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Oligarchs into Businessmen: Ukraine's Transition to the Post-Kuchma Era

This article is divided into three sections. The first discusses Ukraine's post-Soviet transition within a comparative perspective. It undertakes this by surveying the growing gap between democratic progress in central-eastern Europe and the Baltic states, on the one hand, and the Commonwealth of Independent States (CIS), on the other. Two other issues which are investigated are a reluctance to cede power in the CIS leading to authoritarianism, and the link between corruption and democratic regression.

The second places Ukraine's post-Soviet transition within theoretical frameworks. Of the many attempts at classifying Ukraine's regime type the concept of a hybrid state with a competitive authoritarian regime is found to best suit Ukraine during Kuchma's second term in office (1999-2004).

The third section analyses the transition to the post-Leonid Kuchma era in 2002-2004. This section investigates the 2003-2004 election campaign, fear by the executive and the oligarchs that dominates the transition to the post-Kuchma era, the return to Soviet tactics against the opposition, growing conflict between the "parties of power" and civil society and divisions within ruling elites in the transition to the post-Kuchma era.

Ukraine's Transition in Comparative Perspective

Harvard University Professor Samuel Huntington outlined his Clash of Civilizations framework for understanding international relations in 1993, and published it three years later in a book of the same title (Huntington 1997). Huntington's thesis was severely criticized by many of his fellow academics because it sought to define a new "Other" against which the U.S. could establish a new moral crusade (Price 2004).¹

¹ A decade after its debut, Samuel Huntington's famous thesis still draws fire from liberal intellectuals in the US. *Boston Globe* (15 February 2004). See also *A Clash of Civilizations: A Reading Guide* at <http://www.csnonline.com/specials/sept11/flash_civClash.htm>

Huntington's thesis was also, understandably, not readily accepted by the twelve of the Soviet successor states grouped within the CIS. Huntington defined as one of his civilization fault lines the "Slavic Orthodox" world, whose border is roughly equivalent to that of the CIS. Belarus and Ukraine are two CIS exceptions with the fault line allegedly dividing the "more Catholic western Ukraine from Orthodox eastern Ukraine."

Huntington's thesis is not always applicable. Western Belarus, for example, has never played the same "Westernizing" role as western Ukraine because of its long period under Tsarist rule. Only three Galician of the seven western Ukrainian *oblasti's* have Catholic majorities; the other four (including Trans-Carpathia) have more Orthodox than Catholic parishes. Huntington's thesis also does not explain why Orthodox states such as Greece, Bulgaria and Romania are, or will become, members of NATO and the EU.

Huntington believes that civilization identities are primordial and therefore fixed in stone. Again, this is questionable. National identities are always in a state of flux and open to competing interpretations and competition from other identities, such as gender, sexual orientation, and class (Smith 1991).

Prior to the "Third Wave" of democratization the Latin countries of southwestern Europe and Latin America were also assumed to be unable to build "Anglo-Saxon" liberal democracies and market economies. This thesis has proven to be false. The same could also occur over time with Huntington's "Slavic Orthodox" world. Despite these caveats Huntington's thesis does provide us with some analytical tools with which to understand two factors that are dividing the twenty-seven post-communist states.

Firstly, the EU continues to exclude the "Slavic Orthodox" CIS in the same manner as it has excluded Muslim Turkey (Kubicek 2003: 150-73; Kuzio 2004e). It is striking that no CIS state or Turkey will be among the ten post-communist and two Mediterranean states set to join the EU between 2004-2007. The EU signed Partnership and Cooperation Agreements with CIS states, not the Association agreements that it signed with central-eastern Europe and the Baltic states.

Ukraine has long complained that the EU treats Ukraine as intricately linked to Russia. Some EU officials rule out Ukraine's membership of the EU because of their fear that this would isolate Russia (the same argument was used to bring Ukraine into the Council of Europe at the same time as Russia even though Russia was then in the

midst of a violent conflict in Chechnya). Other high ranking EU officials have ruled out altogether Ukraine's membership in the EU, as some have of Turkey. If "Europe" is defined as the geographic scope of the EU then Ukraine and the CIS are not considered by Brussels as belonging to "Europe." This situation is made more confusing by public attitudes in European CIS states such as Ukraine. Whereas the non-communist elites are either unreservedly, or at least in terms of rhetoric, pro-European the same cannot be said about a large proportion of the population.

Secondly, since the late 1990s there has been progress in three areas of democratization, the rule of law and battling corruption in central-eastern Europe and the Baltic states. Progress has even taken place in former democratizing laggards, such as Slovakia, Romania, Bulgaria and Croatia. This is in contrast to the CIS, where there has been regression in all of these three areas. Countries once similar to central Europe's democratizing laggards such as Ukraine, have regressed since the late 1990s. Authoritarian retrenchment has gained ground throughout the CIS. In some cases, such as in Russia and Ukraine, political authoritarianism has been combined with economic liberalism. "Super-presidential" regimes are the norm in the CIS whereas regimes with strong parliaments are the norm in central-eastern Europe and the Baltic states (Ishiyama and Kennedy 2001: 1177-91). The only exception is Moldova.

Why then are the twenty-seven post-communist states dividing into two groups, of which only one is progressing towards membership of NATO and the EU? Meanwhile, in the CIS democratization is under threat and EU membership and therefore "rejoining Europe" is not entertained by Brussels as a future option.

Huntington believes the reasons for this lie in civilization identities that have different views on relations between the individual, citizen and the state, "as well as differing views of the relative importance of rights and responsibilities, liberty and authority, equality and hierarchy." Explanations proffered by other Western scholars include the role of the Orthodox Church in preaching passivity and submission to secular government that contributed to a political culture of atomization and cynicism. Unlike in Catholic countries, the Orthodox Church therefore never became a counterweight to an oppressive state (Przel 1999: 1-15).

Another explanation put forward is pre-communist history and the length of time under communism. These factors, in turn, influenced the manner in which the communist regime collapsed. No significant break with communism took place in the

CIS (except in western Ukraine) (Abdelal 2002: 459-84; Roper and Fesnic 2003: 119-31).

