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This chapter explores efforts in Ukraine to create a constitutional system that accommodates the country's stark regional differences. The Ukrainian case highlights the fact that, even in a context of deep cross-regional differences, regional demands for autonomy are not necessarily enduring but may fluctuate quite dramatically over short periods of time depending on the political situation in the center. Demands by territorially concentrated groups for constitutional accommodation varied significantly from the breakup of the USSR in 1991 until 2015. With the partial exception of Crimea, central actors alleviated demands for decentralization and federalism by giving key regional interests and identities a stake in central power. By the mid 1990s, a powerful coalition for centralization – sometimes referred to as the “pact with the devil” – emerged between national democrats seeking state support for Ukrainian language and national symbols on the one side; and eastern economic interests on the other seeking access to rents and administrative mechanisms for maintaining power. The collapse of this arrangement from 2010 to 2014 contributed to the onset of violent conflict.

Background:

While divisions in Ukraine have sometimes been described in ethnic terms, they primarily reflect broader, historically grounded and regionally concentrated disagreements over Ukraine's place in the world. This divide can best be described as one between “Ukrainophile” and “Russophile” visions of Ukraine. Ukrainophiles have core preferences for Ukrainian language, culture, history, and symbols and support alliances with Europe rather than Russia. Russophiles generally support Ukrainian independence but view Ukraine as part of Russia's “civilizational space,” speak Russian, and support geopolitical alliances with Russia rather than the United States or Europe.¹

Ukraine: West, East and Center

The relative strength of Russophile and Ukrainophile views has varied enormously in different regions. A patchwork of areas with quite distinct histories, Ukraine can roughly be divided into three regions – west, center, and east – that reflect historical and ethnolinguistic differences.²

First, western Ukraine, populated by Ukrainian speaking ethnic Ukrainians, is mostly dominated by provinces that only became part of Russia or the USSR after World War II. In particular, Galicia was under Austro-Hungarian rule prior to WWI, within Poland in the interwar period and was only incorporated into the Soviet Union in 1939. Galicia is the center of modern Ukrainian nationalism.³ Austro-Hungarian authorities in the 19th century actively promoted Ukraine as a separate nationality as part of an effort to divide the local population from the neighbouring Poles on one side and Russians on the other. Most critically, the Austrian government actively promoted the expansion of mass schooling in the Ukrainian language, which as a result became “the working language of many and diverse social, cultural, economic, and political associations.”⁴ Following its incorporation into the USSR after WWII, anti-Soviet insurgents operated in western Ukraine through the early 1950s. This region was a particularly potent source of anti-Soviet dissidents during the Soviet period.

¹ Oleh Protsyk, ‘Majority-Minority Relations in the Ukraine’ (2008) 1 *Journal on Ethnopolitics and Minority Issues in Europe* 1, 6.

² Dominique Arel and Andrew Wilson, ‘The Ukrainian Parliamentary Elections’ (1994) 3 (26) *Radio Free Europe/Radio Liberty Research Report* 1, 6; Valeriy Khmelko and Andrew Wilson, ‘Regionalism and Ethnic and Linguistic Cleavages in Ukraine’ in Taras Kuzio (ed), *Contemporary Ukraine: Dynamics of Post-Soviet Transformation* (ME Sharpe 1998).

³ Roman Szporluk, *Ukraine, a Brief History* (Ukrainian Festival Committee 1979) 78, 88; Keith Darden, *Resisting Occupation in Eurasia* (Cambridge University Press forthcoming).

⁴ Szporluk (n 3) 78, 88; Darden (n 3) 101-02.

By contrast, eastern/southern Ukraine, which became part of the Russian empire before the 19th century, has been the region most integrated into Russia. It is dominated by Russophones, and exhibited a relatively underdeveloped sense of Ukrainian identity. Within eastern Ukraine, the Donbas region (Luhansk and Donetsk) has possessed a strong regional identity. An important coal producing region, Donbas became a major industrial center in the late 19th and early 20th centuries and attracted immigrants from throughout the Russian empire and later Soviet Union. During the Soviet era, leaders from eastern Ukraine (including Leonid Brezhnev (Dnipropetrovsk) and Nikita Khrushchev (Donbas)) were over-represented in top-level Soviet leadership positions.

At the end of the Soviet era, the region witnessed major strike activity by miners that threatened Soviet power. After the collapse of the Soviet Union, Donbas was host to a highly profitable metals industry and was beset by violent conflicts among competing mafia groups. In addition to major steel and coal production in Donbas, Dnipropetrovsk in the east was the site of the USSR's largest missile factory – *Yuzhmash* – whose director, Leonid Kuchma, became President in 1994.

Next, Crimea in the south stood out as the only region with a Russian ethnic majority and the region most recently incorporated into Ukraine. In 1954, Khrushchev incorporated Crimea into the Ukrainian republic as part of an effort by the recently selected General Secretary of the Party to solidify his support in the Central Committee.⁵ Within Crimea, the Crimean Tatars, constituting about 10 percent of the population, represented a vocal and relatively well organized minority. Native to the region, the Tatars suffered deportation by Stalin for alleged collaboration with the Nazis during WWII. In the late 1980s and 1990s, several hundred thousand Tatars returned to Crimea. Tatars, represented by a council (*Mejlis*), have been strong supporters of the Ukrainian government, which has been seen as an ally against Russian aggression.

Finally, central Ukraine lacked the history of intense nationalism found in much of western Ukraine but consisted of a greater number of Ukrainophones than in eastern and southern Ukraine. Effectively, it functioned as a “swing” region in the 1990s and 2000s. In 1991 and 1994, it voted overwhelmingly for the more Russophile candidate. However, by the early 2000s, support in central Ukraine had shifted away from Russia. In 2004 and 2010, over sixty percent of central Ukrainians voted for Ukrainophile candidates.

