

# Dubious Strength of a ‘Weak State’: The Post-Soviet Ukraine in the Nineties

*Mykola Riabchuk*

## 1 Introduction

Nearly 50 years ago, in a seminal book on totalitarianism, Zbigniew Brzeziński and Carl Friedrich scornfully remarked that they would not discuss constitution or structure of government of the systems in question – because there is little if anything to discuss. All these institutions that are really important in liberal democracies, are of dismal importance in totalitarian party-states; all of them, the scholars contended, are nothing but window-dressings, empty forms with no essence.<sup>1</sup>

As far as a genuine totalitarianism is concerned, the dismissive attitude towards the state institutions might be thoroughly justified. However, what the analysts fail to predict or properly estimate at the time, was the intrinsic ability of totalitarian institutions to acquire their own life and to pursue their own interests – separate if not different from those of the omnipotent and omnipresent Party. This ability was ingrained into them actually from their very conception; and, indeed, it was only massive purges and intensive reshuffling of personnel that kept them obedient and, as designed, purely decorative, suitable for rubber-stamping.

As soon as the screws were loosened – partly during the Khreshchev’s thaw, largely yet during the Gorbachev’s perestroika – all these poor creatures of the Bolshevik leadership – quasi-sovereign quasi-republics of the Soviet quasi-federation, with their fake parliaments and feckless governments, local councils and executives, writers’ unions, women leagues and academies of sciences – woke up from hibernation (or, rather, from terror-inflicted paralysis) and began to live according to their own corporatist logic, emancipating gradually themselves from the Party overlordship.

Valerie Bunce, in her illuminating book on the “subversive”, “self-destructive nature of socialist institutions”, insists on the importance of “looking at institutions in a historically sensitive and empirically detailed way”, “viewing them as films, not snapshots”. Otherwise, she contends, we would barely understand “why economic and political liberalization came to dominate the elite agenda [in the eighties]; why publics and many Communist elites, whether within states as a whole or within republics, were so willing and able to break with the regime; and why there were variations in when and how regime collapse occurred.”<sup>2</sup>

„Recognizing importance of history and details also means acknowledging that institutions can appear to have one set of consequences, but in practice and over time, quite different, if not op-

---

1 Carl Friedrich / Zbigniew Brzeziński, *Totalitarian Dictatorship and Autocracy*, New York 1961, p. 18.

2 Valerie Bunce, *Subversive Institutions: The Design and the Destruction of Socialism and the State*, Cambridge 1999, p. 143.

posing ones (...) [the socialist] institutions did not just put some of the [socialist] states and most of [their] Communist parties 'out of business' (and some of these parties into business!); they also fashioned through the very process of self-destruction radically different alternatives to the existing order. This explains why these systems ended, or at least why the Communist Party in all cases lost its political and economic hegemony, *and* it also explains why the transition to the new order was in many cases so remarkably fast. There was, in short, a new system waiting in the wings.<sup>3</sup>

What seems very interesting here, and important for our prospective studies of postcommunist authoritarianism, is Valerie Bunce's observation that institutions may have quite different consequences over the long run from those intended or immediately apparent to the leaders guiding these institutions. Even of greater importance seems to be her idea that "not only did socialist institutions structure the very challenges that emerged and were ranged against them, these same institutions also became the basis for the construction of new states". Or, as Mark Beissinger aptly remarks (in his review of Bunce's book), no thick line can be drawn between socialism and what emerged afterward; institutions, in particular, have their own pervasiveness, something that Beissinger calls "stickiness" – "even as they are being dismantled and in the midst of revolutionary changes".<sup>4</sup>

Thus, the proposed essay attempts to describe the postcommunist authoritarianism in Ukraine as a modified version of the Soviet authoritarianism from the first nineties, adjusted to the new circumstances.

## 2 Non-revolutionary changes

The survival of the post-Soviet (and essentially crypto-Soviet) regime in Ukraine largely depended on its ability to gentrify and legitimize itself – both domestically and internationally. To this aim it had to co-opt the most prominent members of democratic opposition within its ranks (for highly visible and representative but not influential roles) and to rebuild, or at least refurbish, the old institutions as allegedly new and democratic. But also, it had to fill the institutional void that emerged after the Communist Party was banned and dissolved. More precisely, the regime had to re-establish manageability and functionality of the old institutions that were not designed to function in any effective and coordinated way without the omnipotent and omnipresent guardianship of the Communist party. It was the Party that animated and drove the entire institutional mechanism, devised strategies, enforced decisions, supervised everything, rewarded leaders, penalized laggards, and so on, and so forth. Some substitute for the Party had to be found to prevent the country from a complete failure and further sliding into chaos so evident in the early nineties.

Theoretically, the two goals were not utterly incompatible. Institutions could have been radically reformed in a liberal-democratic way – rather than refashioned to imitate democratic appearance. This is actually what had happened in the Central East European and Baltic states where the old communist institutions were dismantled and the new institutions, based on clear divisions of power and firm rule of law, established.

