

**OSI International Policy Fellowship**

PROJECT “Political Institutions and Public Policies: The Effect of Institutional Choices  
on Legislative Decision-Making Practices in Ukraine and Russia”  
Final Research Report

To analyze how the institutional framework influences the policy process in Russia and Ukraine this research concentrates on examining the policy output of the following key institutional actors: parliament, president, and cabinet. Parliament, which, according to the constitution in both countries, is the primary legislative body, legislates on a wide variety of issues. Parliamentary laws provide an essential basis for designing policy in any substantive issue area. Examining the various characteristics of legislative output is essential for understanding how the framework for policy process is organized.

A semi-presidential constitutional design also allows both the Russian and Ukrainian presidents to participate actively in policy formulation. The constitution grants them substantial legislative and non-legislative powers. Power to issue decrees is the key instrument that enables the president both to initiate and shape policies in a wide range of issue areas. Presidential decrees provide valuable information on the extent of presidential involvement in one or another policy area, on the mechanisms of presidential influence and on the president’s policy priorities.

The role of cabinet in any democratic political system extends far beyond executing laws and routine government management. Cabinet not only has a certain degree of flexibility in specifying policies outlined by laws and, often in semi-presidential settings, presidential decrees, but also has the ability to influence the very design of laws and decrees. The power of legislative initiative is critical for cabinet’s ability to influence the legislative agenda. It is important to understand how successful cabinets are in exercising this power.

**Methodology:**

The data set was created on the basis of a number of databases that contain a comprehensive list of presidential decrees: “Sistema” /Center of Legal Information, Federal Agency of Government Communications, Russia/; “Spravochnye pravovye sistemy” /Konsultant Plus, Russia/; “Zakonodavstvo” /Office of Computer Systems, Apparatus of Parliament of Ukraine, Ukraine/. Every attempt was made to covers *all* presidential decrees issued between 1991 and 2002 in both countries.<sup>1</sup>

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<sup>1</sup> Due to an especially large volume of both published and unpublished presidential decrees in Russia a number of proprietary databases provides incomplete information on a number of decrees issued by the president. Several Russian legislative databases were compared to create the most comprehensive list of published decrees.

The laws and decrees are classified according to policy area and time of issue. Appendices I and II at the end of this paper provide the classification details. Additional parameters of classification were introduced in the course of analysis of specific research issues raised at different stages of this research project. These classification parameters are explained in the text during the discussion of the relevant research problems.<sup>2</sup>

Summary statistics and aggregate data are used throughout the text to illustrate empirical findings and theoretical arguments engaged in the course of the research. Many figures and graphs presented in the paper are examples of univariate, or one-variable statistics. A number of figures and graphs, however, engage more than one variable. These attempts at bivariate or multivariate analysis have only suggestive character. More advanced statistical data analysis techniques have to be employed to further explore the suggested causal links.

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<sup>2</sup> Students of Russian politics familiar with the current work on the executive-legislative relations done by Mishler, Willerton, and Smith will find some of the classification used in this research highly compatible with the one developed by these authors. While I introduced a number of new classification categories to address some additional aspects of presidential and legislative decision-making, I adopted most of the general categories proposed by the authors. This should allow a broader cross-national comparison, which is one of the goals of this project. See Mishler, W., Willerton, J. P., & Smith, G. B. "Hegemony or Rivalry? Laws, Decrees and the Dynamics of Legislative-Executive Relations in the Russian Federation," (a revised version of a paper presented at the 1998 Annual Meeting of the American Association for the Advancement of Slavic Studies, June, 2001).

## **Part I. Presidential Decrees**

While there exists a general understanding of the importance of presidential decree-making in both countries (Remington 2001; Huskey 1999; Wilson 1999), there have been very few studies dealing specifically with this aspect of presidential activity. Parish (1998) analyzed how the presidential decree-making powers were used in Russia during the first years of democratic transition (1991-1995) and Mishler et al (2001) discussed in large details the patterns of use of presidential decrees during 1991-98 period. I contribute to this literature by addressing some of the major issues raised in these studies such as policy scope and policy relevance of presidential decrees, the evidences of the existence of political competition between the executive and the legislature in terms of policy output, and the expectations of a gradual decrease in the use of policy relevant decrees over time.

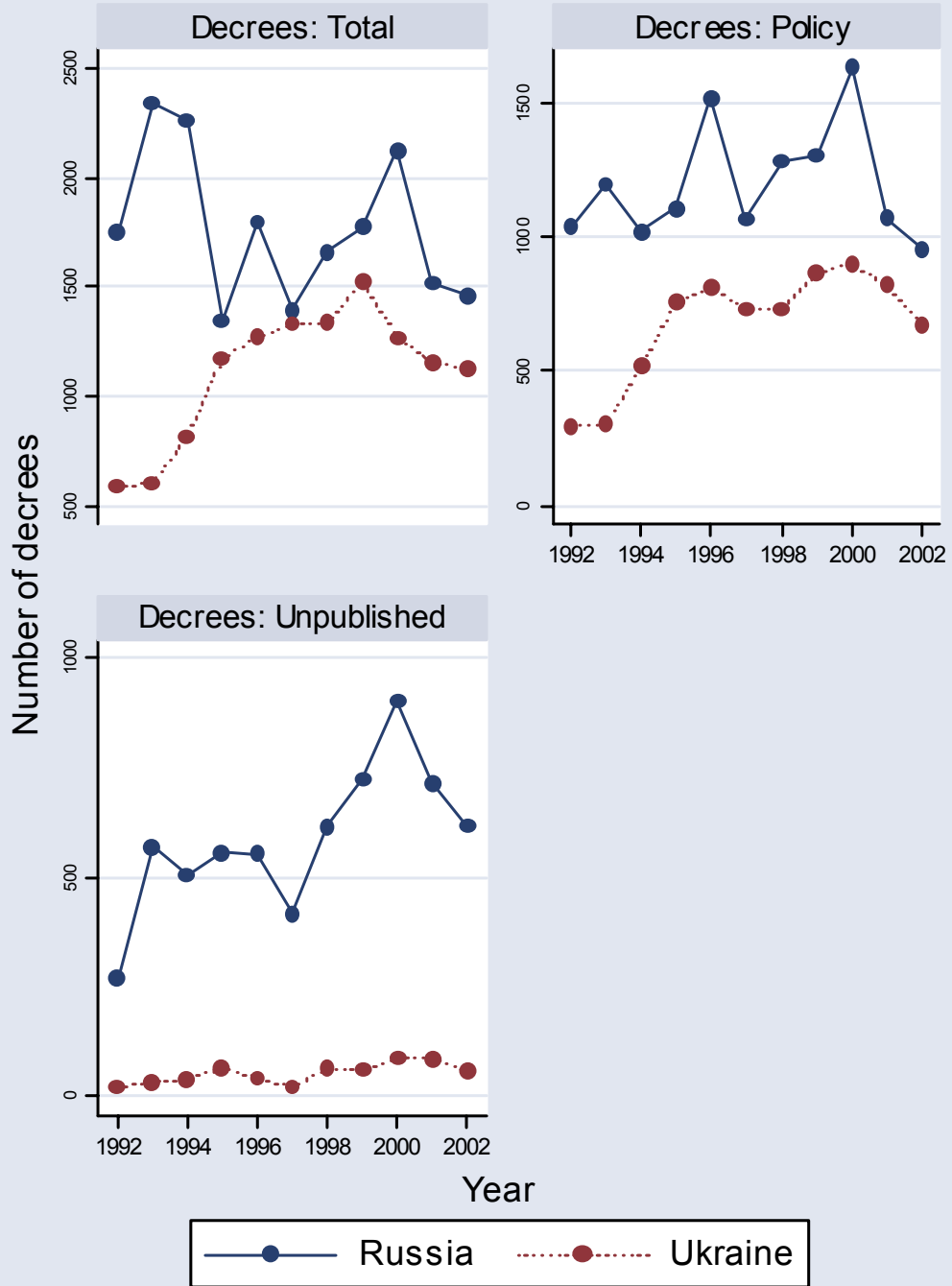
Expanding the scope of research on presidential decree making both geographically and temporarily also allows me draw attention to some overlooked aspects of decree authority such as a large magnitude and critical importance of appointment decrees for maintaining a large patronage systems of political appointees and a varying significance of presidential decrees as an instrument of solving political conflict among the different levels of government. It also allows me develop better tests for detecting the evidences of the existence of political business cycle in the frequencies of use of decree powers by the presidents in Russia and Ukraine.

