Presidents, Oligarchs and Bureaucrats

Forms of Rule in the Post-Soviet Space

Edited by
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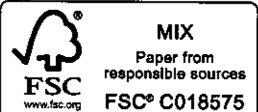

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Chapter 7

From Competitive Authoritarianism to Defective Democracy: Political Regimes in Ukraine before and after the Orange Revolution

Heiko Pleines

This contribution aims to conceptualize the change of Ukraine's political regime initiated by the Orange Revolution in 2004-2005, which after mass protests led to a negotiated transfer of rule from President Leonid Kuchma to the opposition leader Viktor Yushchenko in the context of constitutional reform and demands for democratization. It is argued with reference to the concepts of competitive authoritarianism (Levitsky and Way 2002) and defective democracy (Merkel 2004) that regime change within the grey zone between democracy and autocracy follows specific paths.

Analytical Framework

It is by now commonly accepted that political regimes can be placed on a continuum ranging from an ideal-type democracy through 'really existing' democracies (that is, polyarchies in the concept of Dahl 1972) to authoritarian regimes and further on to totalitarian regimes, where one can again distinguish between 'really existing' systems with certain niches and the ideal-type totalitarian system, which has achieved full control of society.

As a result a 'grey zone' of hybrid regimes between authoritarianism and democracy has been elaborated (see Beichelt in this volume). On the democratic side of this grey zone numerous concepts of different 'democracies with adjectives' have been developed. As Collier and Levitsky (1997) argue, they can all be understood as diminished subtypes of democratic regimes, that is, they fulfill most but not all criteria of a democracy test. Depending on which criteria they do not meet, regimes on the democratic side of the grey zone can be classified. The most comprehensive and systematic classification so far has been developed by Merkel with the concept of defective democracies (see Merkel 2003 for the full concept and Merkel 2004 for an English summary). He distinguishes exclusive democracies (not all are allowed to vote), domain democracies (veto powers without democratic legitimacy control

parts of the country or the political system), illiberal democracies (the rule of law is damaged and cannot fully guarantee civic rights) and delegative democracy (the state executive violates the horizontal division of powers).

A similar systematic approach to the authoritarian side of the grey zone is still missing, but as Bogaards (2009) argues it would be an important building block on the way to establishing a complete continuum of political regimes. One reason for the lack of a comprehensive assessment of diminished subtypes of authoritarian regimes may be that (in contrast to democracies) these regimes have, first, been defined negatively (as non-democratic ones) and have, secondly, been classified on the basis of historical cases (nearly exclusively from the twentieth century) and not through deduction from an abstract root concept.

However, again based on empirical observation, some different diminished subtypes of authoritarian regimes have been described. Following the idea of the continuum of political regimes from authoritarian regimes through a grey zone to democratic regimes, the diminished subtypes of authoritarian regimes should fulfill most criteria for authoritarianism but would also have some features pointing towards a democracy. In that sense they could be described as defective authoritarian regimes. As the deviations from authoritarian principles grow, they then turn into defective democracies. One of the most promising innovations in this context is the concept of competitive authoritarianism by Levitsky and Way (2002), which describes an authoritarian regime with an electoral defect, that is, elections (and especially election campaigns) are manipulated, but in the end, they still determine who gains political power. 'In contrast to elections in fully authoritarian regimes, elections in competitive authoritarian regimes – even if highly unfair – generate genuine uncertainty' (Way 2004: 147). Accordingly, power struggles between rival elite factions focus on elections. But the playing field between the ruling elites and oppositional forces is very uneven as a result of manipulations by the ruling elites (see Levitsky and Way in this volume and Schedler 2006).

Returning to the idea of a continuum of political regimes, countries can of course jump from an authoritarian regime directly to a democratic one, especially in the case of regime collapse in a developed society. After some kind of putsch or revolution a democracy can also swiftly be transformed into a fully authoritarian regime. However, in the more common case of a more gradual transition countries move through the grey zone between authoritarianism and democracy and develop political regimes which can be described as diminished subtypes of either authoritarianism or democracy. They can move in either direction and they can move fast or slowly or may remain with a specific diminished subtype for a longer period of time.