---

3 Ibid., pp. 143-144.

4 Mark R. Beissinger, *Subversive Institutions: The Design and Deconstruction of Socialism and the State*. By Valerie Bunce, in: „East European Constitutional Review” 9 (2000) nos. 1-2, pp. 98-100.

In Ukraine (and, for that matter, in the majority of other post-Soviet republics) no radical changes occurred in 1991. Ukrainian reformers, primarily from the liberal ‘national-democratic’ camp, were preoccupied first and foremost with securing the national independence. Ukraine, unlike the Baltic or Central East European states, had to deal not only with a two-prong transition from totalitarianism to democracy and from command economy to free market, but also with a transition from a Soviet quasi-republic with virtually no tradition of modern statehood to a sovereign state, and from amorphous population with vague and confused identities to a solidified modern nation.<sup>5</sup>

On the one hand, Ukrainian ‘national democrats’ had a good reason to believe that, historically, lack of national and, specifically, elite unity prevented Ukraine from gaining national independence at a number of occasions. It might be suicidal, they felt, to antagonize local – rather territorial, than national – nomenklatura who opportunistically supported country’s pro-independence drive. On the other hand, they had probably little choice but to accept the de facto preservation of the ancient regime and rather evolutionary than revolutionary development of the political system, since they apparently had insufficient support (just within 20-30%) in the heavily sovietised and russified, i.e., largely uncivic and divided society. What they could have been blamed for only, was their failure to formalize their own role as either junior partners in a nomenklatura-led coalition of ‘national unity’ or unambiguous members of a genuine opposition.

Ambiguity yet prevailed and resulted in eventual discreditation of ‘national democrats’. What was even worse, their un-formalized, un-institutionalized, unsystemic cooperation with postcommunists just reflected their general and profound lack of understanding of how much institutions did matter and how important institutional reforms and arrangements should have been. All their relative electoral weakness notwithstanding, Ukrainian ‘national-democrats’ could have been certainly much more active and purposeful in their demands for early parliamentary elections immediately after independence, for adoption of the new Constitution (not passed until 1996), and for some other institutional changes like a new electoral law and new regulations to promote the role of political parties in coalition-building and government-making.<sup>6</sup>

All this was difficult but not impossible to achieve. The wind of political changes was in their sails, and the ruling nomenklatura was largely in disarray, ready for different concessions. And secondly, even though they relied politically on the minority of population, it was an active, committed, vociferous and mobilized minority – a great advantage vis-à-vis the ancient regime that drew upon largely passive, obedient, and silent majority.

The old system that had not been radically reformed, fought eventually back, rather predictably. The main feature of that system was concentration of political and economic power in the hands of a single player – the Communist Party that had held monopoly on virtually everything. Even though there was, formally, a division of powers in the Soviet Union – into executive, legislative, and judicial branches, they were not separated. On the contrary, all of them were fused under the supervision and autocratic rule of the Party that substituted de facto for the entire state and for the etatized society.

---

5 Taras Kuzio, Transition in Post-Communist States: Triple or Quadruple? in: „Politics” 21 (2001) no. 3, pp. 169-178.

6 For a detailed account of the first decade of Ukraine’s independent development see Bohdan Harasymiw, Post-Communist Ukraine, Edmonton / Toronto 2002; also Taras Kuzio (ed.), A Special Issue on Ukraine: A Decade of Independence, in: „Journal of Ukrainian Studies” 26 (2001) nos.1-2.

It had controlled also the entire economy, laying thus foundation for the eventual mutual reinforcement of political and economic power in the post-Soviet states and, as Paul D'Anieri aptly remarks, for a large-scale corruption that both supports and is supported by this vicious circle:

„Political authority was a necessary and sufficient condition for acquiring economic power and wealth [in post-Soviet countries], sometimes on a fantastic scale. Simultaneously, economic power was necessary and nearly sufficient to obtain political power. This potent combination of political and economic power came to rest among a narrow set of elites closely connected with the state apparatus (...) To put it simply, political power is highly concentrated in Ukraine because it started out that way, and because the system tends to reinforce that concentration rather than to disperse it.”<sup>7</sup>

The fact that Ukraine was historically, socially, culturally, and politically predisposed to such a development did not mean that it was utterly predetermined. The country could have probably avoided institutionalisation of authoritarianism, should Ukrainian reformers have pushed through institutional changes more vigorously. The main goal should have been to strictly divide powers and, in particular, to strengthen the legislature as the main counterbalance to the executive that had been traditionally overpowered since the Soviet times. “Ukraine’s slide to authoritarianism was a result of fundamental imbalance in the distribution of political power (...) System was very vulnerable to a chief executive who sought to use the state apparatus to control both the economic and political spheres of the country.”<sup>8</sup>