In Russian polls undertaken in 2002, 43% would actively cooperate or support the Bolsheviks and the proportion of Josef Stalin's supporters was as high as 22%. Likewise in Ukraine, nearly half of the population see the anniversary of the Bolshevik revolution on 7 November in a positive light with only 7.3% seeing it in negative terms. Outside the CIS the collapse of communism was often the result of "collective, non-violent civic action," a Freedom House study concluded.² A major factor that spurred this activity was the "strength of the national idea." In the CIS both of these factors only operated in western Ukraine (Shulman 2005).

In Ukraine a political crisis has been brought on by a stalemate between two different visions which is only partially explained by Huntington's "Clash of Civilizations." Ukraine is home to the only large, pro-western reform movement in the CIS³ which seeks to implement domestic policies that would decisively break with the Soviet past and facilitate Ukraine's Euro-Atlantic integration. In the 2004 elections the candidate that espoused these views was Viktor Yushchenko.

This vision contends with former Soviet Ukrainian elites that have become oligarchic centrists who espouse the rhetoric of Euro-Atlantic integration while continuing to pursue traditional CIS-style authoritarian and corrupt policies. The 2004 candidate with these views was Kuchma's chosen successor, Prime Minister Viktor Yanukovich.

Reluctance to Cede Power in the CIS

Almost twelve years after the demise of the Soviet Union, five of the twelve CIS states are still ruled by the man who was already president at the time his country gained its independence. In almost all of the others, the present ruling elites are composed primarily of former high-ranking communists who ditched their party affiliation in 1991-1992 and adopted a centrist platform.

National democrats came to power in Armenia in 1990 even before the collapse of the USSR. Nationalists governed for a brief period in Moldova (1990-92),

² See <<http://www.freedomhouse.org/research/natranstr.htm>>

³ Moldova and Georgia are two other CIS states with large opposition movements. In the latter they came to power in November 2003. The opposition in these two countries is more nationalistic than democratic, unlike Ukraine where nationalism plays second fiddle to democratic policies in the Yushchenko camp.

Georgia (1990-1992) and Azerbaijan (1992-1993), but have largely remained in opposition in other CIS states during most of the period since 1992. Post-communist centrist elites feel a sense of proprietary right over the territory they control and believe that only they have a right to govern.

Table 1. Presidential Rule in the CIS

CIS	1. Referendums extending presidential terms
Turkmenistan	1999 (LIFE)
Kazakhstan	2000
Uzbekistan	2002
Kirgizia	2003
Tajikistan	2003
	2. Organised successions (Prime Minister to President)
Russia	2000
Azerbaijan	2003
	3. Non-free and unfair presidential election
Belarus*	2001
Armenia	2003
Ukraine	2004
	4. Free and fair presidential elections
Moldova	2001
	5. Democratic Revolution
Georgia	2003-2004
Ukraine	2005

Accordingly, those leaders seek to legitimize themselves by portraying themselves as guardians of stability, holding back a return to power by either the communists, on the one hand, or “nationalists” (i.e. national democrats), on the other.

In Central Asia and Belarus, and to a lesser degree in Azerbaijan, the opposition is not treated as a legitimate group from whom a new president could be elected. Opposition parties are therefore either stripped of legality by the enactment of legislation setting impossible conditions they must meet in order to reregister (as was the case over the past year in Kazakhstan), or de-legitimized through a political discourse that defines them as “radicals,” “extremists,” and bent on instigating “instability,” as the Kyrgyz authorities define their opposition. Therefore, over the past twelve years, those entrenched elites have rewritten constitutions and falsified elections in order to preserve their hold on power.

The simplest way of extending the tenure of the incumbent president is to amend the constitution and then argue that his second presidential term is actually his first because the country’s post-Soviet constitution was adopted after the first term began. This argument was used by Russian President Boris Yeltsin (first elected in 1990, constitution adopted in 1993) and has been touted by pro-presidential forces in Ukraine (first elected in 1994, constitution adopted in 1996) and by Belarusian President Aleksandr Lukashenka (first elected in 1994, revised constitution adopted in 1996).

Lukashenka won a referendum in October 2004 to change the constitution so that he could stand for a third term in office in 2005. Kuchma’s allies pressurized the Constitutional Court so that it would vote in favor of allowing him to stand for what it describes as a “second term” (because his first term from 1994-1999 was not taken into account as it began prior to the adoption of the 1996 constitution). Former Azerbaijan President Heidar Aliyev used the same line. He similarly argued that as he was first elected in 1993 but the current constitution was adopted two years after that he is entitled to seek a third term in the ballot scheduled for October. Instead, he transferred power to his son who became prime minister just before the October 2003 elections and then went on to win them.

Such referendums have extended the term in office of the presidents of Turkmenistan (1999), Uzbekistan (2002), and Kazakhstan (2000). Turkmen President Saparmurat Niyazov subsequently secured for himself the option of remaining in power for life. In Tajikistan, voters were called on in June 2003 to endorse a package of some fifty constitutional amendments, the most important of which enables incumbent President Imomali Rakhmonov to run for two further consecutive seven-year terms.

An alternative, or additional method of holding on to power is electoral fraud. Since 1995, the OSCE has criticized fraud of various degrees of blatancy in parliamentary and presidential elections in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Uzbekistan, and Ukraine.

Kuchma's strategy was four fold:

- Standing for a "second term" (in effect, a third term), as permitted by the Constitutional Court in December 2003.
- Holding all elections in one year, thereby postponing the 2004 presidential elections to 2006 when the parliamentary elections are held and extending Kuchma's term by two years.
- Transforming Ukraine into a parliamentary republic in which parliament would elect the president. Kuchma banked on his pro-presidential majority electing a pliant president, thereby bypassing the need for a nation-wide vote that the opposition could win.⁴
- The transformation of parliament into a bicameral institution with a Senate that would include regional representatives as well as former presidents. Kuchma would obtain a life seat in the Senate.

