
Constitutional Politics and Presidential Power in Kuchma's Ukraine

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Leonid Kuchma deserves some praise for his contribution to the constitutional framework of independent Ukraine, but he often used his constitutional authority in detrimental ways.

PRESIDENT Leonid Kuchma presided over a decade that was critically important for the development of the constitutional framework of independent Ukraine. He helped the country to overcome the profound impasse over a constitution that characterized the first years of Ukrainian independence. At the same time, his ambition and his approach to the exercise of presidential power were key contributing factors to institutional instability and the ongoing attempt to renegotiate the basic principles of the constitutional framework. The 1996 constitution, which Kuchma shepherded through a fragmented and confrontational parliament, provided a highly contested institutional equilibrium. The constant challenges to the equilibrium mounted throughout the ten years of Kuchma's presidency, both by the president himself and by his opponents, were important components of Ukraine's evolving political system and developing state institutions. The first part of this article reviews these challenges, while the second provides some sketches on how Kuchma used his constitutional powers.

Negotiating and Renegotiating the Constitutional Framework

The decade-long Kuchma presidency saw a series of milestones in the evolution of Ukraine's constitutional framework. One way to analyze the constitutional process during this period is to examine its central stages: the adoption of the 1995 Constitutional Agreement and the 1996 constitution, the April 2000 referendum on

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constitutional changes, and the December 2004 constitutional reform. Kuchma played a different but crucial role in each stage. Throughout the process, however different the instruments he used and the goals he sought, he held the dominant position, formulating the constitutional agenda and initiating challenges to the institutional status quo.

Adopting a Constitution as an Independent State. Upon assuming the presidency in 1994, Kuchma inherited a highly dysfunctional institutional framework based on a revised version of the 1978 constitution of the Ukrainian Soviet Socialist Republic. Although the references to socialism and the leading role of the Communist Party had been excised, the document preserved the main elements of the “system of Soviets” with its “unity of power” and its lack of a separation of competencies between branches and levels of government. The constitution was frequently amended during the first years of independence in order to incorporate new institutional provisions, such as a definition of the status and powers of the president. But even with revisions the document was quite inadequate for the task of constructing a democratic state.¹

The political class of newly independent Ukraine faced several challenges, but agreeing on a new constitution proved to be one of the most difficult. The first drafts of a new constitution appeared during the early years of Leonid Kravchuk’s presidency (1991–94), but the polarized political elite were unable to arrive at a consensus on the constitutional issues facing the country. The elite was dominated by members of the old communist *nomenklatura* but now also included a significant number of members of the democratic opposition.

Despite high hopes, the 1994 parliamentary elections did not resolve the ideological issues dividing the political elite or moderate the fierce confrontation between its factions. The elections produced a parliament that was no less fragmented and polarized than its predecessor.² The new parliament could not agree on several critical aspects of a future constitutional framework. Among the most controversial issues were state symbols, the status of the Russian language, property rights, the powers of the president, and the status of the Crimea.³

President Kuchma played a critical role in resolving the parliamentary stalemate and deserves credit for forcing the deputies to agree on these controversial issues. He did not accomplish this by means of persuasion or deliberation, however. The agreement came about when Kuchma called for a popular referendum on the constitution and threatened to dissolve parliament. His use of

intimidation, soon to be one of his favorite tactics for conflict resolution, led to the desired results, and in the view of many, the end justified the means. Ukraine finally adopted a new constitution in 1996. The importance of this event for the process of constructing a new state should not be underestimated.

Ukraine, in this period, was riven by political confrontation between the elite groups that controlled different areas of its government. The rise of centrifugal forces in various regions and of separatism in Crimea threatened to undermine the state’s territorial integrity. Significant elements of the old communist elite and some new political entrepreneurs actively questioned even the minimal existing consensus about the identity and boundaries of a new political community. The adoption of the constitution meant, among many other things, that a much-needed certainty about the country’s basic institutional setup was finally introduced into the political process. The constitution answered some basic questions about the form of government, the territorial framework of the state, and the character of the new political community.

At the same time, several highly contested constitutional provisions sowed the seeds of conflicts that would dominate the rest of Kuchma’s presidency. Of these institutionally predetermined conflicts, the executive-legislative confrontation proved to be the most significant and longest-lasting. The 1996 constitution provided for a complete separation of powers between president and parliament. Both were elected for fixed terms, and neither controlled the tenure in office of the other. The resulting institutional rigidity, common to classical presidential regimes, meant that stalemate might ensue whenever the president and the parliamentary majority had different political orientations.

