

**International Summer School  
'Approaches to Post-Soviet Transformations'  
Dnipropetrovsk (Ukraine)  
5-9 July 2010**

**Explaining Elite Cooperation in Ukraine:  
From Kuchma to Yanukovych**

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This paper seeks to explain changing patterns in relations among Ukraine's ruling elites, which were characterized largely by cooperation under President Kuchma, conflict under President Yushchenko and, again, turn to cooperation under President Yanykovich. If a shift from cooperation to confrontation within the ruling elite over the last four years was the result of Ukraine adopting a semi-presidential model, as many analysts have suggested, why do we see a pattern of renewed cooperation emerging without the change in formal rules? One explanation may center on the transformation of the executive from the "divided majority/minority government" into "consolidated majority."<sup>1</sup> Renewed elite cooperation is then the outcome of a new stable parliamentary coalition backing both the president and prime minister. Alternatively, this paper suggests that the analysis of formal rules alone cannot account for various regime-level outcomes in the post-Soviet political context. It proposes to analyze elite relations using four mechanisms of cooperation enforcement in Ukraine, which rest on the combination of formal rules and informal norms. The former include laws and constitutional provisions setting the distribution of power between and within various branches. Informal norms are, in Greif's definition, "socially constructed behavioral standards that have been incorporated into one's conscience."<sup>2</sup> Politically relevant informal norms in Ukraine include: (1) coercion or the use of law-enforcement agencies for political purposes; (2) rent-seeking or the use of public resources for private financial gains; (3) patronage or exchange of public sector employment for political loyalty.

In the proposed analytical framework cooperation becomes self-enforcing when the combined effects of formal rules and informal norms provide an actor with the monopoly control over rent/patronage distribution and instruments of punishment. This actor can then reward elites' cooperative behavior with the provision of rents or sources of rent-creation (jobs) and sanction any

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<sup>1</sup> For subtypes of semipresidential systems see Cindy Skach, "Constitutional Origins of Dictatorship and Democracy," *Constitutional Political Economy*, vol. 16, 2005, pp. 349 – 351.

<sup>2</sup> Avner Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (Cambridge: Cambridge University Press, 2006), p. 30.

acts of non-compliance by cutting off access to rents and/or threatening personal safety.<sup>3</sup> By contrast, conflict becomes a regular pattern of elite behavior when several elite actors claim control over various sources of rent-creation and levers of coercion. Then, non-cooperation could lead to an increase in individual rent returns, while potential sanctions would not threaten the actors' well-being or their ability to engage in further rent-seeking.

Monopolistic actor gains his credibility to deliver rents and inflict costly punishment through four mechanisms.<sup>4</sup> They include: (1) *Ex-ante sanction* or actor's ability to deter any potential defector through a threatening action; (2) *Ex-post sanction* reflects actor's capacity to impose an immediate and costly punishment following any instance of non-cooperative behavior; (3) *Ex-post veto* gives an actor capacity to prevent the adoption of any policy or course of action without his prior consent; (4) *Ex-ante accommodation* indicates actor's actions to satisfy some of the preferences of the other party to encourage its own reciprocal response. By combining these mechanisms an actor can raise the costs of non-compliance and make collective rent-maximization a preferable strategy for all ruling elites. The capacity of a dominant actor to use mechanisms that produce cooperation rests on the combination of formal rules ensuring his monopolistic power position and informal norms guiding elites' behavior and expectations. A shift in either of these institutional elements may weaken actor's capacity to resort to these mechanisms and, hence, to enforce cooperation. By lowering the cost of conflict or diversifying access to rents it can increase relative benefits from unilateral actions. Institutional change then creates increasing incentives for political elites to defect from cooperation and pursue individual rent-maximization as an optimal strategy.<sup>5</sup> As a result, cooperation in such a political regime ceases to be self-enforcing, while elite conflict becomes its new equilibrium. Ukraine's case sheds a light on how elite conflict can turn into cooperation without a fundamental change in regime's institutional configuration.

