

## Ukraine's crisis of governance

By Andrew Wilson,  
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Another year, another political crisis in [Ukraine](#) [1]. After eight months of accumulating political humiliation since he was forced to accept the return of his arch-opponent Viktor Yanukovych as prime minister in August 2006, President Viktor Yushchenko dramatically ordered the dissolution of parliament on 2 April, and scheduled new elections for 27 May. Not surprisingly, Yanukovych's government and its majority in the "old" parliament, which is only one year into a five-year term, refused to cooperate. The constitutional court was asked to arbitrate, but the judge acting as self-appointed rapporteur was accused of taking \$12 million in bribes, and in a general atmosphere of legal nihilism rumours circulated that the court would avoid making a definitive decision, to avoid the opprobrium of the losing side.

What does the latest crisis tell us about the state of democracy in Ukraine almost three years after the "[orange revolution](#) [2]"? Or does the mere fact of yet another crisis tell us all we need to know?

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### A house divided

A first obvious underlying problem is that the power-sharing agreement made in August 2006 is [not working](#) [7]. This has little to do with what the agreement actually says. The problem is with the political culture of the party led by Yanukovych, the Party of (east Ukraine's) Regions. The [party](#) [8] has enjoyed an extensive makeover from US political consultants since many of its leading members tried to rig the 2004 election, but at heart it is still a clientelistic and authoritarian organisation. In order to function as such, it needs to reward its friends and punish its enemies, and show who's boss; and it needs to do this semi-publicly. To use the local euphemism, "administrative resources" are used increasingly blatantly and partially.

Notorious crooks like [Volodymyr Shcherban](#) [9], one-time "boss of bosses" in the Party of Regions' stronghold of Donetsk, have returned home; the Prosecutor's Office has been taken over by Donetsk "enforcers". A parliamentary committee is "reinvestigating" the alleged crimes of Yulia Tymoshenko, who served as the [first](#) [10] orange prime minister in 2005. Donetsk enterprises like Azovstal and the Yelnakievo metal factory have received preferential VAT refunds of 696 million Ukrainian [Hryvnia](#) [11] (over \$120 million) instead of the 313 million [Hryvnia](#) originally proposed, while other payments have been sharply cut back. Even [Oschadbank](#) [12], traditionally the savings bank of first choice for the average Ukrainian - a kind of glorified post office - has not been safe from a conspicuous political takeover.

The new government has also waged a relentless campaign to further reduce the president's power from the levels agreed in August: challenging his every decree, forcing out his favourite ministers, ramming through a self-aggrandising "law on government" (in which Tymoshenko was shamefully complicit), and even conducting a shadow foreign policy.

Ultimately, however, Regions over-reached themselves because this process seemed never-ending. Yushchenko felt he had to stop them somewhere, somehow [13]. The final straw was the defection in April of eleven orange deputies to the Yanukovich coalition. This gave it around 260 deputies, and Regions boasted that it would have 300 by the summer (out of 450), giving it a two-thirds' majority and vastly increased freedom of action.

Increasingly, however, President Yushchenko [14] has adopted similar methods to try and compete. He has promoted "his" tough guys to head the presidential administration, like Viktor Baloha, a businessman from Transcarpathia in Ukraine's wild west. Yushchenko has appointed "his" businessmen to compete with Yanukovich's businessmen, like Vitalii Haiduk [15] of the Industrial Union of the Donbass (the traditional rival of Regions' main business backer, the System Capital Management (SCM) group run by Rinat Akhmetov [16]), and Valerii Khoroshkovskiy, president of the Russian steel giant Evraz since 2004. Yushchenko has used their clout to bolster the National Security and Defence Council [17] as a rival power-base, and their money to help finance a relaunch of the pro-presidential Our Ukraine party (and possibly finance the elections themselves if government funds are blocked).

Further, Yushchenko has supped with the devil, negotiating in private with odious figures like ex-president Leonid Kuchma's former strong-arm chief-of-staff Viktor Medvedchuk [18], who is thought still to control at least two of the constitutional-court judges he helped appoint in 2002-04.