Corruption and Democratic Regression

In addition to the presumption of the "right to retain power" referred to above, there is a second cogent reason why post-communist elites are reluctant to risk ceding power. Being no longer in power in CIS states means not only going into opposition, but also the possibility of facing charges of corruption and, worse still, revenge by former political opponents who now constitute the new leadership.

Due to the close connection between business and the executive branch, if the executive loses power, business empires built up over the last decade by the president, his family, and oligarchic allies could quickly be lost. A pact is often made whereby oligarchs will be left alone provided they redirect their loyalties to the chosen "successor." In a bid to insure themselves against legal proceedings and protect their fortunes accumulated by their families and close associates, the presidents of both Kazakhstan and Kyrgyzstan have introduced in their respective parliaments bills –

⁴ A similar model was adopted in Moldova in 2000-2001, the only CIS country with a full parliamentary system.

which deposes duly passed – guaranteeing them and their immediate families lifelong immunity from prosecution. Putin granted the same immunity to Yeltsin.

In the CIS, leaders are afraid of being out of power. The reason is their high level involvement in corruption during the "economic reform" of the 1990s. Being out of power means revenge by the newly elected opposition, a re-division of accumulated assets or, worst still, the application of anti-corruption legislation. The opposition have attempted – without much success – to assuage fears among the oligarchs that privatization conducted in the 1990s will be re-opened for investigation of corrupt dealings should Yushchenko be elected in 2004.

There is a close link between the deterioration of democratization in the CIS, creation of hybrid regimes by elites who have "captured" the state and corruption. Of the twelve CIS states, only two countries are exceptions to this link – Belarus and Moldova – led by neo-Soviet and communist leaders.

Belarus is led by President Aleksandr Lukashenka and is, according to the Transparency International think tank, the least corrupt state in the CIS at 53rd place out of 133 countries (where 1 is the least corrupt). Why? Because Lukashenka has not allowed "economic reform" to take place and therefore no group of oligarchs have arisen who could then "capture" the state. Lukashenka won a referendum in October 2004 that allowed him to change the constitution so that he could stand for a third term in the 2006 elections. This has more to do with his authoritarian streak than a fear of being out of power because of corruption. Moldova is the only country where communists have been re-elected to power. Moldovan communists remain the most popular force because Moldova is Europe's poorest country, they are less corrupt and are not backed by oligarchs. One reason Moldova's communists do not fear being out of power is because there is no evidence of corruption within their ranks. Fear of being out of power by corrupt CIS leaders breeds authoritarianism.

In the remainder of the ten CIS states the link between democratization and corruption is more evident. Besides referendums in Central Asia, another tactic has been the holding of unfair and unfree presidential elections in Belarus (2001), Armenia (2003) and Ukraine (2004). In Russia (2000) and Azerbaijan (2003) presidential elections were organized successions from prime minister to president. In Azerbaijan the succession of father to son (Heidar to Ilham Aliyev) was the first dynastic succession in the CIS, making the country more akin to North Korea or Syria. In Russia, Vladimir Putin was Boris Yeltsin's chosen successor in the first such

organized succession in the CIS. Putin granted Yeltsin immunity from prosecution in return for him staying out of politics. The deal has held.

Such a deal could be a model for other CIS states. But, what is needed for such a deal to remain stable is a degree of trust on both sides. Putin's background in the KGB and its successor, the FSB, probably facilitated this. A second factor was the severity of the "crimes" Yeltsin was accused of (and thereby required immunity for). In Ukraine two of the three leading candidates in the 2004 elections (reformer Viktor Yushchenko and communist Petro Symonenko) were not from security service backgrounds and were distrusted by Kuchma. A second complicating factor is the far larger degree of revelations about illegal activities in which Kuchma is accused of involvement. For example, despite periodic changes in the Prosecutor-General progress has been made in resolution of the murder of opposition journalist Gongadze in Autumn 2000.

The second part of the 2000 Russian (Yeltsin-Putin) agreement has been more unstable. The deal allowed the oligarchs to maintain their wealth in return for staying out of politics. This aspect of the agreement has always been contested by both sides. Boris Berezovskii and Vladimir Gusinski were forced to flee abroad in late 2000 (following a precedent set by Ukrainian Prime Minister Pavlo Lazarenko the year before) when all three became "dissident oligarchs." "Dissident oligarch" Yulia Tymoshenko opted to stay in Ukraine (Kuzio 2004d).

Those oligarchs who stayed in Russia refused to stay silent. From exile Berezovskii has funded the Liberal Russia Party, NGO's and media outlets. YUKOS funded Yabloko and the Union of Rightist Forces. Neither of these three reformist parties poses a serious challenge to Putin's monolithic party of power, United Russia, or the Communists, the two parties that dominate Russian politics. The dramatic arrest of YUKOS CEO Khodorkovskii in Autumn 2003, only three months before parliamentary elections, has shown the instability of any deal between a new president and established oligarchs. It is in the interests of an outgoing president to go into "retirement" silently in return for immunity. The oligarchs, on the other hand, are younger, dynamic and self-confident and therefore less willing to stay aloof from daily politics.

The attack on YUKOS had little to do with combating corruption but with the selective application of the rule of law against political opponents. This has been described by Darden as the "blackmail state" where corruption is permitted in

exchange for political loyalty (Darden 2001: 67-71). If this loyalty is withdrawn (as with former Prime Minister Pavlo Lazarenko in 1997-1999) corruption charges are brought (Kuzio 2003f; 2003b). Putin is not launching a wholesale drive against oligarchs. If this were the case, another highly wealthy oligarch, Roman Abramovich, governor of the Chukotka Autonomous *Okrug*, would also be imprisoned. But, Abramovich has stayed out of politics.

The link between corruption and democratization in the CIS was not an issue in the 1994 Ukrainian or 1995 Georgian presidential elections because privatization had not yet begun and the oligarchs did not yet form the presidents' power base. In 1994 outgoing Ukrainian President Leonid Kravchuk had no need to seek immunity from prosecution (which he still does not possess and has never sought). Immunity only became an issue in the 2004 Ukrainian elections because Kuchma was ending his second term in office after a decade of corruption, privatization and close alliance with corrupt oligarchs.

