

Politics

Birthday blues

Ukraine is eighteen this month but constitutional chaos prevents the country reaching maturity

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On 24 August Ukraine celebrates its eighteenth year as an independent state. This is of itself something of an achievement; after all, President Viktor Yushchenko has often pointed to the numerous occasions Ukraine has lost or failed to achieve independence throughout the centuries. However, maturity as a nation state remains elusive for Ukraine thanks to constitutional contradictions which continue to make effective government difficult. Despite repeated attempts to rewrite the country's constitution, confusion continues to dominate the debate, injecting an element of uncertainty into institutional relations that has prevented the Ukrainian state from ever truly coming of age.

Europe's most contrary country

When Ukraine adopted its first constitution in June 1996 (the last of the former Soviet republics to do so), it was regarded as the definitive end of the 'Soviet era' for the country's citizens. Until then, post-independence Ukrainians had continued to live under the 1978 Soviet Ukrainian constitution. Unfortunately it is increasingly clear that as Ukraine prepares to enter what is likely to be the post-Yushchenko era in early 2010, the constitutional issue remains unresolved. In this respect President Yushchenko has failed to improve on the indifferent constitutional record of his predecessor, Leonid Kuchma, during whose presidency two constitutions were adopted - the original post-Soviet document in 1996 and the December 2004 Orange Revolution compromise changes agreed at the height of mass street protests. This current Orange Revolution-brokered

constitution, which eventually came into force in early 2006, continues to be dogged by serious legal question marks and lies at the centre of the confusion which is obstructing the efficient functioning of the Ukrainian state. It has failed to clarify whether independent Ukraine will be a parliamentary or presidential republic, leaving the country stuck in a constitutional halfway house that mirrors Ukraine's geopolitical indecision and forms a key component in the country's ongoing identity crisis.

Constitutional compromise and unfinished business

Adopted in haste against a backdrop of million-strong people power protests in the winter of 2004, the Orange Revolution constitutional compromise escaped serious scrutiny at the time largely because attention was focused on the revolution itself. However, the legality of the changes then adopted has since been a constant thorn of contention between rival factions within the country's broad-based Orange political camp. Led by Yulia Tymoshenko, opponents of the changes have argued that they were adopted in an unconstitutional manner. Instead of the two separate parliamentary votes required by the country's primary legal document, the current constitution was adopted by a single parliamentary vote, with only Tymoshenko's BYUT Bloc voting against. Nor has this latest constitution ever been subjected to a national referendum as required by an October 2005 Constitutional Court ruling. Instead, President Yushchenko has seen his powers in relation to parliament eroded while in office but has nevertheless refused to hold a national referendum on the subject or take steps to backtrack on the deal he struck at the height of the Orange Revolution.

The resultant political, legal, and constitutional instability throughout Yushchenko's presidency has become especially acute since the onset of the global financial crisis. Failure to opt for a clearly defined presidential or parliamentary system of government inevitably leads to executive-government conflicts, and this has been evident in President Yushchenko's inability to work with three of his four prime ministers. Understandably therefore, Yulia Tymoshenko has promised to hold a national referendum on the constitutional question in early 2010 if she is elected president.

Trapped between parliamentarianism and presidential pretensions

Most Western observers agree that parliamentarianism would stand the best

chance of providing the country with the institutional framework needed to integrate into European structures and away from Eurasia. Since the late 1990s the 27 post-communist states of the former Eastern Bloc have split into two groups, with those in central-eastern Europe adopting parliamentary systems and those in Eurasia adopting presidential systems. The only exceptions are Ukraine and Moldova which both find themselves caught somewhere between the two. Parliamentarianism assisted central-eastern Europe in its democratisation and eventual integration into NATO and the EU. In moving towards parliamentarianism, Ukraine would therefore be demonstrably moving away from Russia and Eurasia and towards a European future. This simple formula has not proved sufficient to convince all of the country's Europhiles of the need to champion parliamentary primacy. President Yushchenko has stated that returning to the 1996 constitution (which would give him greater powers) would resolve Ukraine's instability. This overlooks his apparent inability to exercise power regardless of which constitution is in place and his lack of support inside parliament or the country at large. Furthermore, by supporting a return to a presidential constitution the Europhile President and his Our Ukraine party have also been accused of undermining Ukraine's integration into Europe. Birds of any given political feather tend to flock together, and experience has shown that Europe's parliamentary democracies are not particularly comfortable dealing with over-mighty presidents. The example of Ukraine's colour revolution comrades in Tbilisi should really have been enough on its own to give Yushchenko second thoughts. Following the Rose Revolution Georgia changed its constitution to a 'Super Presidential' system that stymied its democratic development, marginalised the opposition, and undermined Georgia's integration into Europe. President Mikhail Saakashvili's disastrous foray into South Ossetia in August 2008 was also partly a product of a lack of parliamentary oversight into government policies in the Caucasian former Soviet republic.

In-fighting and uncertainty derailing Ukraine's westward march

The cost of this uncertainty to Ukraine has already been high, with the endemic political and constitutional instability it has provoked serving as the single greatest factor undermining the country's integration into Europe since 2005. This has resulted in widespread outbreaks of 'Ukraine fatigue' throughout Europe and the US, leading to the evaporation of the positive image earned by Ukrainians during the Orange Revolution when the Western world saw in the mass protests on the streets of Kyiv a sign of the country's strong commitment to

European values.

The last two years have been particularly disastrous for Ukraine's international image, with presidential-prime ministerial conflict heightened to a level which has made it impossible to implement reforms and launch programmes that require medium-term stability (such as policies to fight corruption or increase public support for NATO membership). Ukraine's ranking on corruption perceptions by Transparency International have declined every year since 2007. The latest rankings place Ukraine far behind Georgia whose ranking on corruption has improved every year since the Rose Revolution.

Political coherency as an EU prerequisite

Since 2007, Germany has frequently raised the issue of the need for political stability in Ukraine and cited its absence as a major obstacle to integration into NATO. Nico Lange, director of the Kyiv office of the Konrad Adenauer Stiftung, advised Ukrainians: "Cohesion among reform-oriented political forces is a *sine qua non* of a successful dialogue with the EU. Political cohesion will inter alia help Ukraine gain public support for necessary and tough reforms." In other words, the failure to improve the constitutional reforms negotiated in 2004 and introduced in 2006 has been disastrous for the development of Ukrainian democracy, Ukraine's international image and the country's integration into Europe.

First item on the agenda for Ukraine's next president

President Yushchenko's time in office looks destined to be remembered for political crises, governmental instability, elite in-fighting, and constitutional chaos that have together undermined the potential that arose from the Orange Revolution. Meanwhile, Ukraine will likely enter the post-Yushchenko era with an unconstitutional constitution and the threat of five more years of political instability and legal chaos lying ahead. The country's next president will have to quickly resolve the constitutional issue in order not to repeat the same old struggles that have plagued Yushchenko's one-term presidency. Yulia Tymoshenko has already outlined her plans to implement the referendum that her BYUT bloc has repeatedly sought since 2006. Viktor Yanukovich and Arseniy Yatseniuk continue to dither on this strategically important question for Ukraine's future, but will no doubt be forced to address it in more detail as the presidential election campaign unfolds.

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