The fact that "Leonid Kravchuk did not seem to be such an executive, [n]or initially did Leonid Kuchma," mattered little in view of a broader and much more powerful institutional logic. It implies, in particular, that any ambitious leader tends to amass his power and expand his prerogatives, and any powerful institution tends to convert its *de facto* power into legitimate power and vice versa. Therefore,

„we should not necessarily conclude that the politicians themselves are different – that Western politicians are inherently honest and that others are not. The difference seems to be in how far politicians can go in different countries before something or somebody pushes back (...) The primary difference between the liberal democracies and the electoral authoritarian regimes is that in the former, power tends to equilibrate. In liberal democracies, politicians who become increasingly powerful tend to engender increasing opposition. In electoral authoritarian systems, in contrast, political and economic power tend to centralize, such that those who initially gain an advantage can then use that leverage to create further advantage. This self-reinforcing cycle is limited only by the competence and lifespan of the ruler.”<sup>9</sup>

The "benign" behaviour of Leonid Kravchuk and the early Leonid Kuchma in the first half of the nineties stemmed barely from their benign law-abiding nature or sheer good will. Many times, at different occasions, both of them proved to be rather typical, quite mediocre post-Soviet men with a profoundly uncivic political culture and a deeply entrenched belief that ends justify means, winners take all, and any law is inferior to political and/or economic expedience. Actually, not only Kravchuk and Kuchma – the old members of Soviet

---

7 Paul D'Anieri, *Understanding Ukrainian Politics: Power, Politics, and Institutional Design*, Armonk / New York / London 2007, p. 13.

8 *Ibid.*, p. 14.

9 *Ibid.*, p. 240.

nomenklatura – exposed repeatedly disregard for law and civic merits but also their younger adversaries and successors still cannot come to terms with these subtle matters, as today's 'orange' politicians graphically exemplify.

It looks more likely that neither Kravchuk nor the early Kuchma misused their power defiantly just because they had not yet accumulated enough political and economic resources to implement effectively the 'power politics' – something that refers to the "ability of actors to pursue their goals by going outside the established rules", and that includes "selective law enforcement, regulation of the economy, influence over the media and other measures".<sup>10</sup> Only by the end of his first term, Leonid Kuchma accrued the needed resources and acquired the needed skills to combine masterfully coercion and manipulation, bribery and blackmail, intimidation and cooptation. While this second period that had led ultimately to the Orange revolution, has been broadly covered in literature,<sup>11</sup> the initial stages of Ukrainian post-Soviet authoritarianism still require some in-depth exploration.

### 3 Rise of electoral authoritarianism

The non-revolutionary character of political change in Ukraine resulted not only in preservation of largely the same institutions with basically the same personnel. This brought about, in turn, very slow, incoherent, and often confusing reforms that provided an excellent opportunity for the post-Soviet elite to pursue the power politics in a highly ambiguous legal environment. Partial reforms created an economic "grey area" between plan and market that "allowed well-placed actors to get richer than they could either in a fully planned or fully marketized system". Rather predictably, these rent-seekers did their best to "halt further reform in order to 'freeze' the economy in this highly lucrative intermediate position".<sup>12</sup>

One may argue also that a similar "grey area" emerged and was 'frozen' deliberately in a legal sphere where a great many laws were either missing or overlapping, contradictory, incomplete, confusing, arbitrarily interpreted and poorly enforced. This was a kind of a no man's land, an unmarked territory open for grabs, a place where the might makes right and the strongest players can expand their landmarks by sheer force. The institutional logic is simple: "partial reform of a system with concentrated power leads to continued concentration of power." Hence, "given the original distribution of power in Ukraine in 1991, the partial opening of the system made it easier, not harder, for those with power to consolidate it. (...) As a result, the powerful become more so, and those with lack of access to resources find themselves increasingly shut out."<sup>13</sup>

Another broadly recognized factor that facilitated development of electoral authoritarianism in Ukraine was societal fragmentation – all kinds of ethnic, linguistic, cultural, religious, regional, and ideological divisions that made virtually impossible any consolidation of political opposition and enabled the post-Soviet quasi-centrist elite to effectively use the divide-and-rule tactics.

---

10 Ibid., p. 11.

11 See in particular Taras Kuzio, *Ukraine under Kuchma. Political Reform, Economic Transformation and Security Policy in Independent Ukraine*, New York 1997; Marta Dyczok, *Ukraine. Movement without Change, Change without Movement*, Amsterdam 2000; Andrew Wilson, *Virtual Politics. Faking Democracy in the Post-Soviet World*, New Haven / London 2005.