Many case studies, especially on transitions to authoritarian rule in interwar Europe (Berg-Schlosser and Mitchell 2002) and on democratic transitions in Latin America and Europe in the final third of the twentieth century (Linz and Stepan 1996: 55-65), have shown that these transitions through the grey zone are path-dependent, as the institutional design as well as the political culture and the stage of socio-economic development of the preceding regime influence the development of the one which follows.[1]

However, so far no research has attempted to systematically establish transition paths through specific diminished subtypes of authoritarian and democratic regimes, as most accounts focus either on specific explanatory factors and causal links or on the phases of democratization. Taking Ukraine as an example, I argue that one such transition path through the grey zone might lead from competitive authoritarianism, as established in Ukraine under President Kuchma (1994-2004), to a defective democracy of the illiberal type, which emerged after the Orange Revolution of 2004. The authors of the two concepts confirm these classifications for Ukraine (Way 2004, Merkel 2004: 51). However, both focus on a static description of the specific regime type and do not address questions of regime change.

Ukraine's Political Regime under Kuchma

The political strategy of Ukrainian President Kuchma was not focused on the weakly developed political parties as represented in parliament, but on informal regional networks. Representatives of the regional political elites were appointed to national offices in Kiev. With the help of their newly-won authority, these politicians could then patronize their entrepreneur cronies from the informal networks. The politicians thus appear to have habitually shared in the entrepreneurs' spoils via politically corrupt means. The informal networks used their influence on the mass media and on the political climate in their region in order to mould public opinion in favour of the president. In the Donetsk region especially, the result was a rather well-oiled political machine (Kuzio 2007, Zimmer 2006).

All parties involved profited from this arrangement. The regional politicians reaped influential positions on the national level as well as bribery payments from the business world. The entrepreneurs received preferential treatment via policies that brought them immense profits. And the president received support for his election campaign. At this juncture, it was vital for the president to assemble informal networks in numbers sufficient to cinch the presidency; their combined election campaign assistance was instrumental in achieving this aim (Puglisi 2003, Pleines 2008).

At the same time, the president had to secure his position as the central mediator in this system in order to prevent the rise of an internal competitor for his post. This entailed the frequent reshuffling of high-level offices as a means of thwarting the growth of competitors and simultaneously cultivating all the informal regional networks via regular redistribution of power. A classic example of this can be found in the office of the prime minister. During Kuchma's ten-year term in office, no fewer than seven prime ministers served under him. The majority of them came

1 An overview of the state of the art is offered, for example, by Munck 2007.

from Dnipropetrovsk and thereby belonged to Kuchma's regional network. At the beginning of Kuchma's reign, old Soviet networks supplied the prime ministers. In 2002, the Donetsk informal network succeeded in procuring the post when Donetsk governor Viktor Yanukovych was appointed prime minister. The only prime minister without connections to an influential informal network was the reform-oriented Viktor Yushchenko, who served from the end of 1999 until spring 2001 (Pleines 2005: 178).

In addition to the post of prime minister, many other ministerial positions – above all those exercising authority in the economic sector – were divided among the informal regional networks. These networks were also frequently able to gain proximity to the president when their representatives came to be appointed as personal advisers. In that way, not only regional politicians but also the entrepreneurs themselves were able to get a foot in the door (Puglisi 2003, Kowall 2006).

Wealthy businesspeople, so-called oligarchs,[2] were seen as a central feature of the political system. Connections with the political elites were a key to the success of the oligarchs' business activities. In order to cement these connections, starting in the second half of the 1990s most of the oligarchs became politically active themselves. Political influence was exerted by the oligarchs in three ways: first, they acquired mass media in order to obtain political access via the manipulation of public opinion; second, they developed informal networks including political elites; and third, they themselves took political office, mainly as parliamentary deputies but also in the state executive (Pleines 2009). When they succeeded in securing a pro-presidential majority in parliament in 2000 by luring away opposition MPs, their power became evident.

However, the oligarchs did not act collectively. Instead, they competed with each other for power and only seldom formed broad coalitions. Yulia Tymoshenko, for example, an entrepreneur from Dnipropetrovsk, failed to overcome competition from her own region in the second half of the 1990s. While Pavlo Lazarenko, as a prime minister from Dnipropetrovsk, became her major political patron, the election of Valerii Pustovoitenko as the next prime minister from Dnipropetrovsk brought down her business empire (Pleines 1998: 126).

