

# INSTITUTIONAL CHANGE, POWER, AND POLITICAL EXECUTIVES IN UKRAINE UNDER THE KUCHMA PRESIDENCY

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*To assess how and why some institutions may be more efficient in promoting change without disrupting the initial institutional design, this article proposes to analyze the evolution of the power relationship between the political executive in the semi-presidential regime of Ukraine under the presidency of Leonid Kuchma. The analysis of the power relationship between political executives in Ukraine reveals the hazard of understanding the political process solely through institutional lenses. The results show that in this consolidating democracy, executive power is often a function of non-institutional and partisan explanations, and that state weaknesses in its autonomy and capacity are core explanations, since it allows important societal divides, such as ethnic and regional affiliation, and network competition to polarize the political sphere and make political competition between political executives a zero-sum game.*

**Keywords:** *semipresidentialism, institutional change, institutional design, Ukraine, Kuchma.*

Traditionally, political scientists interested in institutional change have focused on research questions pertaining to issues of institutional design performance or of determinants of political behavior in selected institutional settings. For instance, a large section of the literature on democratization has stressed the centrality of the institutional design to explain stability and consolidation in new democracies (Linz, 1990; Di Palma, 1990; Linz & Valenzuela, 1994; Sartori, 1996). In the

last two decades, important works have attempted to explain the effect of institutions on policy outcomes (Haggard & McCubbins, 2001) or on political behavior (Cox & Shugart, 1996) to explain institutional change, but typically they have not remedy the common and rather rigid assumption that institutions are fixed over time and analyze the complex and often unpredictable reality of institutional change.

Institutional change typically occurs when the formal or informal procedures, rules, norms and conventions embedded in the organizational structure of the polity are modified and ultimately generates shifts in the power relationships associated with the operation and development of institutions (Hall & Taylor, 1996: 938). Even though a relatively solid consensus exists in the literature regarding what is institutional change, political scientists have consistently given more attention to the capacity of institutions to resist change, generate political stability and offer predictability to their agents (see Peters & Pierre, 1998: 567). Only in the 1990's have scholars started to assess the determinants and the timing of institutional change, asking questions about incremental modifications of constitutions, procedures and practices (Avant, 1994; Cortell & Pererson, 1999). Common explanations for change are now stressing the effects of agents' behavior, partisan politics, legislators' preferences, public opinion shifts, windows of opportunities ideology, and crisis situation, all of which could generate changes to the institutional activity.

This relatively recent scholarly attention was mostly directed to formal institutional changes, or to "official" changes as a documented set of rules, most commonly through constitutional amendment or parliamentary procedures and regulations. Little attention has consequently been given to informal change, through radical or incremental modifications of conventions, routine practices, norms, or to any change that does not disrupt the formal institutional rules. Informal changes were typically considered as a temporary divergence from the normal institutional pattern and unlikely to affect the "regular" institutional functioning. They were commonly justified as the results of a specific actor's behavior, preferences or ideology, or to an unforeseen external event, such as an economic crisis or an armed conflict. But non-

institutional or informal change can also be entrenched permanently within the institutional framework of a polity. The well-known declining accountability of the government to the parliament in 20<sup>th</sup> century United Kingdom illustrates such a process and reveals that the power relationship between competing actors can be affected without entailing any formal changes (Dunleavy, Jones, Burnham, Elgie & Fysh, 1993: 268).

As such, little consideration has been given to the impact of the institutional design, or to the initial formal arrangements of the institution, as a cause of informal change. A specific institution could be designed, willingly or not, to facilitate change without affecting the initial institutional design. Informal changes could be intrinsic to some institutional designs, yet not constitute an aberration or a temporary digression to the “regular” institutional practices. The implication here is that some institutions may actually accept or promote change, while others may instead be designed to resist it. It does not mean that change is endogenous in a rational-choice perspective, in which the action of individuals generates a more efficient collective outcome, but instead that the institutional arrangements must be factored in to explain why informal change occurs.

To assess how and why some institutions may be more efficient in promoting change without disrupting the initial institutional design, this article proposes to analyze the evolution of the power relationship between the political executive in the semi-presidential regime of Ukraine under the presidency of Leonid Kuchma. In contrast to presidential or parliamentary systems, semi-presidential regimes formally accept some uncertainty regarding the distribution of executive power (a core institutional component), as its design implicitly divides executive power between a president and a prime minister, each of whom may have different constituencies and ideological preferences. Ukraine’s short, but dynamic experience with semi-presidentialism is particularly well suited to illustrate institutional change, since it had frequent and significant shifts in the power distribution between political executives, as well as two major constitutional reforms that reshaped the semi-presidential arrangements.

Semi-presidentialism in Ukraine has to a significant extent followed the patterns observed in Russia in the 1990's. First, consolidation of presidential power over parliament following the collapse of the Soviet Union was relatively rapid. Second, semi-presidentialism emerged and developed amongst a very weak party system and amongst politico-economical networks created mostly from government concessions and the privatization of the soviet industrial infrastructure. Third, the power relationship between political executives followed vested economic and regional interests common in a transitional period. Nevertheless, the source of executive power struggle differs considerably from Russia, highlighting especially the peculiar economic, ethnic, and ideological context of post-soviet Ukraine. Ukraine's path under semi-presidentialism has been globally unstable and has illustrated the effect of an unpredictable identity consolidation process on regime consolidation.

### **Theoretical approaches**

As much as the literature on institutional change is well-developed in political science, it has almost solely stressed formal institutional change (constitutional change or legally adopted modifications to the structure, rules, and practices of a political institution). In contrast, relatively little research has been conducted on the causes of less easily observed change, such as progressive or incremental change in the structure, rules, and practices of an institution that did not required constitutional or legal rearrangements (Dunleavy & al., 1993). In reference to the study of semi-presidential regimes, to consider informal change is a necessary endeavor. The conceptualization of semi-presidentialism itself is grounded in the informal functioning of institutions, as many presidents exercise very little power, despite formal recognition in the constitution. Thus, to look solely at a constitution to determine the power distribution among political executives is often unreliable. As such, most of the attention to explain power distribution and its change in semi-presidential regimes (change in the power relationship between presidents and prime ministers) has been centered on three distinct sets of theoretical explanations: institutional, partisan, and extra-institutional.

