



**Mykola Riabchuk**

## Pluralism by default

*Ukraine and the law of communicating vessels*

Ukraine's pro-western government coalition has collapsed after only one year. Viktor Yushchenko's victory in the elections in September 2007, called after the pro-Russian "parliamentary coup", represented an opportunity for the gradual improvement of democratic institutions, writes Mykola Riabchuk. The latest crisis is yet another symptom of the political "pluralism by default" that undermines Ukraine's long-term democratic consolidation.

Democracy follows the principle of communicating vessels, according to Mykola Riabchuk: as long as government and people are bound together by regular elections, a free media, and an independent judiciary, their attitudes will not significantly differ. In Ukraine, the Orange Revolution in 2004 restored those levels yet failed to go far enough. This opened the door for the attempted "parliamentary coup" by the Party of Regions in 2007. The snap elections called in response confirmed the Orange government's democratic mandate and has kept open the avenue of opportunity for a gradual improvement of democratic institutions.

Back in 2002, Lucan Way examined the development of a number of post-Soviet republics and concluded that the consolidation of authoritarian regimes was rather unlikely to succeed in at least two of them, Ukraine and Moldova. The reason for this, he argued, was not a robust civil society, strong democratic traditions and institutions, or the democratic commitments of post-Soviet leaders. Rather, it was "the inability of incumbents to maintain power or concentrate political control by preserving elite unity, controlling elections and media and/or using force against opponents".

He aptly defined the phenomenon as "pluralism by default" — a form of political competition specific to weak states that "survives not because leaders are especially democratic or because societal actors are particularly strong, but because the government is too fragmented and the state too weak to impose authoritarian rule in a democratic international context".<sup>1</sup> Ironically, the very same factors that supported political pluralism in Ukraine under Leonid Kuchma and facilitated the regime's demise during the "Orange revolution" nowadays seem to undermine effective governance and, as Lucan Way has shrewdly predicted, "threaten long-term democratic consolidation".

Most observers agree that post-"Orange" Ukraine of Viktor Yushchenko in 2005–2007 largely resembles the post-Soviet Ukraine of Leonid Kravchuk in 1992–1994. Both regimes demonstrate the political syndrome described by Thomas Carothers as "feckless pluralism" — phenomenon that became prominent in Latin America and a number of Asian countries long before the

fall of the USSR:

Countries whose political life is marked by feckless pluralism tend to have significant amounts of political freedom, regular elections, and alternation of power between genuinely different political groupings. Despite these positive features, however, democracy remains shallow and troubled. Political participation, though broad at election time, extends little beyond voting. Political elites from all the major parties or groupings are widely perceived as corrupt, self-interested, and ineffective. The alternation of power seems only to trade the country's problems back and forth from one hapless side to the other. Political elites from all the major parties are widely perceived as corrupt, self-interested, dishonest, and not serious about working for their country. The public is seriously disaffected from politics, and while it may still cling to a belief in the ideal of democracy, it is extremely unhappy about the political life of the country. Overall, politics is widely seen as a stale, corrupt, elite-dominated domain that delivers little good to the country and commands equally little respect. The state remains persistently weak. Economic policy is often poorly conceived and executed, and economic performance is frequently bad or even calamitous. Social and political reforms are similarly tenuous, and successive governments are unable to make headway on most of the major problems facing the country, from crime and corruption to health, education, and public welfare generally.<sup>2</sup>

All the countries with feckless democracy have a "deep legacy of persistently poor performance of state institutions". Parties that alternate power between them, explains Carothers, "are divided by paralyzing acrimony and devote their time out of power to preventing the other party from accomplishing anything at all". The political competition, in many cases, is between parties that "essentially operate as patronage networks and seem never to renovate themselves": "The alternation of power occurs between constantly shifting political groupings, short-lived parties led by charismatic individuals or temporary alliances in search of a political identity, as in Guatemala or Ukraine." Despite a great many variations of feckless pluralism, from Latin America to Bosnia and Albania, all of them, Carothers concludes, have one thing in common: "The whole class of political elites, though plural and competitive, are profoundly cut off from the citizenry, rendering political life an ultimately hollow, unproductive exercise."