## **A blocked system**

A second underlying problem is that the constitutional settlement, agreed at the height of the orange revolution in December 2004 and implemented in January 2006, is clearly not working. The new system disperses power more widely than in the past, but the downside is a serious risk of stalemate or conflict, especially as the new system [19] also creates a "divided executive". The president makes some appointments (defence, foreign affairs, the security services), the prime minister most others. Predictions as to who might back whom in the most recent standoff often amount to no more than pointing this out. In practice, most institutions would prefer to spot a likely winner first.

The constitutional court is centre-stage in the current crisis, but its demeaning behaviour has shown that its method of selection is not working either. The court has eighteen members: six appointed by the president, six by the parliament and six by a congress of judges themselves. In the current conditions, that has simply transferred political gridlock to the court. Judges can only serve one nine-year term. Judicial independence would be better served by life-time appointments.

Yushchenko's decree is also legally shaky. He cites the defection of the un-magnificent eleven as his main reason for dissolving parliament, as the new constitutional arrangements include the so-called "imperative mandate" - deputies must stay in the party for which they were elected (the last elections were decided by proportional representation, with national party lists), or lose their seat. But, and this is a big but, there is no explicit linkage between this undoubted misdemeanour and Article 90 of the constitution [20] which lays out the grounds for dissolution.

Yushchenko has talked of putting the new constitution to a referendum, possibly after even more revisions. One more round of constitutional engineering won't necessarily do the trick, however. Not while more deep-rooted problems [21] remain. One way of interpreting these problems is to look at the original "orange revolution" as a drama in three acts.

In Act One, hundreds of thousands of protesters packed the streets of Kiev and other cities. The crowd became a revolutionary actor, trumping the calculations of all sides.

In Act Two the story moved on to an agreed settlement between elites, the 'package' agreed behind semi-closed doors on 8 December 2004 (incumbent president Leonid Kuchma [22] agreed to new elections, a new election law and a new election commission in return for constitutional changes that would shift many powers to parliament a year after any new president took office).

In Act Three, the aftermath [23], Yushchenko made a disastrous decision to avoid "revolutionary justice". "Bandits to prison" was more than just a slogan of the protestors in November 2004. A few key prosecutions, involving at a minimum the perpetrators of the election fraud, the killers of journalist Heorhii (Georgii) Gongadze [24] whose headless corpse was found in November 2000, and Yushchenko's own mysteriously under-investigated poisoning, would have changed the rules of the game - and were definitely expected at the time by the panicky old guard. Instead, most of the suspects ended up with legal immunity on the Party of Regions's election list.

Together, Acts Two and Three made a disastrous combination. The package agreement on its own, without the informal amnesty, would not necessarily have turned parliament into a crook's haven, as it is now. The informal amnesty on its own would have been less of a problem if the system had been reshaped. Taken together, the old guard survived, prospered and returned. Despite a universal agreement on non-violent protest in 2004, many now regret that the orange revolution wasn't a bit more revolutionary.

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## **A Kyiv stalemate**

The breakthrough conditions that were wasted in 2004 will be difficult to recreate. New elections might not make much difference. Opinion polls indicate that the same three players would finish in roughly the same order: the Party of Regions might get around 30%, the Tymoshenko Bloc 25%, and Our Ukraine around 10%. Ukraine's well-entrenched regional voting divides have not gone away. The only surprise here is that Our Ukraine is somewhat reinvigorated, having plunged even lower in the polls in recent months. The Party of Regions could claim the legitimacy of a second plurality victory. Tymoshenko [33] would be a clearer leader in the orange camp. But the same dynamics of mistrust would remain.

On the other hand, all three parties [34] are coalitions, and their internal dynamics may be shifting. The Party of Regions, to be fair, is a broad church. Deputy prime minister Mykola Azarov is in charge of patronage. The party's big businessmen, particularly the biggest, Rinat Akhmetov of SCM, worth an estimated \$7.2 billion according to the latest rich list in the Polish magazine *Wprost*, do not want their business expansion and IPO plans to be disrupted by bad publicity.