12 D'Anieri, *Understanding Ukrainian Politics*, Op. cit, pp. 65-66, 71.

13 Ibid., pp. 52, 61.

Less attention, so far, has been paid to the role of a peculiar institutional design and of 'power politics' in the development of Ukrainian authoritarian system. Paul D'Anieri, in his perspicacious analysis of the 1996 constitutional process, makes an important point that "the way in which constitution was adopted was much more important than its content." He refers here to president Kuchma's ability to go outside the constitutional process, to use extralegal 'raw power' and force the parliament to pass his version of the document under the threat of dissolution (however dubious from the legal point of view).

„This, not the advent of a constitutional order, was the key outcome. Two related points emerged from these facts. First, there is significant variation in the ability of legal rules in Ukraine to constrain actors. Second, the actors powerful enough to make the rules apply to others but not to themselves will prevail in political conflicts. While many saw the adoption of the 1996 constitution as a triumph for Ukrainian democracy, because the new document was superior on paper to what it replaced, it was in fact the beginning of the end of constitutional government (...) When the constitution can be ignored by the president, or when he can credibly threaten to ignore it, the quality and details of the constitutional provisions lose their importance.“<sup>14</sup>

The way in which the Ukrainian 1996 constitution (as well as the Russian in 1993) was adopted, exposed paradigmatically how, in the absence of rule of law, power politics determines both the writing of laws and their eventual implementation – through a selective law enforcement.

Constitutional design that legalized de jure an exorbitant de facto power of the executive (primarily of the president), helped a great deal to authoritarianism become established in Ukraine. Two more institutional factors, however, contributed substantially to the process. First of all, it was the electoral law that encouraged strong, rich, and influential individuals to run for the seats in majoritarian single-member districts rather than invest in development of political parties. Secondly, it was the parliamentary order that encouraged divisions of parliamentary groups into the smallest factions rather than their consolidation into powerful coalitions. And finally, it was the constitution itself that did not provide any significant role for political parties in forming the government, thereby dispossessing them from any incentive to coalesce.

So, Ukraine's post-Soviet authoritarian development was determined not only by the "concentration of power in the Soviet system, which was transferred largely intact to the executive branch in independent Ukraine". To make bad things worse, "this initial predominance of executive power has been maintained and exaggerated by the inability of the parliament to provide a sufficient institutional counterweight."<sup>15</sup> Initially, this was due to ideological fragmentation and the electoral law. But eventually, the fragmentation and disabling of the parliament became a part of purposeful manipulative tactics of president Kuchma and his administration.

The rise and entrenchment of electoral authoritarianism (the system that formally imitates democratic procedures but informally tries to eliminate any real political competition) had not been an instant process in Ukraine after the fall of the Soviet Union. Not only the would-be authoritarian leaders had to count with high pro-democracy expectations both at home and abroad. They also needed to acquire new skills and sufficient resources to credibly manipulate the entire system in a seemingly democratic way. The executive branch they

---

14 Ibid., p. 85.

15 Ibid., p. 73.

inherited from the Soviet Union was fragmented nearly as much as the post-Soviet legislature.

To be sure, post-Soviet executives were much better positioned than any other institutions to accumulate resources. For the majority of the Soviet citizens they embodied real authority, 'vlast', to a much greater degree than the parliament, which had been just a by-product of glasnost, a Hide Park, an extension of liberated mass media, 'govorilnia', talkshop. Yet the real problem of the first months and years of Ukraine's independence was how to make versatile executive bodies to work systemically, how to subordinate local executives to the central executives, how to achieve cooperation, responsibility and accountability between and within different executive bodies and branches.

The simple truth is that the early post-Soviet Ukraine was as much non-democratic as the late Soviet Ukraine – in terms of its institutions and ruling elites, their political culture and legal consciousness. The only difference was that post-Soviet institutions, without the Communist party, were largely in disarray and could barely reveal their authoritarian essence – being just too weak, fragmented, and dysfunctional.

As a result, Ukraine, throughout its first years of independence, remained a relatively open country that exhibited dynamic and competitive politics. It was proven, in particular, in a rather free and fair presidential election in 1991 and in electoral turnover in 1994. Mass media liberated already by late perestroika, remained basically free, and civic freedoms achieved by that time, remained uncurtailed. All this openness and competitiveness, however, was "rooted less in robust civil society, strong democratic institutions or democratic leadership and much more in the inability of incumbents to maintain power or concentrate political control by preserving elite unity, controlling elections and media and/or using force against opponents." It resulted primarily from the sudden collapse of the USSR that deprived authoritarian rulers of organization, skill, and finances necessary to maintain power and/or concentrate political control.<sup>16</sup>

In other words, the post-Soviet regime in Ukraine, as well as elsewhere in former Soviet republics, emerged less as struggling democracy, where leaders strived to build more pluralistic institutions, and much more as a kind of failed authoritarianisms aptly defined by Lucan Way as "pluralism by default" – a form of political competition specific to weak states:

"Pluralism by default describes countries in which institutionalized political competition survives not because leaders are especially democratic or because societal actors are particularly strong, but because the government is too fragmented and the state too weak to impose authoritarian rule in a democratic international context. In such cases, leaders lack the authority and coordination to prevent today's allies from becoming tomorrow's challengers, control the legislature, impose censorship, manipulate elections successfully, or use force against political opponents. Such countries are caught in paradox: The same state weakness and governmental fragmentation that promotes pluralism also undermines effective governance and may ultimately threaten long-term democratic consolidation."<sup>17</sup>

---

16 Lucan Way, *Authoritarian State Building and the Sources of Regime Competitiveness in the Fourth Wave. The Cases of Belarus, Moldova, Russia, and Ukraine*, in: „World Politics” 57 (2005) no. 1, pp. 231-261, p. 232.