Only in the Donetsk region have the regional elites consistently avoided public internecine squabbles and refrained from forming coalitions with representatives of rival regions. At the same time, the example of Donetsk also demonstrates instability. Over the course of just one decade, the composition of

2 Based on the classical definition of oligarchy, that is, the rule of a few self-interested elites, the term 'oligarchs' denotes, among other things, entrepreneurs who use their wealth to exert political influence. In this context, the concept of an oligarch is also closely associated with political corruption, and the term is primarily used in the analysis of formally democratic systems with authoritarian tendencies, such as those found in Latin America, Southeast Asia and, since the 1990s, in Eastern Europe. In a narrower sense, which is how the term will be used here, the concept does not include politicians or civil servants who use their political influence to obtain control over (state-run) economic activities.

the regional network underwent three fundamental shake-ups. In the first phase, at the beginning of the 1990s, the directors of state-run large-scale enterprises dominated the network and also occupied political posts at the regional and national levels. In the second phase the Shcherban brothers emerged, who represented new commercial structures in the economy and took over positions in regional politics. Finally, with the Industrial Union of Donbas and System Capital Management, two industry holdings owned by oligarchs entered into a tight regional insider network at the end of the 1990s with the help of the first autonomously created political elite surrounding Governor Viktor Yanukovych (Zimmer 2004).[3]

As the potential for direct vote rigging remained very limited in Ukraine and a strong political opposition could not be marginalized, it was important for President Kuchma to manipulate democratic rules in order to create an uneven playing field in his own favour (Way 2004, see also Birch 1997, D'Anieri 2001, 2003, Kubicek 2001, Bos 2006). One way was to use 'administrative resources', that is, to use the state bureaucracy to support election campaigns and organs like the tax police to put pressure on opponents (Darden 2001, 2008). Possessing financial means and control of influential mass media, the oligarchs held key resources to manipulate election campaigns. Accordingly, business elites have to be seen as important actors in the power struggles between ruling political elites and oppositional forces. In return, the oligarchs expected the political elites whom they supported to favour their business interests. During Kuchma's second term, privatization auctions became the focal point of the oligarchs' interests *vis-à-vis* the ruling political elite (Pleines 2008).

The Orange Revolution

However, during his second term Kuchma alienated a number of important allies. Some oligarchs, like Yulia Tymoshenko, and some politicians, like Viktor Yushchenko, lost their positions as a result of power struggles. The speaker of parliament also appealed to the opposition, presenting secret audio tapes of Kuchma allegedly ordering the murder of a journalist and organizing pressure by state agencies on oppositional forces and important figures in society. At the same time Kuchma's decision to choose the governor of the Donetsk region, Victor Yanukovych, as his successor, alienated the other regional networks. While in the presidential elections of 1999, Kuchma's main opponent had still been the candidate from the Communist Party, large parts of the population, especially in Western Ukraine and among the middle class, now saw for the first time a real alternative to Kuchma in the pro-democratic and pro-Western

3 For a detailed description of the Donetsk regional network, see publications by Kerstin Zimmer. For a concise summary, see Zimmer 2004. A detailed treatment can be found in Zimmer 2006.

opposition movement around Yushchenko and Tymoshenko. As a result the presidential election campaign in 2004 saw a close race between Yanukovych and Yushchenko.

The ruling elites around Kuchma and Yanukovych again manipulated the election campaign. Media reporting was extremely biased, employees were pressured to vote the right way and campaigning by the opposition was hampered by administrative means. Yushchenko was even poisoned with dioxin. However, as Ukrainian society was marked by clear cleavages strongly separating Yanukovych from Yushchenko in the eyes of the population, Yanukovych faced a likely (though narrow) defeat (Wilson 2005, Dyczok 2007, Zimmer 2007, Pavlyuk 2007, Bos 2006, Darden 2008).