Divisions between east and west Ukraine have reflected distinct attitudinal communities. While surveys have suggested relatively equal levels of support for democracy, there are striking differences in foreign policy attitudes – including support for NATO, the EU, and Russia.⁶ Polarization between Russophile and Ukrainophile attitudes was “an enduring fact of Ukrainian political life” in the post-Soviet era.⁷

Overall, the central regional tensions in Ukraine have not reflected typical conflicts between minorities on the one side and a dominant majority on the other. Certainly, traditionally defined territorially concentrated minorities existed in Ukraine – Tatars in Crimea, Hungarians in Zakarpatia, Romanians in Bukovyna, and Bulgarians and Gagauzians in Odesa. However, with the partial exception of the

⁵ Mark Kramer, ‘Why Did Russia Give Away Crimea Sixty Years Ago?’ (*Wilson Center*, 19 March 2014) <www.wilsoncenter.org/publication/why-did-russia-give-away-crimea-sixty-years-ago2014>.

⁶ Pippa Norris. 2014. “Ukrainians Are Not That Divided in Their Views of Democracy.” *Washingtonpost.com*. 3 March. See also Ivan Katchanovski, *Cleft Countries: Regional Political Divisions and Cultures in Post-Soviet Ukraine and Moldova* (Ibidem-Verlag 2006) 113, 114.

⁷ Dominique Arel and Valeriy Khmelko, ‘The Russian Factor and Territorial Polarization in Ukraine’ (1996) 9 (1–2) *The Harriman Review* 81, 90.

Tatars in Crimea, these groups were weakly mobilized and never presented a serious challenge to Ukrainian statehood.

At the same time, the Russian “minority” shared many characteristics of a dominant group in post-Soviet Ukraine. While ethnic Russians represented under 20 percent of the population,⁸ Russophile identity has been quite powerful. After 70 years of mostly pro Russian Soviet rule, Ukrainian language and culture in the 1990s and 2000s were on the defensive. Just over a third of the population spoke Ukrainian at home; a third spoke Russian and just under a third spoke both about equally.⁹ Culturally, Russian has been dominant. Outside of western Ukraine, Russian was spoken in large cities – including the capital Kyiv. Almost no movies were dubbed into Ukrainian and Ukrainian language publications were dwarfed by Russian language ones.¹⁰ Indeed, the Ukrainian language was widely perceived as requiring positive discrimination as a way of countering its perceived marginalization under Soviet rule.¹¹

Russophile strength also emerged from Russian government support, industrial production, and the fact that a plurality of the country— just under 50 percent – resided in the east. By contrast, just over 50 percent lived in central (30 percent) and western (20 percent) Ukraine. Critically, the relative distribution of power in the country meant that *both* Russophiles and Ukrainophiles (with the support of populations in central Ukraine) had a plausible chance at national power.

In turn, support for regional autonomy in Ukraine has fluctuated significantly depending on whether or not regional groups could expect to gain national power. In the nineteenth century, nationalist Ukrainian intellectuals supported federalism as a means of promoting Ukrainian culture within the Russian empire, which Ukrainians could never expect to dominate.¹² In the late Soviet period, politicians in Galicia advocated Galician autonomy in order to protect the region from a pro Communist majority that dominated the rest of Ukraine – but quickly abandoned autonomy as “anti-state” once Ukraine became independent.¹³

In the post-Soviet period, Ukrainophiles have had the greatest stake in Ukrainian unity – and therefore have consistently supported unitary structures. By contrast, the east has often been on the defensive. As we see below, the evolution of support for federalism in the post-Soviet era was a direct reflection of the east's perceived stake in national power in Ukraine. In the early 1990s, insecurity, fostered by the sudden break with Russia and the first President's anti-Russian policies, created the basis for strong support for federalism and a brief experiment with decentralization. However, the rise to power of Leonid Kuchma, a former head of *Yuzhmash* missile factory in eastern Ukraine, created the basis for a powerful coalition for centralization rooted in a Faustian bargain between western Ukrainophiles and eastern economic interests – a bargain that lasted in various forms until 2010.

⁸ All figures here refer to the pre-2014 borders of Ukraine.

⁹ Protsyk (n 1) 24.

¹⁰ *ibid* 2-3.

¹¹ *ibid* 21-22.

¹² Katarzyna Wolczuk, *The Moulding of Ukraine: The Constitutional Politics of State Formation* (Central European University Press 2001) 68.

¹³ *ibid* 72.

The Period of Constitutional Engagement: 1991-1996

It can be said that the entire post-Soviet period has been one large constitutional moment. Outside of a couple of years after the passage of the 1996 constitution, major political forces have contested and renegotiated core elements of the constitutional structure. In the early 1990s (1991-1996), Ukraine operated under the old Soviet Ukrainian constitution that was amended over 220 times.¹⁴ In June 1996, politicians finally negotiated a new constitution that mostly remains in force today. However, since then, major efforts were undertaken to strengthen (2000-2002; 2004-2010) or weaken (2002-2004; 2014) Presidential power. In particular, a reduction of Presidential power was introduced in 2005, reversed in 2010 and re-introduced in 2014. At the same time, center-periphery relations have only been the subject of contestation for part of that time – 1991-1996 and after the 2014 crisis. This chapter focuses on these two periods.

From the beginning, the process of Ukraine's independence was a product of compromise between east and west. On the one hand, western Ukraine was a major site of anti-Soviet mobilization – and therefore an attractive Western ally at the start of the 1990s when Soviet rule had been heavily discredited by economic breakdown and political crisis. Western Ukraine became a “a hotbed of nationalist dissent” and “by far the most politicized region of Ukraine.”¹⁵ At the same time, the east hosted most of the population and the industrial wealth – without which an independent Ukraine was unimaginable.

Out of this distribution of forces, there emerged what might be thought of as the first Faustian bargain between Leonid Kravchuk, Ukraine's first President, on one side and western Ukrainian nationalists on the other. The Party Ideology Secretary in the late 1980s, Kravchuk was selected to take charge of the Ukrainian legislature in 1990. The Communist establishment, which had previously shown no interest in Ukrainian independence, selected Kravchuk because he was one of the few members of the political elite who dared debating leaders of the pro-Ukrainian Rukh movement that had emerged in 1989.¹⁶ But instead of combating demands for independence, Kravchuk quickly co-opted the cause of Ukrainian independence. He challenged efforts by Gorbachev to negotiate a new union treaty in 1990 and early 1991. In a referendum on December 8, 1991, Ukrainians voted overwhelmingly for independence. In a Presidential election held on the same day, Kravchuk won in the first round – capturing a majority in eastern Ukraine and a plurality of most western oblasts.