17 Lucan Way, *Pluralism by Default in Moldova*, in: „Journal of Democracy” 13 (2002) no. 4, pp. 127-141, p. 127.

Over the time, however, the post-Soviet elites had gained a substantial wealth through shadow privatization and other dubious deals; learned how to manipulate elections, mass media, and political opponents; and transformed eventually the state weakness into a specific strength that meant primarily methods and scopes of coercion.

President Kuchma played an important role in this process – partly because of his personal skills and qualities but more importantly – because as a president he controlled disproportionately huge resources and, therefore, “was able to take an initial advantage in power and expand it considerably”:

„The president's power in Ukraine stems from his control over the executive branch, which is by far the most developed of Ukraine's three branches. Because it is charged with executing and administering the laws of the country, the executive branch can alter the incentives of other actors. (...) Imbalance of power is the fundamental factor that has prevented Ukraine from becoming a liberal democracy (...) Moreover, rather than having a dominant equilibrating or 'balancing' tendency, in which smaller power centres in society tend to ally to challenge a potentially dominant actor, in Ukraine the tendency is towards concentration, rather than balance, of power (...) As a result, the powerful become more so, and those with lack of access to resources find themselves increasingly shut out.“<sup>18</sup>

By the mid-nineties the situation was ripe for a large-scale privatization since the main players in Ukrainian politics and economy accumulated sufficient resources to carry it out in the most beneficial way for themselves. Ironically yet, it appeared to be a mixed blessing. The dubious wealth and murky privatization made them potentially easy targets for the surveillance and law-enforcement agencies subordinated directly to the president. All of them appeared to be on the hook, and it was up to the president now to decide who would be punished and when, and who would be granted generously an extended probation.

Selective application of law became a powerful instrument of official, albeit informal, blackmail employed by the president and his associates. It allowed them to re-establish a kind of order throughout the country, to subdue local barons and, surprisingly, bring the threat of Crimean separatism to virtual nil. By and large, this peculiar instrument of state domination eliminated fecklessness of the early nineties making the state institutions work, taxes paid, and oligarchs obedient. But the side effect of this relative “success” was a gradual elimination of pluralism – since it was “pluralism by default”, i.e., pluralism accompanied and supported by state fecklessness, rather than democratic traditions and institutions. All the disloyal subjects, members of political opposition and especially their business supporters became major targets of official blackmail. A great advantage of this new instrument of repression was that it allowed to persecute political opponents with clearly non-political charges, in full conformity with a letter of law.

In this regard, the new authoritarianism differed substantially from the former one. Formerly, the shadow power of the Communist Party was based on the communist ideology. It was deemed mandatory for everybody who held any more or less important position and/or strove for any social advance. A kind of “ideological blackmail” was employed as a tool of state domination to extort loyalty from the subjects. Now, under the post-Soviet non-ideological regimes, the loyalty could be achieved by other means: partly, as usual, by

---

18 D'Anieri, *Understanding Ukrainian Politics*, Op. cit, p. 61.

bribery and cooptation, partly by a new sort of blackmail – economical, facilitated by the advent of oligarchic capitalism.

#### 4 The "Blackmail State"

The notion of a blackmail state was introduced in 2001 by an American scholar Keith Darden who, at the time, co-directed the Melnychenko Tapes Project at Harvard University. An extensive collection of conversations of Ukrainian president Leonid Kuchma with his aides, recorded secretly in his office and eventually publicized by his fugitive bodyguard Mykola Melnychenko, provided an excellent albeit dreadful illustration of how blackmail could be institutionalized, i.e., systemically employed by the government as an effective tool of state domination. The system, as outlined by Darden, is based on three elements:

„The first is a permissive attitude of state authorities towards corruption. In Ukraine, corruption and illegality among the elite were accepted, condoned, and even encouraged by the top leadership, resulting in a general condition of impunity. The second element is extensive state surveillance. Even as the violation of the law is encouraged, the state (or rather the surveillance organs controlled by the President) continues to monitor and collect information on such illegal activities. Thanks to the surveillance organs, the state amasses a stockpile of files and criminal cases documenting the wrongdoings of office-holders as well as private actors. When compliance with state directives is required, this information is used for blackmail, with payment exacted – not in cash, but in political obedience.“<sup>19</sup>

