Ukraine**.

Art. 88

The Verkhovna Rada of Ukraine elects from among its members the Chairman of the Verkhovna Rada of Ukraine, the First Deputy Chairman and the Deputy Chairman of the Verkhovna Rada of Ukraine, and recalls them.

The Chairman of the Verkhovna Rada of Ukraine:

1) presides at meetings of the Verkhovna Rada of Ukraine;
2) ~~organises the preparation of issues for consideration at the meetings of the Verkhovna Rada of Ukraine~~ **organises work of the Verkhovna Rada of Ukraine and co-ordinates activities of its bodies**;
3) signs acts adopted by the Verkhovna Rada of Ukraine;
4) represents the Verkhovna Rada of Ukraine in relations with other bodies of state power of Ukraine and with the bodies of power of other states;
5) organises the work of the staff of the Verkhovna Rada of Ukraine.

The Chairman of the Verkhovna Rada of Ukraine exercises authority envisaged by this Constitution, by the procedure established by law on the Rules of Procedure of the Verkhovna Rada of Ukraine.

Art. 89

In order to carry out its legislative drafting activities, prepare and conduct the preliminary consideration of issues falling within its competence, and performing its functions of control under this Constitution of Ukraine, t~~T~~he Verkhovna Rada of Ukraine ~~confirms~~ **shall set up** the list of Committees of the Verkhovna Rada of Ukraine, and elects Chairmen, **Deputy Chairpersons, and Secretaries** to these Committees.

~~The Committees of the Verkhovna Rada of Ukraine perform the work of legislative drafting, prepare and conduct the preliminary consideration of issues ascribed to the authority of the Verkhovna Rada of Ukraine.~~

The Verkhovna Rada of Ukraine, within the limits of its authority, may establish temporary special commissions for the preparation and the preliminary consideration of issues.

To investigate issues of public interest, the Verkhovna Rada of Ukraine establishes temporary investigatory commissions, if no less than one-third of the constitutional composition of the Verkhovna Rada of Ukraine has voted in favour thereof.

The conclusions and proposals of temporary investigatory commissions are not decisive for investigation and court.

The organisation and operational procedure of Committees of the Verkhovna Rada of Ukraine, and also its temporary special and temporary investigatory commissions, are established by law.

Art. 90

The authority of the Verkhovna Rada of Ukraine is terminated on the day of the opening of the first meeting of the Verkhovna Rada of Ukraine of a new convocation.

The President of Ukraine may terminate the authority of the Verkhovna Rada of Ukraine prior to the expiration of term,

1) **there is a failure to form within one month a coalition of parliamentary factions in the Verkhovna Rada of Ukraine as provided for in Article 83 of this Constitution;**
2) **there is a failure, within sixty days following the resignation of the Cabinet of Ministers of Ukraine, to appoint members of the Cabinet of Ministers of Ukraine;**
3) if within thirty days of a single regular session the plenary meetings fail to commence.

The early termination of powers of the Verkhovna Rada of Ukraine shall be decided by the President of Ukraine following relevant consultations with the Chairperson and Deputy Chairpersons of the Verkhovna Rada of Ukraine and with Chairpersons of Verkhovna Rada parliamentary factions.

The authority of the Verkhovna Rada of Ukraine, that is elected at special elections conducted after the pre-term termination by the President of Ukraine of authority of the Verkhovna Rada of Ukraine of the previous

convocation, shall not be terminate d within one year from the day of its election.

The authority of the Verkhovna Rada of Ukraine shall not be terminated prior to the expiration of term within the last six months of the term of authority of the President of Ukraine.

(...)

Art. 93

The right of legislative initiative in the Verkhovna Rada of Ukraine belongs to the President of Ukraine, the National Deputies of Ukraine, the Cabinet of Ministers of Ukraine and the National Bank of Ukraine.

Draft laws defined by the President of Ukraine as not postponable, are considered out of turn by the Verkhovna Rada of Ukraine.

Art. 94

The Chairman of the Verkhovna Rada of Ukraine signs a law and forwards it without delay to the President of Ukraine.

Within fifteen days of the receipt of a law, the President of Ukraine signs it, accepting it for execution, and officially promulgates it, or returns it to the Verkhovna Rada of Ukraine with substantiated and formulated proposals for repeat consideration.

In the event that the President of Ukraine has not returned a law for repeat consideration within the established term, the law is deemed to be approved by the President of Ukraine and shall be signed and officially promulgated.

If a law, during its repeat consideration, is again adopted by the Verkhovna Rada of Ukraine by no less than two-thirds of its constitutional composition, the President of Ukraine is obliged to sign and to officially promulgate it within ten days. **In the event that the President of Ukraine does not sign such a law, it shall be without delay promulgated officially by the Chairperson of the Verkhovna Rada of Ukraine and published under his or her signature.**

A law enters into force in ten days from the day of its official promulgation, unless otherwise envisaged by the law itself, but not prior to the day of its publication.

(...)

Art. 98

The Chamber of Accounting exercises control over the use of finances of the State Budget of Ukraine **on behalf of the Verkhovna Rada of Ukraine**.

(...)

<u>Chapter V - President of Ukraine</u>

(...)

Art. 103

The President of Ukraine is elected by the citizens of Ukraine for a five-year term, on the basis of universal, equal and direct suffrage, by secret ballot.

A citizen of Ukraine who has attained the age of thirty-five, has the right to vote, has resided in Ukraine for the past ten years prior to the day of elections, and has command of the state language, may be elected as the President of Ukraine.

One and the same person shall not be the President of Ukraine for more than two consecutive terms.

The President of Ukraine shall not have another representative mandate, hold office in bodies of state power or in associations of citizens, and also perform any other paid or entrepreneurial activity, or be a member of an administrative body or board of supervisors of an enterprise that is aimed at making profit.

Regular elections of the President of Ukraine are held on the last Sunday of ~~October~~ **the last month** of the fifth year of the term of authority of the President of Ukraine. In the event of pre-term termination of authority of the President of Ukraine, elections of the President of Ukraine are held within ninety days from the day of termination of the authority.

The procedure for conducting elections of the President of Ukraine is established by law.

(...)

Art. 106

The President of Ukraine:

1) ensures state independence, national security and the legal succession of the state;
2) addresses the people with messages and the Verkhovna Rada of Ukraine with annual and special messages on the domestic and foreign situation of Ukraine;
3) represents the state in international relations, administers the foreign political activity of the State, conducts negotiations and concludes international treaties of Ukraine;
4) adopts decisions on the recognition of foreign states;
5) appoints and dismisses heads of diplomatic missions of Ukraine to other states and to international organisations; accepts credentials and letters of recall of diplomatic representatives of foreign states;
6) designates an All-Ukrainian referendum regarding amendments to the Constitution of Ukraine in accordance with Article 156 of this Constitution, proclaims an All-Ukrainian referendum on popular initiative;
7) designates special elections to the Verkhovna Rada of Ukraine within the terms established by this Constitution;
8) terminates the authority of the Verkhovna Rada of Ukraine, ~~if the plenary meetings fail to commence within thirty days of one regular session~~ **in cases specified by this Constitution**;

~~9) appoints the Prime Minister of Ukraine with the consent of the Verkhovna Rada of Ukraine; terminates the authority of the Prime Minister of Ukraine and adopts a decision on his or her resignation;~~

9) puts forward, following the relevant proposal by the parliamentary coalition formed in the Verkhovna Rada of Ukraine as provided for by Article 83 of the Constitution of Ukraine, the name of a candidate to be appointed to the office of the Prime Minister of

Ukraine by the Verkhovna Rada of Ukraine, no later than fifteen days after the receipt of such a proposal;

~~10) appoints, on the submission of the Prime Minister of Ukraine, members of the Cabinet of Ministers of Ukraine, chief officers of other central bodies of executive power, and also the heads of local state administrations, and terminates their author ity in these positions;~~

10) puts forward to the Verkhovna Rada of Ukraine the name of a candidate to be appointed to the office of the Minister of Defence of Ukraine and the Minister of Foreign Affairs of Ukraine;

11) appoints the Procurator General of Ukraine to office with the consent of the Verkhovna Rada of Ukraine, and dismisses him or her from office;

12) appoints one-half of the composition of the Council of the National Bank of Ukraine;

13) appoints one-half of the composition of the National Council of Ukraine on Television and Radio Broadcasting;

~~14) appoints to office and dismisses from office, with the consent of the Verkhovna Rada of Ukraine, the Chairman of the Antimonopoly Committee of Ukraine, the Chairman of the State Property Fund of Ukraine and the Chairman of the State Committee on Television and Radio Broadcasting of Ukraine;~~

14) puts forward to the Verkhovna Rada of Ukraine the name of a candidate to be appointed to, or to be dismissed from, the office of the Head of the Security Service of Ukraine;

~~15) establishes, reorganises and liquidates, on the submission of the Prime Minister of Ukraine, ministries and other central bodies of executive power, acting within the limits of funding envisaged for the maintenance of bodies of executive power;~~

15) suspends the operation of acts by the Cabinet of Ministers of Ukraine on grounds of their inconsistency with this Constitution and challenges concurrently the constitutionality of such acts before the Constitutional Court of Ukraine;

16) revokes acts of the Cabinet of Ministers of Ukraine and acts of the Council of Ministers of the Autonomous Republic of Crimea;

17) is the Commander-in-Chief of the Armed Forces of Ukraine; appoints to office and dismisses from office the high command of the Armed Forces

of Ukraine and other military formations; administers in the spheres of national security and defence of th e State;

18) heads the Council of National Security and Defence of Ukraine;

19) forwards the submission to the Verkhovna Rada of Ukraine on the declaration of a state of war, and adopts the decision on the use of the Armed Forces **and other military formations** in the event of armed aggression against Ukraine;

20) adopts a decision in accordance with the law on the general or partial mobilisation and the introduction of martial law in Ukraine or in its particular areas, in the event of a threat of aggression, danger to the state independence of Ukraine;

21) adopts a decision, in the event of necessity, on the introduction of a state of emergency in Ukraine or in its particular areas, and also in the event of necessity, declares certain areas of Ukraine as zones of an ecological emergency situation — with subsequent confirmation of these decisions by the Verkhovna Rada of Ukraine;

22) appoints **and dismisses** one-third of the composition to the Constitutional Court of Ukraine;

23) establishes courts by the procedure determined by law;

24) confers high military ranks, high diplomatic and other high special ranks and class orders;

25) confers state awards; establishes Presidential distinctions and confers them;

26) adopts decisions on the acceptance for citizenship of Ukraine and the termination of citizenship of Ukraine, and on the granting of asylum in Ukraine;

27) grants pardons;

28) creates, within the limits of the funds envisaged in the State Budget of Ukraine, consultative, advisory and other subsidiary bodies and services for the exercise of his or her authority;

29) signs laws adopted by the Verkhovna Rada of Ukraine;

30) has the right to veto laws adopted by the Verkhovna Rada of Ukraine **(except for laws on amendments to the Constitution of Ukraine)** with their subsequent return for repeat consideration by the Verkhovna Rada of Ukraine;

31) exercises other powers determined by the Constitution of Ukraine.
The President of Ukraine shall not transfer his or her powers to other persons or bodies.

The President of Ukraine, on the basis and for the execution of the Constitution and the laws of Ukraine, issues decrees and directives that are mandatory for execution on the territory of Ukraine.

Acts of the President of Ukraine, issued within the limits of authority as envisaged in subparagraphs ~~3, 4, 5, 8, 10, 14, 15, 17, 18, 21, 22, 23 and 24~~ **5, 18, 21, 22, and 23** of this Article, are co-signed by the Prime Minister of Ukraine and the Minister responsible for the act and its execution.

(...)

Art. 112

In the event of the pre-term termination of authority of the President of Ukraine in accordance with Articles 108, 109, 110 and 111 of this Constitution, the execution of duties of the President of Ukraine, for the period pending the elections and the assumption of office of the new President of Ukraine, is vested in the ~~Prime Minister of Ukraine. The Prime Minister of Ukraine~~ **in the Chairperson of the Verkhovna Rada of Ukraine. The Chairperson of the Verkhovna Rada of Ukraine**, for the period of executing the duties of the President of Ukraine, shall not exercise the powers envisaged by subparagraphs ~~2, 6, 8, 10, 11, 12, 14, 15, 16, 22, 25 and 27~~ **2, 6 - 8, 10 - 13, 22, 24, 25, 27, and 28** of Article 106 of the Constitution of Ukraine.

Chapter VI - Cabinet of Ministers of Ukraine. Other Bodies of Executive Power

Art. 113

The Cabinet of Ministers of Ukraine is the highest body in the system of bodies of executive power.

The Cabinet of Ministers of Ukraine is responsible to the President of Ukraine **and the Verkhovna Rada of Ukraine** and is under the control of and

accountable to the Verkhovna Rada of Ukraine within the limits envisaged in Articles 85 and 87 of the Constitution of Ukraine.

The Cabinet of Ministers of Ukraine is guided in its activity by the Constitution and the laws of Ukraine and by the acts of the President of Ukraine **and resolutions made by of the Verkhovna Rada of Ukraine in accordance with the Constitution and laws of Ukraine**.

Art. 114

The Cabinet of Ministers of Ukraine is composed of the Prime Minister of Ukraine, the First Vice Prime Minister, three Vice Prime Ministers and the Ministers.

The Prime Minister of Ukraine is appointed by **the Verkhovna Rada of Ukraine upon the submission by the** President of Ukraine ~~with the consent of more than one-half of the constitutional composition of the Verkhovna Rada of Ukraine~~.

~~The personal composition of the Cabinet of Ministers of Ukraine is appointed by the President of Ukraine on the submission of the Prime Minister of Ukraine.~~

The name of a candidate for the office of the Prime Minister of Ukraine shall be put forward by the President of Ukraine following the relevant proposal by the parliamentary coalition formed in the Verkhovna Rada of Ukraine as provided for in Article 83 of the Constitution of Ukraine or by a parliamentary faction whose National Deputies of Ukraine make up a majority of the constitutional membership of the Verkhovna Rada of Ukraine.

The Minister of Defence and the Minister of Foreign Affairs of Ukraine are appointed by the Verkhovna Rada of Ukraine upon the submission by the President of Ukraine; the other members of the Cabinet of Ministers of Ukraine are appointed upon the submission by the Prime Minister of Ukraine.

The Prime Minister of Ukraine manages the work of the Cabinet of Ministers of Ukraine and directs it for the implementation of the Programme of Activity of the Cabinet of Ministers of Ukraine adopted by the Verkhovna Rada of Ukraine.

~~The Prime Minister of Ukraine forwards a submission to the President of Ukraine on the establishment, reorganisation and liquidation of ministries and other central bodies of executive power, within the funds envisaged by the State Budget of Ukraine f or the maintenance of these bodies.~~

Art. 115

The Cabinet of Ministers of Ukraine tenders its resignation to the newly-elected ~~President~~ **Verkhovna Rada** of Ukraine.

The Prime Minister of Ukraine, other members of the Cabinet of Ministers of Ukraine, have the right to announce their resignation to the ~~President~~ **Verkhovna Rada** of Ukraine.

The resignation of the Prime Minister of Ukraine **or the adoption by the Verkhovna Rada of Ukraine of a resolution of no confidence in the Cabinet of Ministers of Ukraine** results in the resignation of the entire Cabinet of Ministers of Ukraine.

~~The adoption of a resolution of no confidence in the Cabinet of Ministers of Ukraine by the Verkhovna Rada of Ukraine results in the resignation of the Cabinet of Ministers of Ukraine.~~

In such cases, the Verkhovna Rada of Ukraine shall form a new Cabinet of Ministers of Ukraine within the terms and under the procedure provided for by this Constitution.

The Cabinet of Ministers, **that has divested itself of its powers before the Verkhovna Rada of Ukraine or whose resignation has been accepted by the Verkhovna Rada of Ukraine** ~~whose resignation is accepted by the President of Ukraine~~, continues to exercise its powers ~~by commission of the President~~, until a newly-formed Cabinet of Ministers of Ukraine commences its operation, ~~but no longer than for sixty days~~.

~~The Prime Minister of Ukraine is obliged to submit a statement of resignation of the Cabinet of Ministers of Ukraine to the President of Ukraine following a decision by the President of Ukraine or in connection with the adoption of the resolution of no confidence by the Verkhovna Rada of Ukraine.~~

Art. 116

The Cabinet of Ministers of Ukraine:

1) ensures the state sovereignty and economic independence of Ukraine, the implementation of domestic and foreign policy of the State, the execution of the Constitution and the laws of Ukraine, and the acts of the President of Ukraine;
2) takes measures to ensure human and citizens' rights and freedoms;
3) ensures the implementation of financial, pricing, investment and taxation policy; the policy in the spheres of labour and employment of the population, social security, education, science and culture, environmental protection, ecological safety and the utilisation of nature;
4) elaborates and implements national programmes of economic, scientific and technical, and social and cultural development of Ukraine;
5) ensures equal conditions of development of all forms of ownership; administers the management of objects of state property in accordance with the law;
6) elaborates the draft law on the State Budget of Ukraine and ensures the implementation of the State Budget of Ukraine approved by the Verkhovna Rada of Ukraine, and submits a report on its implementation to the Verkhovna Rada of Ukraine;
7) takes measures to ensure the defence capability and national security of Ukraine, public order and to combat crime;
8) organises and ensures the implementation of the foreign economic activity of Ukraine, and the operation of customs;
9) directs and co-ordinates the operation of ministries and other bodies of executive power;

9^1) sets up, re-organises, and liquidates, in accordance with law, ministries and other central executive authorities, acting therewith within the limits of funds allocated for the maintenance of executive authorities;

9^2) appoints to office and dismisses from office, upon the submission by the Prime Minister of Ukraine, the chief officers of central executive authorities who are not members of the Cabinet of Ministers of Ukraine

10) performs other functions determined by the Constitution and the laws of Ukraine~~, and the acts of the President of Ukraine~~.

(...)

Chapter VII - Procuracy

Art. 121

The Procuracy of Ukraine constitutes a unified system that is entrusted with:

1) prosecution in court on behalf of the State;
2) representation of the interests of a citizen or of the State in court in cases determined by law;
3) supervision of the observance of laws by bodies that conduct detective and search activity, inquiry and pre-trial investigation;
4) supervision of the observance of laws in the execution of judicial decisions in criminal cases, and also in the application of other measures of coercion related to the restraint of personal liberty of citizens;
5) supervision over the respect for human rights and freedoms and over how laws governing such issues are observed by executive authorities, bodies of local self-government and by their officials and officers.

Art. 122

The Procuracy of Ukraine is headed by the Procurator General of Ukraine, who is appointed to office ~~with the consent of the Verkhovna Rada of Ukraine,~~ and dismissed from office by the President of Ukraine, **with the consent of the Verkhovna Rada of Ukraine**. The Verkhovna Rada of Ukraine may express no confidence in the Procurator General of Ukraine that results in his or her resignation from office.

The term of authority of the Procurator General of Ukraine is five years.

(...)

Chapter XI - Local Self-Government

(...)

Art. 141

A village, settlement and city council is composed of deputies elected for a ~~four~~ five-year term by residents of a village, settlement and city on the basis of universal, equal and direct suffrage, by secret ballot.

(...)

II.3 Law 'On Elections of the President of Ukraine'(of 1999, last changed on 18 March 2004)[78]

Art. 2

1. The elections of the President of Ukraine are general. Citizens of Ukraine, who have reached 18 years of age on the day of elections, shall have the right to vote.