Yet, Kravchuk was unable to hold onto the support of eastern industrial interests for long. Economic collapse, Ukraine's dysfunctional state and fears of Ukrainianization fostered increasing demands for decentralization in the east and south in the early 1990s. First, rather than facilitating economic growth as many had hoped, the sudden breakup of the Soviet Union contributed to a severe economic downturn and hyperinflation in Ukraine. This crisis severely tested support for independence among forces in the east that had backed sovereignty as a means of promoting economic growth.¹⁷

Simultaneously, the sudden dissolution of Soviet power in mid-1991 deprived Ukraine of a functional center – a fact that encouraged many in the east to seek greater autonomy. Many important state

¹⁴ Ibid 128.

¹⁵ Mark R Beissinger, *Nationalist Mobilization and the Collapse of the Soviet State* (Cambridge University Press 2002) 192; David R Marples, 'Elections in Ukraine: An Analysis' *Ukrainian Weekly* (Kiev, 4 March 1990) 15.

¹⁶ *Foreign Broadcast Information Service Daily Report, USSR* 6 December 1991 p. 74.

¹⁷ Andrew Wilson, *Ukrainian Nationalism in the 1990s: A Minority Faith* (Cambridge University Press 1997).

institutions – including the army, security services, and key economic ministries – had been controlled directly by Moscow prior to the Soviet collapse. Further, the Communist Party, the main means of central control in the Soviet period, disappeared without a trace in 1991. New central mechanisms of control had yet to be institutionalized. In the early 1990s, “the juxtaposition of the elements of the system of Soviets with Presidentialism meant that regional leaders could decide on their own allegiance: either to the President, the Prime Minister, or the chairman of parliament.”¹⁸ Regional presidential prefects, established in March 1992 to increase central executive power,¹⁹ simply added to the confusion at the local level about who was in charge.²⁰

In this context, many – including Volodymyr Hryniiov, the deputy head of parliament - thought the best solution was to strengthen local control as a way of avoiding the dysfunction in Kyiv.²¹ Hryniiov argued that federalism would stimulate bottom-up reforms and innovation and that unitarism would only hasten centrifugal tendencies in Ukraine.

Simultaneously, President Kravchuk's embrace of Ukrainian nationalism fostered fears of Ukrainianization in the east. The President encouraged the use of the Ukrainian language in the media, education and government and limited cooperation with Russia.²² Partly as a result, trade with Russia significantly declined.²³ Kravchuk's efforts to ensure that central state television broadcast in Ukrainian had the unintended consequence of alienating many in the east.

In response, heads of heavy industries with previously strong ties to Russia – coal mining and steel – became vocal proponents of decentralization and federalism. They supported groups such as the Interregional Block for Reforms (IBR), headed by Hryniiov, which claimed to represent eastern and southern Ukraine. The most important proponent of decentralization became Leonid Kuchma, the former head of the *Yuzhmash* missile factory in Dnipropetrovsk. Supported by the IBR and a wide range of enterprise directors, Kuchma became Prime Minister of Ukraine in mid-1992.

Demands for decentralization abounded during this period – particularly in Donbas and Crimea, which both had strong ties to Russia.²⁴ First, Donbas became the most vocal region outside of Crimea in support of decentralization. While there was little support in the east for separation from Ukraine, many supported greater autonomy.²⁵ Donetsk and Luhansk councils voted in favour of regional autonomy in June 1993; while Luhansk voted that Russian should be the official state language alongside Ukrainian. During the March 1994 parliamentary elections, Luhansk and Donetsk held local referendums calling for full membership in the CIS, a federal structure for Ukraine, and the immediate introduction of Russian as an official language alongside Ukrainian in the Donbas region.²⁶ Most critically, in early 1993, coal miners, backed by regional leaders and enterprise heads, struck throughout the region demanding

¹⁸ Wolczuk, *The Moulding of Ukraine* (n 12) 139.

¹⁹ The prefects, appointed by the President, were given the right to annul decisions of local radas, see Wolczuk (n 14) 122.

²⁰ *Nezavisimost'* 22 June 1994: 5. (newspaper)

²¹ Wolczuk, *The Moulding of Ukraine* (n 12) 73.

²² Paul D'Anieri, *Economic Interdependence in Ukrainian-Russian Relations* (SUNY Press 1999) 139.

²³ *ibid* 112.

²⁴ Wolczuk, *The Moulding of Ukraine* (n 12) 70; Valentyna Romanova, 'Regionalist Origins of Centralisation in Ukraine' (2012) 20 (1) *Sfera Politicii* 54, 57.

²⁵ Jaroslaw Martyniuk, 'Ukrainian Independence and Territorial Integrity' Radio Free Europe/Radio Liberty Research Report (27 March 1992). According to surveys in September and October 1991, 6 percent of easterners and under 10 percent of Donetsk residents supported seceding to Russia.

²⁶ Wolczuk, *The Moulding of Ukraine* (n 12) 71.

regional autonomy, higher wages, and a referendum on early parliamentary and presidential elections. Partly in response, Efim Zvyahilsky, the mayor of Donetsk and the head of one of the largest mines in Donbas, was brought in as acting Prime Minister.

The early 1990s also witnessed powerful movements against the center in Crimea, the only region in Ukraine with a Russian ethnic majority. In early 1991 before the Soviet collapse, a referendum passed overwhelmingly in Crimea to make the region an autonomous republic directly subordinate to Moscow rather than Kyiv. After the collapse of the USSR in late 1991, however, the referendum was essentially ignored and Crimea became an autonomous republic within Ukraine. In May 1992, Crimean leaders passed the Constitution of the Republic of Crimea that proclaimed the territory to be a sovereign state that “enters the state of Ukraine and defines its relations with Ukraine on the basis of contract and agreements.”²⁷ The Ukrainian parliament immediately rejected this constitution and a compromise constitution was agreed upon in September 1992 that made Crimea a constituent part of Ukraine. Separatism reached its peak in 1994 with the election of a pro-Russian president Yurii Meshkov. Meshkov called for the boycott of Ukrainian parliamentary elections that year²⁸ and his “Russia Blok” won 54 of 98 seats in the regional assembly.²⁹ Meshkov changed Crimea to Moscow time.