The last-minute attempts of the old elites at authoritarian vote-rigging confirmed the assumptions of the concept of competitive authoritarianism, namely that the ruling elites can create an uneven playing field in their favour but the counter-elites are so strong that elections cannot simply be stolen. In Ukraine the old regime lacked the professionalism required for the task of massive vote-rigging,[4] but most importantly it was faced with mass protests on the street which were backed up by a vital part of the elites (including prominent politicians, second-rank oligarchs and parts of the security and armed forces). The result was a stalemate (D'Anieri 2007).

The old elites were pressured (through mass protests, a ruling of the Supreme Court and round table negotiations with international mediation) into accepting repeat elections, which they knew they would lose. In return the old elites demanded not only legal immunity but also constitutional changes which reduced the power of the president (for a comprehensive overview of events and interpretations see Bredies et al. 2007).

Although the Orange Revolution was first interpreted as a clear victory of the counter-elites around Yushchenko and Tymoshenko, the elites remained as divided as they had been. Some oligarchs changed sides and joined the orange camp, but Yanukovych (who won 44 per cent in the clean repeat elections) was able to reform part of the networks around Kuchma into the Party of Regions, which soon formed the biggest faction in parliament. That meant that the elite structure based on the division into two opposing camps was not significantly changed by the Orange Revolution. What did change was that elections and election campaigns as well now conformed to democratic standards. This was due to the fact that elections were the focal point of the Orange Revolution. As a result power changed regularly in Ukraine after the Orange Revolution. After the parliamentary elections of 2006 Yanukovych's Party of Regions was able to form the government, only to be replaced by a Tymoshenko government after the early parliamentary elections of 2007. After the presidential elections in 2010, Yanukovych replaced Yushchenko as president.

4 An account of vote-rigging is attempted by Myagkov, Ordeshook and Shakin 2005.

Power Struggles and Regime Change

In this context the broader argument would be that since competitive authoritarian regimes revolve around elections, the logical way for opposition forces to gain power in such regimes is to win elections. If the opposition can engage in the same kind of manipulations as the ruling elites, the result is just a change in the composition of the ruling elite. However, in the more likely case that the opposition cannot engage in manipulations (as it lacks control over the media and can be discriminated against by the state administration) it will demand clean elections. This way it can gain support from the population and also from foreign and transnational democracy promoters. Once the old elites have lost elections, it is their turn to support clean elections as their only chance to regain power. This means the focus on elections as a way of distributing power in combination with elite camps of relatively equal strength – as two major features of competitive authoritarian regimes – make election manipulations after a regime change and with that a transition to a defective democracy of the exclusive type (that is, a regime with limitations on the right of the people to vote) highly unlikely.

The focus on elections, which give a certain legitimacy to parliament, and the regular changes in power also make a delegative democracy, that is, a fundamental restriction of the horizontal division of power, rather unlikely. This hypothesis is supported in the Ukrainian case by the fact that the Orange Revolution was accompanied by a constitutional reform which strengthened parliament *vis-à-vis* the president. A powerful president, who pushes horizontal controls aside, is more likely to emerge either from a putsch or from a populist uprising, but not from the inter-elite struggles of competitive authoritarianism. If counter-elites in parliament and the judiciary are sidelined in a competitive authoritarian regime, the regime would not move in the direction of a delegative democracy but in the direction of full-scale authoritarianism, as happened for example in Russia under President Vladimir Putin (on the Russian case see the contributions by Motyl, Mommsen and Gel'man in this volume).

On the other hand, the main characteristics of a defective democracy of the illiberal type like the instrumentalization of corruption for political power games and the manipulation of courts in actors' own political interest are also key features of competitive authoritarianism as they are the vital means to manipulate elections in order to reduce the uncertainty they cause through the creation of an uneven playing field. These phenomena are more deeply-rooted in political culture and depend not only on the narrow top stratum of elites. Moreover, as competition (even if unfair) is an integral part of competitive authoritarianism, the new elites tend to have been part of the old elites at some point in time and therefore are accustomed to the same mechanisms. In summary, whereas unfair elections threaten the new balance of power among the elites and the very foundations of the new system, limited manipulations of courts and civic rights can be employed by all elite camps. Accordingly, an illiberal democracy, that is, a regime which does not fully guarantee the rule of law and civic rights, emerged in Ukraine after

the Orange Revolution. This point can be illustrated through an analysis of the role of oligarchs in Ukrainian politics after the Orange Revolution.