### **Institutional theory**

First, and most obviously, scholars have looked at the initial distribution of power between political executives. If, as just mentioned, limiting oneself to this explanation could be unreliable, it has some utility for understanding ulterior changes. For example, the Russian constitution clearly favors the president over the prime minister, explaining to a large extent the constant supremacy in practice of the president. However, to limit ourselves to this factor can be misleading, as, at times, the prime minister, supported by a favorable parliament, has been able to challenge extensively the powers of the president.

This theoretical explanation would therefore argue that change in the power distribution between political executives can only be formal, and that we need to look at constitutional and legal prerogatives, electoral rules and cycles, and interactions with other political institutions to understand it. The focal point here has been on the occurrence of *cohabitation* and on the mechanism that makes it happen (Shugart & Carey, 1992). The reinforcement of prime-ministerial power under *cohabitation* in France is, in this viewpoint, a consequence of an inefficient electoral cycle and of the length of the presidential term. The 2000 reform to reduce the presidential mandate to five-year brings strong support to institutionalists' claims.

This approach assumes that change can only occur when formal modifications (constitutional reform, court ruling, etc.) occur, and that consequently the origin of the change is another question. So, who has power in a semi-presidential regime can be explained by the legal or formal framework of the polity. Political actors are rational agents of the institution that provides positive and negative incentives, which constrains their behavior. Power distribution is consequently a function of fixed institutions. Most of the research in political science has followed this path, highlighting the complexity of power distribution in the constitutional design of semi-presidential regimes (Pasquino, 1997; Elgie, 2004).

Perhaps most convincingly, and with much less attention to the

constitutional design, other institutionalists have focused on the impact of institutional performance (Weaver & Rockman, 1993; Lewis-Beck & Nadeau, 2000). Even though these scholars have not per se analyzed the power relationship between executives, we may argue that weak performance by an executive, especially in regard to policy-making, could impinge on the power distribution between executives. For instance, a prime minister unable to put through key policies or failing to craft efficient and successful policies because of institutional deadlock (in a *cohabitation* period especially) would undermine appreciably his or her power, as perceptions of other political actors and of the population would become more negative. An even more radical failure occurred in Ukraine in 2007, when the institutions failed to perform efficiently, leading to a political deadlock: the events pushed President Viktor Yushenko to behave extra-constitutionally by grabbing more power (i.e., by the dissolution of the parliament). Failure by the institutions to solve the political crisis thus led to a shift in the power relationship between the political executives.

### **Partisan theory**

Second, others have highlighted the significance of partisan politics as the main determinant of changes in power distribution between political executives. Besides the obvious case of political *cohabitation* (especially in the French system), it has been argued that the composition of the assembly and the ideological *mosaïque* of the elected officials has a significant impact on political executives' positioning. A first argument is that ideological proximity between the executives increases presidential dominance, while distance favors prime ministerial powers. The nomination of Evgeny Primakov as Russian prime minister illustrates this point, demonstrating that even in a regime with dominating presidential prerogatives, the prime minister can have significant influence, especially if ideologically closer to the assembly majority. More or less forced by the Duma to nominate the left-leaning politician, Yeltsin encountered considerably more resistance from him than arguably any other prime minister.

A second argument refers to the leadership of the executive over his or her troops. The logic here pertains to the capacity of

the executive to receive full loyalty and wide support to increase his or her prestige, influence, and eventually power. An unquestioned leader of a political party, such as Viktor Yanukovich, can increase his capacity to challenge the president. His challenge to Viktor Yushenko, in the spring of 2007, was only possible because he was able to mobilize not only his deputies, but also his Socialist allies, and retain their loyalty throughout the political struggle. Even when both executives are on the same ideological spectrum, a prime minister can represent a challenge to the president.

The last argument of the partisan explanation refers to the composition of the assembly. More specifically, it states that the size of the majority and its political affiliation can explain change in power distribution between political executives (Duverger, 1980). First, in a case of *cohabitation*, a large majority for the prime minister increases his or her legitimacy and justifies a more challenging stand against the president. A clear example of this situation happened after the 1993 French legislative election, when the right (UDF and RPR) won 460 out of 577 seats, leaving Edouard Balladur in a position of force against François Mitterrand. In contrast, the much smaller majority of the right after the 1986 French legislative election may have restrained Prime Minister Jacques Chirac's ambitions to challenge the president.

Second, the composition of the majority may also affect the relative power of the executives. The argument here is that coalition governments may reduce the maneuvering capabilities of the executive. A president with a majority in the assembly, but a majority composed mostly of members of a different party than his, may have to make concessions: for instance, nominate a prime minister who is a potential rival as leader of the coalition. For example, the Plural Left coalition of P.M. Lionel Jospin in 1997 constrained the Socialists' independence to legislate, forcing them to compromise with other Left parties and the Greens on important policy issues (environment, transport policy, pension reform).

### **Extra-institutional theory**

Third, many have pointed to extra-institutional factors to explain variations of the power distribution between political



executives. The focus here is on role of individuals, political traditions, and on the national and international socio-political context. This theoretical perspective does not necessarily rejects institutional or partisan theories, but claims that they often fail in explaining variance within a political system or between polities.

First, the role of individuals is determinant in explaining change in the power relationship between executives. More specifically, the power of a political executive depends not only on constitutional prerogatives, but also on legitimacy (to the institutional actors and to the electorate) and on individual capacities and will. A powerful president, such as Charles De Gaulle and Vladimir Putin, with very high popular recognition and popular approval, and with high ambitions, can overshadow a prime minister as to almost create a purely presidential regime. Conversely, unpopular and less involved presidents, such as Viktor Yuschenko, even with dominant constitutional powers, have often been either overpowered or constrained by prime minister and assemblies. Similar patterns also have been observed for prime ministers. The key variation is in the complex interaction of political ambition and political survival, as often a prime minister does not only challenge presidents on an ideological basis (see partisan theories), but also on an electoral basis. In consequence, party affiliation or ideological difference may be of little significance. For example, Ukrainian President Viktor Yuschenko and Prime Minister Yulia Tymoshenko, even though close allies during the Orange Revolution sharing relatively similar ideological views, have had a very tense relationship as joint executives, because mainly of the very high presidential ambitions of Timoshenko. In opposition, a prime minister with little presidential ambitions and popularity, such as Jean-Pierre Raffarin, will tend to defer much more to presidential will, and function much more as a technocrat or civil servant than as active executive.