These powerful forces for devolution ushered in a period of significant de facto regional decentralization. In 1993, the Ukrainian legislature abolished central control of regional executives instituted by Kravchuk and transferred control over these administrations to the local assemblies. In 1994, regional heads became directly elected. The leaders of regions combined responsibilities of local self-government and representatives of the central state. They could not be dismissed by the central government.³⁰ In June 1994, newly elected heads of oblast administrations gained “extensive” powers over their territories.³¹ 1994-1995 would end up being the period of greatest regional decentralization.

Then in 1994, Kuchma was elected as President on a platform supporting federalism and closer ties to Russia. Kuchma’s close advisor was Hryniov, a vocal proponent of federalism. Yet, the new President made a stunning shift in policy once in power – establishing a powerful coalition for centralization between eastern oligarchs and Ukrainophiles in western Ukraine. First, Kuchma preserved Ukraine’s western orientation – downgrading Ukraine’s membership in the CIS and seeking NATO membership.³² Kuchma’s rise to power in 1994 also represented a fundamental reorientation of eastern economic interests away from Russia and towards Ukraine. The rise of large financial-industrialists in Russia in the mid-1990s generated fear among many in Ukraine’s economic elite that Russians would use their greater access to wealth to grab valuable properties and out-compete Ukrainians in such vulnerable sectors as banking and finance.³³ As Andrew Wilson notes, the eastern industrial elite began “to realize the new Ukrainian state could make them very rich indeed.”³⁴

²⁷ Wolczuk, *The Moulding of Ukraine* (n 12) 71.

²⁸ Due to turnout requirements, this boycott resulted in 12 of 23 national parliamentary seats remaining vacant through 1998, see Gwendolyn Sasse, ‘The ‘New’ Ukraine: A State of Regions’ (2001) 11 (3) *Regional and Federal Studies* 69, 88.

²⁹ *ibid.*

³⁰ Romanova (n 24) 55-56.

³¹ Wolczuk, *The Moulding of Ukraine* (n 12) 70.

³² Dominique Arel, ‘Ukraine: The Muddle Way’ (1998) 97 (621) *Current History* 342, 344.

³³ Rosaria Puglisi, ‘Clashing Agendas? Economic Interests, Elite Coalitions and Prospects for Cooperation between Russia and Ukraine’ (2003) 55 (6) *Europe-Asia Studies* 827, 836.

³⁴ (Wilson 2000: 195)

Simultaneously, Kuchma rapidly abandoned support for federalism. Several factors seem to have encouraged this conversion. First, national democrats feared that decentralization would only heighten regional differences and “provide centrifugal forces with symbolic legitimacy and material resources.”³⁵ Decentralization was thought to be especially dangerous in a country “haunted by the spectre of centrifugal forces.”³⁶

At the same time, Kuchma's control over central institutions made it very easy for him to convince his supporters to abandon support for decentralization. Many oligarchs sought central state subsidies and access to the central state provided ample opportunities for enrichment.³⁷ With a clear stake in the central government, eastern interests had little reason to continue to press for decentralization. Simultaneously, centralization was considered essential for Kuchma to maintain national power.³⁸ By the late 1990s, Kuchma used regional appointments in order to promote a system of electoral corruption. The ability to bring in votes for the President and his allies would become an important criterion for advancement under Kuchma.

After his election, Kuchma took immediate steps to centralize state power: he issued decrees to restore Presidential control over regional administrations that had been handed over to regional councils, and subordinated elected heads of regional councils to the President. To allay concerns of regional leaders, he created an advisory (but largely powerless) Council of Regions consisting of heads of oblasts and the mayors of Kyiv and Sebastopol.

Kuchma also centralized control over Crimea. In response to separatist tendencies in Crimea, Kuchma pushed through a “law on the Autonomous Republic of Crimea” in March 1995 that abolished its presidency and placed executive authority directly under Kuchma's control.³⁹ The Crimean President Meshkov, facing divisions within his own ranks, was unable to fight back. From 1995 until June 1996, the government chipped away at Crimea's effective sovereignty but agreed to allow Crimea to retain the title “Autonomous republic,” a constitution and a regional assembly.⁴⁰ The Ukrainian President was given the power to appoint a powerful presidential representative and key ministers. The ministry of internal affairs and security forces were staffed entirely by Kyiv. The responsibilities of the Crimean legislature remained limited. However, Gwendolyn Sasse argues that the protracted negotiations themselves were a “vital mechanism in defusing conflict potential.”⁴¹ “The process itself, rather than the constitutional status, was the key to conflict prevention.”⁴² The government responded to tensions by repeatedly delaying decisions on controversial issues such as dual citizenship. While probably not part of a conscious strategy, these delays meant that the final negotiations took place “when the emotional dust had settled and the potential for conflict had by and large been resolved.”⁴³

³⁵ Wolczuk, *The Moulding of Ukraine* (n 12) 74.

³⁶ *ibid* 65.

³⁷ Wolczuk, *The Moulding of Ukraine* (n 12).

³⁸ Kimitaka Matsuzato, ‘All Kuchma's Men: The Reshuffling of Ukrainian Governors and the Presidential Election of 1999’ (2001) 42 (6) *Post-Soviet Geography and Economics* 416,

³⁹ Kataryna Wolczuk, ‘Catching Up with ‘Europe’? Constitutional Debates on the Territorial-Administrative Model in Independent Ukraine’ (2002) 12 (2) *Regional & Federal Studies* 65, 71.

⁴⁰ Sasse, ‘The ‘New’ Ukraine’ (n 28) 92-93.

⁴¹ *ibid* 91.

⁴² *ibid* 94.

⁴³ *ibid* 93.

After gaining power, Kuchma also set about passing a new constitution.⁴⁴ Until then, negotiations over the new constitution had taken place entirely within the confines of the legislature and had gone nowhere. In October 1994, Kuchma created a relatively inclusive new Constitutional Commission as a “state commission” combining representatives of both the executive and legislative branches. However, the Commission got bogged down in the highly contentious issue of how to describe the sovereign people and could not agree on procedures for passing the constitution.