The 1996 constitution gave the president a substantial amount of legislative and non-legislative power. Although it fell short of transferring the entire set of powers granted to the president by the June 1995 Constitutional Agreements, the new constitution established a relatively strong presidency, and in itself this was a reflection of Kuchma’s strong bargaining position throughout the constitutional negotiations. The president was now empowered to issue decrees, veto laws passed by parliament, and introduce draft laws that would have priority status for parliamentary consideration.⁴ He also now had some important non-legislative prerogatives, including the power to nominate or dismiss the prime minister, appoint or dismiss members of cabinet and other executive agencies, and make appointments or nominations in the judicial branch, dip-

lomatic corps, central bank, and a number of other government agencies.

The fact that the constitution made the cabinet accountable to both the president and parliament, and, at the same time, granted substantial executive powers to the president, meant that a dual executive system, or, in Duverger's terms, a semi-presidential model of government, was strengthened in Ukraine.⁵ The new arrangement laid the legal underpinnings for intra-executive competition between the president and prime minister. This institutionally induced competition can be categorized as a major type of conflict quite different from the executive-legislative confrontations that the Ukrainian political system endured throughout the post-Soviet period.⁶

Challenging the Constitutional Status Quo. The April 2000 referendum on constitutional changes, and the events surrounding the organization of the referendum and the implementation of its results, signified a major presidential assault on the institutional status quo and, ultimately, the process of democratic consolidation. The proposed changes were designed to alter the balance of power between presidency and parliament by increasing the president's ability to control parliament's tenure in office and by weakening parliament's institutional strength and independence. The Constitutional Court authorized a ballot with four questions. Voters were asked whether they wanted to give the president authority to dissolve parliament if it did not form a majority within one month or approve a budget in three months, and whether they approved the elimination of immunity for deputies, a reduction in the number of seats in the lower chamber of parliament, and the creation of an upper legislative chamber.

Domestic analysts and international legal experts widely perceived Kuchma's constitutional initiative as an assault on the country's fledgling democracy. The initiative was conducted in violation of existing constitutional norms. The Council of Europe, for instance, questioned whether there was any legal basis for the proposed referendum and threatened to suspend Ukraine's membership if the referendum was conducted unconstitutionally and its results were directly used to amend the constitution. While the referendum took place nonetheless, Kuchma gave in to the severe domestic and international criticism by agreeing to adhere to constitutional procedures in order to implement the referendum results. The saga of constitutional reform in 2000 lasted for almost a year and revealed the worst aspects of Kuchma's increasingly authoritarian regime—intimi-

dation, bribery, and falsification. It ended without any tangible results, due to the lack of legislative support for the presidential initiative.⁷

Kuchma's inability to secure a stable and reliable parliamentary majority was a major source of frustration throughout both of his presidential terms. None of the four Ukrainian parliaments since independence was able to produce a coherent and disciplined majority, either pro-presidential or anti-presidential, that could survive for an entire parliamentary term. Parliament's ongoing fragmentation and polarization were produced by a combination of institutional and structural factors beyond the scope of the present article.⁸ Despite its fragmentation, though, parliament as an institution has persistently defended its constitutional prerogatives.

Referendum proposals were not the only constitutional issues to be disputed after the adoption of the 1996 constitution. As Wolczuk documents, the battle to delineate spheres of responsibility between the president and parliament was waged over the passage of virtually every major law intended to develop and clarify constitutional provisions.⁹ The law on the cabinet, drafted to clarify the status, powers, and responsibilities of the cabinet vis-à-vis the president and parliament, became a symbol of executive-legislative deadlock on constitutional issues. Kuchma vetoed the law eight times, and it was never enacted during his presidency.

Kuchma's presidency was, in fact, characterized by extensive use of the veto.¹⁰ The requirement of a two-thirds majority to override made the veto a very powerful instrument with which to impose his preferences on the legislature. In instances where enough votes were mobilized to override the veto, Kuchma used other tactics, such as not signing the newly adopted bill, to prevent laws he opposed from coming into force. While the constitution sanctioned the use of the veto, delays in signing laws and other procedural antics demonstrated his willingness to overstep the boundaries of the presidency's legal prerogatives.

Kuchma combined his extensive use of the veto power with frequent requests to the Constitutional Court to consider the constitutionality of legislative bills initiated in parliament. As the only institution entitled to address constitutional disputes between the executive and the legislature, the court became a major player in constitutional politics after its inception in 1996. Brown and Wise, who have conducted the most systematic study to date of the court's decisions on separation-of-powers issues, conclude that the court, during the early years of its existence (1997–2000), tried to find a middle ground

in disputes between the president and parliament. Many analysts argue that later in Kuchma's second term the court's rulings tended to favor the president.¹¹

Changing the Constitution. Kuchma ended his presidency with a constitutional agenda that was the opposite of the one with which he had started. The constitutional changes promulgated during the dramatic events in December 2004 provided a strong impetus for transforming the Ukrainian political system from a presidential-parliamentary system to a more parliamentary one. The president also now has somewhat greater discretion in making decisions about dissolving parliament.