...

4. Any direct or indirect privileges or restrictions of the voting rights of the citizens of Ukraine based on race, skin colour, political, religious and other convictions, gender, ethnic and social origin, property status, place of residence, or based on language or other criteria, besides those envisaged by the Constitution and this Law, shall be prohibited.

...

7. Citizens of Ukraine who have the right to vote are voters.

Art. 3

1. The elections of the President of Ukraine shall be equal: citizens of Ukraine shall take part in them on an equal basis.

78 This translation was taken from the materials, which was given to OSCE Election monitors.

2. Each voter has one vote in the elections of the President of Ukraine. The voter may only cast his or her vote at one election precinct on the day of elections.

3. All candidates nominated for the post of President of Ukraine shall enjoy equal rights and opportunities.

4. The equality of rights and opportunities to take part in the election process is guaranteed by

1) a prohibition of all privileges and restrictions on the candidates for the post of President of Ukraine based on race, skin colour, political, religious and other convictions, gender, ethnic and social origin, property status, place of residence, or based on language or other criteria,
2) a prohibition on interference from the side of State executive bodies and bodies of local self-government in the election process, except in cases envisages by this Law;
3) a prohibition on using other funds than funds from the State Budget of Ukraine and the election funds of the candidates to the post of President of Ukraine for the purposes of financing the pre-election campaign.

Art. 4

Elections of the President of Ukraine are direct. Citizens of Ukraine shall directly elect the President of Ukraine.

Art. 6

1. The elections of the President of Ukraine are free. The voters are guaranteed conditions to form and express their will freely during voting.

2. The use of violence, threats, fraud, bribery and any other actions impeding the free formation and free expression of the will of the voters is prohibited.

3. Military servicemen shall vote at ordinary election precincts located outside the boundaries of dislocations of military units, except in cases envisaged by this Law. Fixed-term military servicemen shall be provided with at least a four-hour leave on the day of elections in order to ensure the free expression of their will.

Art. 9

1. A citizen of Ukraine, who is thirty-five years of age on the day of the elections, eligible to vote, has a command of the state language and has resided in Ukraine for the last ten years prior to the day of elections, can be elected the President of Ukraine.

...

5. One and the same individual cannot be the President of Ukraine for more than two consecutive terms. An individual who has been elected the President of Ukraine for two consecutive terms cannot be nominated as a candidate for the post.

Art. 11

...

2. The election process shall be realized on the principles of:
   1) lawfulness and a prohibition of illegal interference of any person with this process;
   2) political pluralism and a multi-party system;
   3) publicity and openness of the election process;
   4) equality of all candidates for the post of President of Ukraine;
   5) equality of rights of the parties (blocs) that are subjects of the election process;
   6) freedom of campaign, equal opportunities for candidates to the post of President of Ukraine to access mass media;
   7) impartiality from the side of the State executive bodies, bodies of local self-government, enterprises, institutions and organizations, their directors and other officials and officers towards candidates to the post of President of Ukraine and parties (blocs);

...

7. The election process terminates with the official announcement of the results of elections of the President of Ukraine by the Central Election Commission or with the official publication of a submission of the Central Election Commission to the Verkhovna Rada of Ukraine regarding the calling of repeat elections of the President of Ukraine.

Art. 15

1. The elections of the President of Ukraine may be ordinary, extraordinary and repeat.

2. Ordinary elections of the President of Ukraine shall be conducted in connection with the end of the constitutional term of office of the President of Ukraine.

3. Extraordinary elections of the President of Ukraine shall be conducted

...

4. Repeat elections of the President of Ukraine shall be conducted

1) if no more than two candidates for the post of President of Ukraine were included in the election ballot for voting and neither of them has been elected;
2) if all candidates of the post of President of Ukraine, who were included in the election ballot, have resigned prior to the day of elections or prior to the day of repeat voting.

Art. 84

...

3. The candidate who received more than half of the votes of voters who participated in the vote shall be declared President of Ukraine elected on the day of the elections. The Central Election Commission shall take a decision declaring the President of Ukraine elected according to the results of the vote on the day of elections. The surname and initials of the candidate, who according to this Law was elected as President of Ukraine, shall be specified in the protocol of the Central Election Commission on the results of the vote on the day of the elections of the President of Ukraine.

4. If no more than two candidates to the post of President of Ukraine were included in the election ballot for voting on the day of elections and according to the results of the vote on the day of the elections of the President of Ukraine neither candidate was elected in accordance with the requirements of part three of this article, the Central Election Commission shall take based on clause 1 of part four of article 15 of this Law take a decision on addressing the Verkhovna Rada of Ukraine with a request to call repeat elections of the President of Ukraine, about what a record shall be made in the protocol on the results of the vote on the day of the elections of the President of Ukraine.

...

Art. 85

1. Repeat voting shall be called for the third Sunday after the day of elections in compliance with the requirement of this law....

...

8. If two candidates were included in the election ballot for repeat voting, the candidate, who according to the results of the repeat cote received more votes of voters, who participated in the vote, than the other candidate, shall be declared the elected President of Ukraine.

...

10. If, as a result of the repeat vote, both running candidates received an equal number of votes, ... the elections of the President of the Ukraine shall be declared such, that have not taken place.

II.4 Law ‘On Peculiarities of Applying the Law of Ukraine “On Elections of the President of Ukraine” During Repeat Voting on 26 December 2004’ (of 8 December 2004)[79]

Art. 1

The Verkhovna Rada of Ukraine, upon submission of the President of Ukraine, shall appoint new membership of the Central Election Commission ....

Art. 3

1. The territorial election commission shall, not later than 10 days prior to the day of repeat election, prepare a new list of voters for the repeat election at an ordinary polling station based on the list of voters used on October 31, 2004 with changes introduced to it pursuant to the Law on Ukraine ‘On elections of the President of Ukraine’. Persons included into the list of voters based on absentee certificates on the polling day shall not be included into the list of voters for re-voting.

...

3. ... No changes shall be introduced to the list of voters based on absentee certificates.

4. Respective civil registration authorities shall provide each polling station with lists of persons who lived in the territory of a respective polling station and died after March 31, 2004. In the event that such persons are present on the list of voters, the head and the secretary of the polling station commission shall exclude them from the list. ...

...

7. On the election day, the head and the secretary of a polling station commission shall have the right to correct inaccuracies and technical mistakes in the list of voters, specifically: inaccurate spelling of the last name, first name and patronymic, date of birth (except for those born in 1986), ...

8. A voter shall be included into the list of voters on election day only on the grounds of a court decision.

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79 This translation was taken from *The International Observer Guide of the OSCE ODIHR for the Presidential Election - Ukraine, Repeat 2nd Round - 26 December 2004*, Annex B.

...

Art. 4

1. The number of printed absentee certificates shall amount to 0.5% per cent of the number of persons included into the lists of voters.

...

Art. 5

...

4. No later than in 7 days prior to the repeat voting, a territorial election commission shall determine one large or medium-size nearest ordinary polling station within the relevant constituency, where voters, who were put on a voters list based on absentee certificates, shall cast their votes.

...

Art. 6

1. Voting outside the premises for voting shall be allowed only for the disabled individuals of the 1st group, who can not move by their own. A handwritten application for providing a voter with a possibility to vote outside the premise for voting shall be filed with a polling station commission together with a copy of a disabled individual's certificate certified in accordance with the established procedure or a certificate of an expert medical commission no later than on 12 am of the day before the polling day.

2. Two members of the polling station commission representing different candidates shall organize voting outside the premise for voting. It is prohibited to use more than one mobile polling box at the same time.

...

Art. 9

1. Two candidates for the President of Ukraine who ran during the second round on November 21, 2004, shall be included into the voting ballot for the repeat voting. ...

The Cyberpolitics of Music in Ukraine's 2004 Orange Revolution[1]

Adriana Helbig, University of Illinois at Urbana-Champaign

Between November 21 and December 26, 2004, nearly one million people protested in Kyiv against election fraud, media censorship, mass government corruption, and oligarchic market reforms. These large-scale peaceful protests have become widely known as the Orange Revolution, named after the campaign colors of Viktor Yushchenko, the opposition candidate who ran against Viktor Yanukovych, a politician with a criminal record who was backed by Moscow and the sitting Ukrainian government.[2]

Music and the Internet played crucial roles in the Orange Revolution. In the five years between 2000 and 2005, the number of Internet users in Ukraine jumped from 200,000 to more than 5 million in a country of approximately 48 million people (an increase of more than 10% of the population).[3] In the two months between November 21, 2004 (the day of the contested presidential elections that precipitated the Orange Revolution), and January 23, 2005 (when President Viktor Yushchenko was inaugurated), the number of Internet users in Ukraine tripled.[4] The significant role played by Internet streaming of audio and video in the mediation of political information,

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1 Special thanks to Barbara Rose Lange and Elizabeth Keenan for their helpful comments on an earlier draft of this paper. Thank you also to Olexiy Kogan and Victor Ovchinnykov, producers of the CD Orange Jazz, for permission to publish the disc's cover art designed by Olga Dombrovska with photos by Yefrem Lukatsky.

2 The sitting president, Leonid Kuchma, perceived Viktor Yushchenko as a threat and repeatedly attempted to expel him from the campaign. For instance, on September 5, 2004, Yushchenko mysteriously suffered from dioxin poisoning during a dinner with government officials. This poisoning, which disfigured his face and almost killed him, was perceived by protestors as a government attempt to push Yushchenko out of the race.

3 These statistics come from 'Ukraine Internet Usage and Marketing Report,' http://www.internetworldstats.com/euro/ua.htm (accessed May 20, 2006).

4 Rick Delong, 'Orange Revolution Aftermath,' *TryUkraine.com* (February 15, 2005): http://www.tryukraine.com/society/orange.shtml (online article, accessed November 29, 2006).

activism, and communication during the Orange Revolution can serve as a case study for a broader analysis of the relationship between cyberactivism[5] and what I term 'cybermusicality': an engagement with Internet music and its surrounding discourses that has meaning in listeners' lives both online and off.

In remarks before a concert by Ukrainian rock singer and Orange Revolution participant Maria Burmaka in the spring of 2005 at Columbia University[6], ethnomusicologist Ana María Ochoa Gautier argued that music is not political in its essence. Rather, it is politicized through formal, ideological, cultural, and social actions, configurations, and processes.[7] I will build on Ochoa's argument by demonstrating that the media through which music is disseminated partly determines how that music's relationship to the political sphere is established and understood within social movements. In analyzing the relationship between music, social movements, and technology, I draw on the paradigm proposed by Ron Eyerman and Andrew Jamison who argue that 'social movements lead to a reconstruction of processes of social interaction and collective identity formation'.[8] Though I will present some of the new popular music styles favored by anti-government organizers during the Orange Revolution, particularly one that I call TAK-techno, I am less concerned with the content on the Internet than with the Internet's use as a

5 Seth F. Kreimer, 'Technologies of Protest: Insurgent Social Movements and the First Amendment in the Era of the Internet,' *University of Pennsylvania Law Review* 150 (1), 2001: 119-71; McCaughey, Martha and Michael Ayers, *Cyberactivism: Online Activism in Theory and Practice.* New York and London: Routledge, 2003.

6 This concert was co-sponsored by the Ukrainian Studies Program at Columbia University and the Brooklyn Ukrainian Group, whose members served as international election observers during the December 26, 2004, round of voting and met Maria Burmaka on Maidan, the main square of Kyiv. The Orange Revolution helped change perceptions of Ukraine among followers of Ukrainian politics in the Ukrainian diaspora in North America. See Adriana Melnyk, 'Maria Burmaka: From the "Maidan" to Manhattan,' *Ukrainian Weekly* (April 24, 2005): http://www.ukrweekly.com/Archive/2005/170523.shtml (online article, accessed November 1, 2006).

7 Ana María Ochoa, 'Counterpoints of Time and Space in *El Concierto de los Colores. Travesía,' Journal of Latin American Cultural Studies* 6, 1997: 51-64; Ana María Ochoa, 'Music That Moves: The Role of Music in Social Movements,' Lecture preceding the concert of Maria Burmaka at Columbia University, New York, NY, March 31, 2005.

8 Ron Eyerman and Andrew Jamison, *Music and Social Movements: Mobilizing Traditions in the Twentieth Century.* Cambridge and New York: Cambridge University Press, 1998: 10.

vital communication tool within socio-political events and music's function within that framework. In this analysis of the relationship between the Internet, music, and politics in post-socialist Ukraine, I argue that technology is not culturally or politically neutral. Rather, cybermusicality was undeniably vital to the Orange Revolution, drawing millions of Internet users into new online communities.

During the Orange Revolution, the Internet offered opportunities for anti-government protestors to express and engage new understandings of self and community through music. The unprecedented use of technology by this opposition movement during the protests highlighted the significance of music as a powerful communicative medium for the expression of individual and collective dissent. More specifically, because the Orange Revolution criticized the reliability and authenticity of government discourse, the revolution's music and recordings invite an examination of the representative power of recorded spoken text in political song. Numerous political scandals involving technology greatly influenced the public's perception of words spoken by various pro- and anti-government political leaders in Ukraine. Protest songs re-inflected the official political discourse by using *musique concrète* techniques to incorporate vocal recordings of speeches by the presidential candidates. Much of this protest music was composed with the help of computer software on home computers and at opposition-friendly radio stations by DJs and musicians who, prior to the revolution, were not part of the mainstream popular music scene in Ukraine. These performers, composers, and producers were activated by the political situation. Well known Ukrainian-language musicians such as Sviatoslav Vakarchuk, Oleh Skrypka, Taras Chubai, Maria Burmaka, Ruslana Lyzhychko, and Oleksandr Ponomariov, as well as groups such as *Haidamaky, Tartak, Mandry, Okean Elzy, Vopli Vidopliasova*, and *Plach Jaremii* also encouraged political involvement as they took center stage and performed daily for protestors in Kyiv during the Orange Revolution. My analysis, however, will be restricted to revolution songs on the Internet that feature the voices of pro- and anti-government politicians. I view this repertoire as a particularly salient expression of citizen empowerment through the interpretation and evaluation of truth (*pravda)*, a concept understood in the rhetoric of the revolution as the

public's 'right to know' about what is at the core of post-Soviet Ukrainian government propaganda.

Musicology and the Internet

Internet music has become an increasingly popular topic of study in musicology. Much of the literature has Western biases, however, and neglects the local social and political contexts in which Internet music is situated. Thus, a review and critique of recent literature will frame the research presented in this article. The December 2005 issue of the journal *Contemporary Music Review* featured articles that analyze the Internet as a musical space and as a network that enables collaborative musical improvisation.[9] Such research builds on work by ethnomusicologists and popular music scholars who have demonstrated the impact Internet technology has had on modes of musical communication and the ways in which the Internet has influenced avenues of musical production, consumption, and dissemination within global(ized) music markets.[10] Scholars have considered the effects of Internet-based music technology on issues of musical copyright[11], and others have pointed to the ways in which the Internet has presented new opportunities for musical composition, the archiving of music, and the public dissemination of musicological scholarship.[12]

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9 Dante Tanzi, 'Language, Music, and Resonance in Cyberspace,' *Contemporary Music Review* 24 (6), 2005: 541-49; Hugill, Andrew. 2005. Internet Music: An Introduction. *Contemporary Music Review* 24 (6): 429-37.

10 René T. A. Lysloff, 'Musical Community on the Internet: An On-line Ethnography,' *Cultural Anthropology* 18 (2), 2003: 233-63; Steve Jones, 'Music and the Internet,' *Popular Music* 19 (2), 2000: 217-30; Timothy D. Taylor, *Strange Sounds: Music, Technology, and Culture*. New York and London: Routledge, 2001.

11 Reebee Garofalo, 'From Music Publishing to MP3: Music and Industry in the Twentieth Century,' *American Music* 17 (3), 1999: 318-53; Michel Norbert, *A Theoretical and Empirical Analysis of the Impact of the Digital Age on the Music Industry*. PhD dissertation, University of New Orleans, 2004; David Park, *Conglomerate Rock: The Music Industry's Quest to Divide Music and Conquer Wallets*. PhD dissertation, University of Wisconsin, Madison, 2003; Catherine Karl Wright, 'Digital Piracy: The Investigation of Music Downloading Via Peer-to-Peer Connections on the Internet.' PhD dissertation, Regent University, 2005.

12 William Duckworth, 'Making Music on the Web,' *Leonardo Music Journal* 9, 1999: 13-17; Sergi Jordà, 'Faust Music on Line: An Approach to Real-Time Collective Composition on the Internet,' *Leonardo Music Journal* 9, 1999: 5-12; Barbara Rose

A close examination of contemporary musicological research, however, reveals a disproportionate emphasis on Internet music in the West, and in the United States in particular. Studies tend to over-emphasize English-language music and rely on research that looks predominantly at English-language chat rooms, electronic mailing lists, and websites.[13] Though English is apparently the lingua franca of the Internet, an over-emphasis on English-language data and a tendency to disregard foreign-language websites can lead to skewed interpretations and misleading conclusions.[14] Such a geographically and culturally limited approach to web-based music (music that is allegedly accessible to users worldwide) promotes an uncritical celebration of what is seen to be the developed world's technology and a concurrent dismissal of cybermusical phenomena in non-Western contexts. For example, Karl Neuenfeldt's Internet-based research on the relationship between gender and the didjeridu relies on information gathered from online discussions among computer users in Australia, Canada, the United States, Sweden, and South Africa.[15] The email list from which Neuenfeldt drew his data was hosted at Mills College in California and, as Neuenfeldt notes, the discussion of the didjeridu did not include any responses from female users or from Aboriginal

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Lange, 'Hypermedia and Ethnomusicology,' *Ethnomusicology* 45 (1), 2001: 132-49; Steven Wright, 'Technology. *Notes,' Quarterly Journal of the Music Library Association* 56, 2000: 591-97.

13 Michael Ayers, ed., *Cybersounds: Essays on Virtual Music Culture*. Digital Formations 31. New York: Peter Lang, 2006; Marjorie D. Kibby, 'Home on the Page: A Virtual Place of Music Community,' *Popular Music* 19 (1), 2000: 91-100; Timothy D. Taylor, *Strange Sounds: Music, Technology, and Culture*. New York and London: Routledge, 2001.

14 English is the web's 'unmarked' language, just as US domain names are unmarked by suffixes. For a critique of the Internet as a facilitator of Westernizing processes in non-Western contexts, see Gustavo Lins Ribeiro, 'Cybercultural Politics: Political Activism at a Distance in a Transnational World,' In *Cultures of Politics, Politics of Cultures: Re-visioning Latin American Social Movements,* edited by Sonia E. Alvarez, Evelina Dagnino, and Arturo Escobar, 325-54. Boulder, CO: Westview Press, 1998. In their study of online communities, Samuel Wilson and Leighton Peterson suggest that English may have been surpassed by other languages in terms of number of speakers online because residents of the United States and Canada account for less than half of the estimated number of Internet users worldwide (Samuel M. Wilson and Leighton C. Peterson, 'The Anthropology of Online Communities,' *Annual Review of Anthropology* 31, 2002: 453). This conclusion is weak, however, because it assumes a strict correlation between geographic location and language choice.