Realizing that this commission was unlikely to achieve any results, Kuchma decided to push for a “stop gap” constitution that could be passed as a regular law with fewer votes in the legislature.⁴⁵ Initially Kuchma met with little success. To resolve the deadlock, Kuchma pushed through the creation of a special ad hoc commission in which each parliamentary faction was given one representative – a system that favored national democratic parties that were much smaller than the left wing factions. He succeeded in doing this by threatening to hold a referendum on the confidence in the President and Parliament. Given the unpopularity of the legislature, the head of parliament, Oleksandr Moroz, agreed.

Finally, a temporary “Constitutional Agreement” to replace the old Soviet constitution was passed with the support of six center-right parties and Moroz. After significant negotiation (and likely a fair amount of bribery), the agreement was voted on and signed by a majority of 240 deputies. The accord strengthened Presidential powers and subordinated provincial and rayon executive administrations directly under Presidential control. To allay the concerns of provincial heads, Kuchma promised to retain existing officials in their positions.⁴⁶ The agreement was set to expire after one year.

However, progress on passing a constitution remained slow. Kuchma at this point abandoned the Commission and instead relied on ad hoc expert commissions over which he had much greater control. In March 1996, he supported a “March draft” constitution that gave the President significant power and created a directly elected bicameral legislature consisting of an upper house in which Ukraine’s provinces would be given equal representation. Bicameralism was widely opposed – even by many pro Presidential groups – because it gave disproportionate representation to more lightly populated western provinces and because it was thought to undermine collective action and influence of the legislative branch. National democrats feared that an upper house would create a back door route to federalism. In this draft, local self-government was guaranteed in cities and villages. However, rayon and provincial administrations were made directly subordinate to President and Cabinet of Ministers. The March draft, which was widely opposed by parties across the political spectrum, went nowhere in the legislature.

Then, on June 26, Kuchma threatened that if a constitution was not passed, he would hold a popular referendum on the much-hated March draft. While such a referendum had no legal status (and indeed a similar constitutional referendum held in 2001 went nowhere), the prospect that the March draft might become law concentrated the minds of deputies. In a 23-hour session on the night of June 27-8, Moroz led a non-stop debate in which article after article were voted on by the legislature. With help from the Presidential administration (and bribery⁴⁷), a constitution was passed on the morning of June 28 with 315 of 450 votes.

⁴⁴ Unless otherwise noted, this description draws from Wolczuk, *The Moulding of Ukraine* (n 12).

⁴⁵ A simple majority rather than 2/3 majority.

⁴⁶ Matsuzato (n 38) 424.

⁴⁷ Yuri Lukanov, *Tretyi Prezident: Polytichnii portret Leonida Kuchmi*. Kyiv: Tak Spravi, 1996, i155-156).

The constitution was a formal articulation of the Faustian bargain that defined Ukrainian politics in its first decades. On the one hand, Ukrainophiles obtained ratification of Ukrainian national symbols and Ukrainian language as the sole official language of the country. On the other hand, eastern elites obtained effective control over the state apparatus to maintain power and secure rents. Seeking to use state power to promote Ukrainian language and culture, the national democrats strongly supported a unitary state structure. They viewed both parliament and decentralization as threats to Ukrainian statehood – parliament because it was dominated by the Russophile left in the 1990s and decentralization because it was seen to promote centrifugal forces.

Kuchma, on the other hand, did not care much about the national issue but cared deeply about creating a strong vertical of state power that would give him the administrative resources necessary to maintain power. Kuchma opposed the Communists who sought to undermine Presidential power. Thus to appease the right, Kuchma quickly adopted the rhetoric of statehood – firmly supporting Ukrainian national symbols, and anthem.

Within two short years then, Kuchma helped to kill elite support for federalism in Ukraine. In 1995-1996, he built a powerful coalition for centralization that brought national democrats interested in supporting Ukrainian statehood together with oligarchs interested in protection from powerful Russian economic interests, central state subsidies and the use of central administrative resources to maintain power. By the late 1990s, federalism had almost completely disappeared from political discourse.⁴⁸

Outcome

After the passage of the constitution, the Faustian pact evolved into different forms: a single pyramid compromise 1996-2004 characterized by strong Presidential power; and a double pyramid compromise 2004-2009 characterized by stronger parliamentary authority.⁴⁹ During the first period, increased Presidential power embedded in the 1996 constitution gave Kuchma enlarged capacity to promote electoral fraud. The centrally controlled tax administration, and other government agencies were systematically used to coerce businesspeople, politicians, and local officials into backing the regime during elections.⁵⁰ Simultaneously, regional officials were now held accountable for success in bringing in votes for the President and his allies. Officials who did not bring sufficient votes in Kuchma's 1999 reelection were let go.⁵¹ Indeed, the rise of Viktor Yanukovich, who was governor of Donetsk in the late 1990s, can be directly traced to his ability to mobilize support in Donetsk, which had previously been dominated by the Communists. After bringing disproportionate support for pro-Kuchma forces in the 2002 parliamentary election, Yanukovich was selected as Prime Minister and became Kuchma's chosen successor in 2004.

Simultaneously, Kuchma built a system of wealthy "oligarchs" who relied on Kuchma for access to rents. In exchange for support for Kuchma, oligarchs gained "privileged access to privatisation, budget subsidies, quotas and licences for the import and export of oil, gas, wheat, vodka and tobacco."⁵² For

⁴⁸ Sasse 'The 'New' Ukraine' (n 28) 82; Protsyk (n 1).

⁴⁹ These terms come from Henry Hale, *Patronal Politics: Eurasian Regime Dynamics in Comparative Perspective* (Cambridge University Press 2015).

⁵⁰ Keith Darden, 'Blackmail as a Tool of State Domination: Ukraine Under Kuchma' (2001) 10 *East European Constitutional Review* 67.

⁵¹ Matsuzato (n 38).