Kuchma was the main driving force behind the constitutional reform, especially during its early stages in 2002 and 2003. The president's August 2002 initiative to change the constitution helped publicize the need to transform the country's constitutional framework along lines more compatible with European standards of parliamentary practice. The ways this initiative was presented, however, were reminiscent of the questionable practices employed to advance the 2000 referendum's agenda: administrative pressure to mobilize support, counterfeit debates and expressions of public interest in constitutional change, and intimidation and vote buying to win support for the reform in parliament. In the end, the reform was forced upon a significant segment of the elite that supported the reform package very reluctantly. The circumstances of the reform's passage, as well as the technical deficiencies in some of the new constitutional provisions, may provide fertile ground for future revisionist claims.

While Kuchma deserves some credit for initiating the move toward a constitutional system more in line with the European model, his motives for taking this step should not be ignored. As many analysts have pointed out, the president came up with this initiative only as the end of his second term approached and the question of a successor became an overriding political concern. Unable to ensure the succession of a candidate who would continue his policies and guarantee his personal safety after his departure from the office, Kuchma opted for the strategy of weakening the presidency. In the view of his many critics, Kuchma's interest in constitutional reform was driven more by fear of political and personal repercussions if his opponents seized the presidency than by a grand vision of a European future for Ukraine.¹²

One way to analyze the many constitutional amendments passed by parliament and signed by Kuchma on December 8, 2004, is to consider what changes they

brought to the relationships between parliament, cabinet, and presidency and how they affected the inner dynamics of these institutional pillars. Such an analysis reveals that parliament was the main beneficiary of the constitutional reform. It obtained greater control over cabinet appointments and over the appointment and dismissal of the heads of other governmental agencies; it was given the exclusive right to dismiss the cabinet; its term in office was extended from four to five years; and the speaker of parliament was designated to assume the duties of the president should the incumbent leave office before the end of his term. Internally, the constitutional changes are likely to lead to a shift of power from individual deputies to party leaders, thanks to the introduction of the imperative mandate and the proportional electoral system. The latter clause, which is not a part of the constitution itself but an element in the transitional provisions intended to guarantee that the 2006 parliamentary elections are conducted according to the principle of proportional representation, could have an important emancipatory effect on the Ukrainian party system.

Constitutional reform also gave more authority to the cabinet. It is now more independent of the president in respect to its continuation in office and its control over ministries and central government agencies. It has the authority to create, reorganize, or eliminate government bodies, and to appoint and dismiss the heads of government agencies who are not members of the cabinet. The expansion of cabinet power came at the expense of the presidency. Nonetheless, the president still has several instruments with which to influence the executive branch. In addition to decree powers, the president can appoint and dismiss the heads of local state administrations. The president also now has more control over parliament's tenure, which is somewhat paradoxical given the numerous and futile attempts by Kuchma to acquire such power in the past.

A closer look at the provisions of the December 2004 constitutional reform raises some doubts about whether it will strengthen democracy and improve governance in Ukraine. One major set of problems relates to the functioning of parliament under the new arrangement. The imperative mandate provision has been extensively criticized for making the functioning of parliamentary factions unnecessarily stilted, undermining parties' internal democracy, and giving too much power to party leaders. The amendments also introduce the concept of a coalition of parliamentary factions that must include the majority of deputies in order to initiate the process of cabinet formation. The authors of the constitutional amendments seem to have been unaware that in many

consolidated democracies a minority cabinet is often a solution for lack of agreement on the issue of a parliamentary majority. By stipulating the need to form a coalition before addressing the issue of government formation, the drafters unnecessarily complicated the process of cabinet formation, and any complication or ambiguity in this area can be exploited by the president, who now has the right to dissolve parliament if it fails to produce a majority coalition in one month's time.

Another set of issues relates to the dual subordination of the executive bodies. The existence of parallel chains of command impedes effective governance and can lead to intra-executive confrontation. While the constitution's drafters addressed most of the problems in this respect, they did not deal with some of them. Although the cabinet assumes full responsibility for the functioning of the executive government, it is still the president who makes the final decisions about appointing and dismissing the heads of regional state administrations. At the cabinet level, the president nominates the ministers of foreign affairs and defense, while the other ministers are nominated by the prime minister.