Theoretical Frameworks for Regime Type in Ukraine

The difficulties of applying the "transition paradigm" to Ukraine and other CIS states was dissected by Carothers (2002: 5-21) who found its premise of a "democratic teleology" wrong. Carothers points out that only approximately 20 out of 100 transitions in the "third wave" democratic wave of the 1990s have achieved success in democratic consolidation. The majority of the states which were in transition usually combine elements of authoritarianism and democratic systems that scholars have increasingly referred to as hybrid regimes.

As we will see later, Ukraine's transition was halting throughout the 1990s and it ground to a halt during Leonid Kuchma's second term in office. During Kuchma's second term, Ukraine became a hybrid state in the sense defined by Carothers. Besides Ukraine, Carothers includes Russia, Bulgaria, Bosnia, Moldova and Albania as hybrid regimes. These hybrid regimes have six features which are present in Ukraine:

- Citizens interests are under-represented or ignored;
- Low levels of political participation beyond young;
- Frequent abuses of the rule of law;
- Election outcomes produce uncertain results and lack legitimacy;
- Exhibit low levels of trust in state institutions;

- Poor performance of the state.

Transitology assumed that regimes were merely stuck in a forward transition to the eventual attainment of democratic consolidation. Hybrid states can though, have long staying power. In Mexico the hybrid state ruled by the Institutional Revolutionary Party (PRI) stayed in power until the 1990s by managing elections in which it regularly received 80% of the vote. Russia is also increasingly referred to as a "managed democracy" (Balzer 2003: 189-227).

The main threat to regime stability in hybrid states is the requirement to hold periodic elections. If elections are mishandled, as in Serbia by President Slobodan Milosevic in October 2000 or President Eduard Shevardnadze in November 2003, regime turnover can lead to "democratic breakthrough." Throughout the transition to the post-Kuchma era the Ukrainian authorities remain threatened by a repeat in Ukraine of the "Georgian scenario" (Kuzio 2003d; 2003e; 2004b).

The characterization in Carothers (2002) of the ruling elites as corrupt, without interest in the country and dishonest is consistent with opinion polls in Ukraine which show that 90-92% of Ukrainians believe they have no influence over central or local affairs. In 2003, between 63-85% of Ukrainians believed the elites were corrupt, unable to increase living standards, indifferent to the protection of their rights, unprofessional and undemocratic. A total of 71% believed that the newly elected president in 2004 should change Ukraine's course.

The political process in hybrid states is, "widely seen as a state, corrupt, elite-dominated domain that delivers little good to the country and commands little respect" (Carothers 2002: 10). Hybrid regimes blur the distinction between the state and the ruling party. The state's assets (finances, jobs, public information via state media, security forces) are placed in the hands of the ruling party. This is seen especially during elections when the party of power abuses its access to state administrative resources (Kuzio 2004e).

Hybrid regimes are "dysfunctional" because they exhibit "feckless pluralism," in Carothers's view. Levitsky and Way prefer a different term, calling it "pluralism by default" (Levitsky and Way 2002: 51-65; 2001; Way 2004: 143-61). Pluralism by default exists in states which have neither a strong civil society nor united elites. Instead, there is, "a fragmented and polarized elite and weak state unable to monopolize political control" (Way 2003: 463).

Pluralism by default is inherently unstable because neither side (authoritarian incumbents or the opposition) are powerful enough either to impose a fully authoritarian regime or to undertake democratic regime change. Although they are at heart inherently unstable regimes, "parties of power" (such as Mexico's PRI) may have the capability to stay in power for long periods of time. Elections remain the greatest threat to the unstable relationship between the authorities and the opposition. Pluralism by default may prevent democratic breakthrough and also pose an important obstacle to authoritarianism. The ruling elites of the regime are incapable (for a variety of reasons that we shall discuss later) of introducing a fully authoritarian regime. This was the case during Kuchma's second term, when from the Kuchmagate crisis until he left office (2001-2004) the ruling elites faced one of their strongest challenges from the opposition.⁵

Transition to the Post-Kuchma Era

The October 2004 elections will end the Kuchma era dating from his first election in July 1994. Kuchma has played the role of an impartial arbiter between oligarchic clans that entered the Ukrainian scene in the late 1990s and have become his power base. No neutral candidate is available to continue Kuchma's role. Yanukovych cannot play a neutral role among competing oligarchs because he is the official leader of the most powerful Donbas clan grouped in the Party of Regions.⁶ Yushchenko, the candidate with the highest poll ratings, is seen as a threat by some oligarchic clans.

Throughout the CIS the greatest period of instability has arisen during presidential elections when the incumbent has ended his second term. Presidents are afraid of losing power. Their oligarchic allies are also afraid of losing the president's protection if his opponent is elected. In Ukraine the issue of immunity from prosecution for Kuchma is even more compelling than in the remainder of the CIS because of the large number of allegations made against him in the Kuchmagate tapes that were produced illicitly in his office in 1999-2000 by presidential guard Mykola Melnychenko (Kuzio 2003a). These allegations include election and referendum fixing in 1999-2000, high level corruption, murder and violence against journalists and

⁵ The Kuchmagate crisis began in November 2000 when tapes made illicitly in Kuchma's office by a presidential guard were released in parliament. They purported to provide evidence linking President Kuchma to the murder of opposition journalist Heorhiy Gongadze in Autumn 2000.

⁶ The unofficial leader of the Donbas clan is Ukraine's wealthiest oligarch, Renat Akhmetov.

parliamentary deputies, as well as illegal arms sales. Without immunity from prosecution Kuchma would be tempted to continue to interfere in Ukraine's domestic politics when he is out of office. With an immunity deal Yeltsin has remained aloof from Russian politics since Putin's election in March 2000. Without Kuchma in power, some of his oligarchic allies would also feel threatened by three factors. Firstly, hailing primarily from the Soviet Ukrainian elite they are highly conscious of the history of the USSR since Josef Stalin's death in 1953 when each new Soviet leader condemned his predecessor.