⁵² Puglisi 'Clashing Agendas?' (n 33) 837.

these figures, centralization offered greater access to resources – including massive subsidies from the state budget.⁵³

For a very long time, Ukrainophile forces were happy to support Kuchma because Kuchma consistently resisted Russian interference into Ukrainian domestic affairs. The President refused to join the Russian dominated Eurasian Customs Union and fought back efforts by Russians to take ownership over Ukrainian gas pipelines. Domestically, Kuchma supported the existing language law that made Ukrainian the sole official language of the country.

This arrangement, however, began to unravel in 2000 with the release of secretly recorded tapes of Kuchma that exposed massive corruption and seemed to suggest that Kuchma ordered the murder of the internet journalist, Georgi Gongadze. After the release of the tapes turned Kuchma into a Western pariah, Russia became Kuchma's virtually major ally. Then in 2002 Kuchma selected Viktor Yanukovich, the governor of Donetsk, to be Prime Minister and to run as the government's candidate in the 2004 Presidential election.⁵⁴ Yanukovich marked a striking break from Kuchma. He was closely associated with the Donetsk "clan" and stridently pro-Russian.

In the run-up to the election, the opposition coalesced around the candidacy of Viktor Yushchenko, Prime Minister from 1999 to 2001, who was highly regarded in the West. Yushchenko, whose popularity was bolstered by a surge in the Ukrainian economy during his tenure, was strongly supported in Western Ukraine. In the months before the election, polls consistently showed Yushchenko with a slight lead over Yanukovich. However, on election day on November 21, blatant fraud in Donetsk and several other provinces⁵⁵ resulted in a narrow official victory of Yanukovich.

In response to this fraud, protest – primarily by western and central Ukrainians exploded. Hundreds of thousands of protesters took to the streets for three weeks in the center of Kyiv.⁵⁶ Galicia, which made up about 10 percent of Ukraine's population, accounted for about 36 percent of all pro-Yushchenko protesters – more than double the share of protesters (14 percent) from the capital, Kyiv, where the main demonstrations took place.

Despite their powerful capacity to bring people to the streets, Ukrainophile forces demonstrated an acute awareness of the need to avoid alienating pro Russian forces in 2004. While Yushchenko's "Our Ukraine" coalition included several radical nationalists in its ranks, the movement strenuously avoided using nationalist symbols during the Orange Revolution.⁵⁷ Most critically (and in contrast to EuroMaidan) Yushchenko refrained from seizing power unilaterally in late 2004. While Yushchenko initially had himself sworn in as President a day after protests began in November 2004, pro Orange forces backed off for fear of sparking regional tensions. According to Taras Stetskiy, "fear of splitting

⁵³ Romanova (n 24) 58.

⁵⁴ While Kuchma faced a two-term limit in 2004, he engineered a court ruling allowing him to run for a third time. In the runup to the 2004 election he kept open the possibility that he would run – but ultimately chose not to because he was so unpopular that a victory would have come at enormous cost.

⁵⁵ For discussions of fraud, see Karatnycky (2005); Lucan Way, 'Kuchma's Failed Authoritarianism' (2005) 16 (2) *Journal of Democracy* 131.

⁵⁶ Lucan Way, *Pluralism by Default: Weak Autocrats and the Rise of Political Competition*. (Johns Hopkins University Press 2015) also Mark R. Beissinger 'The Semblance of Democratic Revolution: Coalitions in Ukraine's Orange Revolution' (2013) 107 (3) *American Political Science Review* 574, 581–582.

⁵⁷ Anton Shekhovtsov, 'The Creeping Resurgence of the Ukrainian Radical Right? The Case of the Freedom Party' (2011) 63 (2) *Europe-Asia Studies* 203, 211.

Ukraine” dissuaded activists from seizing power and encouraged them to negotiate a settlement with Kuchma forces.⁵⁸ Indeed, in late December Yanukovich attended a short-lived “All-Ukrainian Congress of Deputies” held in the Donetsk city of Severodonetsk. The congress, whose keynote speaker was Iuri Luzhkov, the Mayor of Moscow who supported Russian annexation of Crimea, called for a “federal South-Eastern republic based in Kharkiv.”⁵⁹ Yanukovich threatened to organize a referendum on this question if Yushchenko became President.

However, talks between Yushchenko and Kuchma in Kyiv cut short these demands. Yushchenko negotiated a constitutional settlement with Kuchma forces to weaken the Presidency in exchange for a rerun of the election.⁶⁰ As a result of a 2/3 constitutional agreement in mid-December 2004, the legislature became responsible for selecting the prime minister and approving most cabinet members nominated by the prime minister. Such reforms would help spur significant competition in the Yushchenko era.

Split pyramid bargain 2005-2009

The victory of Yushchenko marked an important milestone for Ukrainophile forces. Yushchenko was a much more ardent supporter of Ukrainian nationalism than was Kuchma. In 2006, Yushchenko helped push through a highly controversial law that officially declared the 1932-1933 man-made famine in the Soviet Union as a “genocide” against the Ukrainian people—a move that was strongly opposed by Russophile forces.⁶¹ Yushchenko also honoured highly controversial figures in the Ukrainian nationalist resistance in WWII.⁶²

At the same time, the Orange Revolution unified political forces in the east – giving them a powerful means to contest for central power. Under Kuchma, the east had divided among a loose collection of parties and non-party politicians. The Orange Revolution united this electorate into the Party of Regions headed by Viktor Yanukovich. While the party had reaped just 17 percent in the east in coalition with other parties in earlier elections, the party by itself won close to 60 percent in the east in 2006 and 2007. Yanukovich himself garnered 77 percent of the vote in the east and a respectable 44 percent nationally in the final, relatively free round of the Presidential election in 2004. Founded in Donetsk in the late 1990s, the party initially demanded greater decentralization of power in Ukraine. However, with the rise of Yanukovich, it dropped such demands and continued to support Ukraine's top-down administrative structure. With a well-organized party, massive industrial wealth, and solid control over almost half of the country, the Party dominated parliament for much of the late 2000s.

⁵⁸ Tatiana Silina, Serhii Rakhmanin, and Olga Dmitricheva, 'Anatomiia dushi maidana' *Zerkalo Nedeli* (Kiev 11-17 December 2004).

⁵⁹ Taras Kuzio, “Nationalism, Identity and Civil Society in Ukraine: Understanding the Orange Revolution.” *Communist and Post-Communist Studies* 43, No. 3 (September 2010): 285

⁶⁰ Silina, Rakhmanin, and Dmitricheva (n 58).