Analysts also highlight a series of issues that constitutional reform has not solved or has introduced anew, such as extended powers of the procuracy, easily amendable status of parliamentary rules of procedure, and a lack of institutional safeguards against the potential excesses of executive government.¹³ The existence of these problems and contradictions can be attributed, to a significant extent, to the way Kuchma and his supporters forced passage of the draft constitutional document, which did not pass sufficient expert examination and failed to win the necessary two-thirds' majority support in the preliminary rounds of constitutional negotiations, during the dramatic days of the Orange Revolution.

Using Presidential Powers

The foregoing summary of constitutional politics and presidential strategy during each stage of constitution building offers some insight into how Kuchma used his constitutional powers. The analysis reveals his extensive reliance on legislative initiative and veto power, both in constitutional matters and in other areas of institution building. It also indicates his willingness to venture into areas where his constitutional responsibilities were either gray or not prescribed at all (such as choosing to freely interpret his referenda powers or withholding his signature on newly passed laws). Finally, citing some of the recurring accusations in the Ukrainian media, the analysis castigates his use of un-

constitutional and illegal practices (such as vote-buying in parliament or the use of law-enforcement agencies to intimidate deputies) to achieve his political goals.

As other scholars have forcefully argued, these informal practices were not simply imperfections of Kuchma's rule. They were part of a coherent method designed and implemented by the president in order to achieve his goals across a broad spectrum of issues. Constitutional politics was only one such issue. Paul D'Anieri, for example, describes a set of informal techniques that in his view were essential ingredients of Kuchma's governing style: selective law enforcement and arbitrary administration of regulations, partisan control of media and the election process, politicization of public sector employment, and abuse of government control of the economy.¹⁴

The second part of this article provides an overview of Kuchma's use of one of the most powerful official instruments granted him by the constitution: the power to issue decrees. The overview is essential for a comprehensive picture of the uses and abuses of presidential power under Kuchma. The analysis starts with a short introduction to the general dynamics of presidential decrees and then proceeds to a discussion of the impact of presidential decree-making activity in specific policy areas.

Throughout his presidency, Kuchma issued decrees across a very wide range of policy areas. His power to issue decrees came not only from the 1996 constitution but also from various interim constitutional documents.¹⁵ Kuchma's extensive use of his decree powers derived partly from the fact that parliament, because of its fragmentation and lack of factional coordination, had effectively, although not willingly, delegated to him the power to intervene in a range of policy areas. His use of decrees was safeguarded by his use of the veto to stop new laws that would have curtailed his powers and thus limited decree-issuing capability. Kuchma repeatedly vetoed efforts to clarify and delineate the responsibilities of different institutional actors, such as the already-mentioned draft law on the cabinet.

For all of these reasons, the president was able to dominate the political and policy-making processes by issuing decrees.

As Figure 1 indicates, Kuchma made much more use of the presidential powers than his predecessor, Leonid Kravchuk. Throughout his presidency, Kuchma issued, on average, more than 1,200 decrees per year. His presidential decrees dealt with many different types of issues. He used decrees to introduce new policies, appoint officials, award medals, and issue secret orders. Policy

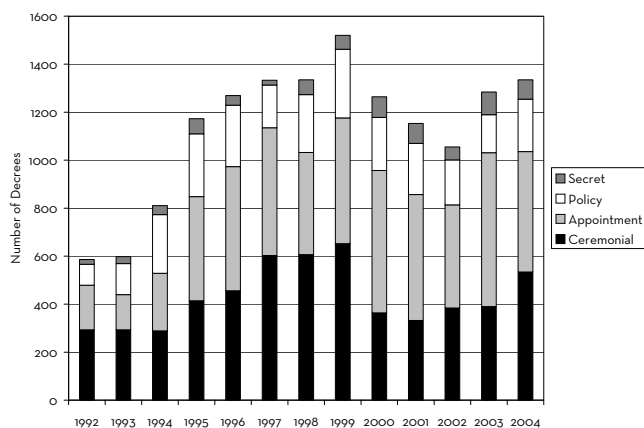


Figure 1. Presidential Decrees in Ukraine, 1992-2004

decrees were one of his most effective tools. As Figure 1 shows, the number of policy decrees issued by Kuchma was relatively stable throughout his presidency, which contrasts with the decline in the issuance of policy decrees in Russia.