### **The scope of presidential decree-making**

The sheer numbers of presidential decrees in Russia and Ukraine are very large. The annual number of decrees stayed above one thousand for the entire length of the postcommunist period in both countries, with the exception of 1992-1994 period in Ukraine. Even before the institutional frameworks enacted by the 1993 Russian and the 1996 Ukrainian constitutions came into place, the presidents actively started to use this instrument to consolidate the powers of their newly created office and to implement policies for which they lacked both legislative and broad societal support. The interpretations of these presidential actions during the early years of democratic transition varied very substantially – from seeing the presidents as trying to solve the problems of collective actions (Parish, 1998) to explaining their behaviour as attempts to usurp power and create a delegative democracy (Kubicek, 1994). In either interpretation they, however, indicate the importance of examining the presidential decree output for understanding the role that presidents play in political process and policy making.

Similarly to other presidential or semi-presidential democracies where the presidents have executive decree authority (Carey and Shugart, 1998), a number of very different actions is initiated by the presidential decree in Russia and Ukraine. Only a fraction of total decree output concerns the initiation of the new policies by the president, which is the main focus of academic scholarship on presidential decrees. A significant number of decrees deals with what can be described as a rule making directed on implementing the existing laws. Even a larger portion of decrees is ceremonial in its nature and reflects the presidential control of such inherent executive prerogatives as awarding medals, honorary titles, and pardons. A very substantial portion of decrees in the Russian and Ukrainian context also deals with the appointments at the various levels of government. Graph 1 below provides summary on several major aspects of decree-making in Russia and Ukraine.

Graph 1. Presidential Decrees in Russia and Ukraine, 1992-2002



Source: Author's calculations; data from databases 'Zakonodavstvo' /Office of Computer Systems, Apparatus of Parliament of Ukraine/ and 'Spravochnye pravovye sistemy' /Konsultant Plus, Russia/

The total numbers of decrees are plotted in the upper left graph that indicates that the Russian presidents were issuing much larger numbers of decrees than their Ukrainian counterparts. The difference in the numbers was especially pronounced during the earlier years of democratic transition reflecting differences in style of political leadership adopted by the first post-communist presidents Yeltsin and Kravchuk. Leadership styles themselves were, to a large degree, a function of differences in political charisma and degree of conservatism or reform-mindedness of presidents and their immediate political entourage (Aslund, 1995; Sakwa, 1996; Kuzio et al, 1999; Aslund 2000).

The gap in the total annual numbers of presidential decrees decreased substantially after the arrival in the office of the second Ukrainian president, Kuchma, in the second half of 1994. Two unrelated trends contributed to the narrowing the gap. The first one, which signified a real change in the presidential behavior, was an increased frequency with which president Kuchma relied on decree authority to influence political process and policy-making in Ukraine. The second one was partly due to a change in the practice of issuing ceremonial decrees by the Russian president Yeltsin.<sup>3</sup> Probably getting tired of issuing a separate decree for each medal or title awarded, the Russian president have been increasingly relying on issuing ceremonial decrees that would cover a group of award recipients rather than a single individual. The second trend was also partly due to the fact that the variety of honorary titles awarded between 1993 and 1995 has been rapidly declining.<sup>4</sup> As a result, the total number of ceremonial decrees dropped from thirteen hundred in 1993 to less than three hundred in 1995.

The upper right graph excludes ceremonial decrees from the total count and provides summary of the dynamics of changes in the decree numbers that more accurately reflect the general patterns of presidential involvement in political process and policy making. The differences between Russia and Ukraine become even more pronounced in this graph. The magnitude of these differences varied from about two hundred to nine hundred decrees per year. Similarly to the first graph, the differences were most substantial during the early years of transition, 1992 and 1993. The differences in the numbers, however, increased sharply on two separate occasions later in the decade. 1996 and 2000, the years of presidential elections in Russia, saw the spikes in the number

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<sup>3</sup> The following categories of decrees were classified as ceremonial: awarding honorary titles, diplomas, and medals; awarding military, diplomatic, and civil service ranks; granting or evoking citizenship rights; granting pardons; commemorating events and important historical dates; establishing professional days (e.g. Teachers' Day);

<sup>4</sup> For example, in January 1993, which is the year that saw the largest number of ceremonial decrees awarded, the president signed decrees awarding to groups of individuals the following honorary titles of the Russian Federation: Honored Doctor, Honored Builder, Honored Lawyer, Honored Geologist, Honored Engineer, Honored Miner, Honored Transportation Industry Worker, Honored Technologist, Honored Teacher, Honored Professional Education Worker, Honored Housing Industry Worker, Honored Forestry Worker, Honored Fishery Worker, Honored Machinery Construction Worker, Honored Scientist, People's Artist, Honored Physical Education Worker, Honored Art Worker, Honored Chemist, Honored Consumer Services Worker, Honored Architect, Honored Power Engineering Worker, Honored Textile Industry Worker, Honored Inventor, Honored Oil and Natural Gas Industry Worker, Honored Communication Service Worker, Honored Metallurgy Worker, Honored Commerce Industry Worker, Honored Textile Industry Worker. During the same month a number of decrees awarding medals to the individuals were signed, including such medals as "For Saving the Drowning" and "For Courage during Fire". Ceremonial decrees undoubtedly deserve to be further analyzed by the students of anthropology.

of non-ceremonial decrees and the widening gap in decree issuance between Ukraine and Russia .

The graph also suggests that the most substantial differences in the frequency of use of decree authority in each of the countries are related to the personality changes in the presidential leadership. In Ukraine, the transfer of presidential power from Kravchuk to Kuchma in 1994 led to a dramatic increase in a number of issued decrees. The annual decree numbers during Kuchma's presidency, however, varied significantly less than the annual numbers for Kravchuk and Kuchma's presidencies. In Russia, while the frequency of decree issuance fluctuated quite substantially during the Yeltsin's presidency, the year 2002 saw the drop in the number of decrees that fall beyond the range of variation established during the Yeltsin period. The last two years of Putin's rule may suggest the emergence of a new pattern of a less frequent use of decree authority in Russia.

The bottom left graphs provides data on another important aspect of presidential decree making activity, unpublished decrees. The counts of unpublished decrees are a part of both total and non-ceremonial counts presented in earlier graphs. Different methodology was used for collecting data on unpublished decrees in Russia and Ukraine. While neither title nor any indication of the content of these decrees is published in Ukraine, the government information databases specify the number, the date of issue, and 'not for publication' status of these decrees. In contrast, the Russian official sources do not contain any information on this type of decree. I followed Parish's approach (1998) to estimate the quantity of unpublished decrees. The numbers were calculated by subtracting the number of published decrees from the total annual number of decrees as indicated by the numerical order of the last decree issued during the year (the decrees are issued in numerical order starting from number one for the first decree issued in January and continuing on till December).<sup>5</sup>

While most of the executives in the world have power to issue so called secret decrees, the graphs indicates that the Russian and the Ukrainian presidents used this power with a very different frequency. In neither of years during the 1992-2002 the number of unpublished decrees in Ukraine exceeded one hundred. If my estimates are correct, the Russian presidents since 1993 routinely issued more than five hundred decrees each year, with the year of 1997 being the only exception. As the graph indicates the number of unpublished decrees peaked in 2000 during which Putin, firstly as an acting president and lately as a newly elected one, issued slightly more than nine hundred decrees.