⁶¹ Jan Maksymiuk, 'Ukraine: Parliament Recognizes Soviet-Era Famine As Genocide' (*Radio Free Europe/Radio Liberty* Research Report, 29 November 2006) <www.rferl.org/a/1073094.html>. While the famine resulted in the deaths of millions of Ukrainians, there is no scholarly agreement about whether this policy was specifically aimed at Ukrainian nationals or was instead part of a much broader murderous policy under Stalin.

⁶² RFE/RL, 'Yushchenko Defends Making Bandera, Shukhevych 'Heroes Of Ukraine' (*Radio Free Europe/Radio Liberty*, 23 March 2010) <www.rferl.org/a/Yushchenko_Defends_Making_Bandera_Shukhevich_Heroes_Of_Ukraine/1991175.html>.

For five years, this situation resulted in a de facto balance of power between the strongly Ukrainophile President Yushchenko and the Russophile Party of Regions. However, this balance of forces would be shattered by Yanukovich's election in early 2010 – an election that ushered in the breakdown of the Faustian bargain and war in 2014.

The Breakdown of the Faustian Bargain and Conflict 2010-2014

Two dominant and competing narratives have shaped our understanding of Ukraine's stunning and totally unexpected descent into violent conflict in March 2014. The least grounded interpretation comes from the Russian government, which has portrayed the war as emerging from domestic resistance to an anti-Russian rightwing fascist government that seized power in a coup in late February 2014. From the Russian perspective, the fall of Yanukovich was not a homegrown revolution but the product of Western intervention and a US government effort to undermine Russia. This interpretation is fatally flawed. While the Ukrainian opposition did indeed adopt highly divisive Ukrainian national imagery during protests, the government that came to power did *not* in fact undertake *any* effective measures prior to the war that were genuinely threatening to Russophones in the eastern Ukraine or elsewhere. Next, while it is true that the opposition ended up seizing power from Yanukovich, such a seizure was made unavoidable by Yanukovich's sudden decision to flee the country on February 21, 2014. It was thus not a coup. Finally, there is extremely little evidence that Western support was critical to the success of Euromaidan.

A second, much more empirically grounded, interpretation focuses on Russia's highly aggressive behaviour towards Ukraine. Indeed, it is clear that the crisis after Yanukovich's exit would never have turned violent absent Putin's invasion first of Crimea and then the Donbas. There is also abundant indication that plans for the invasion of Crimea were years in the making. Putin indicated in the late 2000s that he saw Crimea's 1954 incorporation into Ukraine as legally dubious. To put it simply, there is a villain in this story and his name is Putin.

That said, an exclusive focus on Putin provides an inaccurate understanding of the roots of war in Ukraine. First, history is littered with examples of irredentist claims that were never successfully acted upon.⁶³ The simple existence of irredentist claims does not mean that invasion is inevitable. Very few predicted Putin's annexation of Crimea and virtually no observers argued that the Russian government would intervene in Donbas. Indeed, many accounts of decision-making suggest that it was, haphazard, ad hoc and on the fly.⁶⁴

In a nutshell, the war in Ukraine would almost certainly not occurred were it not for the domestic crisis in Ukraine. To understand the sources of this crisis, we need to understand how Ukraine's Faustian bargain broke down in early 2014. The bargain that resulted in the relative equal inclusion of Ukrainophile and Russophile forces in Ukraine began to erode with the election of Viktor Yanukovich as President in early 2010.

After taking office, Yanukovich rapidly monopolized power and pushed Ukraine in a starkly pro-Russian direction. In April 2010, the legislature, dominated by a tightly cohesive Party of Regions,

⁶³ Austria and South Tyrol; Hungary and Transylvania; Bulgaria and FYROM; Sweden and the Åland Islands. I thank Keith Darden for pointing these out.

⁶⁴ See Steven Lee Myers, 'Russia's Move Into Ukraine Said to Be Born in Shadows' *The New York Times* (Moscow, 7 March 2014) <www.nytimes.com/2014/03/08/world/europe/russias-move-into-ukraine-said-to-be-born-in-shadows.html?search-input=2=Russia%27s+move+into+ukraine+shadows>.

approved a highly controversial agreement with Russia extending Russia's lease over the Black Sea Fleet.⁶⁵ Subsequently, the Party was able to use its dominance of the legislature to cow the courts. This subordination of the judiciary greatly enhanced Yanukovich's capacity to impose authoritarian rule. Perhaps most importantly, subordination of the courts helped Yanukovich to quickly reverse the constitutional reform of 2004. Such a reversion was hampered by the fact that – according to the law – the Court could invalidate the reforms, but did not have the authority put into effect other changes – such as a re-imposition of the pre reform presidential and legislative terms – that would be necessary to fully revert to the Kuchma-era system. Further, according to most experts, such changes would only take effect after new parliamentary and presidential elections.⁶⁶ Yet, Yanukovich's dominance of the court was sufficient that the courts simply cut through the legal morass and declared by a vote of 17 to 1 both that the changes of 2004 were unconstitutional *and* that the old 1996 constitution immediately valid.⁶⁷ In turn, Yanukovich's government and "loyal" parliament "promptly" sponsored and passed legislation to make these changes effective.⁶⁸

Euromaidan and the collapse of Yanukovich

In late 2013, Yanukovich was securely in power. His party dominated the legislature while the opposition was fragmented and almost completely sidelined. Yet, a string of events was to lead to his sudden downfall three months later. It all began in late November, when, under pressure from Russia, Yanukovich suddenly withdrew from negotiations on an Association Agreement with the European Union. Within days, tens of thousands took to the streets to demand membership in the Association. Following a half-hearted attempt to crack down on protesters on November 30, the "Euromaidan" protests swelled to hundreds of thousands.