Policy Decrees

Many of Kuchma's presidential decrees were concerned with policy. These can be broadly categorized into three general areas: polity, economy, and society. In each area, the president used decrees for purposes that ranged from setting new general policies (normative decrees) to instructing civil servants on the implementation of legal norms. However, only few of the policy-related decrees in each substantive area can be described as mere instructions—that type of presidential decision was usually formalized in a different category of documents, presidential executive orders, or directives.¹⁶

Polity. The largest number of policy-related decrees concerned the political infrastructure: creating government institutions and agencies; regulating activities and setting policy goals for the civil service, police, and military; implementation of citizenship rights and democratic freedoms. Decrees related to government and administration were especially frequent, since the constitution gave the president the prerogative to establish, reorganize, and liquidate central government agencies. The constitution specified that the president was to make these changes based on submissions from the prime minister, but since the president had the ultimate say on the appointment and dismissal of the prime minister, the prime minister often had only a nominal voice in

these matters. As a result, some major elements of the overall structure of central government, as well as norms and procedures regulating the internal functioning of many central government agencies, bear the imprint of Kuchma's political, office-related, and even personal preferences.

The results of presidential activity in this area were not unambiguous if measured by the degree to which a modern, functional, and efficient system of government institutions was established by the end of Kuchma's presidency. Although there were some achievements, in comparison with Kravchuk's presidency, in terms of dismantling Soviet-style institutions and creating the foundations for a modern system of governance, progress was partial, extremely slow, and often reversible.¹⁷ The degree of progress was complicated not only by Soviet institutional legacies but also by idiosyncratic developments during Kuchma's decade, such as his policy of strengthening the role of the presidential administration in the decision-making process, which effectively led to the establishment of a parallel government in Ukraine.

Economy. Kuchma actively used his decree powers to intervene on economic matters. This was especially the case before July 1999, when his special powers to issue decrees on economic issues not regulated by law expired, in accordance with the transitional provisions of the 1996 constitution. In the months immediately before the expiration of this power, Kuchma churned out a good many economic decrees, and in consequence the year 1999 saw a total of 112 economic decrees, the greatest annual output of such decrees issued by a Ukrainian president since 1991. These decrees sought to launch policies aimed at creating conditions for developing small business, attracting foreign investment, generating support for certain sectors of the economy, and promoting a host of other measures to foster economic growth. As with his earlier decrees in the economic sector, however, many questions can be raised about implementation and enforcement.¹⁸

Kuchma's reliance on decrees to influence economic policy continued after July 1999, but the decrees were now styled as directives to the cabinet rather than direct initiatives setting the rules in different spheres of economic activity.¹⁹ The president also continued to intervene in the regulation of issues related to specific sectors and even individual economic enterprises. While many analysts tend to credit him with taking the necessary measures to overcome the economic turmoil of the early 1990s and for contributing to at least partial reforms throughout his term in office, they also question the ra-

tionality of his many economic interventions that tended to directly benefit rent-seeking groups and fostered an environment of crony capitalism.²⁰

Society. The results of Kuchma's decree-issuing activity in the social sector were also mixed. Kuchma used decrees to introduce some new social initiatives and to intervene in certain social policy areas that required immediate attention. For example, several comprehensive programs that targeted children's problems were introduced by presidential decrees. However, a very substantial proportion of his decrees in this area dealt with providing benefits for specific categories of government employees, a measure intended, among other things, to reassert presidential control over the bureaucracy and to boost his support, first of all, among law-enforcement agencies.

Kuchma followed a somewhat similar practice of selective intervention in the area of science and education. In addition to initiatives that the academic community perceived as needed and important, he also issued decrees that were criticized for their lack of academic justification and their obvious partisan bias. For example, in April 2004 the president signed a decree establishing a new university in the city of Sumy. The decree announced that the new university was to be established on the basis of the academically weakest of the three universities in the city, and that the other two universities were to merge with the new institution. The decision was widely seen as lacking rational justification and aimed at strengthening the president's political supporters in the city's higher-education establishment.²¹

Other Types of Presidential Decrees

Besides policy decrees, President Kuchma issued several other types of decrees: appointment, secret, and ceremonial. Appointment decrees became his major instrument for consolidating control over the state apparatus. Kuchma's quest for ever-increasing power was manifested in his use of appointment powers. As Figure 2a illustrates, the share of appointment decrees in total decree output grew substantially, especially during his second term. Figure 2b indicates that Kuchma issued, on average, more than 400 appointment decrees per year (including both appointments and dismissals).