While the gap in the number of unpublished decrees between two countries is probably partly a function of the Russian "great power" status and concomitant security, military, and intelligence engagements it is difficult to determine the scope of issues that secret decrees deal with. As the recent journalistic discovery of the content of one of the secret decrees in Ukraine suggest, even relatively infrequent use of a practice of issuing secret decrees does not provide any guarantees that they are used to deal with the matters of state secrets. The legal norms that would specify the rules for classifying decrees as

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<sup>5</sup> Parish calculates that during the period he analyses (1994-1996) there were 526 and 548 unpublished presidential decrees issued in Russia during two full years for which he collected data, 1994 and 1995 respectively. My estimates of a number of unpublished decrees were 524 and 553, which indicates that our independent count of all published decrees produced almost equivalent results.

“not for publication” remain vaguely defined in both countries. In the absence of such specific rules the use of secret decrees provides grounds for serious concerns about the transparency and accountability of post-communist executives. The large numbers of unpublished decrees, especially in Russia, also creates a problem for the analysts trying to assess the extent and the impact of presidential involvement in the various areas of public policy. Much of the following discussion of the presidential practices of using decree authority should be taken with this caveat in mind.

The bottom right graph in Figure 1 provides summary on the legislative context in which presidents in Russia and Ukraine operate. As the lines capturing the changes in the annual passage of laws by the parliaments indicate there have been upward trend in the numbers of laws passed in each country.<sup>6</sup> Although this trend is much more pronounced in Ukraine than in Russia, the data on law passage may suggest the growing assertiveness of parliaments in both countries. This trend remains intact even after excluding from the annual counts those laws that introduce only stylistical changes or amendments to the existing laws, without affecting in any significant way policies established by prior legislative acts.

The most noticeable detail of this graph, however, is a higher level of legislative activity in Ukraine, as measured by the number of laws passed, in comparison to Russia. With the exception of two years, the Ukrainian parliament annually passed a larger number of laws than its Russian counterpart. The year 1998 was one of the exceptions during which the number of laws passed by the Ukrainian parliament dropped behind the number of those passed in Russia. This drop can be probably attributed to the deputies’ preoccupation with electoral politics due to the parliamentary elections held that year in Ukraine. Election-year politics, however, do not seem to have affected negatively the legislative productivity in any other year during which the elections were held in either of the countries. 1994, 1998, and 2002 were the years of parliamentary elections in Ukraine and 1993, 1995, and 1999 were the years when parliamentary elections were held in Russia. Although the differences in the numbers lessen during the last two years, it is unclear at this point whether there is a convergence trend in terms of legislative productivity.

The overall differences in the legislative output between the two countries render some support to the claims that a bicameral legislature slows law-making by introducing another powerful institutional actor, an upper legislative chamber, into the legislative process. The predominantly competitive rather than submissive nature of the Ukrainian unicameral parliament’s relationship with the president might be another factor behind higher levels of legislative output in Ukraine (Protsyk, 2003). While the systematic analysis of this relationship, similar to one conducted by Mishler et al (1998) with regard to Russia, is outside of the scope of this paper, the effects of executive-legislative

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<sup>6</sup> While the number of passed laws does not tell us much about the effectiveness of the legislative process or quality of laws, these numbers are important in the light of the current debates about the advantages and drawbacks of the different types of legislative institutions because they summarize one type of variation in the outcome of legislative activity.

confrontation on the character and quantity of the decree and law output in Ukraine constitutes a promising research program.<sup>7</sup>

## **Presidential Decrees and Policy**

Estimating policy significance of the presidential decrees involves significant methodological difficulties. On the one hand, Shugart and Carey (1998) advocate highly restrictive understanding of a decree that affects policy. They differentiate between the decrees that establish new or change the existing policies and the decrees that are merely a rule making orders which are used for implementing policies set by the legislature and which inherently belong to the arsenal of tools available for the executive. They acknowledge that sometimes difficulties emerge in differentiating between two types of decrees but claim that those difficulties are not major. On the other hand, Meyer (2001) in his analysis of presidential orders in US argues that even setting a temporary commission in the presidential office can constitute a policy move because it makes certain type of policy outcomes more or less likely. Classifying decrees according to their policy importance obviously introduces a degree of subjectivity on the part of the researcher. It is especially so in the context of the two post-Soviet republics where a large portion of decree output falls in the conceptually grey zone between decrees whose scope and subject matter makes them comparable in terms of policy affects to the laws and decrees that are merely instructions for civil servants regarding the implementation of statute norms.

To measure the frequency and the scope of the presidential decree-based intervention in the various policy areas I proceeded with classifying decree output in two steps. First, following Mishler et al (1998), I categorized all decrees according to policy areas. Appendix I provides details on how policy areas were defined and what subcategories they included. All decrees dealing with any issues in the specific policy area were included in the count, regardless of the scope and nature of the actions required by the decree.

There were a very large number of presidential decrees dealing with the various policy-related issues in both countries during the first post-communist decade. As most of the literature suggests the decrees were crucial for establishing policies in very diverse areas. Major recent studies of presidential decrees done by the legal scholars in both countries are indicative of the scope of issues the decrees were trying to regulate. Luchin and Mazurov (2000) chose to devote six separate chapters to the Russian president's involvement in setting the norms in the following policy areas: government and administration, economy, finance, land reform, labour relations, crime prevention.

The policy-related decrees include decrees with broad normative or regulatory scope such as N. 1272 "Issues of Federal Tax Police Agency" (Russia, 25.09.1999), N. 62 "On Measures for Protecting Property Rights of Peasantry in the Process of

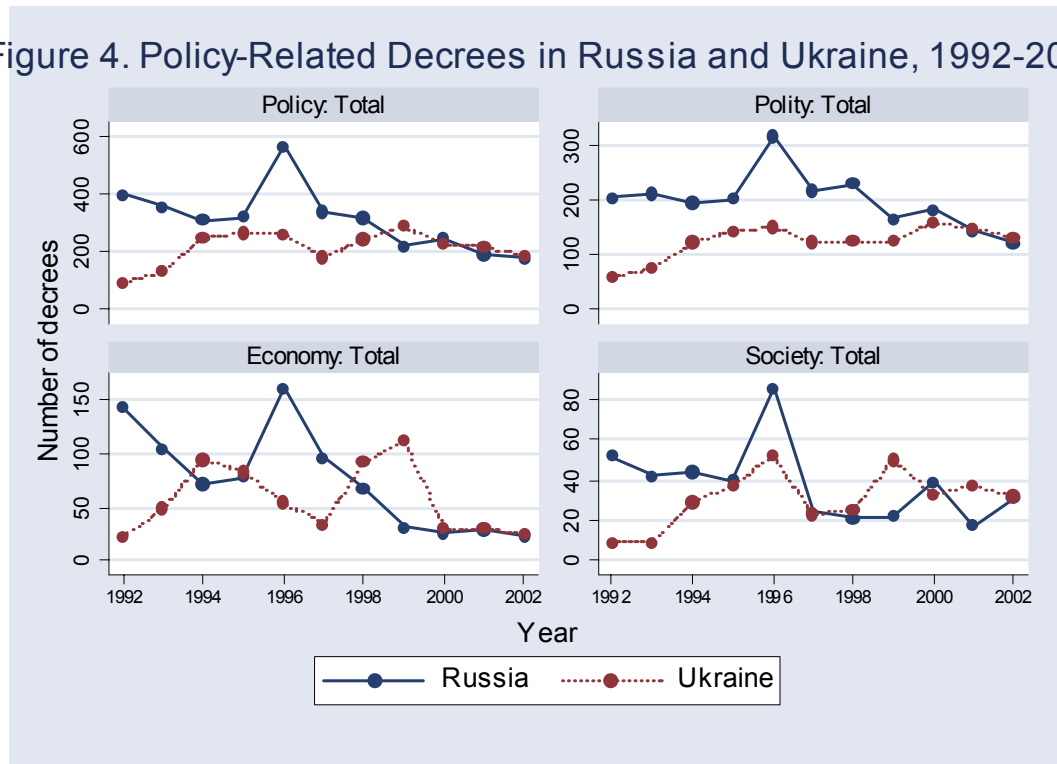
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<sup>7</sup> A hypothesis of executive-legislative rivalry in Mishler et al paper (1998) seems, however, to be under specified. It is unclear, for example, why the rival president and parliament, when challenged in one specific policy area, will tend to compete by issuing laws and decrees in other policy areas rather than resorting to other means of affecting the results in the initial policy area.