The other political syndrome in the grey zone between consolidated democracy and consolidated dictatorship, according to Carothers, is dominant-power politics:

Countries with this syndrome have limited but still real political space, some political contestation by opposition groups, and at least most of the basic institutional forms of democracy. Yet one political grouping — whether it is a movement, a party, an extended family, or a single leader — dominates the system in such a way that there appears to be little prospect of alternation of power in the foreseeable future [...] As in feckless-pluralist systems, the citizens of dominant-power systems tend to be disaffected from politics

and cut off from significant political participation beyond voting. Since there is no alternation of power, however, they are less apt to evince the "a pox on all your houses" political outlook pervasive in feckless-pluralist systems. The state tends to be as weak and poorly performing in dominant power countries as in feckless-pluralist countries, though the problem is often a bureaucracy decaying under the stagnancy of de facto one party rule rather than the disorganized, unstable nature of state management (such as the constant turnover of ministers) typical of feckless pluralism.<sup>3</sup>

Carothers suggests that political systems marked by both feckless pluralism and dominant-power politics are relatively stable — albeit not as stable as consolidated democracy or outright authoritarianism. Indeed, feckless pluralism may achieve a kind dysfunctional equilibrium — "the passing of power back and forth between competing elites who are largely isolated from the citizenry but willing to play by widely accepted rules". Dominant-power politics might be even more stable and deeply entrenched, "with the ruling group able to keep political opposition on the ropes while permitting enough political openness to alleviate pressure from the public". Neither configuration, however, is permanent. "Countries can and do move out of them — either from one to the other or out of either toward liberal democracy or dictatorship".<sup>4</sup>

The Ukrainian case might be a graphic example of such a move or, rather, of fluctuating between feckless pluralism and dominant-power politics — with a gradual slide towards consolidated authoritarianism in the last years of Leonid Kuchma and an abrupt yet less skilful attempt at consolidated democracy in the first years of Viktor Yushchenko.

### **From a dysfunctional to a blackmail state**

The striking similarity between the feckless democracies of Kravchuk (1992–1994) and Yushchenko (2005–2007) seem to be of structural character rather than simply being determined by the personal features of both presidents and their closest associates — be it a communist nomenklatura in the first case or komsomol-cum-businessmen in the second. The impotence of Yushchenko's power was apparent from his first months of rule, when all the denounced top-level "criminals" moved safely to Moscow only to return shortly afterwards to the Ukrainian parliament. This was just a re-incarnation of the same feckless pluralism, in other words non-institutionalized democracy, that hampered Leonid Kravchuk's efforts to curb Crimean separatism, to prevent the Russian takeover of the Black Sea fleet, or bring to order the "red barons" of the Donbass, who had cynically used the miners' protests to get huge personal gains from Kyiv.

Everything written by Yulia Mostova about Yushchenko's Ukraine in 2006 can be applied to Kravchuk's Ukraine of 1993: "The country is in a state of anarchy: hundreds of presidential orders, court rulings, and parliamentary resolutions remain on paper only; it is practically impossible to find justice in courts; the central government's decisions are very rarely or only negligently fulfilled at the local level."<sup>5</sup>

To understand the reason for the virtual collapse of state power, one should recall that Ukraine inherited from the Soviet Union completely dysfunctional institutions not designed for efficient autonomous work in a pluralistic and

competitive democratic environment. All those institutions — including parliaments and governments, local councils and executives, courts and customs, police and security services — played a subsidiary role vis-à-vis the real centre of power, which animated the entire system, making it effective rather than efficient. It was the Communist party that made all important decisions, initiated all changes, and extorted loyalty and obedience. As its power declined towards the end of perestroika, the dysfunctionality of the Leninist state became obvious. The failed communist coup and the removal of the party from the political scene deprived the communist state of its driving force and rendered the collapse of the Soviet Union inevitable.