Second, some political traditions and experiences may also help to determine the power relationship between political executives. Without falling into culturalist explanations, this approach assumes that institutional history shapes individual and collective preferences, and consequently affects perceptions. Common stereotypes, such as Russia's like strong



and autocratic leaders because of their history, are very simplistic and misinterpreted. More accurately, failures of socio-economic and political institutions and the collapse of order in the 1990's, have increased preferences for a powerful leader over time, perceived to be the solution to restore order and restore failing institutions. Consequently, massive institutional failure has undermined the value of decentralized political institutions, and increased preferences for previous experiences with autocratic government, conceived as traditions. Similarly, inefficient institutions in France under the Fourth Republic have switch preferences toward a strong head of state, well perceived historically.

Finally, contextual factors can also play a significant role in explaining variation in power between political executives. By contextual factors, I refer to a wide set of variables that affect the political dynamic within a specific polity, such as ethnic composition, geopolitics, European integration, socio-economic problems, etc.. For instance, the linguistic cleavage in Ukraine has polarized the political game, making each executive since 2006 a representative of one linguistic/regional group, culminating in 2007 with a severe constitutional crisis and a power struggle in the streets of Kiev. In this case, in a relatively short period of time, the power balance between political executives oscillated until a preliminary settlement was reached. To a large extent, it insured the overall dominant power of the president at the end, but it also revealed how considerable is the power of a prime minister backed by powerful industrial groups and a mobilized political base, concentrated in Russian-speaking Eastern Ukraine.

### **Executive power relationships in Ukraine under Kuchma (1994-2004)**

During his reign, Kuchma reinforced presidential authority over the legislative branch and attempted to fix the dysfunctional institutional arrangements that have plagued the early years of Ukrainian independence. The power relationship between president Kuchma and his prime ministers nonetheless remained very unpredictable, exposing the fluidity

of executive power in semi-presidential regimes. Kuchma's presidency especially highlighted the importance of informal politics in Ukraine, and the flexibility of institutional arrangements in shaping power relationship outcomes. Partisan factors are once again limited as an explanation of power variation between political executives, but would progressively become more important as the party system matures and becomes polarized around 'Orange' and 'anti-Orange' distinctions in 2004.

### **Institutional Explanations**

As soon as he was elected, Leonid Kuchma engaged in several actions designed to increase presidential power in Ukraine, enacting numbers of decrees to take control over central and local levels of government and over the economic reform process, and giving himself a veto over legislative agenda (Freeland & Barshay, 1994). He also stacked the state administration and cabinet with supporters, a large number of them from his home base of Dnepropetrovsk, in order to challenge parliamentary powers (Gorchinskaya, 1998). The adoption of his economic reform program and of his agreement with the IMF to lend Ukraine \$371 million in October 1994 by the parliament illustrates this consolidation process of presidential authority. Even the conservative prime minister, Vitaly Masol (nominated by Kravchuck on the eve of the presidential election), and the speaker of parliament Olexander Moroz had to comply with the president's reform program (Moscow Times, October 28<sup>th</sup> 1994).

The adoption of the Law of Power in May 1995 again reinforced presidential dominance over other potential veto players. To remedy Ukraine's inefficient constitutional arrangements, this was designed to insure more coherence in the power relationships between political institutions (president, prime minister, and parliament) until a new constitution can be adopted. The shape of the new law clearly reflects increased presidential power. On the one hand, it made local and regional councils solely responsible to the president (including nomination and dismissal powers), an important prerogative for the implementation of policies. On the other hand, and perhaps more importantly, the president received

the exclusive right to form a government, issue decrees, and appoint the prime minister and cabinet members (D'Anieri & al., 1999: 115). The parliament however retained the right to dismiss the prime minister and cabinet members through votes of no-confidence, but parliamentary power over budget approval and legislative activity was considerably restricted.

The constitution of 1996 can be regarded as the formal consolidation of the increased presidential powers since 1994. Besides clarifying power prerogatives of political actors and institutions, it establishes the foundations of a presidential-parliamentary regime, or a semi-presidential system dominated by the president. While partially modelled from the 1993 Russian constitution, the new constitution brought balance between executive and legislative powers. Presidential powers, while considerable, did not allow the president to govern without constraints from the government or the parliament. First, presidential decree-issuance prerogatives are limited to economic policies only (for a maximum of three years), and require prime-ministerial agreement. Second, the nomination of the prime minister is conditional on the parliament's approval, the latter being also able to dismiss a prime minister by a single-majority vote at any time. And third, parliament received considerable appointment prerogatives and control of the government's policy-making activities. The vast presidential powers are thus partly conditional on parliamentary and/or government support, making Ukrainian political regime less super-presidential than the Russian one.

In this institutional context, one would expect the president to hold the reins of the prime minister, who is constitutionally subordinated to him, and responsible to parliament. In practice however, the prime minister would often challenge presidential authority, undermining Kuchma's capacity to push forward key policies or initiatives. For example, P.M. Yevgeny Marchuk (March 1995-May 1996), the former head of the Ukrainian KGB, was able to slow down Kuchma's economic reform program and stall the constitutional reform process until his dismissal by the president (Rupert, 1996). To do so, he relied on his close ties with the security services and despite being stripped of many powers (cabinet formation) by the president, he was able to build his own support base within the government and state administration, especially in the

Ministry of the Interior. The power of Kuchma over the executive branch was thus considerably diminished, since his push for economic reforms were blocked or at least slow downed by the government.

The adoption of the constitution in 1996 did not initially changed the power relationship between political executives. With the nomination of Pavlo Lazarenko as prime minister in May 1996, Kuchma was rewarding the Dnepropetrovsk Clan which brought him in power in 1994. The former governor of the heavily industrialized Eastern region, Lazarenko was also widely assumed to be the clan's leader and had at his disposition massive resources of the local industrial and energy sectors. According to Anders Åslund (2006), 'Until Lazarenko was ousted one year later (1997), he appeared to be more powerful than Kuchma'. Even though this claim might seem exaggerated, especially in regards of the institutional distribution of powers and prerogatives, it highlights the importance of the non-institutional factors in Ukrainian politics.