Reforming the Agrarian Sector of Economy” (Ukraine 29.01.2001)<sup>8</sup>; decrees with much more narrow scope such as N. 550 “On Additional Powers and Responsibilities of the Plenipotentiary Representative of the President of the Russian Federation of but still regulating

Figure 4 below summarizes the data on policy related decrees in Russia and Ukraine.

Figure 4. Policy-Related Decrees in Russia and Ukraine, 1992-2002



<sup>8</sup> Although the decrees that were issued in the first half of 1990s especially Russia in such areas as privatization or government restructuring, the examples of policy decrees that are cited here are chosen to reflect the continuing importance of the presidential decrees for policy making later in the decade.

The upper left graph provides data on the total numbers of policy related decrees. These numbers are broken according to the three broad categories - polity, economy, society – in three other graphs in Figure 4. As all of these graphs indicate the patterns of the differences between two countries in terms of policy-related decrees is less clear cut than the general patterns of decree issuance discussed in Figure 1. Although the Russian president started the first post-communist decade with issuing a larger number of decrees in all policy areas the differences between two countries started to narrow already during president Kravchuk's incumbency. The patterns of leadership in terms of decree issuance became decidedly mixed after Kuchma assumed the office.

#### **Presidential appointment decrees**

Appointment decree powers of presidents in Russia and Ukraine have received so far a very little attention in the literature. Yet the importance of the presidential decrees is difficult to overestimate. Appointments are indirect but often a very effective way of influencing policies. In many circumstances, choosing among the alternative candidates for key government positions implies making a choice among the alternative courses of actions. The significance of appointment powers becomes even more felt in highly personalized politics where rules, norms, and procedures are weakly institutionalized and informal political mechanisms often substitutes formal political channels.

Appointment decrees are critically important for understanding how politics functions not only because of their potential effect on policy outcomes but also because they provide important insights into political and bureaucratic elite recruitment and upward mobility. Appointment decrees are essential for the president's ability to build and maintain political support. They are a valuable patronage resource for the presidents who are always in need to reward loyalists, attract the hesitant, and co-opt the rivals.

Both in Russia and Ukraine the presidents make hundreds of appointments each year. Figure 3a and 3b below provide a summary on the numbers and character of the presidential appointments and on their relative importance in the overall decree output. The appointment decree numbers in both figures include both appointment and dismissals made by the presidential decrees. In the following discussion whenever I use the term appointment decrees I refer to the decrees that deal either with appointments or dismissals.

Figure 3. Appointment Decrees in Russia and Ukraine, 1992-2002

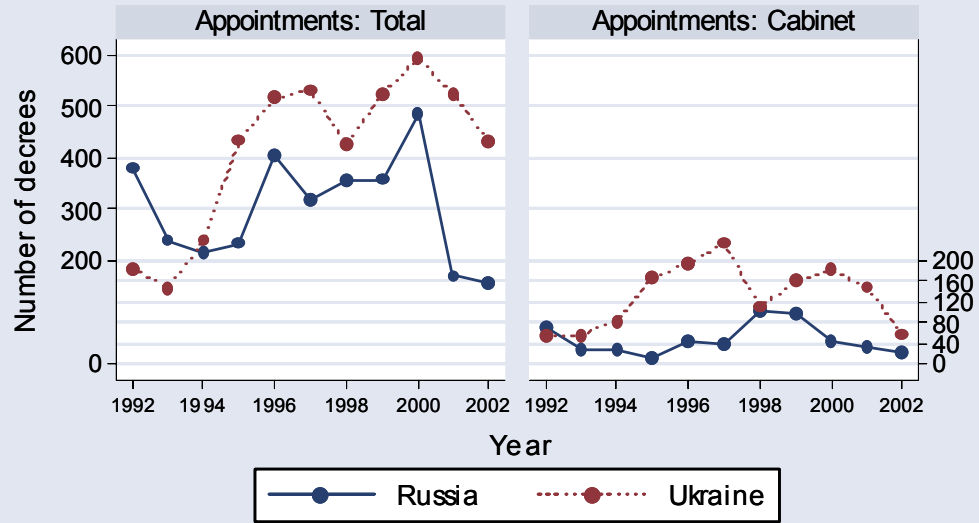
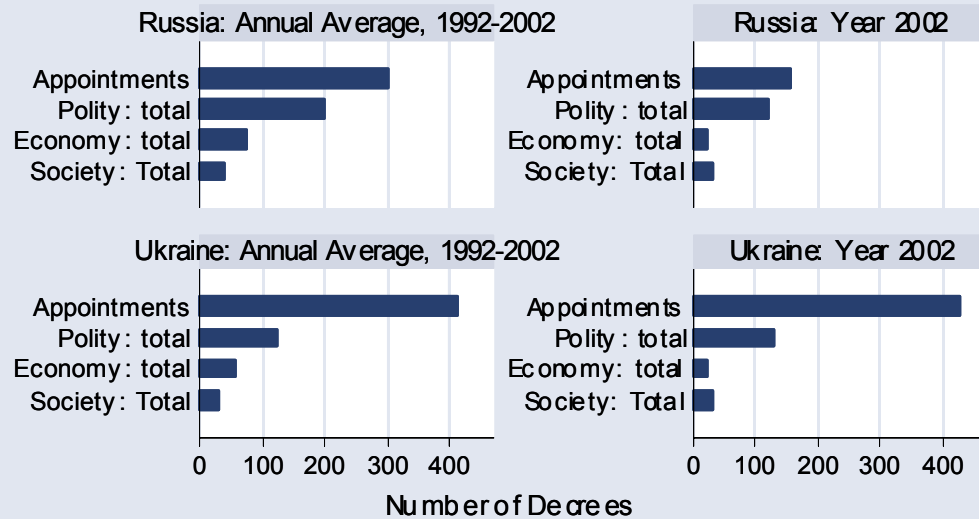


Figure 4. Distribution of Decrees According to Decree Type



Source: Author's calculations; data from databases 'Sistema' /Center of Legal Information, Federal Agency of Government Communications, Russia/ and 'Zakonodavstvo' /Office of Computer Systems, Apparatus of Parliament of Ukraine/

Graph “Appointments: Total” provides information on the annual numbers of presidential decrees in Russia and Ukraine. Starting from 1995 the Ukrainian presidents consistently made a substantially larger number of appointments than his Russian counterpart. The gap in the total output grew especially large since 2001 largely due to the drastic decline in the number of appointments made by president Putin. Similarly to other types of decrees, the numbers of appointment decrees were election-sensitive especially in Russia where two election years of 2000 and 1996 saw the annual increase in the numbers of decrees.

In both countries, the presidents appoint cabinet ministers, heads of the various central government agencies, top civil servants, military and security apparatus, top management of some state-owned industries, judges, diplomats, countries’ representatives to the international organizations, and make a number of appointments on the regional level. The nature of appointments on the regional level vary due to the differences between federal and unitary design of two countries. The Russian president appoint the presidential representative in the regions, special representatives charged with the specific tasks, and, starting with Putin presidency, presidential representatives in the federal districts.<sup>9</sup> The Ukrainian presidents, with the exception of an approximately twelve month period during 1994-1995, appointed first the presidential representatives in the oblast’ and later the heads of oblast’ state administrations who enjoyed a substantially larger powers on the regional level than the presidential representatives in the regions in Russia. Prior to 1995 the Ukrainian presidents also actively used presidential decrees to appoint the presidential representatives in rayons, the practice that latter became primarily reserved to the presidential executive orders.