The Oligarchs as Informal Power Brokers

With the Orange Revolution the Kiev and Dnipropetrovsk networks lost their political power. Thus, after 2004 only Donetsk can be said to have a powerful informal network. But informal networks between oligarchs and politics, in which politicians support the economic interests of the oligarchs and in return profit from the oligarchs' financial and media support, are not only formed on a regional basis but also include connections between individual oligarchs and representatives of the executive branch responsible for their commercial areas of interest. A glaring example of this is the rise of Dmitri Firtash after the Orange Revolution. His seizure of a monopoly position in Ukrainian natural gas imports was accepted by Yanukovych as well as Yushchenko. Both also supported the extremely opaque formation of the related business connections (Pirani 2007, Kusznir 2006).

However, while the oligarchs – as part of the informal regional networks – rallied around President Kuchma until 2004, things changed after Yushchenko was elected president. Some oligarchs with close ties to Kuchma withdrew from politics. The Donetsk informal network revolving around Yanukovych and the Party of Regions thus established itself as an independent political power that particularly enjoyed the patronage of Rinat Akhmetov among the oligarchs. On the other hand, the entrepreneurs who had supported Yushchenko and Tymoshenko now acquired political influence and thus oligarch status. In addition, several oligarchs changed sides after the Orange Revolution (Puglisi 2008).

As a result, most of the Ukrainian oligarchs found themselves in the Orange camp and thus in the parliamentary factions of the Bloc Tymoshenko or Our Ukraine after 2004. Over the course of the 2006-2007 parliamentary elections, the number of oligarchs in parliament dropped precipitously, however. While at the beginning of 2006 there were twelve oligarchs in parliament (eight of which belonged to Orange factions), there were ten after the parliamentary elections (seven in Orange factions) and after the early elections in September 2007, only eight remained (five in Orange factions) (Pleines 2009).

But this does not mean that the oligarchs' influence in parliament has waned. On the contrary, many oligarchs are now represented in parliament by cronies. The change in the electoral system from single constituency mandates to a mixed system to fully party-list-based nominations promoted this development, as candidates in the lower section of the party lists were not scrutinized by the media and did not influence voters' decisions (Wolowski 2008: 41).[5] Having cronies in parliamentary seats gives the oligarchs a number of advantages. First of all, it enables them to retreat from public scrutiny. Second, it allows their parties to

5 On the development of the electoral system, see Harasymiw 2005 and Herron 2008.

develop a less special-interest-oriented image. Third, stepping out of the political arena permits them to run their companies themselves, as members of parliament are forbidden from participating in entrepreneurial activities since 2005. Fourth, they can diversify their political influence by sending their cronies to various political camps. This has become important since factions have regularly gained and lost power in the period after the Orange Revolution (Pleines 2009).

Though many collaborate with them, Ukraine's political and economic elites still hold rather sceptical views of the political role of the oligarchs. In interviews conducted with national and regional politicians, prosecutors, judges and business people[6] in spring 2008 a majority claimed that oligarchs determine Ukrainian politics, while hardly anybody considered them not to be influential.[7] When asked about the ways the oligarchs exert their political influence, a third refers directly and exclusively to corruption, often with the direct assertion that they 'buy' politicians or laws. The proverb 'he who pays the piper calls the tune' is cited several times. In addition, a tenth of the respondents refer to informal networks and clientelism, mostly using the term 'clan', which was a common way of describing the political constellation during the Kuchma presidency. Several of the respondents also refer to the oligarchs as the 'grey cardinals' of Ukrainian politics. This means about half of the members of the political and economic elites interviewed refer exclusively to informal and illegal means of influence. Most of the other half are rather indifferent, either talking about a multitude of methods, referring to the assumption of political office (without describing how office is gained) or giving no clear answer. Only 5 per cent named (presumably) legal lobbying activities as a major form of interest representation.[8]

In summary, the interviews, though not representative, give a clear indication that the majority of Ukraine's political and economic elites see the oligarchs as playing an important role in Ukrainian politics with the help of corruption and informal networks. Altogether only five respondents mention some positive aspects of the oligarchs' political involvement, either arguing that this promotes

6 Eighty-four in-depth interviews conducted from February to April 2008 according to a detailed interview-guide by Kiev-based Socis in Kiev, Donetsk and Lviv. Data collected as part of project No. 182628, located at the Norwegian Christian Michelsen Institute and funded by the Research Council of Norway. In one interview the questions on oligarchs were not asked. See Grødeland (2009) for details on the interview design and data.