15 Karl Neuenfeldt, ed., 'The Issue of Gender,' In *The Didjeridu: From Arnhem Land to Internet*, edited by Karl Neuenfeldt, 99-105. Sydney: John Libbey, 1997.

players of the didjeridu in Australia. Research such as Neuenfeldt's often reveals more about who in the West initiates and controls Internet discourses on music than about global Internet music practices.

Questions posed by development theorist Arturo Escobar regarding technology's role as an impetus for cultural change around the globe are at the center of my study.[16] Anticipating anthropologist Arjun Appadurai's[17] notion of 'technoscapes,' Escobar questioned the types of social realities new technologies produce and the ways in which they influence modes of thinking and being in non-Western contexts.[18] In Ukraine, for instance, the Internet is perceived as a marker of Western modernity, as a symbol of social and economic status, as well as a communicative tool imbued with political meaning. Furthermore, as Jamie Shinhee-Lee discovered in his ethnographic research in Japan and Korea, one's level of access and interaction with the Internet is inflected by one's generation, class, language, ethnicity, gender, and geographical location.[19] Because the meanings people attribute to the Internet differ according to these factors, scholars who conduct Internet research must be careful not to project their particular configuration of assumptions and experiences with the Internet onto users elsewhere. To avoid such a trap, we should consider the informative and culturally sensitive study by David Hill and Krishna Sen[20] that analyzes the role of the middle class in establishing the Internet in Indonesia as a government opposition space in the mid-1990s, as well as research by Eric Harwit and Duncan Clark[21], who examine the government's attempts to regulate Internet content in China. These studies show that, in addition to expanding online research to consider non-English websites and networks, scholars must move beyond conducting research *on* the Internet and instead analyze people's interactions

16 Arturo Escobar, 'Welcome to Cyberia: Notes on the Anthropology of Cyberculture [And Comments and Reply],' *Current Anthropology* 35 (3), 1994: 211-31.

17 Arjun Appadurai, *Modernity at Large: Cultural Dimensions of Globalization.* Minneapolis and London: University of Minnesota Press, 1996.

18 Arturo Escobar, 1994: 214.

19 Jamie Shinhee-Lee, 'Discourses of Fusion and Crossing: Pop Culture in Korea and Japan.' PhD dissertation, Regent University, 2005.

20 David T. Hill, and Krishna Sen, 'Wiring the Warung to Global Gateways: The Internet in Indonesia,' *Indonesia* 63, 1997: 67-89.

21 Eric Harwit and Duncan Clark, 'Shaping the Internet in China: Evolution of Political Control over Network Infrastructure and Content,' *Asian Survey* 41 (3), 2001: 377-408.

with the Internet, taking into account individual experiences with interactive technologies in order to locate the Internet's effect on musical expression within broader political, economic, and socio-cultural processes.[22]

Background to the Orange Revolution: The Battle for Technology and 'Ukrainian Truth'

Beginning in the mid-1990s, the Ukrainian government under President Leonid Kuchma (1994–2004) began to increase its control over the media. An oligarchy of businessmen with political ties to the administration controlled the finances and programming of television and radio stations. They censored public information about the government as news of political corruption made international headlines with increasing frequency.[23] Because relatively few people in Ukraine had access to the Internet, the Ukrainian government at first paid little attention to the new technology.[24] Against this background of government control over the news reported by most national media outlets, the Internet emerged as a communication medium that could sidestep government censorship during the presidential elections of 2004.

In addition to controlling newspapers and the broadcast media, the government was implicated in threats, intimidation, and violence against independent journalists who failed to follow the party line. In 2000, independent Internet journalist Heorhiy Gongadze mysteriously disappeared.

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22 Paul D. Greene and Thomas Porcello, eds., *Wired for Sound: Engineering and Technologies in Sonic Cultures*. Music/Culture. Middletown, CT: Wesleyan University Press, 2005.

23 For instance, Pavlo Lazarenko, prime minister of Ukraine from 1996-97, was arrested in Switzerland in 1999 and later indicted in California for allegedly using US banks to launder $114 million in funds stolen from the Ukrainian state between 1992 and 1999. In August 2006, Lazarenko was convicted and sentenced to nine years in prison in the United States. See Taras Kuzio, 'When Oligarchs Go into Opposition: The Case of Pavlo Lazarenko,' *Russia and Eurasia Review* 2 (11), 2003: 6-8.

24 Since 2001, the 'ua' (Ukraine) domain has been managed by Hostmaster, a private company. The government attempted to gain control over the domain name during the 2004 presidential election campaign. See Taras Kuzio, 'Ukrainian Authorities Tighten their Grip on the Internet,' *Ukrainian Weekly* (December 14, 2003): http://www.ukrweekly.com/Archive/2003/500304.shtml (online article, accessed October 12, 2006).

Gongadze had co-founded the newspaper *Ukrayinska Pravda* (Ukrainian Truth) in April of 2000, publishing it on the Internet in an effort to avoid censorship from the government and pressure from oligarchic businessmen.[25] The newspaper produced a number of investigative articles about Ukraine's corruption scandals and published commentaries critical of the administration. Gongadze disappeared in September 2000 and his headless body was found one month later. In November, Socialist Party leader Oleksander Moroz released recordings that allegedly featured the voice of President Kuchma ordering aides to stop Gongadze from investigating and exposing high-level corruption in the government.[26]

Public reaction to the 'Cassette Scandal,' which Western scholars also dubbed 'Kuchmagate,' culminated in a series of protests in 2001 under the slogan 'Kuchmu het!' (Kuchma, out!). With seventy percent of the population deeply mistrustful of Kuchma, people took to the streets to demand his resignation two years before the end of his term.[27] The powerful Kuchma administration crushed these protests and increased pressure on journalists to adhere to government-issued *temnyky*, secret instructions sent to television stations advising them as to what they should cover and what they should ignore.[28] Gongadze's colleague and the co-founder of *Ukrayinska Pravda*, Olena Prytula, published transcripts of the Kuchma tapes, which made the Internet newspaper the most visited website in Ukraine. Anders

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25 The Ukrainian/Russian/English language newspaper *Ukrayinska Pravda* may be accessed at http://www.pravda.com.ua/en.

26 The tapes constitute approximately seven hundred hours of conversation secretly recorded in President Leonid Kuchma's office during 1999 and 2000 by Kuchma's bodyguard, Mykola Melnychenko, who was granted asylum in the United States in 2001. The private US audio-verification laboratory Bek Tek, which was hired to analyze the tapes, deemed them authentic and asserted that they had not been tampered with. Some of the tapes had been transcribed and published on Ukrainian Internet sites by the end of 2000. To date the tapes have not been officially recognized as genuine by the government in Ukraine.

27 Paul Starobin and Roman Olearchyk, 'Dashed Hopes for Ukraine's Economy? A Government Scandal Threatens Growth and Could Jeopardize EU & NATO Membership,' *Business Week Online* (November 25, 2002): http://www.business week.com/magazine/content/02_47/b3809176.htm (online article, accessed December 15, 2006).

28 Temnyky were first utilized in late 2001 during the campaign for the March 2002 parliamentary elections. For more information, see Human Rights Watch. 2003. Negotiating the News: Informal State Censorship of Ukrainian Television (March 17): http://www.hrw.org/reports/2003/ukraine0303/Ukraine0303.pdf (online report, accessed November 15, 2006).

Åslund, director of the Russian and Eurasian Program at the Carnegie Endowment for International Peace, interpreted people's interest in the newspaper this way: 'If it's so good that people get murdered for it, it must be worth reading'.[29]

The murder of Heorhiy Gongadze created an unprecedented awareness among Ukrainian citizens of Internet technology. The event positioned the Internet in Ukraine as a powerful, progressive, democratic, and potentially dangerous anti-government space. Young adults throughout western and central Ukraine's urban centers (where the support for the anti-government protests in 2004 was strongest) turned to the Internet to access unbiased news and information and to subvert government-controlled media outlets such as television, radio, and newspapers, viewing the Internet's information and images as content untainted by government spin-doctors.[30] Because a large segment of government supporters were members of the older generation, and since the official media was more popular in eastern and southern Ukraine where support for the government in power was strongest, the Orange Revolution marked a turning point for Ukrainian political expression as younger voters began to voice political dissent and culture-related grievances over the Internet.[31]

For these anti-government Internet users in Ukraine, cyberspace played an important role in mobilizing civic awareness. Only a small segment of the population had direct access to the Internet, but the new technology and the discourse surrounding it entered the lives of opposition supporters indirectly. In urban settings, for example, news printouts from the Internet circulated widely among government opponents, expanding their information network to non-virtual contexts. As Olena Prytula explains, 'People printed online articles and took them to their relatives, friends, and even to the rural regions where

29 Quoted in: Sara Catania, 'Hellraiser: Olena Prytula, Safeguarding Ukraine's Orange Revolution,' *Mother Jones* (November/December 2005): http://www.motherjones.com/news/hellraiser/2005/11/prytula.html (online article, accessed December 22, 2006).

30 Natalka Zubar, 'In the Beginning Was the Word, and the Word Was...: The History of Maidan (Part I),' *Maidan: An Internet Hub for Citizens Action Network in Ukraine,* 2006: http://eng.maidanua.org/node/459 (online article, accessed December 15, 2006).

31 Olga Filippova, 'Anti-Orange Discourses in Ukraine: A Cyber-Ethnography of the Political Opposition,' Paper presented at the First Annual Danyliw Seminar in Contemporary Ukrainian Studies, University of Ottawa, September 30, 2005.

their parents lived. These articles were republished in regional presses, penetrating to even the most remote corners of Ukraine, where the Internet is still a novelty'.[32] Thus, online politicking merged with off-line socio-political networking. In Ukraine, Internet cafés continue to be the most common access points to the Internet. Many Internet cafés are adjacent to bars and discos frequented by young people, and these locations extend the sociability of the Internet as people visit cafés in groups or share computer stations with friends. Such face-to-face sociability associated with cyberspace reveals that the socio-political significance of the Internet often lies beyond the Internet itself.

Picture 1. November 24, 2004, the third day of protests on Independence Square in Kyiv, Ukraine. Opposition supporters face a high-tech stage from which politicians spoke and musicians performed during the Orange Revolution. Photograph by the author.

32 Olena Prytula, 'The Ukrainian Media Rebellion,' In *Revolution in Orange: The Origins of Ukraine's Democratic Breakthrough*, edited by Anders Åslund and Michael McFaul, 103-24. Washington, DC: Carnegie Endowment for International Peace, 2006: 108.

Music, Violence, and the 2004 Presidential Election in Ukraine

On November 21, 2004, the challenger Viktor Yushchenko lost the presidential election to government candidate Viktor Yanukovych in what was widely believed to be a rigged election. By the following morning, when the election results had been announced along with the broadcast of Yanukovych's acceptance speech on Ukrainian state-run television stations, hundreds of thousands of people had assembled in protest on Kyiv's Independence Square (known in Ukrainian as *Maidan Nezalezhnosti* and referred to simply as *Maidan*).

I was in Ukraine during this time, having returned to my dissertation field site in Uzhhorod, the administrative capital of the Transcarpathian region in western Ukraine, to serve as an international observer for the presidential election. During my fieldwork among Roma (Gypsy) communities in 2002, I witnessed extensive corruption in the Ukrainian government, including unwarranted arrests and trials. Therefore, I felt it was my moral responsibility to interlocutors, friends, and family, and also my civic duty, as an ethnic Ukrainian living in the United States, to do what I could during the presidential election. I understood this event to be the most significant attempt at reform since Ukraine's declaration of independence from the Soviet Union in 1991.

My interest in Ukrainian politics began in 2001, when, in the wake of Gongadze's murder and President Kuchma's 'Cassette Scandal,' reform-oriented economist Viktor Yushchenko was forced to resign from his position as prime minister, an act that generated political chaos in the country. As Yushchenko's camp mobilized for the 2002 parliamentary elections in Ukraine (a campaign that I observed firsthand during my ethnomusicological fieldwork), I witnessed ruthless political machinations practiced by the government in schools, factories, and businesses throughout the country. In May 2004, the nation was stunned by two scandals in the region of Transcarpathia: the mayoral elections in Mukachevo had been rigged in favor of the government candidate, and Professor Volodymyr Slyvka, Rector of Uzhhorod National University, died under mysterious circumstances. Professor Slyvka, who had repeatedly attempted to shield students from voter

manipulation, was found dead with his wrists slashed and a knife through his heart. Officials dismissed his death as suicide.[33]

Violence against members of the opposition continued during the election itself.[34] Opposition voters were beaten and ballot boxes were sabotaged and set on fire. On November 21, 2004, at the polling station where I monitored the presidential elections in central Uzhhorod[35], members of the election commission who had been bribed by government officials forced university students to show their ballots prior to casting to ensure they had voted for Viktor Yanukovych. Those who did not comply were warned they would suffer repercussions at school. At three a.m. during the polling station's vote count, someone cut off the electricity, plunging the building into darkness. People began to shout nervously at each other because everyone present knew that any ballot tampering would result in the nullification of all the votes cast at the polling station. One local election observer attempted to maintain order by shining his flashlight into people's eyes and ordering them to step away from the ballot table while I used my cell phone to call the central headquarters of Yushchenko's political party in town. Within minutes, members of Yushchenko's team arrived outside the station and a heated verbal exchange took place between them and men allegedly hired by the Yanukovych camp to attack commission members and steal the ballot boxes en route to the regional polling office.

At six a.m. the next morning, after twenty-four hours at the polling station, a media blackout meant that I still had no access to any information regarding polling outcomes. My cell phone battery had died and, as I smoked a cigarette in the bone-chilling morning air, I wondered whether I was already caught in the middle of a civil war. My choices were to walk ten kilometers to the Slovakian border and leave the country or to try to make it to my family's

33 On May 13, 2005, the former governor of Transcarpathia, Ivan Rizak, was formally charged in connection with Professor Slyvka's death.

34 For a more detailed account of election fraud and voter harassment in Transcarpathia and Cherkasy, see Rory Finnin and Adriana Helbig, 'Prelude to a Revolution: Reflections on Observing the 2004 Presidential Elections in Ukraine,' *Harriman Review* 15, 2005: 1-8.

35 I had previously served as an election observer for the October 31, 2004, primary elections. In response to the fraud I witnessed at that time, I returned to the same polling station in Uzhhorod on November 21, 2004, accompanied by my sister with whom I worked on the monitoring team.

house in Lviv, and then onto Kyiv, the capital, where in the days preceding the election, members of Yushchenko's opposition party had been urging people over the Internet to gather should election irregularities take place. The Uzhhorod teller informed me that he had orders not to sell any train tickets to Kyiv that morning. In the end, it would take me three days to travel the eight hundred kilometers from Uzhhorod to Kyiv by car (a journey that normally takes ten hours) because the police had set up roadblocks along the roads leading to Kyiv to prevent people from mobilizing.

Only one independent television station, Kanal 5, dared to broadcast (on air or on the Internet) the events unfolding in Kyiv. I had no access to the Internet since the Internet café in Uzhhorod was closed, and I could not watch Kanal 5 in Transcarpathia due to periodic blackouts of the broadcast station in the region, so it was only upon my arrival in Kyiv that I grasped the massive scale of the protests. I postponed my flight back to New York, bought a pair of *valianky* (woolen boots without which one cannot walk very far on Kyiv's ice-covered sidewalks), and headed for the Maidan, now a sea of sound awash in orange. All around me, thousands of people shouted 'Yu-schen-ko! Yu-schen-ko!' to the rhythmic accompaniment of bangs on overturned oil barrels and other noisemakers. I was so overwhelmed with emotion that I would not have noticed my tears had they not stung my face in the freezing winter air. The protests reflected my personal goals for reform and solidarity on a scale I had not thought possible in post-socialist Ukraine.

As I made my way through the crowd along Kyiv's wide main boulevard, Khreschatyk Street, I heard chants that came to represent the movement, including 'Nas bahato, nas ne podolaty' (Together we are many, we won't be defeated). This chant would become the Orange Revolution's version of 'El pueblo unido jamás será vencido' (The people united will never be defeated), Che Guevara's declaration made famous in song during Pinochet's 1973 coup in Chile.[36] In the first days of the revolution, the Carpathian music group Hrinzholy (a Hutsul word meaning 'wooden sleigh'), rapped 'Nas bahato, nas ne podolaty' to a hip-hop beat and uploaded their song to a website sponsored by supporters of the opposition movement. Downloaded more than one hundred thousand times after only two days

36 Mark Mattern, *Acting in Concert: Music, Community, and Political Action.* New Brunswick, NJ: Rutgers University Press, 1998.

online, 'Razom Nas Bahato' quickly became the anthem of the revolution (Kiev City Guide 2006).[37] As one of the earliest revolutionary songs, its style would exemplify a broader stylistic category of 'orange' musical genres: Ukrainian-language hip-hop and what I call TAK-techno ('tak' in Ukrainian means 'yes,' the campaign slogan of Viktor Yushchenko's political party *Our Ukraine*).

The refrain of the song 'Razom Nas Bahato' is based on a duple-meter rhythmic pattern to which the words 'Razom nas bahato, nas ne podolaty' are set syllabically. This 'anthem' expresses voter anger and disagreement with the initial outcome of the presidential election in which Viktor Yanukovych had been declared the winner. Moreover, it conveys people's frustration with corruption, the falsification of election results, and the government's persistent attempts to deny the will of the electorate. The line 'we aren't goats' responds to Yanukovych's provocative use of the Russian word *kozly* (goats) to deride his opponent's supporters as 'bastards' during the campaign. The incorporation of this Russian word in an otherwise Ukrainian-language song supports Bohdan Klid's[38] argument that the long-running tension between Ukrainian and Russian language use in Ukraine played a significant role in politicizing popular music during the Orange Revolution.[39] The line 'Under-

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37 See Kiev City Guide, Anthem of a Revolution, 2006. http://kievukraine.info/greenjolly.htm (online article, accessed November 29, 2006); Maria Sonevytsky, 'Leather, Metal, Wild Dances: Ukrainian Pop's Victory at the 2004 Eurovision Song Contest and the Politics of Auto-Exoticism,' Paper presented to the US Branch of the International Association for the Study of Popular Music, Nashville, TN, February 17, 2006. Hrinzholy would later anglicize their name to GreenJolly after being chosen to represent Ukraine at the Eurovision contest that took place in Kyiv in May 2005.

38 Bohdan Klid, 'Rock, Pop, and Politics in Ukraine's 2004 Presidential Campaign and Orange Revolution,' *Journal of Communist Studies and Transition Politics*, forthcoming.

39 Many analyses of the relationship between music and politics in Ukraine focus on the controversies over the status and public use of Ukrainian and Russian language in post-Soviet Ukraine (e.g., Laada Bilaniuk, *Contested Tongues: Language Politics and Cultural Correction in Ukraine.* Culture and Society After Socialism. Ithaca, NY: Cornell University Press, 2005). Literary scholar Romana Bahry (Romana Bahry, 'Rock Culture and Rock Music in Ukraine,' In *Rocking the State: Rock Music and Politics in Eastern Europe and Russia*, edited by Sabrina Petra Ramet, 243-96. Boulder, CO: Westview Press, 1994) identifies language choice in rock music as an expression of political ideology during Ukraine's struggle for independence from the Soviet Union. Anthropologist Catherine Wanner (Catherine Wanner, 'Nationalism on Stage: Music and Change in Soviet Ukraine,' in: *Retuning Culture: Musical*

standings, no!' (poniatia, ni!) uses prison jargon to call attention to Viktor Yanukovych's prison record, highlighting and rejecting the government's 'understandings' with *bandyty*—literally 'bandits,' generally used to refer to any (male) person in post-socialist society who breaks the law. Thus, this song is an example of a broader trend in which popular music offered people a way to express their discontent with a corrupt and unresponsive government. The song's lyrics translate as follows:

Razom Nas Bahato (Together We Are Many)

Together we are many,
We will not be defeated . . .