Substantially larger numbers of appointment decrees issued on a regular basis by the Ukrainian president is especially puzzling given the fact that the constitutional appointments powers of the presidents in Russia and Ukraine are roughly comparable and that the Russian presidents have to appoint a several times larger number of diplomats, judges, and the presidential representatives in the regions. Although the Russian presidents uses more frequently the practice of issuing one decree for making a number of appointments, for example, to appoint judges, than their Ukrainian counterparts, so-called multiple decrees constitute only a very small part of appointment decree output. The vast majority of appointment decrees concern the appointment or dismissal of a singular person.

The left graph in Figure 3a helps to identify some of the answers to this puzzle. It graphs the number of decrees in a key appointment area, cabinet. As the graph indicates the Ukrainian presidents since 1993 were issuing much larger number of cabinet appointment decrees. Both ministerial and deputy ministerial appointments were included in calculating these numbers. The gap was especially large during the early years (1995-

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<sup>9</sup> For the description of Putin’s use of appointment powers on the regional level, see C. Ross “Putin’s federal reforms and the consolidation of federalism in Russia: one step forward, two steps back!” *Communist and Post-Communist Studies* 36:29-47, 2003. Presidents in Russia appoint presidential representatives not only to the regions but also to selected government institutions. For the description of the practice see Luchin and Mazyrov, *Ukazy Prezidenta RF* (Moskva: Zakon I Pravo, 2000).

97) of the first Kuchma administration in Ukraine: the Ukrainian president was issuing on average 200 hundred cabinet appointment-related decrees during the 1995-97 period. The only year during which the gap between Russia and Ukraine almost close was 1998, a year of financial meltdown in Russia that led to the frequent cabinet changes in Russia. There was also a significant drop in the number of cabinet appointments during that year in Ukraine.

Higher degree of politicization of bureaucratic appointments and higher level of cabinet instability in Ukraine explain the differences in the numbers presented in the graph. President in Ukraine routinely made many more deputy ministerial appointments than his Russian counterpart. Presidents Yeltsin and Putin chose to use presidential decrees to appoint deputy ministers almost exclusively in ministries that deal with the policy areas in which, according to the Russian constitution, the president have special control over the activity of government agencies: defence, security, internal affairs, foreign affairs, and emergency situations (Article 32). In Ukraine, president Kuchma has been appointing deputy ministries across the whole spectrum of cabinet ministries.

Neither the Russian nor Ukrainian constitutional clauses specified rules regarding deputy ministerial appointments. The fact that the presidents chose to interpret them differently is primarily a function of differences in their political and constitutional strength. President Kuchma, whose constitutional powers and political strength have been consistently lower than those of his Russian counterparts, fought hard with the cabinet and parliament over the control of appointments of deputy ministries and, more recently, state secretaries in order to compensate for his political and institutional weaknesses. Highly politicized upper echelon of civil service, a recurrent problem in transitional and developing countries against which the numerous World Bank publications (1997, 1999) warn repeatedly, has been a by-product of actions taken by politically insecure president trying to build a comprehensive patronage base and consolidate the powers of his weakly institutionalized office.

Cabinet instability, the second reason behind the higher number of cabinet appointments in Ukraine, can also be traced to the lower degree of political strength and to more credible political threats to his presidency on the part of the various types of political opposition forces. Kuchma's leadership over the executive has been routinely challenged by several prime-ministers in Ukraine. Kuchma's response to these challenges was to dismiss the rival prime-ministers and their cabinets thus generating more ministerial turnover (Wilson, 1999). There were nine new prime ministers in Ukraine since 1991. In contrast, Russia saw only six new prime ministers during the same period and only one of them, Primakov, could be considered as contesting the presidential leadership over the executive (Huskey, 1999).

To illustrate how frequently the presidents issued appointment decrees in comparison to the decrees dealing with policy-related issues Figure 3b provides data on the average annual numbers of appointment and policy-related decrees for the 1992-2002 period and on the annual numbers for the last year in the sample, 2002. In both countries appointment decrees outnumbered by large policy-related decrees but it was Ukraine where the difference between the number of appointment and policy-related decrees was especially large. Even after dividing the appointment numbers by two in order to account separately for decrees dealing with the appointments and dismissals, each on new categories for Ukraine would include almost the same number of decrees as all policy-

related categories combined. The appointment decrees especially in Ukraine constitute a very important instrument of the presidential involvement in political process and policy making.

Figure 3b also provides another way of comparing the most recent data on the presidential decree making activity with the averages for the entire period. The upper left and right graphs illustrate what was established earlier as a significant drop in the presidential decree making activity in Russia. A substantially smaller number of appointment decrees as well as policy-related decrees was issued during 2002 as compared with the annual average rate of decree-making activity in Russia. The lower left and right graphs, on the other hand, indicate that the same indicators for Ukraine for 2002 differ very little, with the exception of economy-related decrees, from the averages for the entire 1992-2002 period. While the number of appointment decrees in Ukraine has been dropping during the last two years of the period discussed, these drops do not fall outside the range of variation in the number of appointment decrees established during Kuchma's two term presidency.

## Part II. Parliamentary Laws

The functioning parliament is a relatively new phenomenon in Ukraine. Prior to independence in 1991 the parliamentary deputies had very little real law-making experience. The Supreme Soviet of the Ukrainian Soviet Socialist Republic was not an independent law-making body. It served rather as a formal assembly for approval of the decisions made elsewhere, primarily in Moscow or Kyiv's party headquarters.

The first post-communist decade can be considered as a period of institutional emancipation of parliament: new rules were introduced, tried and changed; parliamentary deputies had to learn rules of procedures, basic legal terms and principles, and the art of collective decision making; political leaders in the legislative and executive branches were forced to deal with the competing claims on power and with the ambiguities of the separation of power system.

These difficulties are reflected in the quantity and quality of parliamentary output. Figure 1 below captures the temporal dynamics in parliamentary law-making activity during the decade.

Figure 1. Parliament Laws in Ukraine, 1992-2002

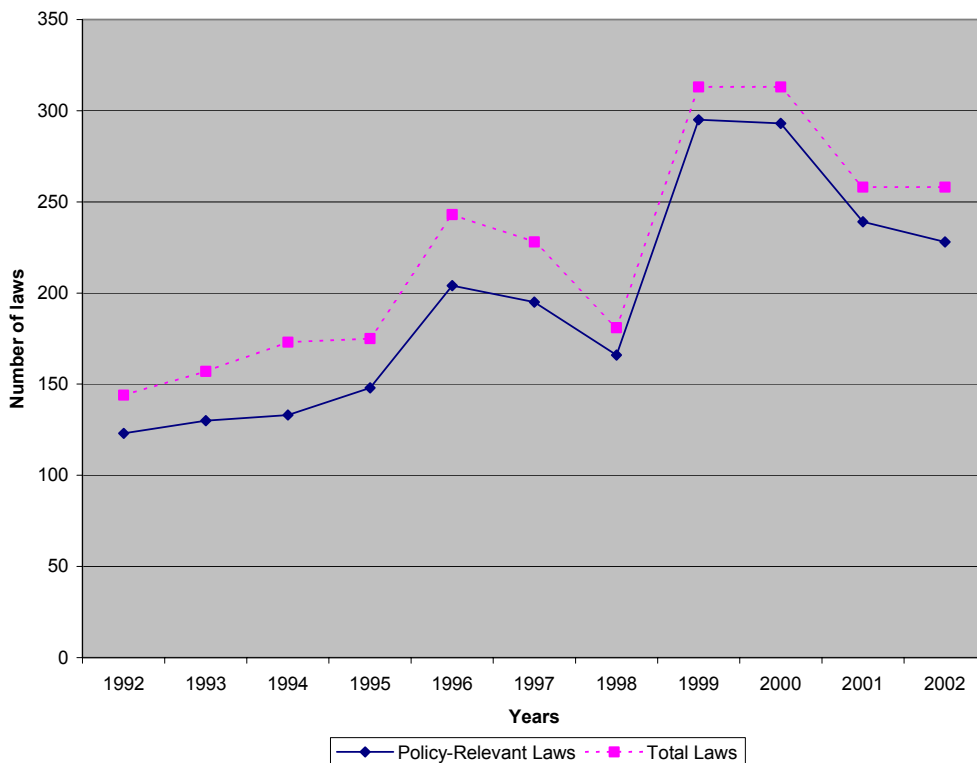


Figure 1 shows an upward trend in the number of laws passed by parliament, which may indicate a growing sophistication and effectiveness of the legislative body. The figure differentiates between the total number of laws and the number of policy-relevant laws.