### **Elite Cooperation under Kuchma**

President Kuchma enforced cooperation within the ruling elite throughout most of his term by concentrating both formal powers and informal levers of influence. With the adoption of 1996 Constitution president gained exclusive powers to select the candidate for prime minister and all members of the government, the heads of other executive bodies and regional governments, as well as to dismiss them at will. This allowed Kuchma to inflict retaliatory punishment (or ex post sanction) against anyone, who would show signs of the opposition to the president. He relied on this mechanism on multiple occasions when dealing with potential challengers within the executive branch. The most prominent cases include the sacking of Evhen Marchuk (1996), Pavlo Lazarenko (1997), Yulia Tymoshenko and Viktor Yushchenko (2001). The lack of high-profile firings in the last three years of Kuchma's presidency indicates that the mechanism became more effective with its consistent use. The president also acquired a crucial formal power to revoke government's

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<sup>3</sup> For an expanded argument on how limited access to rent distribution and high violence costs can promote cooperation see Douglass North, John Joseph Wallis and Barry Weingast, *Violence and Social Order: A Conceptual Framework for Interpreting Recorded Human History* (Cambridge: Cambridge University Press, 2009).

<sup>4</sup> For elaboration on these enforcement mechanisms see Kenneth Shepsle and Barry Weingast, "The Institutional Foundations of Committee Power," *American Political Science Review*, vol. 81, 1987, pp. 85-104.

<sup>5</sup> For institutional incentives behind individual rent-maximization in oligarchic regimes, see Mark Ramseyer and Frances Rosenbluth, *The Politics of Oligarchy. Institutional Choice in Imperial Japan* (Cambridge: Cambridge University Press, 1995), p. 7.

resolutions, which provided him with the power of “ex post veto.” This made it almost imperative for the government to acquire president’s informal consent before voting on any particular policy document. During the two terms Kuchma vetoed only nineteen government resolutions, which is a sign of a particular effectiveness of this mechanism in enforcing government’s cooperation.

Informal powers included Kuchma’s control over the means of coercion, particularly the law-enforcement bodies (Prosecutor General, Interior Ministry, Security Service), regulatory agencies (Tax Administration) and the courts.<sup>6</sup> This allowed the president to rely on ex ante sanctions (through intimidation or harassment of the opposition) in order to neutralize any potential threats to his power and to ensure protection for his loyalists. Among the most prominent examples of preemptive punishment against potential challengers were the murder of the former head of the National Bank Vadym Hetman (1998), opening of criminal cases against Pavlo Lazarenko and Yulia Tymoshenko (1998-2001) and investigations into the banking activities of Viktor Yushchenko (1999). Tax inspections targeted major businessmen funding the opposition (Poroshenko, Chervonenko, Zhvania). The use of coercion was particularly effective during Kuchma’s re-election campaign, when major non-leftist potential candidates were prevented from running. It also allowed Kuchma to form pro-presidential majority in the parliament in 2002 despite the strong showing of the opposition in the parliamentary election.

The other two informal norms – rent-seeking and patronage– helped president to encourage loyal behavior among his main subordinates and reward his staunch allies. With a monopoly control over access to the largest rents Kuchma relied on ex ante accommodation by distributing lucrative positions within the executive to his financial and political backers and then making consistent access to rent-creation dependent on their continued unequivocal support (Lazarenko, Volkov, Pustovoitenko, Yanukovych). He also provided his allies with immunity for any wrong-doings as a way to ensure their further loyalty (Bakai) and allowed them to use administrative resources in order to build-up allied political machines (Medvedchuk, Azarov).

The four mechanisms of enforcing cooperation under Kuchma were based on the combination of president’s formal powers and informal practices of governing. When used by one actor they substantially raised the costs of non-cooperation and increased pay-offs for loyalists. However, a change in formal rules in 2004 weakened president’s ability to rely on these mechanisms and allowed other actors to engage in informal practices of rent-creation without president’s consent and with impunity.