This becomes even more impressive when compared with the number of appointment decrees issued by the president of Russia. As Figure 2b reveals, the Ukrainian president consistently issued more decrees than his Russian counterpart, although the latter has a similar



Figure 2a. Distribution of Decree Output in Ukraine, 1992-2004

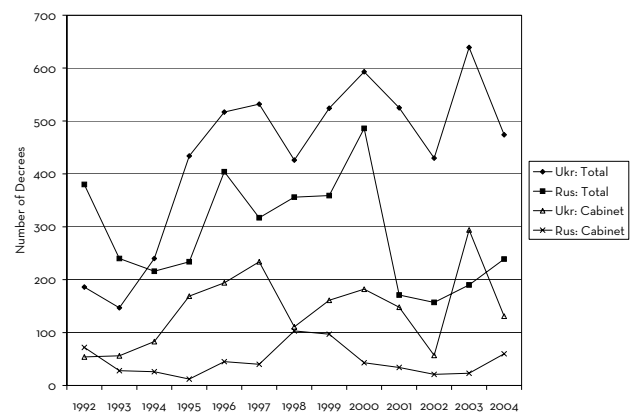


Figure 2b. Appointment Decrees in Ukraine and Russia, 1992-2004

set of constitutional appointment powers and presides over a state apparatus that is much bigger, in absolute terms, than the Ukrainian one. The main reason for the difference comes from the fact that Kuchma had managed to appropriate many more appointment powers than the constitution initially granted to him. He usurped the power to appoint deputy heads of central government agencies despite numerous protests inside and outside parliament.²² Overall, appointment decrees were widely perceived as a tool used by Kuchma to create and reinforce an extensive base of personally loyal bureaucrats rather than as an instrument to promote and rotate a merit-based civil-service elite.

The format of "not for publication," or so-called secret decrees, was initially designed to protect sensitive information related to secret state matters. Kuchma issued, on average, fewer than eighty secret decrees per year. As Figure 1 indicates, there was a distinct upward trend in the issuance of unpublished decrees during Kuchma's second term. Information on possible abuses

of power in issuing secret decrees began to appear during Kuchma's final years in office. These allegations became more frequent at the end of his term. Officials of the new Yushchenko government claim there is evidence that Kuchma used secret decrees to issue, among other things, directives on privatization matters.²³

Equally controversial was Kuchma's issuance of so-called ceremonial decrees to commemorate important events and to award medals, honorary titles, and pardons. Almost 500 such decrees were issued, on average, during every year of his presidency. The volume and pace were especially high in his last few months. In less than three months after October 31, 2004, the date of the presidential election that marked the end of his second five-year term, Kuchma awarded government medals and titles to more than 500 individuals.²⁴

The proliferation of ceremonial decrees led to a rapid devaluation of government awards and honorary titles, which were often perceived as rewards to political allies and personal cronies. Recipients of awards and the public at large became skeptical about government-granted distinctions of service and excellence, and this further contributed to the deterioration of the moral climate and trust in government institutions during the Kuchma presidency. Societal resentment manifested itself in initiatives like "Academic Virtue," which harshly criticized Kuchma's approach in this area.²⁵

Conclusion

The constitutional politics of the Kuchma era involved constant challenges and attempts to renegotiate the basic set of constitutional rules that guided the political process in a newly established polity. Kuchma played an important and constructive role in the early stage of the constitution-making process. The passage of the 1996 constitution, a important milestone in the building of the independent Ukrainian state, was made possible, to a significant extent, by his skillful, if somewhat Machiavellian, efforts to force a compromise on a highly polarized and fragmented political elite. The difficulties of the task—the adoption of the constitution—in the Ukrainian context should not be underestimated.

Living by the rules of the constitution was not, however, something that preoccupied the president. To the contrary, Kuchma consciously and systematically blocked many attempts to adopt laws intended to elaborate and specify constitutional provisions. Accumulating maximum personal power was, to the detriment of the country at large, one of the major motivations behind his rule. This striving for ultimate power in the

institutional realm was manifested in his attempts to renegotiate the constitutional contract and acquire even more institutional power. When these efforts failed and the end of his presidency began to approach, Kuchma launched a radically new constitutional initiative and, once again, became instrumental in forcing a constitutional change upon an elite that was bitterly divided during the course of the Orange Revolution. The promise of this change is the possibility of moving the Ukrainian political system in the direction of a more European-type regime by shifting many presidential powers to the prime minister. Irrespective of his motives, this outcome does him credit. It does not, however, outweigh the negative impact of Kuchma's presidency on the evolution of respect for constitutionalism and the rule of law.

As president, Kuchma used his powers in a manner that raised many questions about his commitment to the principles of democratic governance and rule of law. On many occasions, Kuchma did not hesitate to stretch the limits of his authority and overstep the boundaries of his constitutional prerogatives. The political scandals and allegations surrounding his presidency suggest that he may even face criminal charges in the near future. At the same time, Kuchma should be given credit for using his presidential powers to launch some economic and state reforms in the years following the Kravchuk presidency, which were marred by economic turmoil and a lack of progress in state-restructuring efforts.