The latter indicator excludes laws that introduce minor changes and amendments to the existing pieces of legislation (see Appendix I for details).

Although there was an urgent necessity in the wake of the Soviet breakdown to adopt a scores of new legislation, the figure indicates that the Ukrainian deputies started off slowly. The total number of laws passed by the parliament each year between 1992 and 1995 was well below two hundred. When laws introducing minor changes and amendments are excluded the numbers become even smaller. The first substantial increase in a number of passed legislations took place in 1996. As the figure indicates, when we take the 1990-1994 period as a basis for comparison, each consecutive parliamentary term – 1990-94, 1994-98, 1998-02 – was characterized by a higher degree of parliamentary activity than the previous one.

### ***Legislative process***

To analyze a number of the characteristics of laws passed by the parliaments in Ukraine a random sample of 271 laws was drawn out of the total of 2108 laws passed by Ukrainian parliaments between 1991 and 2002. The findings are summarized in Table 1.

**Table 1. Characteristics of Legislative Output in Ukraine**

Indicators	Law categories				Total
	New laws	Laws that introduce amendments to the current laws	Laws that introduce stylistic amendments to the current laws	International treaties	
Number of laws	16	20	7	0	43
Distribution, %	37.2%	46.5%	16.3%	0.0%	100.0%
1990-94 Total number of amendments	62	16	2	0	80
1990-94 Average number of amendments to a law	3.9	0.8	0.3	0	1.9
1990-94 Maximum number of amendments to a law	13	8	1	0	13
Number of laws	15	26	14	37	92
Distribution, %	16.3%	28.3%	15.2%	40.2%	100.0%
1994-98 Total number of amendments	24	9	2	0	35
1994-98 Average number of amendments to a law	1.6	0.3	0.1	0.0	0.4
1994-98 Maximum number of amendments to a law	6	3	1	0	6
Number of laws	43	56	3	34	136
Distribution, %	31.6%	41.2%	2.2%	25.0%	100.0%
1998-02 Total number of amendments	28	7	0	0	35
1998-02 Average number of amendments to a law	0.7	0.1	0.0	0.0	0.3
1998-02 Maximum number of amendments to a law	7	1	0	0	7

**Sources:** Author's calculation; data from Upravlinia komp'uternykh system Apparatu Verkhovnoi Rady Ukrainy (Office of Computer Systems, Apparatus of Parliament of Ukraine).

The table classifies the laws according to the parliamentary term and category of law. The laws are categorized as new laws, laws that introduce amendments to the current laws, laws that introduce only minor amendments to the current laws, and laws that ratify international treaties. The table also captures a number of characteristics of legislative output for each of the parliamentary terms: the distribution of laws according to law category; number of laws in each category; an average number of amendments to a law; and a maximum number of amendments to a law.

The first row in the table indicates a number of laws from the sample that fall into each category. The last column shows total numbers of laws for each parliamentary term. Our sample includes 43, 92, and 136 laws from the 1990-94, 1994-98, 1998-02 parliamentary terms respectively. The sample reflects the underlying dynamics of law-making activity during the first post-communist decade: a number of laws passed during each consecutive term has been increasing.

There is a substantial variation in the distribution of laws across parliamentary terms. During the 1990-94 term 37.2% of the laws were new laws and 46.5% were the laws that introduced amendments to the existing laws. During the 1990-94 parliamentary term international treaties did not have to be ratified in the form of laws passed by the parliament. They required only the decision of the Presidium of the Verkhovna Rada. Thus, there are no laws in the category “international treaties” for the 1990-94 parliamentary term.

A substantial drop in the share of new laws in the 1994-98 parliamentary output is partly explained by the introduction of a new practice of international treaties’ ratification in the form of parliamentary laws. The most recent data, which covers the 1998-2002 parliamentary term, indicates that the proportion of new laws returned to the one third of the total legislative output.

Average and maximum numbers of amendments to the current laws are of interest because they can shed some light on how stable the legal environment is. If the laws are changed and amended frequently it might also signify a poor quality of legislation. Amendments to the current legislations are often necessitated by the societal changes. When the laws change on a much higher rate than underlying societal conditions the quality of laws can be questioned.

As the table indicates there were, on average, almost four amendments to each new law passed during the 1990-94 parliamentary term. The laws that introduced amendments to the existing laws have also been frequently amended (0.8 amendments per law). The maximum number of amendments to a new law was thirteen. Two laws in the sample were amended thirteen times: Administrative Code (№ 1798-XII, passed on 06.11.1991) and Customs Code (№ 1970-XII, 12.12.1991). Although the table does not provide information on the individual pieces of legislation, it is interesting to note that the first amendment to Administrative Code was passed only in 1999 while Customs Code was

firstly amended already in June 1992. The type of amendments and their timing require further investigation that has to be done on the individual basis.

While the average and maximum numbers of amendments declined during the two subsequent parliamentary terms (1994-98; 1998-2002), the lower numbers may be a function of the more recent origins of these laws. The fact that one of the laws passed during the 1998-2002 term, namely the law on the Year 2000 State Budget (№ 1458-III, 17.02.2000) contains as many as seven amendments, raises further concerns about the stability of legal environment in Ukraine.

Table 2 below relies on the same sample of laws to draw some preliminary conclusions about the temporal aspects of legislative process in parliament.

**Table 2. Passage Time of Draft Laws in Parliament of Ukraine**

Indicators	Law categories				Total
	New laws	Laws that introduce amendments to the current laws	Laws that introduce stylistic amendments to the current laws	International treaties	
Number of laws	13	22	12	27	74
1994-98 Average passage time, days	221	139	114	94	133
1994-98 Minimum passage time, days	4	1	1	3	1
1994-98 Maximum passage time, days	530	483	309	592	592
Number of laws	38	45	3	33	119
1998-02 Average passage time, days	260	123	56	173	179
1998-02 Minimum passage time, days	1	1	23	9	1
1998-02 Maximum passage time, days	1014	674	105	731	1014

**Sources:** Author's calculation; data from Upravlinia komp'uternykh system Apparatu Verkhovnoi Rady Ukrainy (Office of Computer Systems, Apparatus of Parliament of Ukraine).

The table presents data on the average, minimum, and maximum passage time for the draft laws in the Ukrainian legislature. Passage time was calculated in days from the moment a draft law was officially introduced in the parliament until the day the final vote took place and a law was passed. Since data on the dates of the introduction of draft laws

during the 1990-94 parliamentary term was not available the table presents findings only for the 1994-98 and 1998-2002 parliamentary terms.<sup>10</sup>

The major finding that emerges from these calculations is that the average passage time increased substantially during the 1998-2002 parliamentary term. On average it took 133 and 179 days for the law to be passed during 1994-98 and 1998-2002 parliamentary terms respectively. The numbers for the category of new laws, a key category of interest here, were 221 and 260 days. The magnitude of differences between two parliamentary terms is especially large for the maximum passage time: 592 and 1014 days for the 1994-98 and 1998 -2002 parliamentary terms respectively. A more comparative data is required to estimate whether the Ukrainian passage time numbers are small or large in comparison to the numbers found in the parliaments of other countries.