Lazarenko used his premiership similarly to Kuchma's in 1992-93, using his post as a stepping stone for an eventual presidential bid. While always claiming publicly that he was fully loyal to President Kuchma, he rapidly started to build a political base in the state administration and in parliament (Ivzhenko, 1997). Without necessarily attacking the president, Lazarenko conducted government business in relative isolation from him, including the crafting of the 1997 budget and the signing of the Black Sea fleet agreement with the Russian government, which boosted his popularity as an efficient PM. Frequent public denunciations of the government's activities by the president demonstrate that in practice, the head of state had little control over his own government, and that his constitutional prerogatives were contingent on the cooperation of the government and prime minister. In practice, Lazarenko's control of the government was arguably unprecedented, allowing him to establish a system of patronage through manipulation of the process of privatization and of import and export concessions, which has especially favoured his former company (United Energy Systems of Ukraine) headed then by future Prime Minister Yulia Tymoshenko. His patronage activities, despite being well-

known publicly, were not constrained by the president or other political actors, who were unable to challenge his well-organized and resourceful network.

In consequence, institutional explanations are proven very weak until the dismissal of Lazarenko in June 1997. It is paradoxical that the increases of formal presidential powers since the adoption of the 1995 'law of power' were concurrent to a relative dominance of the prime minister over the president, or at least to the weakening of presidential authority. The direction of the power relationship between political executives did not become a pattern however, as the remaining years of Kuchma's presidency would be marked by a strengthening of presidential authority despite the absence of any significant formal institutional changes.

The nomination of Valery Pustovoitenko, a personal friend of President Kuchma, brought back presidential dominance over the executive. In no occasion did the new prime minister challenged or opposed the president, proving to be by far the most loyal prime minister of Kuchma. The parliament would again become the main opponent to the president, blocking many reform bills initiated by the government and trying to dismiss the Prime Minister, eventually succeeding in December 1999 to force Pustovoitenko's resignation. The inefficiency of the government to bring about significant reforms considerably weakened Kuchma versus the Parliament, since he always associated himself personally to the government. These failures resulted in the suspension by the IMF of the very important disbursement of the Extended Fund Facility Loan to Ukraine, which was a major blow to the president's political credibility at the beginning of his second mandate (Gorchinskaya, 1999).

The nomination of Viktor Yuschenko in December 1999 did not fundamentally alter the power relationship between the heads of the executives. The former head of the Central Bank was nominated as a compromise candidate and because of his pro-Western orientations. Rapidly, he managed a series of success, restoring Ukraine's creditworthiness, balancing the State budget, and reducing the country's foreign debt (Aslund, 2006: 14). Despite remaining fully loyal to Kuchma until his dismissal by parliament in May 2001, he rapidly became much more

popular than the president, especially after the Gongadze scandal of November 2000, which implicated Kuchma in the murder of a journalist. More of a technocrat, Yushenko approached his premiership pragmatically, focusing almost exclusively on economic reform. Even during the 'Ukraine without Kuchma' protests in Kiev from December 2000 to March 2001, following the scandal, he remained loyal to Kuchma, ignoring the political and popular offers to lead the powerful, but only emerging, opposition movement which will eventually evolve into the Orange Coalition.

Parliament continued to pose problem for Kuchma after his re-election in 1999, and to a large extent, the nomination of Yushenko was designed to bring deputies from the Right into a pro-presidential majority in parliament, which was never achieved since independence. The ultimate objective, however, was to amend the constitution in favour of the president, by allowing him to dismiss the parliament if it was not able to form a majority, by creating a bicameral legislature, by reducing the number of deputies from 450 to 300, and by removing deputies' immunity from prosecution (Withmore, 2004: 43). Threatening to hold a referendum in 2000 if no institutional reforms are bring about, he managed to overpower parliament in forcing them to concede new powers to the president. Even though these reform proposals were never adopted because of the Gongadze scandal, it reveals the institutional dominance of the president over any other potential veto player between December 1999 and December 2000.

Arguably, at no other time was a president so powerful in Ukraine. First, formal institutional powers and prerogatives of the president were greater than they were before 1995 or after 2004. Second, the re-election of the president confirmed his ascendant to other potential presidential candidates. Third, he disposed of a loyal and performing prime minister who was able to stabilize Ukraine's economy. And finally, he was able to forge a majority coalition in parliament and appoint his supporters in leading administrative, cabinet, and parliamentary positions. It is important to note that among these factors, there are little institutional ones, besides institutional performance, as the shape of the institutional arrangements was similar during the Marchuk and Lazarenko



premierships.

The remaining of Kuchma's presidency would be marked by a preservation of the 1996 institutional arrangements and the dominance of the president over the prime minister. The appointments of the loyal Anatoly Kinakh in May 2001 and of Viktor Yanukovich in November 2002 were designed to preserve the *status quo*. The former, a loyalist to the president and to industrial interests, was appointed by Kuchma in order to reinforce the presidency. During Kinakh's premiership, he gradually transferred cabinet powers to the presidential administration, more loyal to him than cabinet members who answer also to parliament (Byrne, 2002). Consequently, the president used his powers to their full extent, or perhaps even went overpass them, concentrating the executive into his own hand. No significant reform bill was adopted for over a year, and the very unpopular president became for the public the incarnation of patronage politics and corruption. Once again, the removal of Kinakh, which followed several public criticisms by the president of his premiership, was designed to make him a scapegoat.

Following the March 2002 election which resulted in the formation of a majority coalition dominated by oligarchs, Kuchma nominated in November their faction leader, the former Governor of Donetsk, Viktor Yanukovich. He was initially appointed as a potential successor to Kuchma by the ruling government elite. Yanukovich proved to be a loyal prime minister until the Orange Revolution and by 2003 he was confirmed as Kuchma's heir to the presidency in 2004. While not challenging Kuchma directly, Yanukovich distanced himself more and more in public from the unpopular president as the presidential election approached. In practice, however, Yanukovich was able to carry out the government's agenda, thus respecting the general orientations put forward by the president. He pushed forward little significant reforms, but under his management, Ukraine's economy displayed the highest growth rate in Europe at 12.1% in 2004 (Kuzio, 2006: 50). His government's performance, while not as well perceived as Yushenko's, was sufficient to make him a credible candidate for the presidency in the eyes of the ruling elite and of a large part of the Eastern and Southern Ukrainian populations.