Falsifications, no!
Machinations, no!
Understandings, no! no!
No to lies!
Yushchenko, yes!
Is our president, yes!

Changes in Central and Eastern Europe, edited by Mark Slobin, 136-55. Durham, NC, and London: Duke University Press, 1996) shows how language choice served as a divisive and alienating force that politicized music festivals in the years following independence in 1991. Historian Bohdan Klid (footnote 38) argues that political leaders variously used Russian- and Ukrainian-language popular music in the 2004 presidential elections to garner political support in particular segments of the population. These readings of language's role in politicizing musical expression in Soviet and post-Soviet Ukraine are compelling, especially in light of the murder of Ukrainian popular singer Ihor Bilozir, who, in 2001, was beaten to death by two Russian youths for singing Ukrainian songs in a public café in Lviv (Sochan, Maria. 2000. Thousands Attend Funeral of Composer Ihor Bilozir. *Ukrainian Weekly* (July 2): http://www.ukrweekly.com/Archive/2000/270010.shtml (online article, accessed November 29, 2006). Moreover, during the Orange Revolution, presidential candidates divided along political lines in their associations with Ukrainian musicians, with thirty-eight Russian-language popular singers supporting the pro-Russia government candidate Viktor Yanukovych, and twenty-two Ukrainian-language singers supporting the Western-leaning reformist Viktor Yushchenko. Nevertheless, I believe that an analysis that focuses on language choice overshadows the complex cultural, economic, and social nuances that contribute to the politicization of popular music in Ukraine. Furthermore, focusing on language inadvertently emphasizes nationalist ideology, a flawed perspective when applied to a revolution fought on civic principles rather than solely ethnic ones.

Yushchenko, yes! yes! yes!

Together we are many,
We will not be defeated . . .

We aren't goats (*kozly*)
We are Ukraine's
Sons and daughters.
It's now or never,
Enough waiting!
Together we are many
We will not be defeated.

Together we are many,
We will not be defeated . . .

The physical presence of musicians performing live during the election campaign and on the Maidan stage during the revolution augmented the political strength of the music itself. In an interview two days before the election, Oleh Skrypka, leader of the country's oldest punk-funk-folk band VV, or *Vopli Vidopliasova* ('*vopli*' means 'screams, howls'),[40] said,

> The situation is so charged that the country stands on the brink of revolution or war. Emotions are heightened and there is a feeling of patriotism, particularly among the youth who come to these events, to our concerts. We find ourselves in a situation that is somewhat unusual for us—something in between a concert and a political meeting. This unites the energy of a concert with that of a political meeting. There is a flavor of Latin America—that you are like Che Guevara, who appears and brings truth to the people. These are strong emotions.[41]

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40 Vidopliasov is also a character from Dostoyevsky's Stepanchikovo Village.

41 Oleh Skrypka, 'Oleh Skrypka: My vykonuiemo svii hromadianskyi oboviazok,' [We Are Doing Our Civic Duty.]. *Postup* (November 19, 2004): http://postup.brama.

After the revolution, Skrypka spoke more frankly about the musicians' involvement: 'Our role was pivotal because there was a national blackout on Yuschenko's campaign by state-controlled radio and television stations. The only way to get his message out was for us to speak directly to the people during our concerts'.[42] The ability to disseminate information about such concerts via the Internet and through cell phone text messaging played a pivotal role in helping raise the public's awareness of government corruption. During the numerous conversations I had with people on Maidan, fellow protestors admitted that they accepted the information they received through such technological media and at rock concerts as *pravda*, truth.

The presence of musicians on Maidan and the association between the opposition and the genre '*PolitRok*' (literally 'political rock,' the title of a song sung on Maidan by VV) were not spontaneous. Rather, they were built on political structures established during the 2004 presidential campaign that precipitated the revolution. The campaign was in part fought with music, as both candidates had enlisted the support of popular musicians, staged concerts, and distributed recordings. By the end of the campaign, Oleh Skrypka had become one of Yushchenko's official representatives, and Sviatoslav Vakarchuk, the singer from the group *Okean Elzy*, had worked as Yushchenko's advisor on youth policies. Yushchenko's official site featured the singer Rosava's 'Our Ukraine,' a campaign song for Yushchenko's political party of the same name. Yushchenko's personal website continues to offer a free download of the music video of 'Our Ukraine' that features a montage of footage of Yushchenko's presidential campaign set to Rosava's vocal accompaniment:[43]

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com/dinamic/i_pub/usual.php?what=33591&raz=1 (interview with Liubko Petrenko, accessed December 19, 2006).

42 Qutoted in: Daniel Brown, 'From the Red to the Orange Revolution: Singing in Ukraine's New Era,' *Mondomix: All Colors of Music* (January 12, 2005): http://www.mondomix.com/minisite .php?reportage_id=2535 (online article, accessed November 29, 2006).

43 The Yushchenko/Rosava 'Our Ukraine' video is accessible from Viktor Yushchenko's personal website, http://www.yuschenko.com.ua/ukr/present/News/ 1132.

Nasha Ukraina (Our Ukraine)

You rose from bed this morning
And said: Enough—changes are needed!
Your head on your shoulders, your aims—progressive,
You need to take the situation in Ukraine into your own hands!

Your word is worthy, it has will and power,
When you are silent, do not expect a miracle,
To change the world, begin with yourself
I believe in you!

This is my country—native Ukraine!
This is your country—our Ukraine!

Wherever and whoever you are, be yourself,
What was, is past, washed away with water!
Begin life from a new page,
Create this world, it is your doing!

Look back—these are your dreams,
Brothers, let us unite—we have the same hopes!
In your choices and acts, rely on yourself,
You can, I believe in you!

They say the youth is apathetic, it is spoiled,
That is not us, we are free, our chains are broken!
We want to be heard, we are Ukraine!
We are the future!

This is my country—native Ukraine!
This is your country—our Ukraine!

The words of 'Our Ukraine' encourage young citizens to take a proactive stance on the political issues of the day. To a funky reggae beat, the singer tells her listeners to rely on themselves and to realize that it is up to them to change what has gone wrong in Ukraine. The song promotes the idea of civic duty and responsibility at a time when government depravity had become expected in many circles.

Musicians who supported Viktor Yanukovych's 2004 campaign did not fare well after the revolution. For instance, Ani Lorak's public support for Yanukovych ruined her bid to represent Ukraine at the Eurovision 2005 contest held in Kyiv. (Orange Revolution supporter Ruslana Lyzhychko had won the contest in 2004.) Lorak lost the vote to GreenJolly (previously Hrinzholy), creators of 'Razom Nas Bahato.'[44]

If, as Laura Lengel[45] proposes, the first Internet war was the War in the Balkans (1991–2001), then the Orange Revolution was likely the first revolution waged with MP3s. It would be difficult to count how many songs were listened to on the Internet during the Orange Revolution by supporters in Ukraine and abroad. The 'Ukrainian Group' on the Multiply.com network, however, provides some indication of how the Internet functioned as a community space during this time. Users from Ukraine, Europe, and North America posted up-to-the-minute news and commentary on political events in English, Ukrainian, and Russian. They shared blogs, clips of Maidan musical performances, political satire, political video games, recordings of speeches by various public figures, and music, pictures, and live video feeds of the protests. Based on the times and dates of their posts, it seems that a significant number of users were continually online. More than three hundred

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44 GreenJolly had been a relatively unknown group prior to the Revolution and had not been registered to participate in the nationwide competition to decide Ukraine's candidate for Eurovision 2005. The breaking of protocol to include GreenJolly in the candidate list of musicians from Ukraine alienated many supporters of Viktor Yanukovych from the Eurovision contest and politicized Ukraine's position as participant and as host of Eurovision. The Eurovision committee initially rejected GreenJolly's entry because of the overtly political text of 'Razom Nas Bahato.' Popular demand prevailed, however, and GreenJolly was allowed to represent Ukraine, placing twentieth out of twenty-six bands after receiving low scores (of two and zero points, respectively) from the Russian and Byelorussian judges.

45 Laura B. Lengel, ed., *Culture and Technology in the New Europe: Civic Discourse in Transformation in Post-Communist Nations.* Civic Discourse for the Third Millennium. Stamford, CT: Ablex Publishing, 2000: 5.

users from the 'Ukrainian Group' on Multiply.com, for instance, viewed the pictures I posted upon my return from Kyiv only minutes after I had uploaded them to my homepage. Such a high level of cyberactivity suggests that the Internet was one of the most significant sites in which the Orange Revolution was initiated, fought, and shared. Indeed, the Internet was a rare but critical space in which Ukrainians could interact freely and communicate beyond the strictures of government control. This example reinforces how crucial it is that scholars recognize the Internet as a key site for interaction and community building, not just in the West, but in non-Western contexts as well.

TAK-Techno and the Efficacy of the Digitized Voice

As I mentioned earlier, many of the Orange Revolution's protest songs spliced together recorded segments of spoken words from political speeches. This *musique concrète* aspect of the Orange Revolution's music derived its expressive power from the highly politicized discourse about technology and truth surrounding Gongadze's murder and the Kuchma tapes. The 'digitized voice' became symbolic of the struggle between the government and the people, between spin and *pravda*. This music, which I collectively refer to as TAK-techno, also served as a metanarrative about the revolution itself. Yushchenko's speeches to protestors on Maidan were spliced and looped over techno dance beats. These songs, available on the Internet and on bootleg CDs as well as on discs officially issued by the party *Our Ukraine*, reframed real-time occurrences to motivate protestors. The CDs were among the most sought after 'orange souvenirs' of the revolution, in addition to the official orange *Our Ukraine* scarves, hats, and key chains sold by entrepreneurs on the streets of Kyiv and on eBay.

Numerous sampled songs convey the politics of the recorded spoken voice during the Orange Revolution. For instance, the disc *Orange Jazz,* the cover picture of which can be seen on the front-jacket of this book, was issued in November 2004 by Liberty Records (a pseudonym). It opens with a track that features protestors on Maidan shouting 'Yu-schen-ko' and 'Nas bahato, nas ne podolaty,' vocal recordings that merge into an instrumental jazz rendition based on the melody of 'El pueblo unido jamás será vencido.'

Orange Jazz was produced by Victor Ovchinnykov and Olexiy Kogan, whose names appear on the CD as pseudonyms—'Viktor Freedom' and 'Alex Maidan.' Olga Dombrovska, who designed the cover art that features photos by Yefrem Lukatsky, is represented by the pseudonym 'Olya Volya' ('volya' means 'freedom' in Ukrainian).

Among the Orange Revolution CDs I purchased from street vendors near Kyiv's Independence Square is *My Razom . . . Pisni Pomaranchevoho Maidanu* (We Are Together: Songs of the Orange Maidan, 2004). The disc, issued officially by *Our Ukraine*, is stamped with a 'not for retail sale' decal and features fourteen tracks by popular musicians such as Maria Burmaka, Okean Elzy, Tartak, and Vopli Vidopliasova. Numerous bootleg discs include the same copyrighted songs that are on the official disc, as well as songs that incorporate sonic representations of the revolution itself, including speeches by politicians, live performances, and the chanting and cheering of the protestors. The track, 'Yushchenko/Beethoven Mix' that appears on a bootleg *pomaranchevi* (orange) CD titled *TAK: Nas ne podolaty* (YES: We Won't Be Defeated, 2004) exalts Viktor Yushchenko by featuring a portion of a speech in which he states, 'Progress and good always begins with freedom.' Spliced over a techno rendition of Beethoven's 'Ode to Joy' melody, Yushchenko continues, 'Glory to Ukraine! Glory to each of you!' The song layers Yushchenko's voice over recordings of crowds chanting their support for him during the Orange Revolution. When I first heard these songs over the loudspeakers on Maidan, the crowds responded with shouts of support, adding their 'live' voices to amplified recordings of earlier protesters. Yushchenko's recorded voice, mixed into the song, distances him from the corruption within the Ukrainian government and unites him with the *narod*, the people. Though Yushchenko was not always physically present on the Maidan, the CD's track afforded him a continual virtual presence among the crowd. This sonic overlap between mediated and live performance in TAK-techno recalls Philip Auslander's[46] argument that much of what we think of as 'live' music has been filtered and mediated, and that the categories of 'live' and 'mediated' overlap.

46 Philip Auslander, *Liveness: Performance in a Mediatized Culture*. New York and London: Routledge, 1999.

TAK-techno songs dealt differently with the voice and words of government candidate Viktor Yanukovych—perhaps because the 'Cassette Scandal' had already marked the recorded voices of government officials as untruthful. In 'Yanukovych/Era Mix,' a song featured on the 'orange' bootleg CD *TAK: Nas ne podolaty*, speeches by Yanukovych are spliced and manipulated to redirect his meaning, remixing his words to create the 'confession' of a government criminal. The song begins with a Latin chant that both serves to ritualize Yanukovych's remixed words and inflects them ironically as a profession of *pravda*. Yanukovych is heard to state, 'In these tough times, I wish to share the truth. Those who stole from the people are once again clambering to get back into power. This is because it is easier to rule people who are poor and live in fear.' The song ends with Yanukovych expressing his changed sentiment, 'This is why I say 'Yes. Yes, Yushchenko!'' Ludmila Yanukovych, the candidate's wife, did not escape sonic hazing either. The TAK-techno song 'Orange Sky,' which refers to a Soviet-era song by the same name, includes an excerpt from a speech by Ludmila Yanukovych in which she infamously warned her husband's supporters in Donetsk (a city in eastern Ukraine where government support was strongest) that protestors were lured to Kyiv by oranges injected with drugs.

More than simply humorous, these songs politicized the discourses of vocal authenticity and truth. Political authenticity, understood on a continuum between *pravda* and propaganda, had a correlate in ideologies of musical and technological authenticity: liveness and mediation. Thus TAK-techno recordings treated the two candidates in markedly different ways: whereas Yuschenko was heard in relatively unedited clips of his live, public speeches, recordings of Yanukovych were mixed, remixed, and edited into completely new utterances with drastically altered political content. While the recordings of Yuschenko's (live) voice reinforced the protestors' trust in his political messages, the manipulation of Yanukovych's recorded speech in TAK-techno songs empowered protestors with symbolic control over otherwise corrupt and untrustworthy government political rhetoric. The representation of Yuschenko's voice as live, *zhyvyí* (translated also as 'alive,' 'real'), and Yanukovych's as mediated and insincere shows how the ideological opposition between liveness and mediation was inflected during the Orange

Revolution in terms of truth and deception, and technological mediation was articulated in terms of political authenticity. Although both candidates' voices were technologically manipulated, only Yuschenko was understood to radiate *pravda*.

Conclusion

In the years just prior to the Orange Revolution in Ukraine, the Internet was new, relatively unknown, and uncontrolled—its potential as a powerful medium had not yet been recognized by officials or by consumers. Thus, the technology was uniquely situated to become a crucial space of popular political opposition once the Orange Revolution had begun. With the death of Internet journalist Heorhiy Gongadze and the 'Cassette Scandal,' the importance of the new technology increased tremendously. During the Orange Revolution, musicians and the songs they composed, performed, and disseminated drew attention to censorship, violence, corruption, and the lack of a free Ukrainian press. Much of this musical activism was conducted over the Internet. As a result, any analysis of the music associated with the revolution demands an examination of the interaction between technology and expressive musical culture, and the role this interaction played in the revolution's events. This case study identifies the necessity of analyzing Internet music in a more culturally and geographically nuanced way and urges scholars to refrain from strict theoretical and methodological binaries in their analyses of online and off-line behaviors.

The anonymity of the DJs who mixed the TAK-techno recordings, the pseudonyms invoked by producers of CDs such as *Orange Jazz*, the apparent disregard of copyright laws with regard to 'orange' bootleg CDs, and the musical remixes of recorded speeches from undocumented sources beg a deeper analysis of the relative political and social agency of producers and consumers of the Orange Revolution's music. The political goals of protestors were articulated through music, video, speeches, and slogans, organizing diverse groups around a new 'orange' genre of popular culture. While many of TAK-techno's producers remained anonymous, their recordings were filled with the chants and slogans of protestors. Because the music's creators were

themselves anti-government protestors, TAK-techno was built around audience participation and response. TAK-techno's composers and producers continuously adjusted their political aims and included the voices of listener-protestors in the recordings they produced. The widely disseminated images of enormous crowds on Maidan and recordings of their calls for political reform located the political power of the Orange Revolution not with behind-the-scenes producers and organizers, but with the consumers and audiences whose engaged public participation, much of which was enacted over the Internet, reversed the outcome of a presidential election and brought historic political change to their country.

Foreign Intervention in the 2004 Elections

‘Political Technology’ versus NGOs

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In Russia, ‘managed’ or ‘directed democracy’ was firmly entrenched by the time of the election cycle of 2003-04. In Ukraine, however, the 2004 presidential election produced a tumultuous contest and a bitterly-disputed outcome. Russian methods – the crude fraud and faux-sophisticated manipulations of the self-proclaimed political technology ‘industry’ – determined how the election was fought, but were ultimately defeated. Russia, on the other hand, accused the West of exporting its own specific ‘election technologies’ to Ukraine, and these criticisms found an echo in certain circles in the West. This article seeks to compare the role of the two sides and their apparently different methods.

Russia: Project ‘Stop Yushchenko’

In principle, Russian political technologists could work for anybody. They are after all defined by their *prodazhnost'* (corruptibility). The leading Russian technologist Gleb Pavlovskii claims to have been approached in September 2004 by the Our Ukraine financier Petro ‘Poroshenko, who made an open commercial proposition to cooperate with the Yushchenko team’,[1] although Pavlovskii politely declined the intellectually challenging idea of working for both sides. Also supposedly approached was Aleksei Sitnikov of the Moscow firm Image-Kontakt[2], who had also worked for Mikhail Saakashvili during Georgia’s ‘Rose Revolution’ in 2003, allegedly advising him on the art of

1 Interview with Gleb Pavlovskii in *L’vivs’ka hazeta*, 4 February 2005; www.gazeta.lviv.ua/articles/2005/02/04/2357/.

2 Author’s interview with Hryhorii Pocheptsov, 25 February 2005.

demonstration and virtual revolution. Sitnikov didn't stay long, however.[3] Yet another technologist, Sergei Markov, claimed that another leading Russian agency, the magnificently-named Nikkolo-M, was working for the Yushchenko side[4], but its involvement does not seem to have been permanent. Minor roles were played by Andrei Piontkovskii from Russia and Mirosław Czech from Poland. Certain United Kingdom agencies played a larger role.[5]

The Yushchenko camp certainly employed 'political technology' of its own. 'Orange' was in itself a fantastically successful rebranding project, displacing the Ukrainian opposition's less popular past and covering up many of its current imperfections. They also harped on Viktor Yanukovych's criminal record like a dog with a bone, and exploited it to symbolise the general corruption of the regime as a whole (see for example www.ham.com.ua). Both points were fair comment, however, only somewhat exaggerated. One advert in Yanukovych's style, saying 'If you are for Yanukovych, go and fight in Chechnia' could be considered black PR. But the opposition didn't churn out blatant lies on an industrial scale. Yushchenko constantly talked of dignity, moral values in government and respect for the citizen in a way that Yanukovych could not. Otherwise, he would not have raised expectations of his performance in government in the way that he did.