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<sup>10</sup> The dates of the introduction of draft laws were also missing for some laws passed during the 1994-98 and 1998-2002 parliamentary terms. This explains the differences in the numbers of laws in Tables 2 and 3.

### *Cabinet legislative initiatives*

The right of legislative initiative is one of the key policy instruments available to cabinets across political systems. There is a growing tendency in advanced democracies to strengthen cabinet power in forming the legislative agenda. Cabinet ability to secure the successful passing of cabinet-sponsored bills is enhanced through the introduction of procedural norms that allow cabinets to submit their draft laws in a package, to declare a draft law as a matter of confidence vote and to designate certain draft laws as issues that require priority in legislative consideration.

Table 1 below captures the variation in the legislative activity of Ukrainian cabinets:

**Table. 3 The Legislative Activity of Cabinets in Ukraine, 1994-2002**

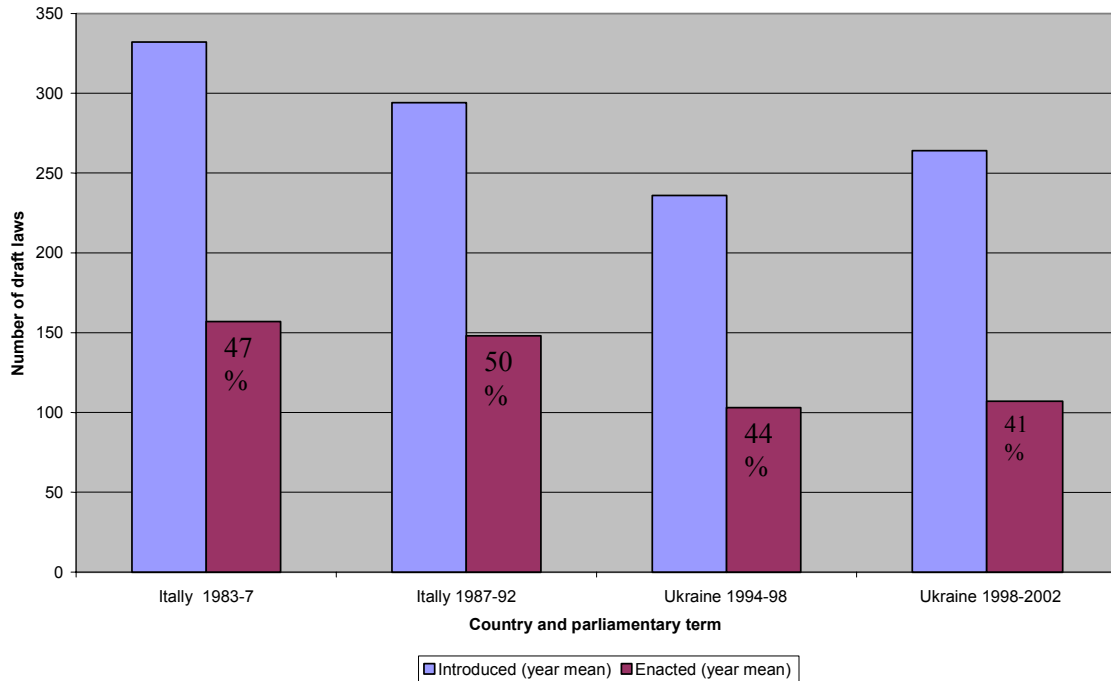
<b>Prime Minister</b>	<b>Office term</b>	<b>Law Drafts Introduced</b>	<b>Law Drafts Enacted</b>	<b>Law Drafts Failed</b>	<b>Success Rate (%)</b>
Masol, Vitali	6/94-4/95	133	77	56	58%
Marchuk, Yevhen	6/95-5/96	206	88	118	43%
Lazarenko, Pavlo	5/96-6/96	33	14	19	42%
Lazarenko, Pavlo	6/96-6/97	326	135	191	41%
Pustovoitenko, Valeri	7/97-12/99	743	289	459	39%
Yushchenko, Viktor	12/99-4/01	316	145	171	46%
Kinakh, Anatoly	4/01-11/02	244	89	155	36%

**Sources:** Author's calculation; data from Upravlinia komp'uternykh system Apparatu Verkhovnoi Rady Ukrainy (Office of Computer Systems, Apparatus of Parliament of Ukraine).

The table lists the number of draft laws introduced by each cabinet since 1994. It provides information on how many draft bills became laws, and measures the success rate that individual cabinets achieved in securing parliamentary support for their legislative agenda. As the numbers indicate, with the exception of the Yuschenko cabinet, there was a steady downward trend in the percentage of draft bills that cabinets were able to turn into laws. In other words, cabinets' ability to fulfill their legislative agenda was declining during 1994-2002.

To put the activity of Ukrainian cabinets into a comparative perspective, Figure 6 provides data on the activity of Ukrainian and Italian cabinets during two parliamentary terms. The availability of detailed quantitative data on the Italian cabinets, as well as the fact that Italian cabinets are among the weakest in Europe in terms of their control over the legislature, makes this comparison interesting.

**Chart 1. The Legislative Activity of Cabinets in Italy and Ukraine**



Sources: Author's calculation for Ukraine; data on Italy - Gary W. Copeland and Samuel Charles Patterson, *Parliaments in the Modern World: Changing Institutions* (Ann Arbor: University of Michigan Press, 1994).

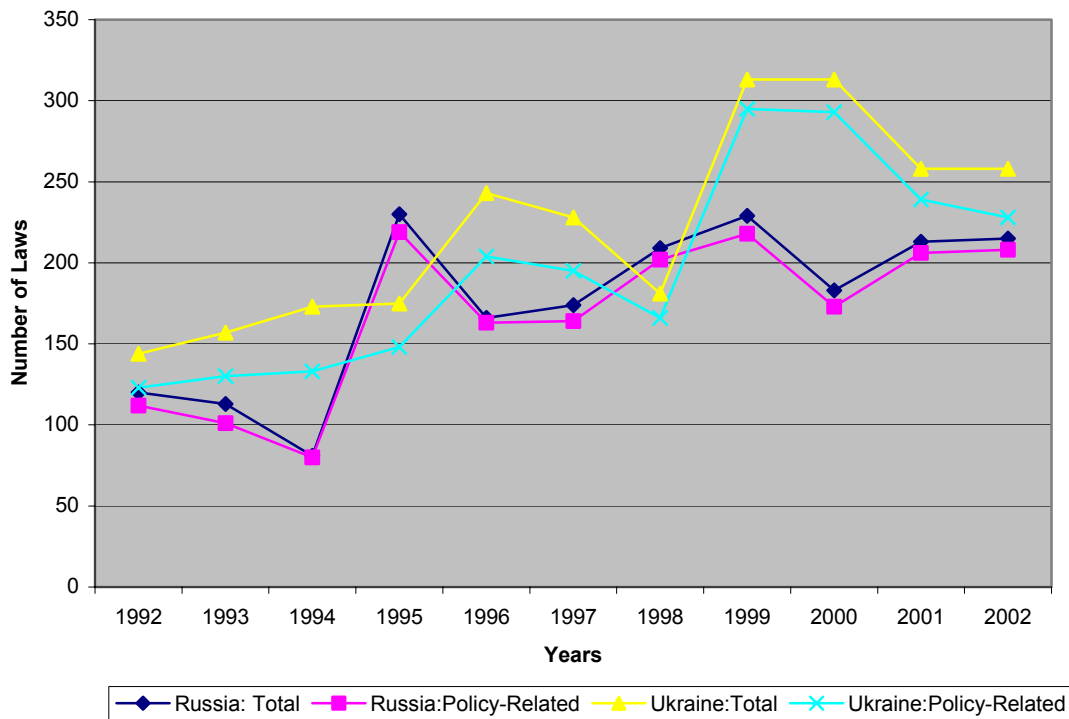
The chart indicates that the Ukrainian cabinets during both parliamentary terms, which are included in the graph, introduced a smaller number of law drafts and were much less successful than even legislatively weak Italian cabinets. These findings underscore the general problems with the functioning of cabinets in Ukraine. Cabinets in Ukraine are weak in at least two important respects. They have been politically weak due to their technocratic nature. None of ten Ukrainian cabinets has been a party cabinet that could rely on the solid and unconditional support of the party majority in parliament. Secondly, cabinet powers remain ambiguously defined. Due to intense confrontation between the president and parliament over the control of a cabinet, a Law on Cabinet of Ministers, which is supposed to clarify the powers and responsibilities of cabinet, and which has been put to the vote at least eight times during the two last parliamentary terms, has not been passed yet.