Institutional factors under Kuchma's presidency were nonetheless not sufficient to explain the power relationship between political executives. The reinforcement of presidential powers and prerogatives in 1995 was followed in practice by the reinforcement of prime ministerial powers under the premierships of Marchuk and Lazarenko. Moreover, the following premierships of Pustovoitenko, Yuschenko, Kinakh, and Yanukovich, while showing different levels of governmental performance, demonstrate in practice the constant domination of the executive by the president. The opposition level of the parliament did have an impact on the reinforcement or weakening of presidential authority, illustrating the importance of the specific Ukrainian institutional design, but this effect might be better captured by partisan factors. Consequently, institutional factors have provided modest explanatory powers for the power relationship variations between political executives during Kuchma's presidency.

### **Partisan Explanations**

The legislature of 1994-98 was marked by a slowly emerging, but still very weak party system, and by consistently shifting allegiances and fluidity of parliamentary factions. Certainly the soviet-style majoritarian electoral rules contributed to this situation, leading to the election of over 220 independent deputies in a legislature of 450 deputies (Withmore, 2004: 67). Despite the early dominance of various Left factions (Communist Party of Ukraine, Socialist Party, and Peasants/Agrarian Party), the Left progressively lost its dominant influence in the Verkhovna Rada and ended up as a well-organized, but smaller, opposition to the president in 1998. In contrast, the Right (*Rukh*, and other small nationalist and pro-reform parties) was less organized, smaller, and fluctuated in its support to the president. Very often co-opted by the president, the Right was a key ally for him especially for the adoption of the constitution in 1996. It was however the very fragmented center that shaped parliamentary preferences, consistently switching positions and its support of the executive.

Political parties started to consolidate after the reform of the electoral law in December 1997, which institutionalized a

50:50 proportional-majoritarian system. Designed to strengthen the weak Ukrainian party system, the reform was able to generate for a short while the first parliamentary majority in post-Soviet Ukraine in December 1999, but overall, did not overcome the very fragmented nature of partisanship and the personification of politics in Ukraine. As a result, the institutional reform had a very limited impact under Kuchma's presidency and did not significantly interfere in the political executives' power relationship, since only once was a political executive able to rely on a legislative majority.

The initial dominance of the Left in 1994 forced Kuchma to reappoint serving conservative PM Vitaly Masol, a public opponent to Kuchma. His initial support in the Rada did not translate in empowering him versus the president, as the Centrist and Rightist factions were generally able to block his major policy initiatives, especially the March 1995 budget (AFP, March 1<sup>st</sup> 1995). While Kuchma pushed to limit the budget deficit to 6% of GNP, to please international credit agencies, Masol was willing to allow it to reach up to 12% of GNP. The result was the dismissal of Masol and his replacement by Yevgen Marchuk. During Masol's premiership, Kuchma was much more successful in using decrees or passing major reform bills in parliament, such as freeing prices, liberalizing imports and exports regulations, abolishing official exchange rates, and limiting financial credits to state industries (Kuzio, 1997: 139-41).

The formal reinforcement of the presidency with the adoption of the 'law of power' did not translate immediately in practice. Despite his public commitment to Kuchma, Marchuk rapidly began to challenge the president on several policy initiatives. More conservative than Kuchma, Marchuk was partially able, with the help of the Leftist factions in the legislature, to slow down the pace of economic reforms, especially in regard to privatizations. He was especially suspicious of the Russian approach to privatization proposed by Kuchma, which entailed massive and fast privatizations, often with disregard for the legality of the procedures (Tikhy, 1996).

The power of Marchuk to slow down the reform process were especially noteworthy when considering that he did not have a

formal base in the *Verkhovna Rada* and that all cabinet members were nominated by Kuchma. Therefore, similar ideological preferences between the P.M. and the parliament reinforced prime ministerial power over the president. The adoption of the draft economic program on October 11<sup>th</sup> 1995, by a 234:61 majority in the legislature, illustrates this strengthening of the prime minister.

The adopted program, proposed by Marchuk, was clearly not as reformist as Kuchma and Western observers initially hoped. Among others, it proposed the reinforcement of the regulatory role of the state over the control of prices, the protection of the domestic market, and state protection or ownership of Ukrainian key enterprises (Kuzio, 1997: 48). In comparison to previous reform proposals of Kuchma, this new program was designed to reduce the pace of reforms and strengthen the economic role of the State in conducting reforms, a position consistent with Marchuk's. Kuchma's public support of the program could be understood as a desire to please Eastern Ukrainians and industrialists, for whom Marchuk was a trusted figure, and not a reflection of personal preferences regarding economic reforms. Consequently, partisan factors (ideology) reinforced the capacity of the prime minister to implement policies and to stall the intended proposals of the president.

A relatively similar situation followed the dismissal of Marchuk in May 1996, when Pavlo Lazarenko was appointed as the new prime minister by the president. A powerful figure, Lazarenko initially claimed in public his full commitment to the president, engaging in the crafting of a much needed tax reform bill proposed by the president. The bill was considered a top national priority, since it was perceived as a source of revenue necessary to the repayment of Ukraine's energy debts to Russia and Turkmenistan (D'Anieri, Kravchuk, & Kuzio, 1999: 201). The bill was ultimately defeated in parliament in June 1997, prompting Lazarenko's removal.

The lack of support for the tax bill in parliament illustrates the relative unimportance of partisan factors in explaining Lazarenko's considerable powers. Despite having some support among Centrist deputies of the Unity faction, which he led after being ousted as PM, Lazarenko was constantly

confronted to Left and Right opposition during his mandate. He submitted over 350 pieces of legislation during his one year tenure, but only 149 were approved by the *Verkhovna Rada* (41%), a fairly low proportion, indicating that clearly his power was not emanating from the legislative branch (Protsyk, 2003: 1083).