Most 'political technologists' were therefore in fact working as part of a project financed by Russian circles and the Yanukovych shadow campaign to 'stop Yushchenko', after the success of his Our Ukraine Bloc in the 2002 parliamentary elections. Indeed, the work of Moscow's leading political technologists, first Marat Gel'man and then Gleb Pavlovskii, continued almost uninterrupted after 2002 – although Gel'man claimed he was running an art gallery and Pavlovskii the new 'Russian Club' operating out of Kiev's Premier Palace Hotel. Other Russian technologists were linked to the various political technology firms that operate out of Yanukovych's home region of the Donbas. In fact, with the Russian domestic market quiet after the March 2004 presidential election, there was if anything a problem of over-supply from Russia.

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3 Ibid.

4 Francesca Mereu, 'Spin Doctors Blame Yanukovych,' *The Moscow Times*, 30 November 2004.

5 See Andrew Wilson, *Ukraine's Orange Revolution* (London and New Haven: Yale University Press, 2006, revised second edition).

Ironically, the Russian technologists' efforts in 2002 were perceived to have been a relative failure. They certainly failed to sell the Ukrainian parties of power as successfully as they had Unity in 1999 and would sell United Russia in 2003; and also failed with a number of new party launches. As one of their number put it: 'the election's dynamic became who was for [then President Leonid] Kuchma and who was against - and we were squeezed in the middle'.[6] They did succeed, however, in limiting the scale of the opposition's victory (the opposition then having three parts: Our Ukraine, the Socialists and the Tymoshenko Bloc), thereby allowing the authorities to build an artificial 'majority' that precariously controlled parliament from May 2002 to October 2004.

Broadly speaking, the technologists then had two options for the elections in 2004. One was to deconstruct the polarisation that had emerged in 2002; the other was to reconstruct it on a different basis, more conducive to Russian geopolitical interests. The first strategy was more typical of the 'postmodernist' Gel'man, the latter of Pavlovskii's 'realpolitik', but the tension between the two approaches would ultimately undermine the efforts of both.

Deconstruction: Cloning, dovedenie do absurda

The basic deconstructivist strategy is known as 'toad's eye', in other words the attempt to make the electorate (the toad) forget its original enthusiasm for the opposition by creating a constant series of diversions to shift their attention. The constitutional reform project, the language issue, the nationalist 'threat', the agreement on a 'Unified Economic Space', arguably even the Tuzla conflict with Russia, all may have had their particular purpose as individual projects, but collectively made up the political 'show'. The spectacle, in other words, was everything (Russian political technologists take Situationism far too seriously).[7] Carefully staged events, moreover, often had no after-life, even if on paper they committed Ukraine to something as important as the Unified Economic Space, which is capable of doing so much damage to its relations with the EU.

Another way of obscuring what was once apparently clear, in this case the binary paradigm of 'corrupt' authorities versus 'reformist' opposition,

6 Author's interview with Pëtr Shchedrovitskii, 3 November 2002.
7 Guy Debord, *Society of the Spectacle* (Paris, 1967; see the 1995 Zone edition).

involved the political technologists' favourite virtual object, the clone. 'Cloning' is too often narrowly associated with the annoying, but often annoyingly effective, tactic of sponsoring candidates or parties with the same name as your opponent. More broadly, political technologists like to create 'double objects' that seek either to replicate, multiply and thereby dilute the perceived advantages of their clients' opponents, or to multiply their clients' specific weaknesses into apparently universal failings. In Russia, for example, 'Project Putin' was clearly a cloning strategy of this type, involving finding a candidate who could serve as a virtual mirror of the regime's most dangerous opponents – and of course of Boris Yeltsin's weaknesses. Vladimir Putin's Chekist past symbolised the old order like Yevgenii Primakov, but he was younger and more vigorous. Unity was simultaneously assembled as a 'regional', and oppositional, project like Fatherland-All Russia, but one that also represented the reinvigoration of state power.

The Ukrainian authorities therefore attempted to clone the opposition's best assets after the latter's successes in 2002. Viktor Yushchenko's past career as Chair of the National Bank (1993-1999) was replayed by Serhii Tihipko, with his PR men presenting the introduction of the newer and shinier version of the hrivnia in 2004 as somehow equivalent to the original launch of the actual currency in 1996. Young, pragmatic reformers such as Economy Minister Valerii Khoroshkovskyi claimed similar achievements to the Yushchenko government in 1999-2001. Prime Minister Viktor Yanukovych was initially advertised as equally capable of opening doors to the EU, etc, before turning to attack 'Euroromanticism' instead. With GDP growth at such high levels (9.4% in 2003, a heady 13% in 2004), the struggle to appropriate credit was extremely important. It also allowed dramatic pre-election largesse, including a doubling of the state pension from UAH137 to UAH284 (US$54) – and a subsequent spike in inflation and fall of the exchange rate. If (rightly) the popular mind continued to associate the current recovery with the sea-changes in economic policy made in 1999-2001, Viktor Yushchenko still benefited: if recovery could be linked to subsequent 'stability' instead, the credit went to those who succeeded him. Much of this PR was relayed to the US via American firms (supposedly Creative Response Concepts and DBC Public Relations), and by Viktor Pinchuk's efforts to court a string of American worthies, including George Bush Senior and Henry Kissinger, to spread the

message that Yushchenko could claim no monopoly on democratic credentials or managerial competence.

The other side of the double object strategy, albeit one that could not be so explicit for obvious reasons, was the constant attempts to paint Viktor Yushchenko and his allies as 'just as bad' as the authorities. An early version of this project was the 'cassette 2' scandal in 2002. Cassette scandal in 2000/01 embroiled the authorities in the real scandal of the dead journalist Hryhorii Gongadze, after the revelations from the secret tapes made in the President's office by Major Mel'nychenko. Its double object involved media controlled by the Social-Democratic Party, or SDPU(o), publicising some private conversations between Yushchenko and Kiev mayor Oleksandr Omel'chenko, plotting to remove SDPU(o) leader Viktor Medvedchuk as Deputy Chair of the Rada. Significantly, in this case the object was all-important. Cloning was all. The fact that the latter conversations were relatively innocuous seems to have been unimportant.

In 2004, the technologists concentrated on financial scandal; as with the verdict against Yushchenko's former deputy at the National Bank, Volodymyr Bondar, for alleged foreign currency misoperations back in 1997. The SDPU(o) was behind a crude book attacking Yushchenko entitled 'Yushchenko: A History of Illness', whose website at http://kniga.temnik.com.ua was linked to another black PR site www.temnik.com.ua, also backed by the SDPU(o). Money was allegedly provided via the right-wing renegade Dmytro Ponomarchuk, who had played a similar role in 2002. The sites continued the 'doubler' technique, accusing Yushchenko of the financial improprieties and political double-dealing for which its backers were more famous. The even cruder site at http://geocities.com/uysh_us was thought to be backed by the Donets'k clan.

The Rybkin affair, when Ivan Rybkin, one of the candidates in the March 2004 Russian election, first disappeared and then told a strange tale of being drugged and filmed in 'perverted acts' in Kiev, was also exploited to try and link Viktor Yushchenko, via Rybkin's supposed business partner in Our Ukraine, Davyd Zhvaniia, with Rybkin's supposed financier Boris Berezovskii and with 'bad' oligarchs in general. As in 2002, however, *kompromat* that had once worked well in Russia did not necessarily transfer well to Ukraine. The apparent links between Berezovskii and the Yushchenko team were not

widely exposed until after the election. A similar plan to simulate 'clan conflict' over privatised assets, and 'to drag [Communist leader Petro] Symonenko into the conflict on the side of the workers, and Yushchenko in defence of the business interests of his partners'[8], came to naught. Nevertheless, Zhvaniia's business interests received much unfavourable publicity on official TV, as did demonstrations against 'foreign oligarchs' organised by fake nationalists like Dmytro Korchyns'kyi. Another such, Bohdan Boiko (see below), specialised in plague-on-all-their-houses rhetoric equating the 'oligarchic group Tymoshenko-Yushchenko' with 'the [real oligarchs in the] groups Medvedchuk-Surkis, Akhmetov and Pinchuk-Kuchma'.[9] More successfully, Petro Poroshenko, another of Yushchenko's main financiers, was portrayed as a new oligarch-in-waiting. The government also had some success in its long-term campaign against Yuliia Tymoshenko (see below). Yushchenko did have plenty of business supporters in his ranks, albeit more often from small to medium enterprises seeking an end to crony capitalism; but the tactic certainly bore fruit in terms of colouring some Western coverage of the election – in part via the spin put out by the likes of Mikhail Pogrebinskii, a home-grown technologist close to the SDPU(o).[10]

Divide and Rule

There was plenty of scope in Ukraine for this most basic of tactics. The three-headed opposition (a doubtful four, if the Communists are included) of March 2002 was far too tempting a target. (In 2002 Our Ukraine topped the poll with 23.6%, the Communists were second with 20%, followed by the main government bloc For a United Ukraine with 11.8%, the Tymoshenko Bloc

8 The document was published in three parts on the *Ukraïns'ka pravda* website. The first part, 'Tretii termin Kuchmy. Iak tse povynno bulo buty' on 25 June 2004, www2.pravda.com.ua/archive/?40625-4-new; the second, 'Tretii termin Kuchmy. Iak tse povynno bulo buty. Cshastyna 2' on 30 June, www2.pravda.com.ua/archive/?40630-1-new; and the third, 'Tretii termin Kuchmy. Iak tse povynno bulo buty. Chastyna 3, zakliuchna' on 1 July, www2.pravda.com.ua/archive/2004/july/1/2.shtml. This citation from 'Chastyna 2'.

9 Vitalii Bala, Aleksei Golobutskyi, Valentin Yakushik et al., *Segodniashnie lidery Ukrainy: primerka roli Prezidenta: IX. Kandidaty v prezidenty Ukrainy: ispol'zovanie televizionnoi reklamy* (Kiev: AMS, 2004): 20. All the AMS publications can also be found at www.agency.org.ua.

10 For example, Nick Paton Walsh, 'The radicals with vested interest in orange victory,' *The Guardian*, 30 November 2004.

came fourth with 7.3%, the Socialists were fifth with 6.9%, and the SDPU(o) won 6.3%). Ukraine of course has plenty of experience of this with the 'Kaniv-4' in 1999, as well as the use of Vitrenko against Moroz, the emergence of three Rukhs, at one time the promotion of Tymoshenko against Lazarenko, etc, etc,

Squaring the Communists, or the party leadership at least, does not seem to have been a problem, given their long-term links to the Donets'k clan. One technologist commented approvingly in private on their willingness 'to talk and to trade'.[11] The Communists willingly added to the virtual chorus condemning Yushchenko as a 'nationalist' and 'American puppet'; but were also required to run an extremely passive campaign, as their traditional vote (22.2% in 1999, 20% in 2002, skewed heavily towards south-east Ukraine) was to be the basis of Yanukovych's rise to within striking distance of Yushchenko in the first phase of the campaign. Three-quarters of their traditional vote would eventually transfer to Yanukovych, but without of course taking votes off Yushchenko. The Communists would therefore be unable to play much of a role in the second round.

More worrying by far was the publication in March 2004 by www.provokator.com.ua of a supposed project to exploit the Socialist Party (SPU).[12] The cynicism was of course absolute – given that Socialist leader Oleksandr Moroz had been the main object of the political technologists' machinations in 1999. It was unclear, however, how much their intentions to interfere from outside the party's ranks matched any desire to respond on the inside. The SPU certainly had shadowy business interests to protect (Mykola Rud'kovs'kyi has energy interests in Poltava); plenty of politicians with personal ambitions (private channels allegedly existed through the Socialists' campaign chief Iosyp Vins'kyi to Viktor Medvedchuk); and one eye on the parliamentary elections in 2006, when the SPU hoped to do well under the proportional representation system. The SPU and the authorities also had a common interest in the project of constitutional reform, which the authorities at least hoped to use to sabotage an incoming Yushchenko presidency if

11 'Tretii termin Kuchmy. Iak tse povynno bulo buty. Chastyna 2'.

12 The alleged document 'Ne upustit' shans!' published at www.provokator.com.ua/p/2004/02/26/090819.html indicates an intent to exploit a coincidence of interests, and only hints at wider plots.

necessary. Finally, despite the SPU's longevity since its founding congress in October 1991, the 2002 elections were the only ones where the party had really run alone. One faction in the party saw more security in a renewed alliance with the Communists or even SDPU(o) in 2006, especially if that brought friendlier treatment on SDPU(o)-controlled TV. As usual, however, the technologists overreached themselves. The plan actually intimated that Moroz could be levered into the Presidency as a 'third force', gratefully to serve his masters' interests thereafter – which was never likely.[13]

The third part of the opposition troika was Yuliia Tymoshenko's eponymous Bloc. Given her ties to the Russian business world in the mid-1990s and her period in the Russophile *Hromada* party from 1997-1999, many Russians initially assumed that she was just another virtual object, available for manipulation or sale, and was worth supporting 'in those regions of west Ukraine where she was capable of taking the maximum number of votes from the former prime minister'.[14] If she could come fourth, that would 'help Yushchenko to be third'[15], although if there had to be two candidates ahead of him this would have to be Yanukovych and Symonenko, who were both aiming at the same electorate. A second and more likely option for Gel'man was to have Tymoshenko 'call on her supporters to vote against all in the second round'.[16]

However, in the end they settled for harassing Tymoshenko to make trouble in the opposition camp, and using her oligarchic image to reinforce the double object campaign against Yushchenko. To alienate voters in the east, Tymoshenko was constantly lambasted on the websites www.aznews.narod.ru and http://timoshenkogate.narod.ru, whose attacks were echoed in the mainstream media. In October 2002 her father-in-law and former associates from her energy trading days in the mid-1990s were arrested. In May 2004 an alleged Secret Service agent in her party,

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13 Vitalii Bala, Oleksii Holobuts'kyi, Valentin Yakushik et al., *Siohodnishni lidery Ukraïny: prymiriuvannia roli Prezydenta. VII. Kandydat u Prezydenty Ukraïny Oleksandr Moroz: mozhlyvi stsenariï rozvytku sytuatsiï* (Kiev: AMS, 2004).

14 Andrei Okara, 'V Moskve startovala aktsiia 'Ukraina bez Iushchenko'…,' www.glavred.info/print.php?art=68597165, posted 13 Feb. 2003.

15 'Authority May Play Tymoshenko against Yushchenko,' *Ukraïns'ka pravda*, www.pravda.com.ua/en/archive/2003/January/24/news/2.shtml.

16 'Tretii termin Kuchmy. Iak tse povynno bulo buty. Chastyna 3, zakliuchna,' *Ukraïns'ka pravda*, 1 July 2004.

Volodymyr Borovko, provided the authorities with a video on which Tymoshenko apparently discussed bribing a judge to get them freed. In September 2004 Russian prosecutors sought to place her on an Interpol wanted list, and demanded she appear in Moscow to face questions about an alleged US$450 million scam involving Gazprom and the Russian Defence Ministry in 1996. On the other hand, Tymoshenko was also attacked 'on the right'. Two million copies of a fake letter were circulated in west Ukraine in February 2003, bearing Yushchenko's picture and the Our Ukraine logo, attacking the trouble Tymoshenko had brought to Yushchenko's campaign, 'whether or not [she] has stolen those hundreds of millions of dollars', and calling for her to be returned to prison.[17] Tymoshenko decided not to run herself, and continued to campaign hard for Yushchenko, but guilt by association was all the technologists desired.

Even if fomented disunity within the opposition(s) did not affect Yushchenko's vote directly - and in many places it did - it was also designed to brake his momentum. Even if all parties and politicians belatedly called on their supporters to rally behind him in the second round, the damage was supposed to have been done by then.

The Key Missed Trick: No Virtual 'Third Force'

From the Machiavellian technologists' point of view, a straight fight between Yanukovych and Yushchenko should have made only partial sense. A bigger opportunity lay elsewhere. With Yushchenko consistently polling at around 30% and Yanukovych around 25% earlier in the year, there was a large middle ground for a potential 'third force'.

Traditionally, 'third forces' in the post-Soviet world have been manipulated by political technologists for one of two reasons. In the first scenario (as with Russia in 1996 or Ukraine in 1999), the incumbent is unpopular, so his technologists seek to guarantee a confrontation with an even more unpopular opponent (in both cases the local Communist leader). Potential 'third forces' (Yavlinskii-Fedorov in 1996, Moroz in 1999) must therefore be weakened to make sure the election remains artificially polarised. In Belarus in 2001 the strategy was basically the opposite.

17 Leonid Amchuk, 'Prezydents'ki vybory-2004: start 'chornoho PR',' *Ukraïns'ka pravda*, www.pravda.com.ua/archive/2003/february/14/3.shtml.

Lukashenka was the genuine choice of a plurality of voters, if not necessarily a majority. However, Lukashenka wanted to avoid a polarised election that would encourage all the potential anti-Lukashenka voters to congregate at one pole. Artificial third forces like Siarhei Haidukevich, leader of the Liberal-Democratic Party of Belarus, were therefore promoted to keep his main opponent Uladzimir Hancharyk's vote down to 15.4% (Lukashenka won with a claimed 75.7%, Haidukevich won 2.5%). Particularly in this latter role, fake third forces are of course not actually neutral. They are also hired guns, paid to focus their criticism on the opposition. Haidukevich mainly attacked Hancharyk in 2001. Zhirinovskii turned his fire on Fatherland-All Russia in 1999, then on Ziuganov in 2000, the Communists again in 2003, then all of Putin's pygmy opponents (including one Zhirinovskii had helpfully supplied from his own party) in 2004. The Ukrainian 'liberal' party KOP, led by Valerii Khoroshkovskyi, showed its true colours by attacking Yushchenko and especially Tymoshenko, rather than the authorities, in 2002.

Ukraine in 2004 more closely matched the second scenario. Like Lukashenka in 2001, it was in their interest to make it more difficult for Yushchenko to consolidate the centrist vote in the election's eventual second round – or even prevent him from getting there in the first place. In Ukraine, however, both Tihipko and Khoroshkovs'kyi seemed to have backed away from possible exploitation as a faux-liberal 'third force'; and others seemed reluctant to risk their future careers by serving as an obvious tool of the powers-that-be. Some suspected that Anatolii Kinakh, who served as Prime Minister in between Yushchenko and Yanukovych from May 2001 to November 2002, and therefore presided over the undoing of much of Yushchenko's work, might be a government 'reserve'; but he was too busy staking out his own survival prospects and ended up in the Yushchenko camp. Mykhailo Brods'kyi, whose fake liberal *Yabluko* party had too often attacked Yushchenko in the past, was too widely distrusted. Kiev major Oleksandr Omel'chenko was popular in the capital, but the basic purpose of his campaign seemed to be preserving his powerful position by avoiding taking the side of either main candidate.