Secondly, Kuchma did not belong to any oligarchic group and played the role of an impartial arbiter. Pro-presidential forces have been unable to find a potential candidate who could continue this impartial leadership role. A victory in the 2004 presidential elections by Yanukovych would upset the delicate balance of power between three large and a host of smaller oligarchic clans that Kuchma had carefully maintained through divide and rule tactics. Oligarchs feel threatened by a new president who comes from a competing oligarchic group because of the perceived impact this would have on their business interests. This makes head of the Donbas "party of power" Party of Regions, Prime Minister Viktor Yanukovych's, candidacy undesirable to other clans.

Thirdly, as in the remainder of the CIS, oligarchs fear that the election of an opposition candidate would lead to the unleashing of revenge against them for their involvement in authoritarian methods used against the opposition. Oligarchs also fear that the hitherto virtual campaign against corruption and organized crime would become real and that they would suffer most. They fear a re-division of assets and possibly re-nationalization. To remove these threats the executive devised various attempts at constitutional reform. Failure to attract the centre-right opposition with its 120 deputies led to the defeat of the constitutional changes (which require 300+ votes) as the combined left vote of 75 deputies was unable to provide the necessary additional votes. The pro-presidential camp always possessed a slim majority of 225-230 in parliament that was situational and devoid of any ideological unity. In Summer 2004 the pro-presidential majority disintegrated.

Not all oligarchs feared a Yushchenko victory. In maintaining a moderate profile Yushchenko hoped to reach out to moderates in the pro-presidential camp. As the elections approached some pro-presidential deputies defected to *Our Ukraine*, a process already begun with twice former parliamentary speaker Ivan Plushch, who

left the pro-presidential Democratic Initiatives faction in October 2003. Those within the pro-presidential camp who were evolving from oligarchs into businessmen understood the need for change. A "critical mass" of businessmen would like to operate in a "normal" legal environment where the success or failure of "their businesses will not be dependent on their faithfulness to the president".⁷ These former oligarchs, such as Viktor Pinchuk, maintain good relations with Yushchenko. Pinchuk and the Donbas clan are also legitimizing their business interests by inviting international auditing firms to place their business empires on a legal and transparent footing.

Of the three main oligarchic clans the ones to suffer most in the event of an opposition victory would be the SDPUo whose relations with Yushchenko and *Our Ukraine* have deteriorated dramatically. The SDPUo are the only clan that are unpopular in their home base because of the high popularity of Yushchenko's *Our Ukraine* in western and central Ukraine. Conflict between *Our Ukraine* and the SDPUo, at times leading to violence, exists throughout western and central Ukraine. Two episodes have particularly contributed to the deterioration of relations between Yushchenko, *Our Ukraine* and Medvedchuk and the SDPUo that he heads.

Firstly, internationally condemned mayoral elections in the Trans-Carpathian town of Mukachevo in April 2004. Although the *Our Ukraine* candidate won the election outright falsification, with the assistance of organized crime, "skinhead" enforcers, led to the official endorsement of the SDPUo candidate (Kuzio 2004b; 2004a). Secondly, the attempted assassination of Yushchenko in September 2004. Although initially diagnosed as "food poisoning" by Ukrainian doctors, Yushchenko's treatment by a Viennese private clinic led to a diagnosis that questioned "Food poisoning" and referred at first to the introduction into the blood stream of "chemical substances" that are not found in food or drink. A second examination by the clinic gave a graver diagnosis that claimed that Yushchenko had been subject to a "bioterrorism" attack. Between both visits to the clinic Yushchenko spoke to parliament and accused the "authorities" (*vlada*) of being behind the assassination attempt. A parliamentary commission was established to investigate the issue.⁸

The head of the SDPUo, Viktor Medvedchuk, is also head of the presidential administration. Medvedchuk plays a similar manipulative role behind the scenes as

⁷ See *Zerkalo Nedeli*, 23-29 August 2003; and *Ukraine: Spliffs Emerging in Pro-presidential Ranks* (2003).

⁸ The speeches of the head and deputy head of the parliamentary commission can be found in *Ukrainska Pravda* (7 October 2004). See also Kuzio (2004f; 2004k).

that formerly undertaken by Berezovskiy in Russia. The SDPUo do not possess production facilities, unlike the Donbas and Dnipropetrovsk (*Labor Ukraine*) clans. The SDPUo's sources of income are from corruption in the trading of energy, commodity trading, tapping into the state budget, and corruption through being close to the executive. Unlike the Donbas and Dnipropetrovsk clans, the SDPUo therefore have a vested interest in continuing the current state of corruption and vested interests and avoiding any shift to a more transparent economy and polity. Medvedchuk and the SDPUo suffered the greatest financial losses during Yushchenko's government because of the successful clean up of the highly corrupt energy sector. Ashund calculated that over \$2 billion was returned to the Ukrainian budget by the anti-corruption efforts of the Yushchenko government (Ashund 2001: 313-28).

2003-2004 was a turbulent election in Ukraine. On the one hand this was typical of presidential elections throughout the CIS because of the fear of the executive and his oligarchic allies of the loss of power. On the other hand, Ukraine was unique in that there was a real possibility of an opposition candidate being elected in a free and fair election. The Ukrainian authorities faced, for the first time, a serious challenge from a powerful opposition. The opposition, on the other hand, faced authorities who had far more to lose compared to earlier elections. It is little wonder therefore, that Kuchma's prediction that the election would be the "dirtiest" in Ukraine's history proved to be a true prophesy.

Fear Drives Constitutional Changes and Election Campaign

Pro-presidential blocs and parties fighting the 2002 Ukrainian parliamentary elections advocated strengthening the executive. This called with President Kuchma's own preference since his first election in 1994 for a Russian and CIS-style 'super-presidential' constitution (Ishiyama and Kennedy 2001: 1177-91). This was also the aim of the flawed and internationally unrecognized April 2000 referendum. Kuchma though, failed to obtain his desired "super-presidential" constitution and had to compromise with parliament. The result was a "semi-presidential" regime (Protsyk 2003: 1077-95) that has meant conflict between the legislature and executive with neither side dominant over the other.