In other words, a selective application of law represents the third element of the system: “Opponents of the regime can expect to feel the full wrath of any new legislation; supporters can expect to be let off the hook.”<sup>20</sup>

It would be secure to say that institutionalized blackmail became the main element of authoritarian rule in Ukraine and some other post-Soviet countries. It was extremely suitable for the ‘imitation (a.k.a. 'illiberal', 'partial', 'sovereign') democracies’, i.e., for the regimes that, on one hand, could not allow free and fair political and economic competition, which would most likely make them losers, yet, on the other hand, they could not afford openly undemocratic, dictatorial methods, due to specific domestic and international circumstances.

Surprisingly yet, this key institution had not been recognized and identified properly until Melnychenko’s tapes resurfaced in 2000-2001 and Keith Darden published his breakthrough article. Even as late as 1999, after highly unpopular Leonid Kuchma won his second presidential term by the most outrageous ‘techniques’ of state blackmail and further consolidated his autocratic rule, many authors still defined Ukraine as a ‘weak’ state – “where weak describes not the power of the state relative to other states but the ability of the government to adopt a policy and implement it in the society.”<sup>21</sup>

19 Keith Darden, Blackmail as a Tool of State Domination: Ukraine Under Kuchma, in: „East European Constitutional Review” 10 (2001) nos. 2-3, pp. 67-71.

20 The End of an Era?, in: „Kyiv Post” 25 October 2001, p. 6.

21 Paul D’Anieri, The Impact of Domestic Divisions on Ukrainian Foreign Policy: Ukraine as a ‘Weak State’, in: State and Institution Building in Ukraine, edited by Taras Kuzio / Robert S. Kravchuk / Paul D’Anieri, New York 2000, pp. 83-106, p. 84.

This misbelief largely stemmed from the early impression of many transitologists that “the disintegration of the Soviet state left an administrative and institutional void in Ukraine of magnificent proportions that has taken the considerable time to ‘backfill’. The political transition thus involves not only development of civic organizations, a free press and media, political parties, and interest groups but also building the capacity of the ‘quasi-state’ inherited from the USSR to enable it to perform even the most minimal functions of modern governance.”<sup>22</sup>

„Unfortunately, – a Ukrainian scholar polemically commented, – the belief in the institutional weakness of successive post-Leninist states has become uncritically accepted as conventional wisdom among transitologists. It must be said that the Ukraine inherited an elaborated system of administrative institutions from its Soviet predecessor. Though not being an ideal of effectiveness and efficiency, it could have shown much better performance had the interests of policy-makers coincided with the pursuit of developmental strategies.”<sup>23</sup>

The confusion may be to a degree terminological, coming from sheer equation of “weakness” and “dysfunctionality”. The latter presumably means that Ukrainian state is unable or, rather, unwilling to satisfy some basic needs of its citizens and to make government institutions to function properly, for the public good. It does not mean however, that the Ukrainian government cannot adopt and implement the policy it really needs – the policy, which benefits state officials and their ‘business partners’. In the latter regard, it was definitely not ‘weak’ – at least by the end of the nineties, when the blackmail-based authoritarianism had been firmly institutionalized and tax administration and tax police became the most powerful instruments of the state politics.

The confusion, most likely, comes from the fact that “in most Western states politics is highly institutionalized”, and institutional theories typically assume that “all the key political processes occur within formal institutions”. In Ukraine, however, like in many other postcommunist countries, “much of what is obviously important happens outside of formal institutions and in contradiction of the formal rules.”<sup>24</sup> This may look unusual, even odd, for Western observers but is fully in line with the Soviet tradition where the Communist party’s dominance was exercised largely outside formal institutions and aside of or even against written rules.

As of today, we have enough evidence to believe that:

„The Ukrainian state, and the presidency in particular, is not weak, but (...) many of its capacities are exercised through informal mechanisms of control that have until recently been hidden from view (...) The new evidence suggests that pervasive corruption, combined with extensive surveillance and the collection of evidence of wrongdoing by the state, provided the basis for the Ukrainian leadership to use blackmail systematically to secure compliance with its directives.

---

22 Taras Kuzio, Introduction: The 'Quadruple Transition', in: *Politics and Society in Ukraine*, edited by Paul D'Anieri / Robert Kravchuk / Taras Kuzio, Boulder 1999, pp. 1-9, p. 5.

23 Pavlo Kutuev, Development of Underdevelopment: State and Modernization Project in the Post-Leninist Ukraine, in: *Thinking Fundamentals*, IWM Junior Visiting Fellows Conferences, vol. 9, edited by David Shikiar, Wien 2000, pp. 1-15, p. 10.