### **Elite Conflict under Yushchenko**

Amendments to Ukraine’s Constitution, which took effect in 2006, transferred most of the powers to form the Cabinet to the parliamentary majority, and gave prime minister the power to select heads of most executive agencies. As a result, President Yushchenko could no longer use retaliatory punishment in response to the instances of non-cooperation among top officials within the executive. This allowed both Prime Minister Yanukovych (2006 – 2007) and Prime Minister Tymoshenko (2007 – 2010) and members of their Cabinets to pursue openly confrontational policies vis-à-vis the

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<sup>6</sup> Keith Darden, “Blackmail as a Tool of State Domination: Ukraine Under Kuchma,” *East European Constitutional Review*, No. 2/3, vol. 10, Spring/Summer 2001.

president with impunity. President's only new retaliatory power was his ability to dissolve the parliament, which, by itself, proved insufficient to deter non-cooperation since the government proved capable of sabotaging president's decrees.

The ability of the president to affect government's policies substantially weakened with the loss of power to veto government's resolutions. He could now only suspend them for violating the Constitution and send them to the Constitutional Court for review. Since the majority of the court's judges were not Yushchenko's appointees, his ex post veto was always conditional on the court's decision. Indicative of the president's lack of influence over the government's decision-making was that Yushchenko suspended over one hundred government resolutions during his term. He managed to defeat about two-thirds of all resolutions that he suspended with relatively similar success rate under both governments. This result, however, was not due to the favorable conclusions of the Constitutional Court, but because of the Court's failure to issue verdicts on time. President revoked resolutions both of Yanukovych's and Tymoshenko's governments approximately with the same frequency, which indicated that this mechanism was not very effective in forcing government to coordinate its policy-making with the president. Moreover, both governments voluntarily revoked only about every fifth resolution suspended by the president showing that the costs of fighting the president's decision were low, while the rewards from winning the legal battle could have been potentially quite substantial.

Preemptive punishment, which Kuchma successfully used to deter or eliminate his potential challengers, was no longer an option to President Yushchenko due to the absence of president's monopoly control over the law-enforcement bodies. President could no longer appoint the head of the Security Service and the Prosecutor General without the parliament's confirmation and needed the consent of the parliament's majority to dismiss them. The parliamentary coalition appointed the Interior Minister, while the Prime Minister could now choose the head of the Tax Administration. As a result, the Prosecutor General was Yanukovych's protégé (Medvedko), the Interior Minister (Tsushko, Lutsenko) and the head of Tax Administration were consistently aligned with the prime minister, while the Security Service (Nalyvaichenko) was leaning towards the Presidential Secretariat, but was also, especially in the final year, under the influence of the Regions Party (Khoroshkovskiy). The influence over the courts was similarly divided between leading political forces. This created a system of mutual checks for all key political actors, which raised the risks of using coercive bodies unilaterally for political attacks against opponents. At the same time, other informal norms, prevalent under Kuchma, remained in place. They included recording private communications of leading political actors, politically motivated accusations by law-enforcement agencies against state officials or activists, blocking criminal investigations against political allies and covering up high-level corruption. Still, ex ante sanction was no longer available as a cooperation enforcement mechanism to any of the leading actors. As a result, Tymoshenko could safely remain prime minister and challenge Yushchenko in 2010 presidential race with little concern for her job or life.

Finally, without the formal powers to appoint and dismiss his candidates from top executive posts the president's attempts to accommodate his political opponents with prime ministerial posts (Yanukovych in 2006 and Tymoshenko in 2007) proved futile as a cooperation enforcement mechanism. Moreover, the Cabinet of Ministers now replaced the Presidential Administration as the main source of rents, which could be created and maximized without direct permission from the

president. Therefore, the brief periods of inner-executive rapprochement in August 2006 and early 2008 were quickly replaced with bitter conflicts, which often centered on the distribution of rents (Vanco, RosUkrEnergo) and patronage opportunities.