On the other hand, promoting a nationalist strong-man like Aleksandr Lebed' in Russia's 1996 campaign to serve as a second type of 'third force' makes little sense in Ukraine. The nationalist camp is normally with the

opposition, apart from its virtual part. Plus, Viktor Yushchenko was now standing on the centre-right. Former security supreme Yevhen Marchuk was only able to stand as an 'independent rightist' in 1999 because there was no strong candidate on the mainstream right to stand in his way. In 2004 there was Yushchenko. Finally, unlike Russia, there is no real tradition in Ukraine of mythologising the *siloviki*, the security services or the military (see below).

Overall, the Russian political technologists' obsession with what they considered the 'easy target' of Ukrainian nationalism played a key part in losing them the election. The attempt to recreate the conditions of 1994 was not appropriate in 2004. First, 1994 had been a relatively free and fair election, when the political technology industry was still in its infancy, especially in Ukraine. Second, a polarised election was actually what they should have been trying to avoid. A truly powerful 'third force' casts scorn on both left and right – and the authorities' chosen tactics and persistent demonology left no space for such a role. More generally, the rumoured option to cancel the elections and replace both Yushchenko and Yanukovych with some unnamed third force remained just a rumour. The ploy needed to be made much earlier in the election. By the time Serhii Tihipko finally tried to enter the race in December, and displace Yanukovych as the official candidate for the 'third' round, it was too late. His attempt not only instantly imploded, but provoked the mass desertion of his parliamentary supporters.

East-West Polarisation: The 'President of One Half of Ukraine'

The alternative to the project attempting to deconstruct the polarised election of 2002, was the attempt to create an alternative polarisation to replace it. Many of the Russian technologists thought that the simplest solution was to reinvent the east-west divide that won Kuchma his original victory in 1994; and, absurdly but characteristically, to portray Yushchenko as the main cause of that divide.[18] Significantly, the debate on Ukraine's internal 'tensions' was also conducted in Russia in papers close to Gleb Pavlovskii's Foundation for Effective Politics (FEP).[19]

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18 Stanislav Shumlians'kyi, 'Rozkol Ukraïny iak virtual'na realnist',' *Krytyka*, no. 11 (November) 2002: 2-5.

19 See the debate in *Russkii zhurnal*, a paper close to Pavlovskii; for example Mikhail Beletskii and Mikhail Pogrebinskii (the latter a Ukrainian 'technologist' close to FEP

Any association of the opposition with ‘extremists’ was therefore played up, although the Russian technologists’ definition of who could be considered ‘extreme’ was usually rather broad. The threat from the so-called Galician autonomists was exaggerated (the best antidote to ‘separatism’ in west Ukraine was of course a Yushchenko victory); and there were attempts to associate Our Ukraine with Crimean Tatar extremism – itself something of a virtual creation, given the surprising restraint the leaders of the Medzhlis have shown these last ten years. For practical reasons (reducing the role of international supervision in the Autumn elections) the campaign depicting Yushchenko and associated ‘grant-eating’ NGOs as tools of the West began early, in late 2003. As well as seeking to minimise opposition to fraud, its role was also to reverse ‘Our’ Ukraine’s successful image-building in 2002. That is, to win the contest to define who is *svoï* and who is *chuzhi* (‘us’ and ‘them’). Again, this particular ploy succeeded in colouring some of the Western coverage, which recycled the idea that local NGOs were vehicles for a covert American destabilisation plot (see below).[20]

‘Directed Chaos’[21]

In June 2004 a detailed plan, supposedly drawn up by Marat Gel’man in November 2003, was leaked to the website www.pravda.com.ua. Although many of its more ambitious elements had clearly been sidelined, many of its detailed proposals had clearly been adopted. The ‘main scenario for the campaign’, declared the report, must be ‘directed conflict’. ‘Our task is to destabilise the situation in the regions... and drag Yushchenko into this process’. ‘The task of the media [in other places, reference is made rather more directly ‘our media’] is to interpret this as an ontological conflict ‘East-West’, a political conflict ‘Our Ukraine-Party of the Regions’, and a personal

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and the SDPU(o)), ‘Ukrainorusy: ideologicheskie i politicheskie orientatsii,’ *Russkii zhurnal*, 7 June 2004, also available at www.russ.ru/politics/20040607-pr.html and the round-table debate ‘Po-ukrainski ‘drova’ prosto – drova,’ *Russkii zhurnal*, 3 June 2004, www.russ.ru/politics/20040603-ukr.html.

20 Jonathan Steele, ‘Ukraine’s postmodern coup d’etat,’ *The Guardian*, 26 November 2004; Ian Traynor, ‘US campaign behind the turmoil in Kiev,’ *The Guardian*, 26 November 2004; Mark Almond, ‘The price of People Power,’ *The Guardian*, 7 December 2004.

21 Oleksandr Malikov and Rostylav Pavlenko, ‘‘Kerovanyi khaos’ – metod stabilizatsiï neokolonial’noho rezhymu v Ukraïni: iak ts’oho unyknuty,’ www2.pravda.com.ua/archive/2004/October/27/2.shtml, dated and accessed 27 October 2004.

conflict 'Yushchenko-Yanukovych''. The report helpfully suggested various flashpoints that could be exploited. Governors from the east, 'not just Donets'kies, but representatives of the close circles of Yanukovych and [Rinat] Akhmetov' could be appointed in west Ukraine to stir up animosity; hostility between Poles and (west) Ukrainians could be revived by exploiting the Orliat cemetery affair (a reference to the Polish victims of the Polish-Ukrainian war of 1918-19, buried in L'viv); a war for control over the eleventh century St. Antonii Caves at Chernihiv, one of Ukraine's holiest sites, could be provoked between the pro-Kiev and pro-Moscow branches of the Orthodox Church. 'Cossacks' from Russia or Ukraine (Korchyns'kyi's men were mentioned) could be encouraged to revive their historical role as frontiersmen in Crimea, building new settlements to provoke land disputes with the Crimean Tatars.[22] 'Yushchenko must be represented as an enemy of Russians in Crimea', the report argued. 'If Ukraine can't defend the interests of Slavs in Crimea, then nearby Russia is always prepared to offer support'.

The report itself confidently declared that the proposed virtual conflict would ultimately force Yushchenko 'to the margin of Ukrainian politics [to] become a politician of the class of Vitrenko'.[23] It did not. Nor did it produce a rumoured alternative 'saviour' scenario, allowing Kuchma or some other proxy to (re)enter the race, posing as the only guarantor of national unity. Nevertheless, although much of the plan stayed on the drawing board, many of its elements were adapted into use in the east-west 'polarisation' campaign. Yanukovych's strategy clearly dovetailed to it, especially his dramatic late commitment in September 2004 to make Russian an official language, allow for dual citizenship of Ukraine and Russia and abandon all moves towards NATO (the first two would require specific changes to the 1996 Constitution). As also did many of Yanukovych's moves after his failure to impose a questionable victory in the second round.

A Ukrainian Putin?

While the Pinchuk camp promoted Yanukovych's image in the West, Donets'k-based PR companies embraced his tough guy image at home,

22 See also Lilia Buzhurova, '18 travnia v Krymu chekaiut' na provokatsiï,' www2.pravda.com.ua/archive/?40517-4-new, 17 May 2004, on more leaked documents with 'provocation' plans.

23 'Tretii termin Kuchmy. Iak tse povynno bulo buty. Chastyna 3, zakliuchna'.

attempting to market him as a Ukrainian version of Putin in east Ukraine. Putin himself has extremely high opinion poll ratings in Ukraine, that often match the two thirds' approval he has won at best at home. However, in Ukraine power and the state cannot be sold as virtues in themselves, as they can to an extent in Russia. Ukrainians are used to power being exercised elsewhere – which is one possible explanation of Putin's popularity in Ukraine. As the Russian technologists who briefly backed Andrii Derkach, with his background in the SBU, as a possible 'Ukrainian Putin' found out in 2000. Viktor Yanukovych, on the other hand, derived his tough guy image not from service in the KGB, like Putin, but from his criminal past – more or less the opposite – and from his reputation as a regional governor, and to the *krysha*-type 'order' he had imposed in Donets'k (*krysha* is a Russian mafia term for the 'protective roof' of a given clan). Moreover, Ukraine in 2004 was not Ukraine in 1994. Kuchma's image-makers then successfully sold him not as a Russophile, but as a Russian-speaking Ukrainian everyman, and as a tough pragmatist opposing the 'romantic nationalist', first President Leonid Kravchuk. Hence Kuchma's famous slogan of 'Deeds, not words'. This time, however Kuchma was the incumbent, the nationalist 'threat' had to be completely virtual rather than simply wildly exaggerated (see next section). More seriously, once the election was partly polarised, but still remained a contest between Yushchenko and Yanukovych, this was a problem for both men. Viktor Yanukovych's enormous frame and the big shadow cast by his criminal past were difficult to squeeze into the everyman persona. Moreover, to date Ukrainian elections have never been won by politicians or parties who are too obviously identified with periphery regions. The Donbas is not the heartland of 'Russophone Ukraine', but in many ways its polar extreme. Finally, by building his base up from the far east of Ukraine, Yanukovych initially took votes from the Communist leader Petro Symonenko, not from Viktor Yushchenko.

'Nationalist Projects'

The final part of the east-west polarisation project was the various 'nationalist projects', covertly financed by the powers-that-be.[24] Even in comparison with 2002, the propaganda campaign in east Ukraine against the '*Nashisty*' from the west (from the equation of 'Our Ukraine', *Nasha Ukraïna* , with 'fascists', *fashisty*) therefore went into overdrive in 2004. It was able to focus on a handful of genuine extremists in Our Ukraine, like Oleh Tiahnybok of the Social-National Party (whom Yushchenko eventually expelled), and on so-called Galician 'separatists'; but ultimately the campaign needed more and had to invent them. No less than four candidates in the election were therefore virtual rightists: Dmytro Korchyns'kyi, former leader of the UNA-UNSO and now leader of *Bratstvo*, a prominent 'media-killer' on SDPU(o) TV (1+1, Inter), with his programme *Prote*; Roman Kozak of the previously obscure Organisation of Ukrainian Nationalists in Ukraine; Andrii Chornovil (independent, son of the veteran dissident Viacheslav Chornovil) and Bohdan Boiko of Rukh for Unity, who had played a similar saboteur's role in 2002. The SDPU(o) also exploited the 'Trident' paramilitary group linked to Boiko, and the version of the Ukrainian National Assembly led by Eduard Kovalenko[25]; both of which frequently demonstrated uninvited in support of Viktor Yushchenko in 2004.[26]

The various 'nationalist projects' were designed in part to take votes off Yushchenko in west and possibly central Ukraine, but without any real success. Korchyns'kyi won only 0.17%, Chornovil 0.12%, Boiko a miniscule 0.04% and Kozak 0.02%. The four projects were not necessarily failures, however, as their real purpose was to generate the required anti-Yushchenko feeling in east Ukraine. Kozak in particular was notorious for putting extremist words into Yushchenko's mouth.

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24 Andrii Duda, '"Natsyky" z Bankovoï,' http://www.tribuna.com.ua/politics/2004/05/17/9843.html, dated 17 May 2004. See also Iurii Butusov, 'Turnirna tablytsia,' *Dzerkalo tyzhnia*, no. 31, 7-13 August 2004.

25 See the attack on Kovalenko by Andrii Shkil', leader of the UNA-UNSO, 'Tranzyt 'Heniches'k-Bankova' z zupynkoiu 'UNA',' 2 July 2004, www2.pravda.com.ua/archive/2004/july/2/1.shtml; and Myroslava Dovhal', 'Sud nad unsovtsiamy – u hlukhomu kuti,' *Postup*, no. 7, 22-23 January 2002.

26 Dmytro Lykhovii, 'Zvychainyi fashyzm – zbroia Bankovoï. Vlada pustyla v khid vazhku artyleriiu peredvyborchykh provokatsii,' *Ukraïna moloda*, 30 June 2004, http://www.umoloda.kiev.ua/number/210/115/7453/.

As in 2002, the virtual chorus created to attack Viktor Yushchenko was supposedly strengthened by its echo on the far left, where three more virtual candidates with longstanding covert links to the regime, Nataliia Vitrenko, Oleksandr Yakovenko and Oleksandr Bazyliuk, were designed to perform what is known as a 'relay race', stirring up anti-Yushchenko sentiment on the basis of crude anti-Western propaganda and than 'passing it on' to Viktor Yanukovych; despite the risk that the three would take votes away from Yanukovych in round one.[27] Nataliia Vitrenko was seemingly too old to reprise a role she had first played in 1999 (when she won 11% in the presidential race), with a repeat performance in 2002 (3.2%); but, as there was a portion of the electorate which seemed to have had no exposure to her exposure as a fake, she was wheeled out anyway. Yakovenko of the faux-radical 'Communist Party of Workers and Peasants' and Bazyliuk of the 'Slavic Party' played a similar role, serving as a virtual chorus for the black PR attacking Yushchenko as an 'ultra-nationalist' and 'American puppet'.[28]

Campaign 'Technology'

Russian political technologists are also notable for their 'micro-technology'; particularly the use of so called grupy zachistki to disrupt an opponent's campaign, pull down his or her leaflets, put false ones in their place, etc. There were three notable additions to this faux-sophisticated repertoire in the 2004 Ukrainian campaign.

The first was the most serious. Viktor Yushchenko's staff claimed that he was poisoned on the night of 5/6 September, necessitating two weeks of lost campaigning and a trip to a Vienna clinic – and even that the incident took place at a secret 'clear the air' meeting with the heads of the Ukrainian Security Service, Ihor Smeshko and his deputy Volodymyr Satsiuk.[29] A fake statement from the Vienna clinic denying that poison was involved, was faxed to Reuters, who initially took it to be genuine. Both the fax and Reuter's

27 Vitalii Bala, Aleksei Golobutskyi, Valentin Yakushik et al., *Segodniashnie lidery Ukrainy: primerka roli Prezidenta: VIII. Kandidaty v Prezidenty Ukrainy: osnovnye svedeniia i analiz rasstanovki sil* (Kiev: AMS, 2004): 235-236 and 14.

28 'Iakovenko obitsiae drukuvaty i dali 'chornyi piar' proty Iushchenka?,' www.pravda.com.ua, 5 October 2004.

29 Volodymyr Boiko, 'Taemnytsi "tainoï vecheri",' http://www.pravda.com.ua/archive/2004/october/1/3.shtml, dated 1 October 2004.

comments were then given wide circulation in the state mass media. Allegedly, however, the fax was sent by a PR company linked to one of the oligarchs behind Leonid Kuchma, namely his son-in-law Viktor Pinchuk.[30] The poisoning seemed to be a direct attempt on Yushchenko's life, but it was also an opportunity for black PR. Once again, the official media poured scorn on Yushchenko's claims, countering that his terrible appearance was the result of a botched botox injection or herpes.

The government camp also replied with an 'attack' on Viktor Yanukovych, when 'several large objects' were thrown at the Prime Minister when he was campaigning in west Ukraine on 24 September. Yanukovych was rushed to hospital, but not before the incident was blamed on extremist supporters of Yushchenko. However, the event was captured on opposition video, and the 'several large objects' seemed to be one raw egg. Yanukovych seemed surprised and failed to react; before over-reacting with a dramatic collapse.[31] As often, the double object was a poor copy of the original – in December it was officially confirmed that Yushchenko had suffered massive dioxin poisoning which almost killed him.

The political technologists also toyed with creating a 'strategy of tension' (see above), although the authorities seemed too divided to push such a strategy to any extreme conclusion. On 20 August a bomb went off in Kiev's Troeshchyna market, killing one and injuring eleven (followed by a smaller bomb two weeks later).[32] The attack was once again immediately blamed on extremists behind Yushchenko, although three of those arrested were later found to work for the fake nationalists, for Bohdan Boiko, Trident and Eduard Kovalenko's UNA.[33] In December, many of the charges would be withdrawn.[34] Bombs were also planted on the premises of the student

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30 AdReport, 'Zhak Sehela skomprometuvav Iushchenka na zamovlennia Viktora Pinchuka?,' http://www2.pravda.com.ua/archive/2004/october/7/2.shtml, dated 7 October 2004.

31 The video could be viewed at the *Ukraïns'ka pravda* website, as of the date of access on 4 October 2004, at http://www.pravda.com.ua/archive/2004/september/24/video.shtml

32 Alexandra Prymachenko, 'Pin-Point Blasting,' *Dzerkalo tyzhnia*, no. 35, 4-10 September 2004, http://www.mirror-weekly.com/ie/show/510/47682/

33 Tetiana Nikolaenko, 'Troeshchyna – kashyrs'ke shose Ianukovycha?,' http://www.ukrpravda.com/archive/?40828-1-new, dated 29 August 2004.

34 'SBU pidtverdzhue, shcho UNP ne terorysty,' *Ukraïns'ka pravda*, 16 December 2004, http://www2.pravda.com.ua/archive/?41216-20-77.

movement *PORA* (see below). On 23 October an estimated 100,000 rallied peacefully in Kiev outside the headquarters of the Central Election Commission to demand it conduct a fair election. Although the meeting passed off peacefully, the authorities then staged a double provocation: first a violent 'assault' by Yushchenko 'supporters' on the building itself after most of his supporters had gone home, followed by an 'attack on the militia' that seems mainly to have been carried out by other militia in plain clothes.

Another new 'technology' developed in 2004 was the proliferation of covertly-financed 'technical candidates'. These might serve other purposes, as *agents provocateurs* or as 'flies' to nibble at opponents' support, but some were designed solely to exploit the provision in the electoral law for each candidate to nominate 'trusted persons' to local election committees. There were twenty-four candidates in the election. As well as the four 'nationalist projects' and the three hired guns on the far left (see above), there were six 'technical' candidates with no other apparent role: Mykola Hrabar, Ihor Dushyn, Vladyslav Kryvobokov, Volodymyr Nechyporuk, Mykola Rohozhyns'kyi and Hryhorii Chernysh. All were polling less than 1%, but were able to nominate the same number of 'their' supporters (all of whom ended up backing Yanukovych) to the committees as the main candidates. Yanukovych could therefore count on a majority, thirteen, out of twenty three 'trust' groups. Most election committees were now under his control – hence the possibilities for subsequent fraud.[35]

Come voting day, blatant intimidation was therefore possible at polling stations 'controlled' by this method; as were other so-called 'technologies', such as padding the turnout with 'dead souls' (non-existent voters) and 'cookies' (extra ballot papers). Another 'innovation' for 2004 was so-called 'electoral tourism', the mass transport of activists by bus and special trains from one polling station to another for repeat voting. In non-controlled stations, the khustynka ('kerchief') method was used. Yanukovych people would wear some distinguishing mark to guide their 'extra' voters to cast their votes in their part of the polling booth. Nationally, the Yanukovych camp used

35 Vitalii Bala, Aleksei Golobutskii, Valentin Yakushik et al., *Segodniashnie lidery Ukrainy: primerka roli Prezidenta: VIII. Kandidaty v Prezidenty Ukrainy*: 11 and 13; Mykola Velychko, '"Ianukovych? Kozak?" – "Iaka vam riznytsia?",' http://www.ukrpravda.com/archive/2004/august/27/1.shtml, dated 27 August 2004.

its control of the fifteen-strong Central Election Commission (CEC), headed by Serhii Kivalov, to corrupt the count and allow its computer systems to be infiltrated. A secret team at work in the Zorianyi ('Stars') cinema, allegedly linked by fibre optic cable to the CEC, intercepted and manipulated the results in Yanukovych's favour.