Local elites in post-Soviet republics inherited dysfunctional pieces of a dysfunctional empire. They had two options: to build new state institutions based on the rule of law, democratic procedures, and civic mobilization; or to re-animate the dysfunctional quasi-institutions of the Leninist state by other informal methods and semi-legal bodies. Only the Baltic republics opted clearly for the first way. All the other post-Soviet states took the second option. Thus, presidential administrations replaced the Central Committees of the Communist Party and presidential representatives ("governors") assumed the role of the local communist bosses.

Yet the decisive element that would make this modified system work effectively was still missing. The shadow power of the Communist Party had been based on the communist ideology, which was mandatory for everybody who held any more or less important position or strove for any social advance. It was an effective tool of state domination, since loyalty could be extorted from any subject by "ideological blackmail". In the post-Soviet non-ideological regimes, the loyalty was achieved by other means — partly, as usual, by bribery and cooptation and partly by the new economic blackmail facilitated by the advent of oligarchic capitalism.

In brief, the new system, as Keith Darden brilliantly analyzed it,<sup>6</sup> was based on three major pillars: widespread corruption, tolerated and even encouraged by the government; effective surveillance and collection of "compromat" against virtually everybody; and finally, selective application of law according to the offending party's degree of loyalty.

The new mechanism could be effectively introduced in Ukraine only after the large-scale privatization of the state property had been accomplished (typically, in the most dubious and unfair way) and after virtually all major political-cum-economic players had become easy targets for the potential blackmail. Leonid Kuchma thus re-established a kind of order throughout the country, subdued local barons and, surprisingly, more or less neutralized the threat of Crimean separatism. By and large, he eliminated the fecklessness of the early 1990s, making state institutions work (however poorly and corruptly). But the side effect of this relative "success" was the gradual elimination of pluralism — it was a "pluralism by default" rather than a real pluralism supported by traditions and institutions.

The Orange revolutionaries inherited a crypto-Soviet state with largely dysfunctional institutions and thus faced virtually the same dilemma as Leonid Kravchuk in the early 1990s: either to craft new democratic institutions as Ukraine's western neighbours had done long ago, or to use the old institutions that, let it be stressed once again, cannot function effectively without a formal guardianship of the party or an informal government-sponsored blackmail.

New institutions were created and the old ones have gradually adopted and adapted to the new political actors.

### Revolution as a return to the evolution

The Orange Revolution ended up with a failure not on 7 July 2006, when a minor socialist party left the Orange Coalition to help the Party of Regions — together with the unreformed communists — to create the anti-Orange ("anti-crisis", as they pompously called it) government. The Orange Revolution was over by February 2005, when the president, both personally and through his minister of justice, announced that no lustration was needed in Ukrainian society. In practical terms it meant not only forgetting the outrageous crimes of the Kuchma regime and giving a free ride to all its corrupt officials, election falsifiers, and ardent oppressors of civic freedoms. It also meant the preservation of the Soviet KGB, re-branded in 1991 as the SBU (Security Service of Ukraine) and leaving basically intact the hyper-corrupt customs and tax services, the crypto-Soviet police force and army, and the justice system. Nomenklatura-style privileges for the state officials remained in place, as did the murky gas and oil trading schemes the previous "criminal regime" had wisely put in place for its successors.

Once again, like in 1991/92, dominant power politics was replaced by a kind of feckless pluralism rather than a properly institutionalized and effectively functioning democracy. One difference, however, is noticeable. The first Ukrainian president, Leonid Kravchuk, had little choice but to accept that "pluralism". He apparently had neither the skill nor the ability to introduce liberal democracy, the rule of law, and the free market. Yet after the Communist Party was disbanded in 1991, he had no institutional mechanisms and no resources with which to curb either fecklessness or pluralism and to reintroduce a firm authoritarian rule. Yushchenko, on the contrary, inherited the rather effective mechanisms of the "blackmail state" created by Leonid Kuchma. He could easily employ huge piles of compromat collected by his predecessors and raise criminal charges against his political opponents. He has abstained, however, from a selective application of the law — at least until recently. Yet Yushchenko can barely overcome the institutional logic: since he failed to create effectively functioning democratic institutions, he had to rely on informal mechanisms of authoritarian rule to make the country manageable.