### *The Legislative Process in Ukraine and Russia: A Comparative Aspect*

Comparing the legislative output of the key institutional actors in Ukraine and Russia is especially productive for the understanding of law-making in transitional societies both because the two countries share similar features of semi-presidential constitutional design and because they face similar challenges of organizing the legislative process. In both countries, the law-making process is greatly affected by the presidents who have the power to issue normative decrees, initiate draft laws, and veto the laws passed by the parliament. Cabinets in both countries have to go through a procedure of confirmation in parliament and have to secure the support of a parliamentary majority in order to turn their legislative initiatives into laws.<sup>11</sup>

Figure 2 below compares the dynamics of law-making in Ukraine and Russia during 1992-2002:

Figure 8. Laws in Ukraine and Russia, 1992-2002



The total number of laws and number of policy-related laws (this indicator excludes laws that introduce minor amendments to the existing laws) are listed for each country. As the graph indicates, with the exception of two years, the Ukrainian parliament annually passed a larger number of laws than its Russian counterpart. The year 1998 was one of the exceptions during which the number of laws passed by the Ukrainian parliament dropped behind the number of those passed in Russia. This drop can be probably

<sup>11</sup> In many instances, for some major legislative initiatives, also a consensus between president, cabinet and parliamentary majority is necessary.

attributed to the deputies' preoccupation with electoral politics due to the parliamentary elections held that year in Ukraine. Election-year politics, however, do not seem to have affected negatively the legislative productivity in any other year during which the elections were held in either of the countries. 1994, 1998, and 2002 were the years of parliamentary elections in Ukraine and 1993, 1995, and 1999 were the years when parliamentary elections were held in Russia.

The overall differences in the legislative output between the two countries render some support to the claims that a bicameral legislature slows law-making by introducing another powerful institutional actor into the legislative process. The Ukrainian unicameral parliament regularly passed a significantly larger number of laws than the Russian bicameral legislature. Although the differences in the numbers lessen during the last two years, more data is needed to see whether there is a convergence trend in these general indicators of legislative productivity. While the number of passed laws does not tell us much about the effectiveness of the legislative process or quality of laws, these numbers are important in the light of the current debates about the advantages and drawbacks of the different types of legislative institutions, because they summarize one type of variation in the outcome of legislative activity.

## Appendix I. Sample Coding Sheet for Parliamentary Laws

		###												Total
		year month	1	2	3	4	5	6	7	8	9	10	11	
<b>Polity</b>	Government and administration	2	1	3	3	7	7	2	0	2	1	2	1	31
	Police and Justice	1	0	1	0	0	1	1	0	0	0	0	0	4
	Military	1	0	0	0	0	1	0	0	1	0	1	0	4
	Citizenship and democratic norms	1	0	0	1	1	0	2	0	1	1	1	2	10
	Codes	0	0	0	0	0	1	0	0	0	0	0	0	1
	changes and amendments	1	0	0	0	3	0	0	0	0	0	0	0	4
<b>Economy</b>	Budget and finance	3	1	3	8	2	3	3	0	3	5	0	3	34
	Property and Privatization	0	0	0	0	0	0	2	0	0	0	2	2	6
	Investments and special economic zones	0	0	2	1	0	0	0	0	0	1	0	0	4
	Business	3	0	0	2	3	1	4	0	0	3	2	1	19
	Natural resources	0	0	1	0	0	1	0	0	0	0	0	1	3
	Codes	0	0	0	0	0	0	0	0	0	0	0	0	0
	changes and amendments	0	0	0	2	1	0	0	0	0	2	0	2	7
<b>Society</b>	Social services	0	0	0	1	0	1	1	0	0	1	1	1	6
	Demographics and Nationalities	1	0	0	0	0	2	0	0	0	0	0	0	3
	Social problems	2	1	2	6	1	1	5	0	1	1	4	1	25
	Arts and sciences	0	0	1	0	0	1	1	0	0	0	0	0	3
	Codes	1	0	0	0	0	0	0	0	0	0	0	0	1
	changes and amendments	0	0	0	0	1	0	2	0	0	1	1	0	5
<b>Legal Reform</b>	Legal issues	2	0	0	1	2	1	2	0	2	2	1	1	24
	court reform	1	0	0	0	1	4	1	0	0	0	0	0	7
	Codes	1	0	0	8	3	4	3	0	2	2	1	0	24
	changes and amendments	1	0	0	2	0	0	0	0	0	0	0	0	3
<b>Treaties and international cooperation</b>		3	3	3	0	5	2	14	0	10	2	14	0	56
	changes and amendments	0	0	0	0	0	0	0	0	0	0	0	0	0

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<b>Total</b>	20	6	16	33	22	26	38	0	20	17	28	13	239
<b>Changes and amendments</b>	2	0	0	4	5	0	2	0	0	3	1	2	19

## Appendix II. Sample Coding Sheet for Presidential Decrees

		year												total
		month												
		1	2	3	4	5	6	7	8	9	10	11	12	
Polity							###							
	Government and administration	4	7	5	7	12	15	4	12	7	11	12	15	111
	Police and Justice	0	0	0	0	0	1	0	0	0	0	0	0	1
	Military	1	2	1	1	0	0	1	1	2	1	0	1	11
	Non Governmental Organizations	0	0	0	0	0	0	0	0	0	1	0	0	1
	Citizenship and democratic norms	0	0	0	0	0	0	0	0	0	0	0	0	0
Economy														
	Economic issues	3	5	3	3	11	61	3	10	2	2	0	4	107
	Natural resources	0	2	0	1	0	0	0	1	1	0	0	0	5
Society														
	Social services	1	1	1	1	1	1	0	3	1	0	0	0	10
	Demographics and Nationalities	1	0	0	0	1	0	0	0	0	0	0	0	2
	Social problems	1	0	1	2	2	5	2	2	1	5	1	0	22
	Arts and sciences	1	3	1	0	2	1	1	2	0	2	2	1	16
Appointment/dismissal														
	appointment of cabinet ministers	23	11	9	21	11	11	10	9	10	8	2	36	161
	appointment of oblast administration	4	1	2	3	2	1	4	2	4	0	9	1	33
	appointment of rajon administration	0	0	0	0	0	0	0	0	0	0	0	0	0
	appointment of others	16	18	19	71	23	37	41	10	31	21	17	26	330
Secret		2	10	0	1	10	1	0	8	4	3	1	18	58
Ceremonial		31	47	26	38	43	49	69	87	89	95	35	43	652
<b>TOTAL</b>		<b>88</b>	<b>107</b>	<b>68</b>	<b>149</b>	<b>118</b>	<b>183</b>	<b>135</b>	<b>147</b>	<b>152</b>	<b>149</b>	<b>79</b>	<b>145</b>	<b>1520</b>
"Pork-barrel" decrees		2	1	2	3	3	3	1	2	1	4	1	0	23
Unconstitutional		0	1	0	0	3	15	0	0	0	0	0	1	20