Viktor Yanukovich's makeover has worked, in the sense that he now functions more effectively as a Ukrainian politician. It is not his job to be pro-Russian or pro-business. His job is to appear to give the people what they want - to champion national business if it is conflict with Russia, to side with employees if their jobs are threatened by national oligarchs. The former governor of Kharkiv, Yevhen Kushnariov [35], was actually interested in policy (that is, in the politics of east Ukrainian identity) but he died in a mysterious and possibly alcohol-fuelled hunting accident [36] in January 2007. Yanukovich will find the centre of gravity in his party, which may be tilting towards compromise.

Change is also apparent in Yushchenko's Our Ukraine [37] party. One reason he moved when he did was to capitalise on the relaunch of Our Ukraine in March 2007. The party's business wing which favours cooperation with, and often enough even defection to, the Party of Regions, was sidelined. The Tymoshenko bloc has changed the least, at least in purpose. She remains Ukraine's most effective populist and political campaigner, with both eyes on the next presidential election.

In the end, smaller parties may decide who ends up with a majority this time, in what would be yet another close parliamentary election. There is a barrier of 3% that parties need to cross to get any representation. The polls indicate the Socialists would fail to do so, after they switched sides from the orange camp to Regions last summer. But their votes might go [38] to the Communists or the (Natalia) Vitrenko Bloc instead, both of which are allies of Regions. On the other hand, there is a new party, claiming to carry the torch of the orange revolution, *Samooborona* ("Self-Defence"), which includes many leaders of the youth movement Pora [39] ("It's time"), prominent in the protests of 2004. At the last elections in March 2006 [40] it took three orange parties to win a potential majority, which they then blew [41]. Now there is a different potential troika. And new parties are often quickly built from scratch in Ukraine.

The fact that all the main parties can convince themselves they might be slightly better off, campaign expenses excepted, makes new elections more likely than not. But they are still far from certain. Ukraine may drift towards compromise, as is its wont. On 25 April Yushchenko agreed to shift [42] the elections to 24 June, though legislators are contesting [43] his very authority to make such a decision. More wheeler-dealing may be around the corner.

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- [10] <http://www.csmonitor.com/2005/0912/p06s02-woeu.html>
- [11] <http://www.uazone.net/Hryvnia/>
- [12] <http://organizations.finance.ua/en/info/%7E/199>
- [13] <http://www.rferl.org/featuresarticle/2007/4/DAC2DF49-7A54-4CC4-9B46-AEC560114582.html>
- [14] [http://www.president.gov.ua/en/content/101\\_e.html](http://www.president.gov.ua/en/content/101_e.html)
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- [19] <http://pravda.com.ua/en/news/2007/4/29/7628.htm>
- [20] [http://www.servat.unibe.ch/law/icl/up\\_\\_indx.html](http://www.servat.unibe.ch/law/icl/up__indx.html)
- [21] <http://www.cfr.org/publication/13133/pifer.html?breadcrumb=%2Fregion%2F336%2Fukraine>
- [22] <http://www.artukraine.com/buildukraine/kuchma.htm>
- [23] <http://www.rferl.org/featuresarticle/2006/03/edbba5c3-eec6-4b56-b1d6-1f5813bdfba7.html>
- [24] <http://media.gn.apc.org/gongadze/030917.html>
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- [33] <http://www.tymoshenko.com.ua/eng/index/>
- [34] <http://www.ukraine-observer.com/articles/230/1019>
- [35] <http://nrcu.gov.ua/index.php?id=148&listid=39849>
- [36] <http://en.for-ua.com/news/2007/04/16/174512.html>
- [37] <http://www.razom.org.ua/>
- [38] <http://www.ukrainianjournal.com/index.php?w=article&id=4423>
- [39] <http://pora.org.ua/eng/>
- [40] [http://www.cfr.org/publication/10223/ukrainians\\_vote\\_for\\_parliament.html?breadcrumb=default](http://www.cfr.org/publication/10223/ukrainians_vote_for_parliament.html?breadcrumb=default)
- [41] <http://www.cfr.org/publication/11181/>
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