In Ukraine, as in other CIS states, election programmers rarely translate into policy after the elections. The pro-presidential *For a United Ukraine* (ZYU) bloc

disintegrated into eight parliamentary factions only a month after the 2002 elections. Unity would be impossible anyhow in one key area, constitutional reform, because the successor factions to ZYU and its ally, the SDPUo have radically changed their policies since the elections. ZYU's election programme called for the strengthening of executive power (i.e. a move towards a "super-presidential" system). Yet, in March 2003 President Kuchma announced a program of constitutional reform. This would ostensibly signal a move away from the typical CIS "super-presidential" system, that ZYU had supported, to an east-central European and Baltic parliamentary constitution (in the CIS only Moldova has a fully parliamentary system). As Freedom House's annual "Nations in Transit" survey of twenty-seven post-communist states has proved, parliamentary-presidential (or pure parliamentary) systems have been more conducive to democratization.⁹

This then begs the question of whether President Kuchma's ultimate purpose was to advance Ukraine's democratization and to halt its regression since the late 1990s. This was unlikely as it was fear (Kuzio 2003c) of a Yushchenko victory that drove constitutional reform and the support given to it by his centrist oligarchic parliamentary allies. These proposals aimed to undertake two steps. The first involved stripping all power away from the executive as an insurance policy in case the opposition won the 2004 presidential elections. An opposition president could not be allowed to possess the same degree of power as Kuchma possessed.

Secondly, as outlined earlier in this article, the aim was to prolong Kuchma's term in office directly or indirectly through four different means. It was this attempt at using constitutional reform to protect Kuchma when out of office that led to the centre-right opposition *Our Ukraine* and Tymoshenko bloc refusing to support the constitutional changes. The additional votes of their 120 additional deputies (45 more than the combined Communists and Socialists) would have led to the passage of the changes (the April 2004 vote was only 11 short of the 300 votes it needed to muster for the constitutional changes). Those afraid of the post-Kuchma era therefore used constitutional changes, "as a fear-relieving anti-depressant" because they feared the "imminent threat of the upcoming redistribution of property."¹⁰ Socialist leader Oleksandr Moroz added that the oligarchs "are concerned about the imminent change

⁹ See <<http://www.freedomhouse.org/research/natransit.htm>>

¹⁰ Interview with first deputy head of the Ukrainian parliament Oleksandr Zinchenko (*Zerkalo Nedeli*, 16-22 August 2003).

of the players".¹¹ Embedded in this was the fear that some pro-presidential groups would go behind Kuchma's back and agree separate deals with Yushchenko. Kuchma was fearful that once he was no longer in power he would have less control over his parliamentary supporters, who are allied not through ideology but the fear of closure of their businesses and having to face corruption charges.

State-Civil Society Relations Strained

In January 1972 a purge and arrest of dissidents began in Ukraine that lasted until 1977 and which was subsequently called a "General Pogrom" by the *samyddav (samizdat)* journal *Ukrainske Visyky* in its 7-8 issue (Spring 1974). The editor, writing under the pseudonym Maksym Sahaydak, was believed to be Stepan Khmara, later subject to repression himself, who is a member of the populist Tymoshenko Fatherland party.¹² During the 1972-1979 "General Pogrom" 70 Ukrainian dissidents were arrested and tried. But, the real number of those dismissed from work, forced to recant and subject to other forms of repression was closer to 200, as it also encompassed the education and cultural spheres. In September 2002, the detention of 1,000 oppositionists throughout Ukraine in the days preceding the 16 September protests was even more extensive and the largest crackdown since the Stalin era in the former USSR. The size of the opposition crowds estimated by the Kyiv State Administration at 50,000 also exceeded the 20,000 during the Kuchmagate crisis in March 2001.

The authorities showed no interest in dialogue in the 1970s, just as in the transition to the post-Kuchma era. Yushchenko, head of *Our Ukraine*, Ukraine's largest parliamentary faction, had distanced himself from the three radical opposition groups (Tymoshenko, Socialists and Communists) by continuing to support a "dialogue" with the authorities in the form of a round-table modelled on that held in Poland in 1988-1989. Yet, Kuchma never expressed interest in any "dialogue" with the opposition. As in the 1970s, this refusal to agree to any "dialogue" pushed moderates like Yushchenko into taking a relatively more radical stance (Kuzio 2004c). The tactics of the authorities against the opposition were two-pronged. The first involved repression and prevention. Every effort was made to reduce the size of the

¹¹ Interviewed by *Zerkalo Nedeli*, 23-29 August 2003.

¹² Khmara's Conservative Republican Party merged with Tymoshenko's Fatherland Party.

protests to as low a figure as possible. It was argued that there would be no room for them all in central Kyiv (Tymoshenko claimed she expected 100-200,000 to attend the protests). Meanwhile, the Traffic Militia (DAI) prevented coaches, buses and cars from entering Kyiv, except those with Kyiv number plates. The DAI worked under a "special regime" but claimed this was to prevent chaos if the roads were blocked by demonstrators. To undertake later court action against protestors, DAI handed out prepared complaints for drivers to sign. Fake copies of the Tymoshenko newspaper *Vechirni visti* were circulated calling on Kyivites not to join the protests. Students, many of whom would be expected to take part in the demonstration, were threatened with expulsion from their higher educational institutions. Education Minister and SDPUo member Vasyl Kremen said he would not allow students to disrupt studies. The weekend prior to the demonstration was designated as a "sanitary period" during which students could not put up guests. In Kharkiv the authorities staged a circus-fair in the central square in which a demonstration was planned. Other city centers were suddenly subjected to renovation during the protests (much of this draws upon Kuzio 2002a; 2002b). To scare the public away from the protests, television ran regular comments by the Ministry of Interior (MVS) on hospitals stocking up on medical and emergency supplies. The MVS advised parents to leave children at home and issued a special leaflet outlining many different articles of the criminal code that could be used against protestors. The opposition accused the MVS and Security Service (SBU) of placing them under surveillance, which they denied. The MVS claimed it had information that "criminal elements and mentally unstable people," the unemployed, hoodlums, drunks, "those with aggressive intentions" and the homeless would join the protests and cause disturbances, thereby disparaging the protestors. In Kyiv, as in the Soviet era, those on state salaries were forced to demonstrate in "support of Kuchma."