7 Forty-two per cent saw them as determining politics, 27 per cent described them as either equally as influential as professional politicians or fully intertwined with the political elites, 10 per cent argued that the influence of the oligarchs depends on the circumstances (mainly relating to the political issues concerned) and 4 per cent saw them as not influential. 18 per cent did not give a clear answer to the question.

8 Thirty-seven per cent refer to corruption, 14 per cent to several methods, 13 per cent to informal networks, 12 per cent to the control of parliamentary factions, 5 per cent to the assumption of political office in general, 5 per cent to legal lobbying. One respondent named civic engagement and one (who had described the oligarchs as not influential) named no means of political influence. 11 per cent did not answer.

the general economic development of the country or pointing to their philanthropic activities.[9]

Though the oligarchs have not really altered their means of influencing political decision-making processes, their role in power politics has changed significantly with the Orange Revolution. While they all supported the manipulations of the Kuchma regime through participation in their respective regional networks and thus contributed to the creation of an uneven playing field in favour of the ruling political elites, since the Orange Revolution they have belonged to competing political camps and have thus contributed to political competition. As all major political factions receive support from oligarchs, they partly neutralize each other and thus offer a safeguard against a permanent takeover by one political force.

At the same time, however, the oligarchs' political engagement inhibits democratic consolidation since they represent their own individual rather than collective (entrepreneurial) interests and, even more importantly, because they use undemocratic means to promote these interests. This undermines democratic decision-making processes and delegitimizes the existing democratic constitutional order in the eyes of the public and of the political and economic elites. As a result the elites develop a very cynical view of the political game in which they themselves are taking part.

Conclusion

There are many paths through the grey zone between authoritarianism and democracy and they all have crossroads and benches. As a result, we should not expect to find *the* one way from authoritarianism to democracy, but had better try to draw a map of different paths and see how often and under which circumstances they are used.

As the case of Ukraine demonstrates, one path leads from competitive authoritarianism through a 'democratic revolution' to a defective democracy of the illiberal type. The central development along this path is that elections and election campaigns become free and fair, while political decision-making remains prone to established forms of undemocratic manipulation, namely manipulation of parliamentary decision-making processes and pressure on courts to provide favourable rulings in political power struggles.

But there are also two other paths of development starting with competitive authoritarianism. If one of the competing elite groups of the competitive authoritarian regime continues to act collectively and controls resources of relevance in political power struggles (for example, the military), it might gain specific veto powers, thus creating a domain democracy. But Ukrainian oligarchs, who had gained their fortune through political support, were not only too weak

9 It is interesting to note that these respondents belong to different professional groups and come from different regions.

to confront a government threatening them with expropriation, they also lacked a common ideology justifying such a conflict. Instead many opted for changing sides as the best way to stay influential in politics. By now, some oligarchs have switched sides several times and some have diversified their bets by supporting several political parties.

Yet another path leads from competitive authoritarianism back to full authoritarianism, as the Russian case seems to indicate. But President Kuchma was not strong enough to gain authoritarian control over Ukrainian society and to prevent the Orange Revolution. This seems to be due primarily to the fact that he faced a strong counter-elite which was able to mobilize mass support based on persistent cleavages within Ukrainian society.

When the competitive authoritarian regime under President Kuchma became unstable, Kuchma was too weak to increase authoritarian control and no strong elite group existed that was able to keep a permanent grip on power. As a result Ukraine moved to a defective democracy of the illiberal type, where free and fair elections determine who gains power, but where ruling as well as opposition elite forces still try to create an uneven playing field with the help of undemocratic manipulations. Where the development paths away from illiberal democracies lead is still open to investigation, while Ukraine faces further journeys through the grey zone between democracy and authoritarianism.

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