After having being challenged by two unruly prime ministers, Kuchma opted to nominate the much more loyal Pustovoitenko, who for two years never posed a threat to the president. After enjoying moderate support in parliament, the new prime minister became more and more questioned by the Center and the Right, which had been generally supportive of his political agenda. The election of a new parliament in March 1998 in which his own faction (People's Democratic Party faction) grew from 31 to 89 deputies did not change the situation, as he barely escaped a vote of no confidence that October (Withmore, 2004: 98). The president also was confronted with an unsupportive Left-dominated parliament, even after 1998, resulting in a general weakening of the executive branch in a time of economic crisis. The loyalty of Pustovoitenko remained however, as every policy initiatives associated to the presidential administration were loyally implemented by the prime minister. Consequently, partisan factors had little impact during Pustovoitenko's tenure, the power relationship between executives remaining mostly determined by personal relationship loyalties.

The nomination of Yuschenko in 1999 and of Kinakh in 2001 was also the result of their personal loyalty to the president. While both enjoyed a very different relationship with the legislature, this distinction did not significantly impact upon their power relationship with the president. On the one hand, Yuschenko had a significant base in parliament. Considered a pro-reform and pro-Europe politician, the former head of the central bank was widely popular with deputies from the right and with some centrist deputies. After the Gongadze scandal of November 2000, he even increased his popularity with legislators and with the general population, making himself indispensable to Kuchma (Itar Tass, February 27<sup>th</sup> 2001). Despite his high popularity, being asked by the Kuchma opposition to lead them, he remained loyal to the president

until his dismissal. Consequently, being potentially more powerful to Kuchma, he did not use his considerable partisan support to challenge the president.

On the other hand, Kinakh had little support in parliament, being constantly contested by both the left and the right. Pro-Kuchma centrist oligarchs were his main support in the Rada, making it difficult to pass significant bills. His record was actually the worst in Ukraine until 2002, as only 89 drafts were enacted out of 244 (36%), making him consequently fully dependent on the president's support (Protsyk, 2003: 1083). Moreover, he was himself not very different in his background than Kuchma, as an industrialist and former head of the Industrialist Association of Ukraine, the oligarch organization. Thus, he was very close ideologically to Kuchma, as a centrist politician and a careful reformer, and remained loyal to the president throughout his 18 month term.

The last prime minister nominated by Kuchma, Viktor Yanukovich, enjoyed considerably more support in the legislature. First, he benefited from the formation of the Regions of Ukraine faction (and later the Party of Regions), created by the association of 9 centrists factions in July 2002. He headed the faction in parliament until his nomination as prime minister. Second, the adoption by parliament of the government program in April 2003 insured his tenure as prime minister until November 2004, safeguarding him from a vote of no-confidence. Yanukovich was therefore, during the last 18 months of his premiership, in a clear position of force *vis-à-vis* the legislature. Up until the Orange Revolution, he was able to build a thin pro-presidential majority, despite the reinforcement of the opposition under the Our Ukraine (*Nasha Ukraïna*) banner led by Viktor Yuschenko.

Yanukovich, pinpointed to succeed Kuchma as the pro-government candidate in the 2004 presidential election, remained loyal to the president until the presidential campaign. Since Kuchma was not legally allowed to run for a third term, there was little incentive for the prime minister to challenge directly the president as a potential opponent, even with a solid parliamentary base. Only in December 2004, during the Orange Revolution, did both oppose each other, as the retiring Kuchma pushed through a constitutional reform

weakening the presidency in exchange for an acknowledgement of Yuschenko's victory in the presidential election. But by that time, the PM had lost much support in the legislature as accusations of electoral violations and mass protests in Kiev were increasing.

Overall, partisan factors do not appear convincing in explaining the power relationship between political executives in Ukraine (1994-2004). Their impacts was mixed throughout Kuchma's two terms, as no prime minister gained much in relative power from support from parliament. For example, while Lazarenko had a weak base in parliament and a fairly similar ideology to Kuchma, he became extremely powerful in practice, directly opposing the president on key policies. In contrast, the reformist Yuschenko, with a significant base in parliament, remained loyal to the president, deferring to him on key policy orientations and being supportive of him in public, even after the 'Kuchmagate' (the Gongadze scandal).

Still, strong parliamentary support from the left for Marchuk contributed to the reinforcement of his power against Kuchma, allowing him to initiate policies independently to presidential preferences. Similarly, the pro-presidential majority in the legislature in 1999-2000 considerably reinforced the president, but even in this case, Kuchma's dependency on Yuschenko's parliamentary base and Yuschenko's loyalty made pointless a confrontation with the prime minister. As a consequence, the impact of partisan factors was moderate, and often absent. Perhaps more important was the almost constant opposition between the executive and legislative branches, which was a source of frustration for Kuchma, constraining his ability to generate needed policy reforms and limiting his capacity to fully use his formal powers and prerogatives.

### **Extra-institutional Explanations**

Focusing on the Ukrainian case clearly highlights the importance of extra-institutional factors. More specifically, the influence of regional industrial groups, the ethno-linguistic polarization of the country, and the personalization of politics shaped the power distribution within Ukrainian institutions. Similarly, personal relations between individuals proved to be central, as loyalty explains much of the variance in the power



distribution between political executives.

First, in a society in economic, political, and social transition, political institutions, and new rules and norms take time to consolidate. In contrast to more established democracies, we need to consider more significantly informal politics in to understand political games. In post-Soviet Ukraine, much of the 'game' was centered around regional economic interests, or clans, which have largely shaped Ukrainian politics since the early 1990's. Their influence on the power relationship between political executives has been considerable, as the clans provide vast resources that a politician can use to increase his or her powers.

The most notable impact of regional clans on Ukrainian politics occurred during Lazarenko's tenure as prime minister in 1996-97. As the head of the Dnepropetrovsk clan (military-industrial complex), Lazarenko largely used his position as PM to serve the economic interests of his own region, through the nomination of over 220 loyal officials to top government posts and through the attribution of state contracts or franchises to Dnepropetrovsk clan's industries (Kyiv Post, October 20<sup>th</sup> 1998). The most scandalous example was the attribution in 1996 of over half the Ukrainian natural gas market to the clan's top company, United Energy Systems, headed then by future Prime Minister Yulia Tymoshenko. Almost overnight, the company became the richest in Ukraine. Even though the clan was mostly responsible for Kuchma's election in 1994, Lazarenko used its vast economic resources to challenge Kuchma on multiple occasions, as seen above, forcing the president to adopt a new strategy, by trying to balance the influence of different clans, forcing them to compete with each other (Aslund & McFaul, 2006: 12).