These reforms, however, were partial and inconsistent, not only because of the resistance of the post-Soviet state bureaucracy and powerful economic interests, but also because of the prevailing political and economic practices of the Kuchma period. These practices included the politicization of state (including the judicial system), corruption, nepotism, and rent seeking. To a very significant extent, the dominance of these practices can be attributed to the ways Kuchma chose to exercise his presidential powers. The interpretation and application of these powers were seldom constrained by the principles of the rule of law.

Constitutional politics and the evolution of the constitutional framework have been important topics in post-communist Ukraine. Two distinct discourses have dominated the discussion of these topics. One is related to the great symbolic meaning of the constitution in light of the long quest of the Ukrainian people for independence and sovereignty. The other is cast in more instrumental terms, with a focus on finding optimal ways to distribute power and authority among the different institutions of government. Kuchma's presidency serves

as a powerful reminder not to neglect another meaning of constitutionalism—as a device to limit potential abuse by power-holders.

Notes

1. For a detailed discussion of the Soviet constitutional framework and the changes to the 1978 constitution of the Ukrainian SSR during Kravchuk's presidency, see Kataryna Wolczuk, *The Moulding of Ukraine: The Constitutional Politics of State Formation* (Budapest: Central European University Press, 2001); Olexiy Haran, Volodymyr Kulyk, and Oleksandr Maiboroda, *Stanovlennia Vladnyh Struktur v Ukraini* (Development of Power Structures in Ukraine) (Kyiv: Den, 1997).

2. Bohdan Harasymiw, *Post-Communist Ukraine* (Edmonton, AB: Canadian Institute of Ukrainian Studies Press, 2002).

3. For an excellent discussion of the main issues raised in the process of drafting a new constitution, see Wolczuk, *Moulding of Ukraine*. On issues related specifically to the separation of powers, see also Charles R. Wise and Trevor L. Brown, "The Separation of Powers in Ukraine," *Communist and Post-Communist Studies* 32, no. 1 (January 1999): 23–44.

4. The decree and veto provisions gave the president great power in legislative matters. There were only two significant restrictions on his decree-making authority: (1) economic decrees took effect for only three years, and (2) decrees could not violate existing laws. The presidential veto could only be overridden by a two-thirds vote in parliament.

5. See Oleh Protsyk, "Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet in Ukraine," *Europe-Asia Studies* 55, no. 7 (November 2003): 1077–95.

6. For a discussion of the causes and consequences of intra-executive competition in Ukraine, see Oleh Protsyk, "Ruling with Decrees: Presidential Decree Making in Russia and Ukraine," *Europe Asia Studies* 56, no. 5 (July 2004): 637–60.

7. For a discussion of the constitutional referendum and implementation campaigns, see the articles by Serhiy Rakhmanin and Oleksandr Yurchuk in various issues of the weekly *Dzerkalo tyzhnia* (January/November 2000).

8. There is a substantial literature on the institutional factors, ranging from parliamentary procedural rules to electoral laws, that constitute the most immediate causes of the persistent fragmentation in parliament. See Sarah Birch, *Elections and Democratization in Ukraine* (Basingstoke, UK: Macmillan, 2000); Paul D'Anieri, "Institutional Design and the Ineffectiveness of Ukrainian and Russian Parliaments" (University of Kansas, 2000); Erik S. Heron, "Causes and Consequences of Fluid Faction Membership in Ukraine," *Europe-Asia Studies* 54, no. 4 (June 2002): 625–40; Oleh Protsyk and Andrew Wilson, "Centre Politics in Russia and Ukraine: Patronage, Power, and Virtuality," *Party Politics* 9, no. 6 (November 2003): 703–29; Sarah Whitmore, "Faction Institutionalization and Parliamentary Development in Ukraine," *Journal of Communist Studies and Transition Politics* 19, no. 4 (December 2003): 41–64.

9. Wolczuk, *Moulding of Ukraine*

10. To date, there has been little systematic research on the use of the veto by the Ukrainian president. One exception is Vladimir A. Pigenko, "The Power of Veto: Some Observations on Institutional Politics in Ukraine" (Indiana University, 2000).