As usual, simple fraud needed a cover story, however, supplied in this instance by so-called reitingovyi pressing, and particularly by 'exit poll technology'. As the authorities' scope for possible fraud was sharply reduced by an independent exit poll released on election night in 2002, this time they conducted rival exit polls of their own.[36] In the first round, the most respectable 'National Exit Poll' had Yushchenko leading Yanukovych by 44.6% to 37.8% in an 'anonymous' poll, later adjusted for differential turnout. A second poll by the Social Monitoring group had him trailing by 40.1% to 41.2% using the 'open' question method, where voters were more likely to feel the intimidation they suffered in real life. The 'Ukrainian Exit Poll' conducted by the Ukrainian Institute for Social Research (a government think tank), the Centre of Political Management, the Institute of Sociology and others initially had Yushchenko ahead by 42% to 40%, but settled for 39.3% to Yanukovych's 43%.[37] SOCIS were accused of changing their figures to put Yanukovych ahead by 42.7% to 38.3%.[38] Finally, the agency FOM (Public Opinion), behind which stood Russian money and Pavlovskii's FEP, failed to release its results. It claimed to have abandoned its poll because of an excessive number (over 40%) of interviewees refusing to state a preference; although it leaked a false report that it had Yushchenko on 39.2% and Yanukovych on 43.5%.

The count also went badly. Administrative resources failed to deliver a fake vote in line with the fake polls. When the official result was finally announced on 10 November, Yushchenko was finally in front, if only by 39.9% to 39.3%. Moroz was declared third with 5.8%, and Symonenko fourth

36 Serhii Taran, 'Sotsiolohichni doslidzhennia staiut' ne pokaznykom ob'ektyvnosti vyboriv, a zvychainoiu politychnoiu tekhnolohieiu,' http://imi.org.ua/?read=251:2, dated 8 October 2004.

37 See the site www.exitpoll.org.ua and the reporting at www.pravda.com.ua on 31 October and 1 November 2004.

38 Tatiana Silina (Tetiana Sylina), 'Exit Poll: long Ordeal,' *Dzerkalo tyzhnia*, no. 45, 6-12 November 2004, at http://www.mirror-weekly.com/ie/show/520/48297/.

on 5%. Vitrenko won 1.5%, Kinakh 0.9%, and Yakovenko 0.8%. All others scored less than 0.5%; 2% voted against all. The minor candidates had helped shift the *dramaturgiia* in Yanukovych's favour; but they were squeezed by the 'polarisation scenario'. Their overall vote was too low to provide a cover story, via their endorsement of Yanukovych, for his victory in the second round. Moreover, Yushchenko was able to secure an agreement with Moroz, despite the flirtation of part of his party with the SDPU(o); albeit at the price of agreeing to a package of constitutional reforms to reduce the powers of the incoming President, which eventually came into effect on 1 January 2006. Kinakh also backed Yushchenko. Yanukovych was of course supported by the faux-leftists Symonenko, Vitrenko and Yakovenko.

The authorities therefore upped the ante for the second round on 21 November, when the *Zorianyi* team seems to have interfered much more blatantly in the counting process. Whereas the count for round one dragged out for almost two weeks, Yanukovych was now declared an overnight winner by 49.5% to 46.6%. It seemed immediately obvious how the deed was done, however. National turnout was up by 5% to 80.9%. In Yanukovych's home region of Donets'k, where Yushchenko's supporters were kept off the local election commission, turnout was supposedly 96.7% and the vote in favour of Yanukovych 96.2% to 2%. Yanukovych's team claims to have found him almost one million extra votes in the Donbas, on top of the apparent maximum he had already reached in round one; 2.88 million in the first round rising to 3.71 million in the second – almost the whole, in fact, of Yanukovych's overall national margin of victory.

There is no space here to discuss the Orange Revolution itself, but the political technologists' biggest failure was to over-rely at the last minute on crude and obvious 'administrative resources'. Their one big success was to impose their preferred *dramaturgiia* on the election; which was heavily polarised on east-west lines. In all three rounds, Viktor Yushchenko was ahead in every oblast west of Poltava, Viktor Yanukovych in every oblast to the east and south. Their biggest blind spot was that civil society in Ukraine was stronger than in Russia, and much more likely to react to crude fraud. Nor were the authorities united enough to impose a controversial result.

Had their clients chosen a more centrist candidate than Yanukovych, the technologists might have been able to sell him as a 'third force'. As it was,

they were stuck with a candidate who was unable to win without fraud, or with a minimal amount of fraud that could be easily disguised. The formula provided by the Russian technologists, of political technology plus fraud, might have worked in Russia; but it could not work in Ukraine. Instead of providing a cumulative, knock-out effect, each grated against the other.

NGOs and the Role of the West

Several commentators, both in Russia and the West, claimed to detect a different hand at work. 'Pro-democracy' NGOs had supposedly in fact backed a particular candidate, Viktor Yushchenko, and served as conduits for the decisive Western commitment to his cause. They had also 'imported' various techniques which allegedly swung the election: 'strategic non-violence', the use of youth movements as a battering ram for change, exit poll 'technology', and working through an NGO network. (There is no space here to discuss the effect of the Western, particularly the Polish, *diplomatic* intervention).[39]

The critics had latched on to an important, if partial, truth. The NGO sector in Ukraine may be weaker than in neighbouring central European states, but is noticeably stronger than in Russia (see the portals www.civicua.org and www.intellect.org). Moreover, whereas the Russian independent sector has found life increasingly difficult since 2000 under President Putin, in Ukraine it has been expanding since the establishment of the 'Freedom of Choice' umbrella in 1999 (www.coalition.org.ua).

Expansion has of course been neither steady nor exponential. After his questionable re-election in November 1999, Ukrainian President Leonid Kuchma began a campaign against media and civil society freedom. In part, his harassment of both led directly to the Gongadze affair, the disappearance and murder of the founder of Ukraine's first investigative web site, 'Ukrainian Truth' (www.pravda.com.ua), in September 2000. However, in its turn the affair led to a storm of protests that began a revival of third sector activity. In Russia at this time, in contrast (in 2001), the infamous 'political technologist' Gleb Pavlovskii organised a grand Kremlin gala 'Civic Forum' for government-

39 For this, see Andrew Wilson, *Ukraine's Orange Revolution*, first edition: 138-140.

approved NGOs. The Ukrainian parliamentary elections in March 2002 provided another stimulus to activity and served as a dry-run for 2004, with organisations like Freedom of Choice and the Committee of Voters of Ukraine (www.cvu.org.ua) helping shadow and minimise electoral fraud, forcing the authorities to create a majority in parliament by bribery and intimidation *after* the vote. It was this partial success that led the government to launch another anti-NGO campaign over the winter of 2003-4, this time backed by Kuchma's new strong-arm Chief of Staff Viktor Medvedchuk and his normally reliable allies, the Communist Party of Ukraine. A Temporary Parliamentary Commission set up in December reported in May 2004, with its chairman the Communist deputy Valerii Mishura demanding that 'foreign financing' of NGOs be banned and Western-funded domestic NGOs be closed.[40]

Harassment was the norm rather than closure, but the 2004 election was never really a proxy contest between a 'Western' set of NGOs and a 'Russian' set. The Kuchma-Yanukovych-Russia side didn't really think in these terms. There wasn't a Russian or pro-Russian or pro-Yanukovych third sector as such. Indeed, after the Orange Revolution, Pavlovskii openly regretted that, 'During the electoral campaign in Ukraine there was an underestimation [by Russia] and low level of cooperation between Russian society and Ukrainian NGOs. We will try to avoid such an underestimation in the future… Mr. Yushchenko will certainly not be regarded by us as a person with exclusive rights to interpret the position of Ukrainian society, political, and nongovernmental organizations.'[41] It is therefore the purpose of this chapter to look at another question: whether the Ukrainian NGOs that did indeed play an important role in the election did so independently, or whether they de facto served one particular candidate and/or the West.

The Critics' Case

Russia's accusations of illegitimate or excessive Western interference found an echo in certain circles in the West, some of whom argued that the entire Orange Revolution was 'made in the USA', as some sarcastic banners put up

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40 Taras Kuzio, 'NGOs and civil society under attack in Ukraine,' *The Ukrainian Weekly*, 18 July 2004.

41 Cited in Vladimir Socor, 'Kremlin Redefining Policy in "Post-Soviet Space",' *Eurasia Daily Monitor*, vol. 2, no. 27, 8 February 2005

by Ukrainian protestors then had it. First, the West's role was supposedly partial. It was alleged that 'Yushchenko got the Western nod, and floods of money poured in to groups which support him'.[42] Second therefore, the West's role was inappropriately financial. Combining the two points, the critics seek to draw 'attention to the degree of funding by the US and other western governments *for the campaign*' (i.e., rather than more generally, emphasis added)[43], normally centring in on a figure of US$65 million over two years used to back the then Ukrainian opposition.[44] In December 2004, US Congressman Ron Paul of Texas, a libertarian Republican and critic of the Iraq War, for example, echoed President Bush's words 'that 'Any election (in Ukraine), if there is one, ought to be free from any foreign influence." He continued 'I agree with the president wholeheartedly'. 'Unfortunately, it seems that several US government agencies saw things differently and sent US taxpayer dollars into Ukraine in an attempt to influence the outcome'.[45]

A subsidiary theory is that funding had to be covert, because it was biased. It was therefore alleged that monies were 'funnelled through' US organisations like Freedom House and the Carnegie Foundation[46], as if these were extra monies to those already mentioned. Overall, it is alleged that the implicit bias of the West and the weight of money involved cast doubt on the self-proclaimed neutrality of NGOs and youth movements like *PORA*. Either their pre-existing bias led them to seek out Western funding, or, vice-versa, that Western funding led to the distortion of their role. NGOs therefore acted as interest groups rather than as promoters of universal standards, and as tools of American foreign policy rather than as local representatives of the 'global conscience' or 'transnational civil society'.[47]

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42 Jonathan Steele, 'Ukraine's postmodern coup d'etat,' *The Guardian*, 26 November 2004.

43 Jonathan Steele, 'Not a good way to start a democracy,' *The Guardian*, 31 December 2004.

44 Ian Traynor, 'US campaign behind the turmoil in Kiev,' *The Guardian*, 26 November 2004; Mark Almond, 'The price of People Power,' *The Guardian*, 7 December 2004; Nick Paton Walsh, 'Inquiry sought into claims of US funding,' *The Guardian*, 13 December 2004.

45 See the original at www.house.gov/paul/congrec/congrec2004/cr120704.htm.

46 Matt Kelley, 'U.S. Money Helped Opposition in Ukraine,' *Associated Press*, 10 December 2004.

47 John Keane, *Global Civil Society?* (Cambridge: Cambridge University Press, 2003); Ann Florini (ed.), *The Third Force: The Rise of Transnational Civil Society*

The Sums Involved

Western support was indeed substantial, and did indeed come mainly from the USA. On the other hand, American spending was actually on a declining trend in Ukraine. According to the publicly-available official figures, the total expenditure on aid to Ukraine by US government agencies in the fiscal year 2002 was US$280.48 million, which included US$157.92 million under the 1992 Freedom Support Act, designed for the funding of democracy promotion in the former USSR. This second figure included US$74 million channelled through USAID, and US$25 million for the more specific U.S. State Department Public Diplomacy programme.[48] In 2003 Washington reacted to the Gongadze affair and the revelations on the Mel'nychenko tapes, specifically the so-called '*Kol'chuha*' affair, by cutting funding for democracy support in Ukraine by about a third (Washington stated its anger at one key tape that it believed to be genuine, in which President Kuchma apparently approves the illegal supply of a hi-tech radar system dubbed *Kol'chuha*, 'Chainmail', to Saddam Hussein on the eve of the invasion of Iraq in 2003). Overall funding was now US$227.48 million, with only US$55.11 million for democratic reform programmes.[49] The figures for fiscal year 2004 were even lower, US$143.47 million overall and US$34.11 million for democracy assistance.[50] That is, there was no build-up of spending in election year, although America decided to provide more money *after* the Orange Revolution, an extra US$60 million in fiscal year 2005 (later cut to US$33.7 million).

The equivalent figures for the United Kingdom Department for International Development's overall annual budget in Ukraine was a more

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(Washington, DC: Carnegie Endowment for International Peace, 2000); Alejandro Colas, *International Civil Society: Social Movements in World Politics* (New York Polity Press, 2002).

48 See www.state.gov/p/eur/rls/rpt/23629.htm, dated January 2003.

49 See www.state.gov/p/eur/rls/rpt/37672.htm, dated January 2004.

50 See www.state.gov/p/eur/rls/fs/36503.htm, dated 13 September 2004. These figures are therefore more provisional. Joel Brinkley, 'Dollars for Democracy? U.S. Aid to Ukraine Challenged,' *New York Times*, 21 December 2004, quotes $ 97 million in the fiscal year that ended on 31 October 2004, including approximately $ 28 million for democracy-building projects.

stable £6.5 million, only a small proportion of which went on democracy assistance.[51] In the British case, there was no scale-back after 2003.

Some figures are also available for the biggest private donors. George Soros's Renaissance Foundation spent US$1.65 million between Autumn 2003 and December 2004, supporting the 'New Choice 2004' and 'Freedom of Choice' coalitions of NGOs, and provided very detailed accounts.[52] Considerable sums were also raised privately by the Ukrainian diaspora and by foreign supporters of the Orange Revolution. Here it is harder to be accurate, but a figure of several million dollars was possible. In Chicago, for example, home to one of North America's largest Ukrainian communities and original home to new first lady Katherine Chumachenko, US$363,000 was raised.[53] It is also harder to be precise about the destination of this type of funding, although it is likely that such funds supported the opposition much more directly. Overall, Timothy Garton Ash and Timothy Snyder estimate a figure for Western support from all sources of nearer US$100 million.[54]

The sums involved for state spending mainly came under the Freedom Support Act, which both creates the legislative framework for democracy assistance to the FSU and makes such assistance conditional on the degree of progress made (only in part a Catch-22). That is, the degree for political discretion in allocating funds is limited. Moreover, given the cuts made to Ukraine's budget in 2003, American aid per capita was much higher in other supposedly controversial cases like Georgia (US$141.16 million and US$21.06 million in 2003, population 4.7 million) and Kyrgyzstan (US$50.8 million and US$12.2 million in 2003, population 5.1 million). Ukraine's population at the time was ten times as high, at 47.4 million.

The NGOs

Some of the critics have also raised question marks about some of the recipients of aid. Freedom House administers the Polish-American-Ukrainian Cooperation Institute (www.pauci.org), which is funded by USAID (www.usaid.kiev.ua). PAUCI funds a variety of Ukrainian NGOs, and its

51 See www.britemb-ukraine.net.
52 See www.irf.kiev.ua/files/eng/news_659_en_doc.doc.
53 *The Chicago Tribune*, 18 March 2005.
54 Timothy Garton Ash and Timothy Snyder, 'The Orange Revolution,' *The New York Review of Books*, 28 April 2005.

grants are all listed publicly at www.pauci.org/en/grants/grant. One argument again was that the recipients were either inappropriately political, or inappropriately partisan. One Ukrainian NGO criticised by Ron Paul was the International Centre for Policy Studies (www.icps.kiev.ua), set up in 1994, because Yushchenko was a member of the board. However, the whole point of ICPS was to encourage elite dialogue, which is why regime stalwarts like Serhii Tihipko, Yanukovych's campaign manager in 2004, were also on the board. ICPS itself claimed that 'the only ICPS-PAUCI project [in this period], worth US US$4,500, was aimed at researching and developing methodology for designing regional small business development programs and had nothing to do with any election campaigns.'[55]

The Centre for Political and Legal Reforms (www.pravo.org.ua) was attacked for having a picture of Viktor Yushchenko on its web site. The Centre was run by two Rada deputies with legal experience, Serhii Holovatyi and Ihor Koliushko, who set it up in November 1996 with the not particularly sinister aim of promoting constitutionalism, i.e. promoting the better working and often enough just the actual observance of Ukraine's own Constitution after it was passed in June of that year. The National Democratic Institute funded similar works, running legal seminars and supporting the Committee of Voters of Ukraine, which has also received help from the Eurasia Foundation. The National Endowment for Democracy supported the Laboratory of Legislative Initiatives and its excellent publication of academic reference 'Parlament' (Ukrainian spelling, but www.parliament.org.ua). It has also funded the web site first set up by Hryhorii Gongadze, www.pravda.com.ua, as did the US embassy, stepping in with a grant of US$24,000 in October 2000 to save it from the threat of closure. The NED and the US Embassy Public Affairs Section helped fund www.telekritika.kiev.ua, a site devoted to media analysis and media bias monitoring, which was actually more popular at home than abroad, quickly establishing itself as a must-visit site for Ukrainian journalists.

Most such grants therefore helped NGOs with a good track record for independent work. Other projects were inherently bipartisan. In late

55 'Congressman accuses US Government of supporting Viktor Yushchenko,' *ICPS Newsletter*, no. 258, 20 December, 2004, at www.icps.kiev.ua/eng/topics, via *The Ukraine List* #320, 22 December 2004.

December 2004, the Ukrainian ministry of the economy released details of two particular contracts, resulting from a Memorandum on Mutual Understanding signed by the Central Election Commission (CEC) and USAID in March 2004. These were 'Citizens' Role in the Elections in Ukraine' (budget US$3.674 million) and 'Promoting Election Organisation in Ukraine' (budget US$4.481 million), and much of the money went to the CEC and the parliament (*Verkhovna Rada*) to improve their institutional performance in the election (counting the votes, and drafting the relevant law – not without effect, at least by promoting lip-service). These projects also benefited all the main political parties, including both supporters of Yushchenko and Yanukovych, and even many of the fake parties set up by supporters of Yanukovych.[56] In other words, a large proportion of foreign funding went to the government side – as it should. And it was the government side that was often accused of creaming off monies for partisan use or personal benefit. In fact, this was one reason for the scale-back of funding in 2003, with the West increasingly reluctant to fund projects involving compromised high state officials.

A partial consequence was that the West therefore worked more with the regime's critics thereafter – but as a result of the regime's behaviour. This was also due to the patrimonial and neo-Soviet political culture in east Ukraine, where the embryonic third sector tended to work with the state rather than outside its structures. Donors remained as even-handed as they could in difficult circumstances. A stress on due process was entirely natural when it was the government side that was flouting its own commitments to such standards. Most NGOs made constant efforts to engage all sides. The fact that the Yanukovych camp often remained aloof reflected its way of thinking as much as theirs.

In election year OSCE-ODIHR played a prominent role in monitoring the voting process.[57] Freedom House along with the National Democratic Institute and the International Republican Institute (IRI) also helped to fund election monitoring by the European Network of Election Monitoring (ENEMO), which

56 'Ministry of Economy: America Did Not Finance Yushchenko's Campaign,' 30 December 2004, http://hotline.net.ua/content/view/9823/37/, via *The Ukraine List*, #335, 20 January 2005.

57 See the OSCE's reports at www.osce.org/ukraine/documents/html.

was strongly critical of the November 21 poll.[58] Ukraine had been a member of the OSCE since 1992 (when it was the CSCE), and had signed up to its standards. The permanent OSCE mission to Ukraine was established in November 1994. Russia has been vocal in its criticism of the OSCE's approach, and after 2004 the defeated Yanukovych side followed in its wake. Unlike Russia, however, Ukraine has always set much greater store by it membership of European 'club' organisations, constantly proclaiming its commitment to 'European values' before 2004, even during the darkest hours at the height of the Gongadze affair. After the Orange Revolution, the new government went to the opposite extreme of withdrawing from the rival CIS election 'monitoring' body, the CIS-EOM, as it has always given any election in the region a clean bill of health.