24 D'Anieri, *Understanding Ukrainian Politics*, Op. cit., pp. 23, 45-46.

Corruption, rather than a sign of state weakness, is an essential element of an informal mechanism of presidential control in Ukraine and other post-Soviet states.<sup>25</sup>

In a recently published article on the same topic, Darden draws upon an extensive data from different countries to prove that in many terms – like capacity to collect taxes, to provide public order and basic services, or to fight crime, the Ukrainian state is pretty effective – nearly as effective as Western democracies and certainly much more effective than the states deemed ‘weak’ or ‘failed’. In spite of the common belief, he contends, bribery and embezzlement are not necessarily evidence of the breakdown of the state’s administrative hierarchy. On the contrary, under certain conditions they may reinforce that hierarchy.

„Traditional arguments have been right to emphasize that widespread graft is antithetical and harmful to a state grounded in the rule of law. Yet this view is incomplete. If we take a broader and more historical view of the state as a form of organized domination that is not necessarily based on law, it becomes clear that bribery and other corrupt practices can provide the basis for robust states of a different type. Where graft is systematically tracked, monitored, and granted by state leaders as an informal payment in exchange for compliance, it may even be essential to the basic integrity of some state – providing both an added incentive to comply with leaders’ directives and also the potent sanction of criminal prosecution in the event of disobedience. (...) While such state institutions may undermine the development of liberal politics and markets, informal states exercise considerable coercive, extractive, and other capacities that differentiate them significantly from the weak, fragmented states or syndicates for which they are often mistaken.”<sup>26</sup>

In his earlier (2001) article Darden suggested that the blackmail-based authoritarianism is likely to be sustainable since those who are in a position to alter this system are precisely those who derive the most benefit from it. So, he concluded, “without pressure from international community to divide rather than concentrate the powers of the state, it will be difficult for opposition forces in Ukraine to cast off this system in the foreseeable future.”<sup>27</sup>

After the Orange revolution he had to recognize, however, that “bribery and blackmail may substitute for genuine loyalty as the basis for a functioning administrative hierarchy, but they are an imperfect substitute from the perspective of regime stability. The Achilles heel of such graft-based states (...) is that they tend to be utterly lacking in popular support or legitimacy.”<sup>28</sup>

One should remember that the electoral authoritarianism builds its legitimacy through seemingly free elections and other ostensibly democratic procedures. It differs substantially in this regard from the traditional authoritarianism that maintains power primarily through ideology and/or coercion. But effectiveness of such a system has clear limits. President's power is significant but not total. The elections are manipulated in multiple ways but not thoroughly rigged. The authorities can tip the balance in their favour in a close race but can

25 Keith Darden, *Blackmail as a Tool of State Domination: Ukraine Under Kuchma*, in: „East European Constitutional Review” 10 (2001) nos. 2-3, pp. 67-71.

26 Keith Darden, *The Integrity of Corrupt States: Graft as an Informal State Institution*, in: „Politics & Society” 36 (2008) no. 1, pp. 35-59, p. 54.

27 Darden, *Blackmail as a Tool of State Domination*, Op. cit.; see also Keith Darden, *The Dark Side of the State: Formal and Informal Mechanisms of State Supremacy*, a paper presented at the conference on *State-Building in Post-Communist States: Toward Comparative Analysis*, Yale University 27–28 April 2001.

28 Darden, *The Integrity of Corrupt States*, Op. cit., p. 53.

barely overcome a huge deficit of votes in case their candidate is too unpopular and the rivals are strong and unified.

This is exactly what happened in 2004 when incumbent Leonid Kuchma picked up an unpopular prime minister Viktor Yanukovich as his successor for presidency. To make Kuchma's bad situation worse, the Ukrainian opposition unexpectedly got united, civil society proved to be stronger than was assumed, and elites defected from the president's camp much more massively than anybody predicted. All these factors combined with the international pressure made the defeat of the electoral authoritarian regime inevitable.

The 2004 Orange Revolution marked Ukraine's departure from authoritarianism rather than advent of liberal democracy. On one hand, the amendments to constitution have imposed some important limits on president's power and increased the prerogatives of the parliament and prime minister. The electoral law and internal rules governing the parliament were changed to promote the development of strong political parties and coalition-building. Yet, on the other hand, all the changes were made during the revolution in haste, through difficult negotiations and compromises, and produced many incoherences, omissions, and contradictions. Even more importantly, no comprehensive legal reform was carried out and no rule of law established.

All this makes, on one hand, Ukraine's return to Kuchma-style authoritarianism rather unlikely but, on the other hand, it makes Ukraine's return to Kravchuk-style 'feckless democracy' very probable. Whether the 'feckless democracy' would again end up in consolidation of authoritarianism is difficult to predict – since today's Ukrainian society substantially differs from that of the nineties and, even more importantly, 'invisible hand of free market' is much stronger an influential today than it was 10-15 years ago. Regretfully, this kind of speculations is beyond the scope of this paper.