Court action was undertaken to ban the demonstration in central Kyiv. Opposition leaders were threatened with court action for blocking traffic and calling for Kuchma's removal from power. 1,000 activists were rounded up throughout Ukraine from the Tymoshenko bloc, Socialists and Communists just prior to the planned protests on charges of applying "psychological pressure on the authorities and, most importantly, on the Ukrainian president." The activists were asked to sign statements saying they would not join the protests, threatened with charges if they did

and asked to provide intelligence on how they were being organized and financed. Opposition party premises were raided and materials confiscated.

The second prong consisted of downplaying their significance and reducing their visibility. The opposition was blackened as “extremists.”¹³ A crashed car with Tymoshenko literature suspiciously next to a box of Molotov cocktails was found near Kyiv and hunting rifles and grenades were planted in tents erected during the September 2002 demonstrations. Kuchma and other senior figures accused the protestors of being paid to come to the protests. The State Tax Administration arrested a Tymoshenko employee who was alleged to have “hundreds of thousands of dollars.” 200 young sportsmen in “support of *Our Ukraine*” and “Tymoshenko” organized fights with local people and threw paint on Soviet monuments, acts which were then replayed on Ukrainian television as the antics of the “opposition.” A similar provocation was organized in the riots on 9 March 2001 in Kyiv when the extreme right pro-Kuchma “Tyzub” paramilitary group attacked the police on behalf of the SBU. Twelve members of the anti-Kuchma extreme right anti-Kuchma Ukrainian National Assembly were imprisoned accused of instigating the violence. In 2001 the tactic worked as public support for the opposition collapsed after the riots (*Dirty Tricks*... 2004; Kuzio 2004g).

While attempting to prevent Ukrainians from exercising their right to hold demonstrations, the authorities closed all access to the media for the opposition. Since the Summer of 2002 the presidential administration has instructed television channels on how to cover or ignore events (“*Temnyky*”).¹⁴ Material on different television channels on the opposition was synchronized. On the morning of the protests all television stations also went off the air, something unprecedented in Ukraine where maintenance is usually carried out one station at a time.

Relations Between the “Parties of Power” and the Opposition

The role of Viktor Medvedchuk behind the scenes in Ukrainian politics is analogous to that of Russian oligarch Berezovski who fled Russia in late 2000. Since Medvedchuk became head of the presidential administration in May 2002 dirty tactics

¹³ This continued up until the 2004 elections. See Kuzio (2004f).

¹⁴ See the Human Rights Watch report “Ukraine: Informal Political Censorship” at <<http://hrw.org/press/2003/03/ukraine031703.htm>>

of one sort or another have escalated against the opposition, especially against Yushchenko and *Our Ukraine*. Two factors account for this.

Firstly, the SDPUo are the only large oligarchic clan in Ukraine who have not established themselves in industrial production. This means that in the event of a clean up of Ukraine’s economy and energy sector, including making the budgetary process more transparent, Medvedchuk and the SDPUo are the oligarchic clans that would lose most. Medvedchuk played a leading role in organizing a combined oligarch-communist vote of no confidence on 26 April 2001 that led to the removal of the Yushchenko government. This was seen as “revenge” for Yushchenko’s successful engineering of the removal of Medvedchuk as first deputy speaker of parliament in December 2000.

Secondly, the low intensity conflict between *Our Ukraine* and the SDPUo was a consequence of two political forces campaigning for dominance in the same region of western and central Ukraine. The SDPUo is the only oligarchic clan unable to secure for itself a dominant place in its home base of Kyiv (*Labor Ukraine* and *Regions of Ukraine* dominate their respective home bases of Dnipropetrovsk and Donetsk). To Kuchma therefore, the SDPUo does not play the role in Ukrainian politics that a clan is supposed to; that is, control an area on behalf of the executive. This role is best undertaken by Regions of Ukraine who blocked *Our Ukraine* from crossing the 4% threshold in the 2002 elections in the two Donbas *oblasti*, of Donetsk and Luhansk and ensured the highest victory for the pro-Kuchma For a United Ukraine bloc. In Kyiv the SDPUo is disliked by the public and blocked by popular Kyiv Mayor Oleksandr Omelchenko (Kuzio 2004f). During the 2002 elections one was hard pressed to find a single SDPUo poster in Kyiv. Omelchenko cooperated with Yushchenko in removing Medvedchuk from the post of first deputy parliamentary speaker and in return Medvedchuk was widely believed to have been behind attempts to force Omelchenko to retire from office on the grounds of age. In 1999 Hryhorii Surkis, Medvedchuk’s close ally, lost disastrously to Omelchenko in the Kyiv city mayoral race.

In 2003-2004 this conflict between *Our Ukraine* and SDPUo led to unpleasantness in mayoral elections in Mukachevo. Mukachevo is an important town in Trans-Carpathia, which was the only western Ukrainian *oblasti* controlled by the SDPUo. In Lviv the conflict between *Our Ukraine* and the SDPUo concerned persistent complaints that the local tax administration, then headed by Medvedchuk’s

brother Serhiy, was deliberately targeting businesses which supported *Our Ukraine*. The editors of the independent *L'vivska Haheta* complained that they had been targeted because their newspaper had exposed widespread corruption in the ranks of the Lviv tax administration. On 1 October 2003 the Lviv city council, headed by *Our Ukraine* member Mykhailo Sendak, adopted a vote of confidence in the city's tax administration. The executive responded by removing the Lviv governor and the heads of four *rayon* state administrations who were accused of allowing *Our Ukraine* to foment civic unrest. A demonstration in Lviv attended by 15,000 took place on 26 September 2003 in protest at the tax administration and the formation of the CIS Joint Economic Space.