Relying on the clans was also done through the legislature, as clans used their wealth to basically buy seats in parliament. The formation of the oligarchic party *Hromada* by Lazarenko was a clear example, as it provided a very loyal political base for the prime minister in parliament, since most of his members were also members of the Dnepropetrovsk clan or on its payroll. Other clans used parliament, such as the rival clan of Donetsk (coal-mining and metallurgy), which formed its



own political base in the Social-Market Choice Party in 1996 linked to Prime Minister Marchuk, and later in the Party of Region headed by Prime Minister Viktor Yanukovich. Other clans from Kiev (finance and industry) or from Western Ukraine were also active prior to the Orange revolution, which was largely the culmination of the clan war, with the control of the state and its resources as the ultimate price (Kutsenko, 2004: 208-09).

The complex clan structure and evolution does not mean necessarily that the power distribution followed a unique pattern, but it reveals that when a president and a prime minister were pushing forward the interests of the same clan, or that no clan interests came between political executives, the relation between them tended to be non-confrontational and tended to favor the president. For example, PM Vitaly Masol (Kiev clan), PM Pavlo Lazarenko (Dnepropetrovsk clan), and PM Yevgen Marchuk (Donetsk clan) all became to different degrees confrontational with Kuchma, as the interest of the clans conflicted with presidential policy orientation or clan affiliation (Zviglyanich, 1997: 2-5). In these cases, Masol and Marchuk were representatives of clans opposed to the Dnepropetrovsk clan to which the president was then affiliated. Their opposition to the president could be interpreted at least partially as attempts by their clan to seek increased access to resources and power, even though presidential ambitions (Marchuk and Lazarenko) were also playing an important role.

Second, the ethno-linguistic divide in Ukraine increasingly became a source of tensions and progressively infiltrated high politics (Shulman, 2004: 42-44). While moderately important in the early years of Kuchma's presidency, it became a core issue in the early 2000's, with the nomination of Yuschenko and eventually of Yanukovich. Frustrated by the constant domination of Eastern Ukrainians clans in National politics, anti-Kuchma groups started to organize more efficiently in 2001-02 with large demonstrations in downtown Kiev, labelled 'Ukraine without Kuchma'. Before the Gongadze scandal, Kuchma had globally been able to carefully balance the interests of Western and Eastern Ukrainians, making for instance Ukrainian the only official language in 1994, but his legitimacy fell in 2001 and the rise of Yuschenko as the 'pro-

reform/pro-Europe' candidate resulted in the rise of the ethno-linguistic issue in national politics (Kuzio, 2006: 62-63).

The impact of this ethno-linguistic issue on the relationship between political executives was however not felt until the latter days of Kuchma's presidency. Even though Yuschenko could have benefited from the support of Western Ukrainians (the core of the 'Ukraine without Kuchma' demonstrations) while he was prime minister, he refrained to use it politically until his resignation in 2001. The only significant, albeit indirect, impact occurred during Yanukovich's tenure as prime minister between 2002 and 2004. He was, and still is, perceived as 'pro-Russian' by Western Ukrainians voters. Besides his background as the governor of one of the most russified regions of Ukraine, his stand on linguistic policies discredited him in the eyes of most Western Ukrainians. Particularly, his proposal to make Russian an official language of Ukraine and his Russian-speaking education, and his close ties with Russia constituted a threat for many Ukrainians. As a consequence, his tenure and presidential ambitions helped to polarize Ukrainian politics around ethno-linguistic issues, and limited his capacity as prime minister, because his popularity remained fairly low until the presidential campaign in 2004. In April 2003, for instance, 57% of surveyed respondents answered that they would definitely or probably not vote for him as president, in comparison to only 16% who would definitely or probably vote for him (Mason, 2003).

Finally, and perhaps more importantly, the nature of personal relations with Kuchma explains much of the variation in the power relationship between political executives. Loyalists, such as Pustovoitenko, Yuschenko, Kinakh, and Yanukovich had good personal relations with Kuchma, and were initially picked for this reason. Of course their technical experience and clan's affiliation also mattered, but for Kuchma the consolidation of power in the presidency was the top-priority, at least until 2002. Multiple confrontations with the parliament and the reinforcement of the presidential administration over time clearly illustrate Kuchma's vision of the Ukrainian presidency. His sudden change of heart in 2002, when he proposed the re-crafting of the Ukrainian constitution in favor of the prime minister (premier-presidential system), was the result of general expectations that his former Prime Minister

Yuschenko would eventually grab the presidency and change the balance of power between vested regional interests and policy-orientations he shaped while president (Protsyk, 2003: 1087). The constitution would eventually be changed, amidst the turbulent Orange Revolution and take effect in 2006.

The personal loyalty of prime ministers is a complex phenomenon to measure. Even if all prime ministers but Masol (nominated under Kravchuk) were initially loyal to Kuchma, at least two of them, Marchuk and Lazarenko, put themselves in the awkward position of directly confronting the person who put them in power and who could fire them at his own discretion. Several factors explain their decision to engage in a power struggle with the president. First, both had at their disposal vast resources outside the institution. As mentioned above, Marchuk was able to rely on the information resources of the security services of Ukraine, which he headed prior to his appointment as prime minister, while Lazarenko had control over the powerful Dnepropetrovsk clan. Second, they both were able to appoint key allies to top positions in the state apparatus, a prerogative that they used significantly more than other prime ministers. Marchuk was especially active in nominating former colleagues in the Ministry of Internal Affairs (MVD) and in the former KGB apparatus (Tikhy, 1996). Finally, and perhaps more importantly, they both had serious presidential ambitions, as illustrated by their confrontational behavior against Kuchma and their building-up of a parliamentary support base. Since they both knew that a 1999 electoral confrontation would more than likely put them against Kuchma, they had to preserve a certain distance from the president and project an image of a leader, while not solely behaving as loyalists to the president, as did Pustovoitenko. A different situation emerged after 1999. The need to challenge Kuchma strongly diminished, as potential presidential challengers knew that they would not confront him in a presidential contest, article 103 of the 1996 constitution limiting Kuchma to two consecutive terms. This situation may explain why Prime Minister Yuschenko, despite being very popular and having presidential ambitions, did not feel the need to be more confrontational with Kuchma during his 1999-2001 premiership.