Not long ago, many authors (including myself) compared the Orange Revolution with the eastern European "velvet" revolutions of 1989–1991 that, after a decade-long delay, had finally reached Belgrade, Tbilisi, and Kyiv. It seems, however, that James Sherr offered a more apt analogy — with the European revolutions of 1848. These, he argues, defeated *ancien regimes* but failed, like today, to transform them into liberal democracies:

In the Orange revolution, as in the European revolutions of 1848, the old order was defeated, whilst its sources and structures of power remained intact. The "revolutionary" leaders made their careers inside these structures. They never fully grasped their self-serving, parasitical, rent-seeking and (at worst) malevolent nature. They changed policies, but did little to change the institutions that implemented them. They had a democratic, European spirit, but no spirit of urgency and very little premonition of danger.<sup>7</sup>

The leaders of the Orange Revolution, Sherr continues, failed to do the most

important thing done by all eastern European revolutions. They did not "alter the terms of the contest, so that when the opponent comes back to power, he has to accept new rules, a new discourse and a new reality. In other words, the opponent must come back transformed". They did not create conditions that would have required anybody willing to come back to power to have changed thoroughly. Hence, "whilst there has been very little revolution under Yushchenko, the risk of counter-revolution is now strong".<sup>8</sup>

Ukraine seems to have again become stuck in a grey zone of feckless pluralism. This could just as well be a station on the route to consolidated democracy as on the route back to authoritarianism. Despite the failure of the Orange Revolution, however, the country still has a good chance of continuing the evolutionary development that was interrupted by Kuchma in the late 1990s. Until that moment, Ukrainians had the government they deserved — in the sense that both Kravchuk and the "first" Kuchma were chosen in free and fair elections from among a plurality of candidates of different hues.

One may compare the situation to communicating vessels in which the level of water is the same as long as the vessels are effectively connected. In our case, the bigger vessel stands for society, the smaller one for the ruling elite. The level of civility, of political culture in both vessels is essentially the same — as long as connection between the ruling elite and society at large exists via elections, an independent media, the judiciary, and so on. In 1999, Leonid Kuchma destroyed this connection, however weak and faltering it was. He deprived Ukrainians of real choice and effectively disqualified himself both domestically and internationally. The Melnychenko records in 2000 only confirmed, very graphically, this illegitimacy.<sup>9</sup>

Since that moment, the quality of the ruling elite, preoccupied with retaining power and detached from public responsibility, deteriorated dramatically. The quality of the society, however, slowly but surely continued on the upward curve began in the early 1990s. The different levels of water created a pressure that knocked out the cork and re-established the connection between the two vessels. Ukrainian society again has the government it deserves. And this is probably the main achievement of the Orange Revolution. Ukrainians may still make a great many mistakes in the future, but they will know that these are *their* mistakes and not those of an elite that has deprived the people of their choice and their responsibility.

The connection between the vessels was broken at the end of the 1990s when the highly unpopular Leonid Kuchma decided to run for a second term. He employed large-scale manipulation, administrative pressure, and extralegal means to eliminate all the serious candidates from electoral competition — except for the communist leader, who was broadly perceived to be even worse option than Kuchma himself. He tried to leave the people without a choice and without the right to have the government they deserve. In other words, he attempted to deprive the people of their responsibility for a government they elected and for the wrongdoings it may do.

The Orange Revolution re-established the connection between the vessels — between a society that was gradually maturing in civic terms and the ruling elites that had degraded, in the last years of Kuchma, to the level of a rogue regime. Once again, however, Ukrainians got the government they deserved — revolutionary on surface, crypto-Soviet in essence. Neither the Orange politicians nor their electorate managed to change this essence, thereby creating an opening for the Party of Regions to return to power. It was not the



Party of Regions' return *per se* that marked the failure of the revolution but rather the fact that they came back unreformed, with the same authoritarian habits and the same semi-criminal mores. Luckily for Ukraine, they had to share power with the Orange president, which prevented them from re-establishing of a Kuchma-style rule of law. The Party of Regions tried to usurp power, however, by arranging the large-scale bribery and co-optation of opposition MPs, thereby provoking a political crisis and the dissolution of the parliament. They lost the re-run of the parliamentary elections on 30 September 2007 but still remain a powerful force, assisted by Moscow, that substantially influences domestic and international politics in Ukraine.