The tactic used in Donetsk of portraying *Our Ukraine* as "Nashist" (a play on the word "Nazism" and *Our Ukraine* (*Nasha Ukrayina*) was devised in Lviv by the SDPUoA and its 6 October 2003 statement on events in Lviv used Soviet language to describe *Our Ukraine* as an "openly extremist and dirty political force" with an "extremist and ultra nationalistic wing".¹⁵ Medvedchuk boxed himself into a corner by tying his fate so closely to Kuchma, in the same way Berezovsky had done with Boris Yeltsin. Medvedchuk's tactics, and that of his SDPUo, led to two outcomes. Firstly, he made himself unelectable as president. Secondly, the Socialist International turned down the SDPUo which had been assiduously courting it for membership, preferring instead to affiliate Moroz's Socialist Party and the Social Democratic Party.

Divisions in the Ruling Elites

Tension and disunity grew within the pro-presidential centre in the transition to the post-Kuchma era. The relationship between the executive and oligarchs in Ukraine was unstable and based on distrust. As part of what Darden termed the "blackmail state," the executive turned a blind eye to, or actively assisted in, corrupt practices by oligarchs. In the meantime, the law enforcement agencies collected information on corrupt activity for possible use in potential future court cases if the oligarchs became "dissident oligarchs."

Only two oligarchs have ever gone into opposition to the executive. Lazarenko was prime minister in 1996-1997 after being brought by Kuchma to Kyiv from Dnipropetrovsk, where he had been governor. The Lazarenko government was one

¹⁵ See <<http://www.sdpuo.org.ua>>

of the most corrupt of Ukraine's eleven governments since independence, working closely with the CEO of United Energy Systems, Tymoshenko. After being removed as prime minister, Lazarenko created the first "dissident oligarch" party, the centre-left Hromada (Community). Hromada was also to be Lazarenko's personal vehicle to challenge Kuchma in the 1999 presidential elections. Such a challenge represented a real threat to Kuchma's re-election chances in 1999 as he had still not built up an oligarch support base. Hromada had financial resources and could have mobilized populist anti-oligarch and anti-corruption sentiment.

Charges of "corruption" were leveled at Lazarenko in late 1998 and early 1999 and his parliamentary immunity was withdrawn. Lazarenko was abroad at the time and eventually applied for asylum in the USA, where he was charged with money laundering. His court case began in 2004 in San Francisco. After Lazarenko fled to the USA his Hromada party disintegrated. His ally, Tymoshenko, created her own centre-right Fatherland party, and joined the Yushchenko government (1999-2001) as deputy prime minister in charge of energy reforms. These reforms successfully recovered funds hitherto siphoned off by oligarchs for the budget, which could then be used to pay wage and pension arrears. Tymoshenko's energy reforms and growing political opposition after the Kuchmagate crisis began led to a reputation of accusations that had been earlier leveled against Lazarenko. Since February 2001 the Prosecutor's office and different levels of the judicial system have either charged, imprisoned, released from prison or dismissed charges against Tymoshenko and her former business partners in United Energy Systems. The outcome of this relationship is twofold.

Firstly, oligarchs who go into opposition to the executive have little choice but to join forces with the opposition Socialists (as did Hromada) or national democrats (as has Tymoshenko). Hromada successfully crossed the four percent threshold in the proportional half of the 1998 elections by focusing on its densely populated home base of Dnipropetrovsk which, after the party collapsed, has since been controlled by the oligarchic *Labor Ukraine* clan. Tymoshenko's *Fatherland Party* was forced to shift its base to western-central Ukraine where oligarchs are less entrenched. Secondly, the relationship between the executive and oligarchs is one of mistrust. Both need each other, one for political loyalty and a support base and the other for lucrative business deals. Such a relationship can never breed ideological unity (centrist parties are ideologically amorphous) nor future confidence in the other side's actions. The

relationship is inherently unstable, open to mistrust by both sides and not surprisingly came under severe strain in the transition to the post-Kuchma era.

Some businessmen looked forward to an end to the "blackmail state" relationship because they felt that they were big enough actors to now operate without Kuchma. The transition to the post-Kuchma era coincided with the oligarchs becoming independent actors. The transition to the post-Kuchma era was ripe with tension because of two inter-related factors. Firstly, the political crisis prevented the authorities from finding a new neutral umpire who would be acceptable to different oligarch clans. Secondly, the transition from illegitimate oligarch to legitimate businessman was central to Ukrainian politics. Authoritarian tendencies within the oligarch centre partly arose out of their feeling that their capital was perceived as illegitimate by the public and, because of this, they feared retribution against them in the post-Kuchma era.

Conclusion

Ukraine's democratic regression is a reflection of similar overall trends throughout the CIS where nine out of twelve states were defined by the New York-based human rights think tank Freedom House in 1994 as either "autocracies" or "consolidated autocracies." Only Ukraine, Moldova and Georgia remained defined as "hybrid" regimes with some potential for democratization.

This classification of Ukraine as a "hybrid state" was found to provide the best fit of the different classifications that have been proposed. As a "hybrid state" Ukraine combined Soviet authoritarianism and Western political and economic influences. This type of "hybridity" is best understood as a "semi-authoritarian" ("competitive authoritarianism") regime where neither the democratizing opposition, or authoritarian ruling elites and oligarchs, are powerful enough to fully impose their will by changing the regime.

The outcome of this inbred instability is either a democratic break through (i.e. Serbia in 2000 or Georgia in 2003-2004) or a move to an autocratic state (i.e. Russia in 2002-2004). The focus of this article was on the last two years of Kuchma's second term in office from the 2002 parliamentary to the 2004 presidential election. This transition to the post-Kuchma era, coupled with the outcome of the 2004 elections, determined whether Ukraine followed Serbia and Georgia, on the one hand, or Russia, on the other.

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