Globally, despite some impact of institutional and partisan

factors, the power relationship between prime ministers and the president, during the Kuchma presidency, was shaped mostly by non-institutional factors. Again, this highlights the relative weakness of institutional consolidation and of the party system in Ukraine. On the other hand, it shows that informal politics, and regionalization and personification of politics were playing a key role in allocating power within and between Ukrainian political institutions. Nevertheless, it is still important to remember that constitutional arrangements still provided a general framework and limits to the power game, though they are insufficient to explain the power relationship between political executives and even between political institutions.

### **Interpretation**

Institutionalists have usually claimed that by looking at the institutional configuration and constitutional prerogatives one could explain the power distribution between the political actors within a given institution. Consequently, power distribution can only occur as the result of institutional change. In the case of Ukraine, several major institutional changes, such as the constitutional reforms of 1996 and 2006, certainly impacted the power distribution between political executives, but can hardly explain the power shifts that occurred while the institutions were unchanged.

The lack of attention to extra-institutional factors has been very common in the political science literature, for methodological or substantive reasons, and has especially affected the understanding of institutional process in post-Soviet republics (Cohen, 2000). Attention to formal elements of democracy, as elections and institutional configurations, has left many scholars inattentive to the importance of the domestic context, idiosyncrasies, popularity rates, and extra-institutional interests.

By observing the multiple power relationships between political executives in Ukraine from 1994 to 2004, it is evident that no unique pattern emerges. According to institutionalist theories, changes should have occurred one occasion: During the 1996 constitutional changes. In practice, however, the sources of political power in Ukraine have often been located

in the extra-institutional arena, most notably in the regional and industrial networks whose considerable resources often overshadowed political institutions and shaped the political process.

President	Prime-Minister	Period	Relationship
Leonid Kuchma	Vitaliy Masol	June 1994-March 1995	Peaceful
	Yevhen Marchuk	March 1995-May 1996	Mixed
	Pavlo Lazarenko	May 1996-July 1997	Conflictual
	Valeriy Pustovoitenko	July 1997-December 1999	Peaceful
	Viktor Yuschenko	December 1999-May 2001	Peaceful
	Anatoliy Kinakh	May 2001-November 2002	Peaceful
	Viktor Yanukovich	November 2002-January 2005	Conflictual

**Tab. 1 Power relationship between Kuchma and his prime ministers**

This situation clearly highlights the impact of weak democratic consolidation on the power distribution within political institutions, but perhaps more importantly denotes the weakness of the state in Ukraine. First, state autonomy has suffered because of the influence of vested regional and industrial interests through political parties in parliament and through the presidency. In practice, many political representatives, such as Prime Ministers Lazarenko, were representatives of their networks or clans and used their position as political executives to serve their interests, often very obviously. State control has been perceived as, and has largely been a zero-sum game for the acquisition and preservation of economic resources. The partisan system has thus not been aligned as a Left-Right spectrum, and this has resulted in political participation based on clientelism, on idiosyncrasies, and on ethnic lines, and consequently not of policy issues. Consequently, a dominant part of the source of power of a political executive has been based on extra-institutional resources and not on constitutional or institutional prerogatives.

Second, state capacity to implement its policy and conduct its regulatory role has been weakened by the regional and ethnic

divide and by the capacity of resistance of powerful regional governments and networks. Oleh Protsyk understands this phenomena as detrimental to the presidency: "Work on Russia and Ukraine suggests that presidents can indeed be crucial in ensuring that governments pursue policies to provide public goods in the context of weakly institutionalized party systems" (Protsyk, 2004). But from this analysis, the impact of the weak state capacity has also been detrimental to President Kuchma, who has been struggling to unite the ethnically-divided country and implement major economic reforms. Resistance from parties and blocs representing networks or regions in parliament has been a constant pattern, as well as popular and labour mobilization in Kiev or in regional capitals. Anti-Kuchma protests and the Orange Revolution, and eventually the 2007 manifestations in Kiev following the disbanding of the parliament, are but a few examples of the capacity of networks and regions to undermine presidents or presidential hopefuls through popular mobilization.

In parliament, during the rule of Kuchma, the policy-making capacity of the state was contingent on network and regional support, whose interests rarely included major reforms of the system that brought them wealth and power. Parliamentary resistance throughout the 1990's for major economic reforms illustrates the importance of extra-institutional networks through Leftist or even centrist parties and blocs. Also, the opposition to re-privatization in 2004 forced the president to fire his prime minister following major pressure of the networks through informal politics and opposition in parliament. Presidential powers to oppose the prime minister were in this case very weak, as not only the president was unable to shape policy through his P.M., but had to answer to powerful networks by firing his prime minister and stopping the re-privatization plans.

The impact of State capacity has been less constant for prime minister, but has consistently undermined the power of weak or loyal prime ministers who attempted to conduct reforms, such as Fokin, Pustovoitenko, and Kinakh. They were usually more loosely connected to the networks and without presidential hopes, which made them more representatives of the president and less as a competing executive. In a way, their weakness was a reflection of the president's weaknesses, since

the reform proposals they tried to implement had presidential blessing. In general, prime ministers benefited from weak state capacity, as much of their activity consisted of providing benefits to their regional networks or protect their interests and not as much to implement major national reforms. A weak state capacity also meant less potential opposition from the president, but also less oversight by the legal system or other potential opponents. Powerful prime ministers, such as Marchuk and Lazarenko, and later Tymoshenko and Yanukovich have clearly benefited from this situation by using extra-institutional connections and resources to dominate their power relationships with their respective presidents, despite the fact that the presidents had more formal power, at least until the 2006 constitutional reform.

To conclude, the analysis of the power relationship between political executives in Ukraine reveals the hazard of understanding the political process solely through institutional lenses. The results show that in this consolidating democracy, executive power is often a function of non-institutional and partisan factors, and that state weaknesses in its autonomy and capacity can explain much this variation, since it allows important societal divides, such as ethnic and regional affiliation, and network competition to polarize the political sphere and make political competition between political executives a zero-sum game. Thus, power distribution within the political institutions has been very flexible during Kuchma's presidential reign, and has revealed that substantial institutional change can occur even without constitutional changes, rules or norms modifications, and alterations of the partisan composition of the Ukrainian Parliament.



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