Critics have also attacked Ukrainian NGOs and their Western sponsors for their role in backing the key exit poll (see above).[59] Eight Western embassies (the US, UK, Canada, Netherlands, Switzerland, Norway, Sweden and Denmark) and four NGOs (the NED, Charles Stewart Mott Foundation, Eurasia and George Soros's Renaissance Foundation), helped funding the exit polls in each of the three rounds, which were initially conducted by a consortium made up of the Kiev International Institute for Sociology (KIIS), the Razumkov Centre think tank, and the opinion pollsters SOCIS and the Social Monitoring Centre. The latter two broke ranks and were widely accused of tampering with their results after round one (in the government's favour). Only KIIS and the Razumkov Centre remained in the consortium after the first round.

Dick Morris, a former adviser to Bill Clinton, has admitted to a clandestine meeting in an unnamed east European capital with members of Yushchenko's team, at which he advised them that a big exit poll would not only be useful in helping minimise fraud, but might also help to bring protesters out on to the streets if it indicated an obvious steal.[60] However, despite the assertion by some that this meant a manufactured projection

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58 See the statement by Freedom House, dated 22 November 2004, at www.freedom house.org/media/pressrel/112204.htm.

59 For the official results, see the CEC's site at www.cvk.gov.ua. For the exit polls, see www.exitpoll.org.ua. The author hopes that the latter is left on the web as a matter of historical record.

60 *The Washington Post*, 2 January 2005.

replacing a 'real' count, the opposite was the case. Everyone expected the official results to be fixed, as they had been at previous elections in 1998, 1999 and, to a lesser extent, 2002 (and truly farcical figures for the referendum held in 2000), when most of the fraud was carried out by the CEC itself. All sides were aware that the introduction of an exit poll in 2002 had made it difficult for the CEC to announce results that wildly diverged from expectations. Only the Western critics were guilty of looking at things through a Western prism, where, as for example with the early polls predicting a narrow Kerry victory in the 2004 US election, skewed methodology may tip the margin of a prediction. Everyone in Ukraine looked to the exit poll to counter both expected fraud and dishonest 'polling technology' (see above - the Sociological Association of Ukraine was abandoned by the honest pollsters after the vote). The exit poll by KIIS-Razumkov was therefore the only fair game in town. The government's fatal mistake was to stuff an extra million votes to the turnout at the last minute. No one believed such a wide divergence. The exit poll had done its job by establishing what was credible, and what was not.

PORA

Finally, the NED, Open Society Initiative, and the Citizens' Role in Elections in Ukraine programme run by Freedom House, NDI and IRI, provided some support for the youth organisation *PORA* (meaning 'It's Time', both in the sense of it being time for the old guard to go and time to protest if they didn't, see www.pora.org.ua and the earlier, more sharply satirical, www.kuchmizm.info).[61] Despite the group being the focus of many critics' allegations, however, most of this money was only seed money, and most was spent on general training sessions rather than on PORA direct. *PORA*'s own claim is that:

> The [i.e. their] campaign's initial funding was supplied by *PORA* founders. These funds were directed to organizing activities, information support and printing of materials. Training of activists was supported by small grants provided by the German Marshall

61 Author's interviews with Peter Byrne, 21 February 2005, and Rostyslav Pavlenko, 22 February 2005.

> Fund of the United States, Freedom House and the Canadian International Development Agency (in the overall amount of approx. $130,000). It is worth noting, thus, that *PORA*, unlike its counterparts in Serbia and Georgia, received only minimal financial support from the international community. In this situation, entrepreneurs from all regions of Ukraine provided the bulk of resources for *PORA* activities during the presidential elections. A large number of these entrepreneurs had been directly involved in the students' movement of the early 1990s. The support they provided came largely in kind, including free production of publications, communications, transportation etc. It is estimated that the value of this in-kind support exceeded 5 million Euro. In cash, *PORA* expended 1.2 million Euro (including the resources used at the regional level). It is also noteworthy that more than 60% of these resources were spent during the Orange Revolution and for the organizational needs of tent camps, transport, food etc.[62]

General seminars for youth activists had been run as early as 2002-3, supported by the Alfred Moser Foundation (Netherlands), the Westminster Foundation (UK) and the Fund for European Education (Poland).[63] Many of those trained later ended up in *PORA*. Freedom House also helped train election monitors in Crimea in August 2004. In April 2004 eighteen Ukrainian activists went to a seminar in the Yugoslav town of Novi Sad, and *Otpor*'s Aleksandar Marić was a frequent visitor to Ukraine until he was eventually denied re-entry in October 2004 – *Otpor* by this time having developed into a transnational organisation of professional revolutionaries. According to Marić, 'We trained them [Ukrainian youth activists] in how to set up an organization, how to open local chapters, how to create a 'brand', how to create a logo, symbols, and key messages,' Marić said. 'We trained them in how to identify the key weaknesses in society and what people's most pressing problems

62 Vladyslav Kaskiv *et al.*, 'PORA – Vanguard of Democracy,' at http://pora.org.ua/en/ content /view/ 780/95/.

63 Oleksandr Solantai, 'Pravda pro PORU ochyma zseredyny,' 15 April 2005, www2. pravda.com.ua/archive/2005/april/15/3.shtml.

were -- what might be a motivating factor for people, and above all young people, to go to the ballot box and in this way shape their own destiny.'[64] Considerable help for *PORA* also came from Slovak organisations, drawing on the experience of the coalition OK'98, which had helped bring down local strongman Vladimír Mečiar in 1998, and from Pavol Demeš, the Slovak national who served as Director for Central and Eastern Europe for the German Marshall Fund of the United States. Much of the leaning effect for what Mark Beissinger has termed 'modular democratic revolution'[65], came in other words from the 'power of example' and was locally-organised.

Unlike the more direct Western support for other equivalent youth organisations like Serbia's *Otpor* in 2000 (US organisations supposedly spent US$41 million on the 'operation')[66], and to an extent *Zubr* in Belarus in 2001, when much money went missing[67], if less so to Georgia's Kmara in 2003[68], there is not yet any evidence of extra covert payments to *PORA*. According to Julie Corwin for example, 'the NED provided more than US$ 240,000 for projects 'to mobilize Ukrainian youth to greater political participation' from 2001-04, according to NED records, but it also did not contribute money directly to *PORA*'.[69]

Most of the protest campaign after the original fraudulent election, in which *PORA* played a prominent role, was also funded domestically. According to Yushchenko's top aide Oleksandr Tretiakov, speaking in late

64 Jeremy Bransten, 'Ukraine: Part Homegrown Uprising, Part Imported Production?,' 20 December 2004, www.rferl.org/featuresarticle/2004/12/BE8E5D97-7EAF-404E-8E91-E21723FF74B6.html; John Simpson and Marcus Tanner, 'Serb Activists Helped Inspire Ukrainian Protests,' 26 November 2004, www.iwpr.net/index.pl?archive/bcr3/bcr3_200411_530_1_eng.txt.

65 Mark R. Beissinger, 'Structure and Example in Modular Political Phenomena: The Diffusion of the Bulldozer/Rose/Orange/Tulip Revolutions,' draft at http://polisci.wisc.edu/~beissinger/beissinger.modrev.article.pdf.

66 Roger Cohen, 'Who Really Brought Down Milosevic?,' *The New York Times Magazine*, 26 November 2000, www.nytimes.com/library/magazine/home/20001126mag-serbia.html.

67 Vital' Silitski, 'Hrantavy skandal,' in: Valer Bulhakav (ed.), *Miastsovyia vybary v nainovishai paliitychnai historyi Belarusi* (Minsk: Arche, 2003): 109-114; *The Christian Science Monitor*, 10 September 2001; Ian Traynor, 'Belarussian [sic] foils dictator-buster… for now,' *The Guardian*, 14 September 2001.

68 According to Natalia Antelava, 'How to Stage a Revolution,' 4 December 2003, http://news.bbc.co.uk/2/hi/europe/3288547.stm; the US spent $ 2.4 million in Georgia on democracy support and the local Renaissance Foundation $ 350,000.

69 Julie A. Corwin, 'East: Regime Change on the Cheap,' *RFE/RL*, 19 April 2005.

December 2004, the total cost of organising the ongoing protest and stage show at Kiev's central square (the Maidan) was UAH20 million (about US$ 3.8 million) and US$1 million in US dollars, nearly all from small donations and not a penny from abroad.[70] Some initial support came from opposition businessmen like Davyd Zhvaniia, who was the main practical provider of tents, mattresses, food, transport and bio-toilets[71]; but his supply soon ran out and more had to be found from the general public. Zhvaniia, who would later join the new Tymoshenko government as Minister for Emergency Situations, also funded *PORA*. The city council provided some material help, but was still hedging its bets with both sides.

Some American money also funded *Znaiu* ('I know', i.e. I know my rights, in its alternative transliteration '*Znayu*'), an organisation set up to encourage people, especially the young, to vote, and to combat attempts at disenfranchisement (www.znayu.org.ua). According to *Znaiu*'s youthful leader, the then 28-year old Dmytro Potekhin, his group won a US$650,000 grant from the US-Ukraine Foundation, with an extra US$350,000 for the third round, topped up by US$50,000 from Freedom House.[72] The money went on ten million leaflets, a toll-free helpline and ads in various papers explaining voters' rights – and paid for visits by incoming US congressmen. Twelve thousand copies of the book by Gene Sharp *From Dictatorship to Democracy: A Conceptual Framework for Liberation* (1993 – see below), which had also been popular in Serbia in 2000, were published with money from his Albert Einstein Institute and distributed through www.maidan.org.ua. Znaiu avoided anything that smacked of political campaigning, but was happy for the more radical wing of *PORA*, dubbed 'Black *PORA*', at least to deliver its 'negative message' on the dangers of fraud.

Amongst other links, the Institute for Sustainable Communities, based in Vermont, had a US$11 million federal contract to help bring about a 'fundamental cultural shift' in Ukraine, as the organization puts it, 'from a passive citizenry under an authoritarian regime to a thriving democracy with

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70 Leonid Amchuk, 'Aleksandr Tret'iakov: U nas ne bylo amerikanskikh deneg. Na revoliutsiiu perechislili 20 millionov griven,' 22 December 2004, www2.pravda.com.ua/archive/?41222-1-new.

71 Serhii Sledz', 'Davyd Zhvaniia – ministr MNS,' *Dzerkalo tyzhnia*, no. 4, 5-11 February 2005.

72 'Making Revolution: Q&A with Dmytro Potekhin,' *The Kyiv Post*, 24 February 2005.

active citizen participation.' Leslie J. McCuaig, Ukraine project director, accepted that 'It has become particularly tricky to walk a very thin line.'[73] In May 2004, the Virginia-based private management consultancy Development Associates, Inc. was awarded US$100 million by the US government 'for strengthening national legislatures and other deliberative bodies worldwide.' According to the organization's web site (www.devassoc.com/devassoc/index.html), several million dollars from this went to Ukraine in advance of the election. The Washington PR firm Rock Creek Creative helped set up a 'Friends of Ukraine' network on behalf of the Global Fairness Initiative linked to Bill Clinton, and a conference on 'Ukraine in Europe and the World' held in Kiev in February 2004 which was attended by Yanukovych, Yushchenko and the likes of Václav Havel and Madeleine Albright. It also helped set up the corresponding web site www.ukraineineurope.com.[74] In Germany, the Friedrich Ebert Foundation (www.fesukraine.kiev.ua) and Centre for Applied Politics have funded many of the same causes.[75]

Assessment

On the whole the West was doing in Ukraine exactly what it should have been doing, though arguably not doing it enough. 'Our money doesn't go to candidates; it goes to the process, the institutions that it takes to run a free and fair election,' as State Department spokesman Richard Boucher said.[76] The West was promoting its own values. It may not always live up to them itself, but that does not mean it is wrong to try. NGOs worked against election

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73 Joel Brinkley, '"Dollars for Democracy?" U.S. Aid to Ukraine Challenged,' *New York Times*, 21 December 2004.

74 The press release at www.rockcreekcreative.com/news/RCC_UKRpress2.pdf, 8 February 2005, implies that the website was closer to the centre of the 'Ukrainian democracy movement' than it actually was.

75 For a German language survey of the various Western democracy promotion programmes in Ukraine, see Andreas Umland, 'Westliche Förderprogramme in der Ukraine: Einblicke in die europäisch-nordamerikanische Unterstützung ukrainischer Reformbestrebungen seit 1991. Mit einem Nachwort von Astrid Sahm,' *Forschungsstelle Osteuropa Bremen: Arbeitspapiere und Materialien*, no. 63, December 2004, 43 pp., http://www.forschungsstelle.uni-bremen.de/images/stories/pdf/ap/fsoAP63.pdf.

76 Quoted in Matt Kelley, 'U.S. Money Helped Opposition in Ukraine,' *Associated Press*, 10 December 2004.

fraud, and the vast majority of the fraud was committed by the Yanukovych side; so their effect was partial in this limited sense. But the West has nothing to apologise for in so far as it helped tip the balance against the widely-expected steal.[77]

On the other hand, it would be wrong to claim that the line between supporting fair process and supporting a particular candidate can always be drawn. The Yanukovych side was often the ironic victim of creating the impression that Western money meant Western preference. Several web sites, such as www.pravo.org.ua, had prominent links and endorsements ('We recommend') to Yushchenko's party's site at www.razom.org.ua; which was certainly inadvisable, however much he was closer to their aims, but a million miles from the instant insinuation that US$65 million funded Yushchenko's campaign. But at least the West is aware that a line should be there somewhere. Normally, the left is proud of the West's spending on international aid, constantly urging it to spend more. Except, quite rightly, Britain for example does not have a department for 'aid' any more, but one for 'international development'. Supporting good government helps the money be well spent.

The critics talk of a covert campaign, but they are quoting official figures. Proof of the former would require a different type of evidence. Moreover, the ideas that more conspiratorial groups like *PORA* embodied the revolution and that the revolution followed some kind of US script are both wide of the mark. The demonstrators were highly organised, but they were organised by Ukrainians who were determined to avoid the mistakes that had been made during the previous 'Ukraine without Kuchma' campaign at the height of the Gongadze affair in 2001. Then the protests had failed because they couldn't build a wide enough coalition and put sufficient numbers on the streets. The protesters also allowed too many questionable 'nationalists' and too many *agents provocateurs* into their ranks, whose carefully-staged confrontation with the local police gave the authorities the excuse they

77 Compare the pieces by Michael McFaul, '"Meddling" in Ukraine: Democracy is not an American Plot,' *The Washington Post*, 21 December 2004; Timothy Garton Ash, 'Bitter lemons: Six questions to critics of Ukraine's Orange Revolution,' *The Guardian*, 2 December 2004; Ash and Timothy Snyder, 'The Orange Revolution,' *New York Review of Books*, 28 April 2005; and Anne Applebaum, 'The Freedom Haters,' *The Washington Post*, 1 December 2004.

needed for a crackdown. In 2004 therefore *PORA* was kept off the main stage, but they had learned the lessons of 2001. In fact, as many youth activists had been at the sharp end of the previous demonstrations, they were especially aware of them.

That said, as even Gleb Pavlovskii tentatively recognised, the West's role was both direct and indirect. 'Soft power' was also important.[78] The perceived attraction of relative prosperity and the general ambience of life *à la européenne*, undoubtedly played a role in the Ukrainian Revolution. The efforts of local NGOs were free-riding to an extent on general globalisation processes, and the pulling power of Western capital and political institutions, giving them a multiplier effect to offset the crude cash spending advantages of the incumbent regime. 'Joining the club' of the EU, NATO and WTO can be a very powerful implicit promise, and one which only 'anointed' candidates can claim to deliver. On the other hand, the West has no reason to be ashamed of the pulling power of democratic ideals and liberal culture. Was the West caught doing anything more heavy-handed? As far back as November 2001 Viktor Yushchenko was campaigning to build bridges with the Bush Administration, helped by the NED and the PR and strategic consultancy company PBN, whose Senior Vice-President Myron Wasylyk is on the board of ICPS. Volodymyr Lytvyn visited Washington between the rounds. But nothing more substantial has yet been proven, and it is up to the critics to provide evidence.

There was never the slightest chance of the West outspending the regime and its backers, many of whom were Russian. One reliable estimate is that the Yanukovych side spent US$410 million.[79] The West was much more influential on method, however. The above-mentioned Sharp book was extremely popular, as its central message fitted well with the lessons learnt in 2001. The core strategy of *PORA et al* was therefore Gene Sharp's concept of 'strategic non-violence', which is neither passive nor a means of avoiding conflict, but a means of identifying and rigorously engaging the weak points that any regime will have, as well as avoiding giving semi-authoritarian regimes an excuse to crack down. Second, the opposition made much better

78 Joseph S. Nye, Jr., *Soft Power: The Means to Success in World Politics*, (New York: Public Affairs, 2004).

79 Andrew Wilson, *Ukraine's Orange Revolution*: 120-121.

use of new technology than the Yanukovych campaign, whose 'political technology' methods, i.e. mass producing propaganda through control of the commanding heights of state TV, were made to look distinctly old-fashioned. The opposition, in contrast, made skilful use of alternative sources of information and agenda-setting technologies such as the internet, texting and video clip posting (*PORA* used the slogan 'Kill the TV within yourself').

Ukrainian NGOs played a sufficiently important role in the 2004 election for there to be a notable backlash against the 'Western-funded' third sector in the more nervously authoritarian post-Soviet states thereafter, most notably in Kazakhstan and Belarus in the run-up to elections due in 2006 and in Russia before its next election cycle in 2007-8. In March 2005 Kazakhstan amended its election law to ban demonstrations between the end of voting and the official announcement of results – specifically to try and exclude the pattern of protest seen in Georgia in 2003 and Ukraine in 2004. In June the law on NGOs was changed to make their independent action virtually impossible. It would permit financing of local or foreign NGOs only with the consent of the authorities. In Belarus in May 2005, President Lukashenka issued a particularly bizarre decree requiring all media, NGOs and parties using the words 'national' and 'Belarusian' to reregister or be banned. Putin signed a new Russian law restricting NGO operations in January 2006.

In large part, this was to mistake a phantom danger for real, or, conversely, to take proper account of the danger of NGOs activising dormant local protest populations. That is, the real fear was of domestic protest potential, rather than outside interference as such, and the latter cannot create the former *ex nihilo*. The idea that the West could use its own proxies to remove popular regimes (Putin's personal popularity remains high) that lacked powerful opponents (the starting line for the opposition in Belarus was much lower than in Ukraine, even the candidate of the 'united opposition', Uladzimir Hancharyk, won only 15.4% in 2001) was misplaced. International aid cannot change the basic 'correlation of forces', especially when it is mainly channelled through bureaucratic institutions. Unless there is a genuine domestic mass movement, it will have little effect.

The critics are therefore wrong to decry the Western effort in general, although fairer criticisms can be made of certain aspects of its involvement. Political technology, on the other hand, is a corrupt *genre*. The West was

trying to promote democracy, the political technologists were trying to undermine it. Here, the fairer criticism is whether the Orange side also used political technology to disguise its own venalities and shortcomings, for which the only true test will be its performance in government over time.

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