11. For a discussion of the early activity of the Constitutional Court, see Trevor L. Brown and Charles R. Wise, "Constitutional Courts and Legislative-Executive Relations: The Case of Ukraine," *Political Science Quarterly* 119, no. 1 (January 2004): 143–69; Kataryna Wolczuk, "The Constitutional Court of Ukraine: The Politics of Survival," *Law and Philosophy Library*, no. 62 (2002): 327–48; Wolczuk, *Moulding of Ukraine*; Bohdan Futey, "Comments on the Law on the Constitutional Court of Ukraine," *East European Constitutional Review* 6, no. 2/3 (spring/summer 1997). For criticism of the alleged partisanship of the Court's later decisions, see Bohdan Futey, "Comments on the Recent Attempts to Amend the Constitution of Ukraine," press release, January 9, 2004, available at www.brama.com/news/press/2004/01/040109judgefutey_ukraineconstitution.html; Paul D'Anieri, "Leonid Kuchma and the Personalization of the Ukrainian Presidency," *Problems of Post-Communism* 50, no. 5 (September/October 2003): 58–65.

12. See, for example, Taras Kuzio, "Is Kuchma Genuine in His Political Reforms?" *RFE/RL Poland, Belarus, and Ukraine Report* (September 3, 2002).

13. For a detailed analysis of the December 2004 constitutional amendments, see Ihor Koliushko and Viktor Tymoshyk, "A vy chytali proyekt 4180? Krytychna otsinka politychnoi reformy" (Have You Read Bill 4180? A Critical Assessment of Ukrainian Political Reform), *Ukrayinska pravda* (December 15, 2004).

14. See D'Anieri, "Leonid Kuchma"; Mykola Riabchuk, "A Perilous Way to Freedom: The Independent Mass Media in the Blackmail State," *Journal of Ukrainian Studies* 26, no. 1/2 (summer/winter 2001): 93–133; Keith A. Darden, "Blackmail as a Tool of State Domination: Ukraine Under Kuchma," *East European Constitutional Review* 10, no. 2/3 (spring/summer 2001): 67–71.

15. See Wolczuk, *Moulding of Ukraine*, for a discussion of the legal norms regulating presidential decree-making activity prior to the adoption of the 1996 constitution.

16. See Protsyk, "Ruling with Decrees," for a discussion of conceptualization and classification of details of presidential decree-making activity.

17. See Harasymiw, *Post-Communist Ukraine*, and Paul D'Anieri, Robert Kravchuk, and Taras Kuzio, eds., *State and Institution Building in Ukraine* (New York: St. Martin's Press: 1999), for a detailed discussion of state reforms.

18. The enforcement of presidential decrees is obviously an important issue for any study that attempts to make inferences from the patterns of presidential decree-making. The seriousness of the potential bias in overestimating the impact of presidential interventions, however, would depend on the issue area. For example, implementation and enforcement problems are relatively minor in examinations of presidential decrees that create, eliminate, or reorganize government agencies. Such decrees entail very specific and concrete actions that can be easily monitored by the presidential office and as a result are usually promptly executed. This is, of course, not the case with many decrees that try to set some new long-term economic policies.

19. See, for example, Decree No. 276, "On Immediate Measures for Realization of the Address of President of Ukraine to Verkhovna Rada of Ukraine 'Ukraine: Strategy of Economic and Social Development for the Period of 2000–2004,'" February 23, 2000.

20. For a discussion of some progress in economic reforms in comparison with Kravchuk's presidency, see, for example, Jeffrey Sachs and Aleksandr Pivovarsky, "Ukraine's Painful Economic Transition," *ACE: Analysis of Current Events* (August 1997). For a discussion of some examples of specific presidential decrees benefiting special interests, see Pavlo Havrysh, "Naftohazovi shemy presydena" (The President's Natural Gas Scheme), *Ukrayinska pravda* (March 30, 2005).

21. Decree No. 453, "On Establishing Sumy National University" (April 20, 2004). For details of the conflict that followed the issuance of the decree and the impact of the conflict on the Orange Revolution, see the Institute of Mass Media Information's coverage of the events at <http://imi.org.ua/?read=211:2/>.

22. Koliushko and Tymoshchuk, "A vy chytaly."

23. Deputy Valentyna Semeniuk's statement at the National Press Club of Reforms on February 11, 2004 (information about the statement was accessed at www.glavred.com). See also Yevhen Zakharov, "Proekt Navzdohinnoi Dekuchmizatsii" (Project of De-Kuchmaization), *Krytyka*, nos. 1/2 (2005).

24. For names of the best-known personalities on the award list, see the editorial "Pid zavisu svoho pravlinnia Kuchma rozdav 500 nahorod" (Kuchma Handed Out 500 Awards at the End of His Rule), *Ukrayinska pravda* (January 21, 2005).

25. See details on the initiative "Academichna Chesnota" (Academic Virtue) at <http://maidan.org.ua/static/mai/1104774694.html> (January 3, 2005).

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