One can hardly expect the level of civic maturity and the responsibility of the national elites to be substantially higher than the level of the society they are part of. It is even less realistic to expect it to change rapidly. Nonetheless, the connection between the vessels is a necessary, albeit insufficient, condition of democratic change. Despite dysfunctional institutions and weak rule of law, the parochialism of the national elites, and the political immaturity of society, Ukraine remains a fairly free and democratic country with highly competitive politics, an independent mass-media, and substantial civic activism. All this keeps the avenue of opportunities open for a gradual improvement of democratic institutions and procedures.

To put it metaphorically, the water in the connected vessels tends to become stagnant. The Orange Revolution attempted to change the water, or at least to re-establish a connection between the vessels. The water continues to go stagnant — but this only means that it must be changed, again and again, by elections, the media, by an independent judiciary and civic activism, until it becomes a little cleaner.

### **Avenues of opportunity**

Robert Putnam's classic study, "Making Democracy Work. Civic Traditions in Modern Italy" (1993), proved persuasively how the contemporary development of various regions primarily depends on their traditions of civility. Putnam defines this as "social capital", or the level of mutual trust among citizens and their ability to cooperate on common, socially important goals. Having examined in detail the administrative reform in Italy in the 1970s, he revealed graphically how the same institutions function differently in the south and the north of Italy solely because they are placed in different social environments. The north and the south had different histories; they belonged to essentially different civilizations that formed different political cultures and different measures of social capital. Thus, Robert Putnam concludes:

The fate of the Mezzogiorno is an object lesson for the Third World today and the former communist lands of Eurasia tomorrow, moving uncertainly towards self-government. [...] Many of the formerly Communist societies had weak civic traditions before the advent of communism, and totalitarian rule abused even that limited stock of social capital. Without norms of reciprocity and networks of civic engagement, the Hobbesian outcome of the Mezzogiorno — amoral familism, clientilism, lawlessness, ineffective government, and economic stagnation — seems likelier than successful democratization and economic development. Palermo may represent the future of Moscow.<sup>10</sup>

In a sense, any country's development is determined by its history, its cultural milieu, its civilizational belonging. This may be gloomy but it is not fatalistic. Indeed, as Robert Putnam points out, the president of Basilicata cannot move his government to Emilia, in other words from the south to the north. And the prime minister of Azerbaijan cannot move his country to the Baltic shores. No miracles can happen and no rapid changes should be expected. But it does not mean that nothing can be changed at all and all efforts are futile.

The past determines the future but also opens up a vast avenue of opportunities that could be completely wasted or fully utilized and, therefore, effectively broadened and developed. The Orange revolution substantially broadened the avenue of opportunities for Ukrainian society, which was heavily burdened by the Soviet legacy — much more so than East Germany, for example. But neither Ukrainian society nor its leaders have managed, so far, to utilize these opportunities properly. By 2006 the avenue had narrowed dramatically; the snap parliamentary elections in 2007 were a desperate attempt to prevent its complete disappearance under the authoritarian pressure of the Party of Regions. After the attempted parliamentary "coup", James Sherr warned his Ukrainian readers in July 2006:

Ukrainians should face the worst. In essence, this means the preservation of democracy in Ukraine: the basic freedoms of speech and association that preserve the stake of all parties in the system and the legitimacy of Regions' victory. The challenge will be to sharpen Regions' grasp of the contradiction between the "administrative resource", their natural temptation, and legitimacy, their vital interest. In an ideal world, someone would also persuade Regions to abandon the financial resource as a means of governance. But we are not in an ideal world, and no one has the slightest chance of doing that. It will be difficult enough to appeal to the interests that Regions has. It will be impossible to appeal to the ideals that they don't possess. [...] Defeat is a harsh teacher. It also has its uses. It provides an opportunity to cleanse the mind, go back to the beginning and renew one's efforts on the basis of a deeper and stronger wisdom.<sup>11</sup>

Thanks to the extraordinary elections, the Orange parties received another mandate from society to carry out much needed institutional reforms and bring the country back onto the democratic path of development. Their slim parliamentary majority, however, makes the governing coalition highly unstable, while the internal conflicts between Orange leaders may again result in the paralysis and collapse of the government — as occurred in 2005–2006.