### **Elite Cooperation after Yanukovich's First 100 Days**

If the new constitutional model combined with the informal norms of rent-seeking and coercion allowed actors to pursue individual rent maximization at each other's expense with little or no prospects of getting punished, how did the new president manage to enforce elite cooperation so quickly without changing the formal rules? One obvious answer would point to the emergence of a pro-presidential majority in the parliament, which allowed the president to regain indirect appointment powers and consolidate his control over the coercive bodies. However, the new majority coalition was formed following the presidential election in the same parliament, which once formed a pro-Orange coalition in late 2007. This indicates that the new president could now rely on wider informal powers, and therefore use various enforcement mechanisms more effectively, even before he regained control over the executive through a new loyal parliamentary coalition.

Most importantly is that the new president now exerted full control over the key coercive agency – Prosecutor General – and, therefore, could credibly threaten members of the parliament from opposing factions. Following the vote for the new Cabinet some MPs from “Our Ukraine” and Tymoshenko bloc indicated that they had to support Azarov government fearing for their businesses.<sup>7</sup> This suggested the renewed effectiveness of the retaliatory punishment. Another important lever expanding president's informal power was his influence over the majority of judges in the Constitutional Court. Yushchenko lost most of his appeals in the Court, which consistently backed the government in disputes with the president. Now the new president could expect the court's judges to support him even on the most controversial issues, such defining the procedures of forming the majority coalition, which became vital for Yanukovich's success in forming his own Cabinet.

Yanukovich has often pointed to renewed cooperation within the ruling elite as one of his first major achievements in office. He holds weekly meetings with the prime minister at the Presidential Secretariat indicating the government's subordinate position. Azarov accepted his secondary role when he called himself the “minister in Yanukovich's cabinet.” This new cooperative arrangement between the government and the president, however, rests largely on the lack of Azarov's independent power base in the Party of Regions. While recently elected as its chairman, Azarov still has little sway both over the party's top leaders and the key individuals in its faction. Yanukovich retains the dominant position in the party and Rinat Akhmetov has been often viewed as its second most-influential figure. This makes Azarov largely dependent on the president for his job since Yanukovich's control over the party would also allow the president to resort to pre-emptive punishment and dismiss the current prime minister through the parliamentary vote the moment he shows any signs of potential opposition. Therefore, collective rent maximization is currently the most beneficial and the less risky strategy for Azarov.

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<sup>7</sup> “Komanda molodosti Yanukovycha,” *Ukrainska Pravda*, March 12, 2010.

Is this renewed elite cooperation in Ukraine self-enforcing? As the current analysis suggests, its prospects largely depend on endogenous informal parameters, like the strength of the prime minister and the spheres of influence within the parliamentary coalition. Although several enforcement mechanisms, such as ex post retaliation or ex post veto, became more effective under the new president, the prime minister or other cabinet members could still gain the incentive to choose individual rent-maximization at the president's expense the moment he (or she) could rely on the independent power base in the parliament and face little risk of the government reshuffle. The incentives of cabinet members to use their expanded rent-seeking opportunities for maximizing their wealth and power could then be neutralized only through pre-emptive sanctions. Then, however, Yanukovich would have to use coercive bodies even more aggressively than Kuchma to punish his likely challengers. President already indicated that he could choose this strategy when the Prosecutor General re-opened a criminal case against Tymoshenko. At the same time, this would also mean lifting any pretense of Yanukovich's commitment to democratic values, which could be costly for his reputation abroad.

More reliable and less controversial guarantee of continued elite cooperation could only come with the strengthening of president's formal powers over the government. Therefore, despite the appearance of a newly enforced elite cooperation Yanukovich already criticized 2004 Constitutional amendments, which he alleged to have led to the "serious power crisis."<sup>8</sup> Revoking these amendments would eliminate the government's potential capacity to use patronage and create rents without the president's direct consent. Only such exogenous change of the constitutional rules would minimize risks from any endogenous change in informal power parameters and would turn elite cooperation in Ukraine into self-reinforcing equilibrium.

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<sup>8</sup> "Zvernennya Prezydenta Ukrainy Viktora Yanukovycha do Ukrainського narodu z nahody Dnya Konstytutsii Ukrainy," June 28, 2010: <http://www.president.gov.ua/news/17506.html> (last accessed July 1, 2010).