## 5 Conclusion

Electoral authoritarianism in Ukraine that had got established by the end of the nineties under the presidency of Leonid Kuchma and was overthrown by the Orange Revolution, largely resulted from the initial imbalance of power inherited by the independent Ukraine from the Soviet Union. The strong executive and weak parliament and judiciary set up the system where the stronger player could concentrate more and more power virtually unchecked by the other participants of political process. Weakness of the civic culture, societal divisions, and lack of traditions of liberal democracy and rule of law in a post-Soviet society had made it easier for the executive to usurp more power and further emasculate the parliament, judiciary, and civil society. A poor institutional design developed in the post-Soviet Ukraine, had largely facilitated the process.

Thus, a vicious circle emerged where the initial formal prerogatives of the executive branch were effectively converted into informal power and influence, which, in turn, was converted into new and even stronger formal prerogatives. This self-reinforcing tendency had ultimately resulted in a perfect (in a way) system of ostensibly democratic governance called 'blackmail state'. Selective application of law provides the president and his associates with an excellent opportunity to make order with political opponents by apparently non-political means. The system, however powerful and efficient, in many terms, had its limits. A rather unique combination of domestic and international factors brought the regi-

me down during the spectacular Orange Revolution, after the authorities attempted to falsify elections too defiantly.

Importantly yet, the regime "failed not because he was constrained by institutions but because, in the end, he was confronted by superior power."<sup>29</sup> The prospects for a liberal democracy and rule of law still look problematic since the institutional basis for them remains incomplete. The revolution created rather overlapping powers that clearly separated them. So further reforms are needed to overcome a post-Soviet authoritarian legacy.

### *Literatur*

- Beissinger, Mark R., Subversive Institutions: The Design and Destruction of Socialism and the State. By Valerie Bunce, in: „East European Constitutional Review” 9 (2000) nos. 1-2, pp. 98-100.
- Bunce, Valerie, Subversive Institutions: The Design and the Destruction of Socialism and the State, Cambridge 1999.
- D’Anieri, Paul, The Impact of Domestic Divisions on Ukrainian Foreign Policy: Ukraine as a ‘Weak State’, in: State and Institution Building in Ukraine, edited by Taras Kuzio / Robert S. Kravchuk / Paul D’Anieri, New York 2000, pp. 83-106.
- D’Anieri, Paul, Understanding Ukrainian Politics: Power, Politics, and Institutional Design, New York 2007.
- Darden, Keith, Blackmail as a Tool of State Domination: Ukraine Under Kuchma, in: „East European Constitutional Review” 10 (2001) nos. 2-3, pp. 67-71.
- Darden, Keith, The Integrity of Corrupt States: Graft as an Informal State Institution, in: „Politics & Society” 36 (2008) no. 1, pp. 35-59.
- Dyczok, Marta, Ukraine. Movement without Change, Change without Movement, Amsterdam 2000.
- Friedrich, Carl / Brzeziński, Zbigniew, Totalitarian Dictatorship and Autocracy, New York 1961.
- Harasymiw, Bohdan, Post-Communist Ukraine, Edmonton / Toronto 2002.
- Kutuev, Pavlo, Development of Underdevelopment: State and Modernization Project in the Post-Leninist Ukraine, in: Thinking Fundamentals, IWM Junior Visiting Fellows Conferences, vol. 9, edited by David Shikiar, Wien 2000, pp. 1-15.
- Kuzio, Taras, Introduction: The 'Quadruple Transition', in: Politics and Society in Ukraine, edited by Taras Kuzio / Robert S. Kravchuk / Paul D’Anieri, Boulder 1999, pp. 1-9.
- Kuzio, Taras, Transition in Post-Communist States: Triple or Quadruple?, in: „Politics” 21 (2001) no. 3, pp. 169-178.
- Kuzio, Taras, Ukraine under Kuchma. Political Reform, Economic Transformation and Security Policy in Independent Ukraine, New York 1997.
- Kuzio, Taras (ed.), Special issue on Ukraine: A Decade of Independence, in: „Journal of Ukrainian Studies” 26 (2001), nos.1-2.
- Kuzio, Taras / Kravchuk, Robert S. / D’Anieri (ed.), Paul, State and Institution Building in Ukraine, New York 2000.
- Way, Lucan, Authoritarian State Building and the Sources of Regime Competitiveness in the Fourth Wave. The Cases of Belarus, Moldova, Russia, and Ukraine, in: „World Politics” 57 (2005) no. 1, pp. 231-261.
- Way, Lucan, Pluralism by Default in Moldova, in: „Journal of Democracy” 13 (2002) no. 4, pp. 127-141.
- Wilson, Andrew, Virtual Politics. Faking Democracy in the Post-Soviet World, New Haven / London 2005.

---

29 D’Anieri, Understanding Ukrainian Politics, Op. cit., p. 208