A number of experts believe that a mixed Orange–Blue coalition would have been more stable and much more beneficial for Ukraine. It would help, they argue, to overcome the east–west divide of the country by involving the Party of Regions in political and economic reforms as an active and responsible partner. Their opponents, however, contend that the Party of Regions is not a "normal" party like any other, but rather a political wing of the Donbass oligarchic clan (one may say even regional "mafia"). Its behaviour when in power would most likely resemble that of the communist parties in the so-called democratic coalitions in eastern Europe after the Second World War. This already happened in 2006–2007, when the corruption and cooptation of opposition MPs became routine practice, forcing the notoriously indecisive



president Yushchenko to step in and dissolve the heavily compromised parliament.

The major goal for Ukrainian policy-makers today is not to engage the Party of Regions in power but merely ensure that the survival of any party and any person in opposition is as secure as it is for those in power. A firm institutionalization of political opposition with real prospects of returning to power will be the first clear step towards European rules of political competition. To this end, a radical legal reform is needed to ensure the introduction of the rule of law at both institutional and psychological (normative) levels.

It will be a difficult and slow process. It seems, however, that the majority of political and especially economic actors in Ukraine are coming to appreciate the inevitability and even the desirability of such institutionalization. Regional and other divisions in Ukraine prevent the monopolization of power and resources by any political group or oligarchic clan, thereby making a Russian-style system of "managed democracy" impossible. Democracy in Ukraine is destined to remain unmanageable, for better or worse. It will be the great challenge for Ukrainian society and politicians to make it self-manageable, ruled from inside — by democratic institutions, rather than from outside — by an authoritarian leader. Ukraine faces a difficult transition from "pluralism by default" to a pluralism by choice, firmly established and institutionalized. Such a transition, in principle, is unavoidable. It may be delayed and protracted for many years or, as in other eastern European countries, may take place quickly — if the EU dares to play the role it used to, and once again tip the balance between the forces of change and the forces of stagnation in a remote but crucially important European country.

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- <sup>1</sup> Lucan Way, "Pluralism by Default in Moldova", *Journal of Democracy*, vol. 13, no. 4 (2002). See also Lucan Way, "Authoritarian State Building and the Sources of Regime Competitiveness in the Fourth Wave. The Cases of Belarus, Moldova, Russia, and Ukraine", *World Politics*, vol. 57, no. 2 (2005).
- <sup>2</sup> Thomas Carothers, "The End of the Transition Paradigm", *Journal of Democracy*, vol. 13, no. 2 (2002), 9–10.
- <sup>3</sup> *Ibid.*, 11–12.
- <sup>4</sup> *Ibid.*, 13–14.
- <sup>5</sup> *Dzerkalo tyzhnia*, 25 March 2006, 3.
- <sup>6</sup> Keith Darden, "Blackmail as a Tool of State Domination: Ukraine Under Kuchma," in: *East European Constitutional Review*, vol. 10, nos. 2–3 (2001).
- <sup>7</sup> James Sherr, "The School of Defeat", *Dzerkalo tyzhnia*, 22 July 2006, 1.
- <sup>8</sup> *Ibid.*
- <sup>9</sup> Recordings of conversations that took place in the office of Leonid Kuchma made by his former bodyguard Mykola Melnychenko. They included evidence that Kuchma had ordered the murder of journalist Georgiy Gongadze and had supplied military equipment to Iraq — ed.
- <sup>10</sup> Robert Putnam, *Making Democracy Work. Civic Traditions in Modern Italy* (Princeton: Princeton University Press, 1993), 183.
- <sup>11</sup> Sherr, 4.

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