In stark contrast to the protests in late 2004, which were tightly organized by pro Yushchenko supporters, the demonstrations in late 2013 and early 2014 were highly spontaneous and lacked clear leadership. The protesters – the vast majority of whom came to the demonstrations on their own rather than with any organized group⁶⁹ – initially lacked obvious political demands. The rallies, dominated by handwritten signs, had the home-grown feel of the American Occupy protests in 2011. The protests could have gone in a number of directions – including one that emphasized opposition to corruption, which would have unified east and west, rather than union with Europe, which divided the country. Ultimately, however, the protests took on a starkly anti-Russian and pro-European tenor. This direction was detrimental to the opposition movement as multiple surveys showed a lack of majority support for joining the European Union.⁷⁰

There is no evidence that protests were driven by right-wing Ukrainian nationalist ideology. Most surveys instead showed that opposition to Yanukovich united people who showed up at the

⁶⁵ Neil Buckley and Roman Olearchyk, 'Ukraine: A nation on guard' *Financial Times* (EU Energy, 21 October 2010) <www.ft.com/content/43cdd390-dc8b-11df-a0b9-00144feabdc0>.

⁶⁶ See 'Ne zamakhnut'sia li . . .' *Biżnes* (25 September 2010); 'Mnogostradal'naia Konstitutsiia' *Chaspiк*, (No 38 [491], 26 September 2010); 'Konstitutsionnyi otkat. Ianukovich stanet Kuchmoi?' *ForUm* (1 October 2010).

⁶⁷ Buckley and Olearchyk (n 65).

⁶⁸ Alexei Trochev, 'Editor's Introduction: The Constitutional Court of Ukraine: Back to the 1996 Constitution' (2011) 46 (3) *Statutes and Decisions* 4, 5.

⁶⁹ Fond Demokratichni Initsiatyvy, 'Від Майдану-табору до Майдану-січі: що змінилося?' (*Fond Demokratichni Initsiatyvy*, 6 February 2014) <<http://dif.org.ua/article/vid-maydanu-taboru-do-maydanu-sichi-shcho-zminilosya>>.

⁷⁰ Most surveys showed around 40-45 percent support for European integration as compared to about 30 to 40 percent support for the Customs Union – a plurality for Europe but hardly a clear mandate. See, for example, 'Дані загальноукраїнського соціологічного дослідження моніторингу «Україна і українці»' <www.slideshare.net/Luxarxl/2014-31960903>.

demonstrations.⁷¹ Subsequently, far right parties obtained tiny support in parliamentary and presidential elections. Nonetheless, the far right *did* play a quite visible role in the protests. One of the three opposition parties that gave support to the protests was the Svoboda party, which was clearly on the far right. Svoboda, which until 2004 had called itself the Social Nationalist Party of Ukraine and employed neo-Nazi and SS symbols, did not hide its glorification of the nationalist Organization of Ukrainian Nationalists. In December they held a torchlight rally on the Maidan to honor the W.W.II era nationalist leader, Stepan Bandera, and they regularly flew the red and black flag of the OUN, which was banned as a racist symbol at soccer matches by the International Football Federation (FIFA).

The explicit harkening back to the songs, slogans, and symbols of the nationalist movement of the 1930s and 1940s — with its aspiration to achieve an ethnically pure Ukrainian nation-state free of Russians, Jews, and Poles — was one of the main differences between these protests and the Orange Revolution of 2004. Svoboda's deputies controlled the opposition-occupied Kiev city administration building, its flag was widely visible and a portrait of Bandera hung in the central hall.

Although these symbols alienated Russophile Ukrainians, they likely inspired numerous Ukrainophile activists. Indeed, while initially about half of the protesters in Kyiv were from the capital, western Ukrainians (representing 20 percent of the population) accounted for about half of the protesters in Kyiv by late January.⁷² Across the country, a disproportionate share of protests was concentrated in western Ukraine.⁷³ According to one survey, 53 percent of western Ukrainians participated in the protests as compared to 17 percent of central Ukrainians and 2 to 4 percent of southern and eastern Ukrainians.⁷⁴

At the same time, Yanukovich remained largely intransigent – refusing to negotiate a reduction in Presidential power or early elections. And then, quite suddenly, Yanukovich's regime collapsed. On February 20, government snipers fired on protesters killing about seventy people. This sparked a rebellion within the ruling party, which effectively lost its majority in the legislature. After that point, the Party of Regions more or less ceased to function as a coherent political unit. Yanukovich, sensing his own vulnerability, agreed to significant concessions during negotiations overnight.

However, government security forces began to fragment. The authoritarian state ceased to function in significant parts of the country. In particular, forces around Yanukovich dissolved – leaving the President vulnerable to attack. That night, he fled the capital and then the country. The next day, parliament voted to dismiss Yanukovich and elected Oleksandr Turchynov, Tymoshenko's close ally, as acting President. For the first time since independence, Ukraine experienced a leadership turnover that occurred completely outside the electoral process. The Party of Regions, which had essentially monopolized power in the east for nine years, suddenly ceased to exist as a viable political force. For the first time since independence, the east was deprived of effective representation in the halls of central power.

In turn, large sections of the Ukrainian state collapsed. Police and special forces “disappeared from the streets.” The new authorities in Kyiv lacked any effective means of imposing order – outsourcing

⁷¹ Fond Demokratichni Initsiatyvy ‘Від Майдану-табору до Майдану-січі: що змінилося?’ (п 69).

⁷² *ibid.* According to the series of surveys conducted by Democratic Initiatives, Kyivites represented about half of the protesters in December and about 20 percent by late January.

⁷³ ‘Статистика протестних подій Майдану: учасники, географія, насильство’ (https://issuu.com/irf_ua/docs/dp-2014-7).

⁷⁴ Fond Demokratichni Initsiatyvy, ‘Річниця Майдану – опитування громадської та експертної думки’ (<http://dif.org.ua/article/richnitsya-maydanu-opituvannya-gromadskoi-ta-ekspertnoi-dumki>).

security functions to local oligarchs and opposition paramilitaries.⁷⁵ At the same time, the new government faced severe distrust in the southeast of the country. While those in western and central Ukraine saw the events as a democratic revolution, half of the population in the south-east – and seventy percent of Donetsk and Luhansk – viewed the new government as illegal.⁷⁶ Opposition to the new government in the east was far higher than it had been following Yushchenko's accession to power in 2005.

The combination of a total loss of popular support in the east and (more importantly) the breakdown of the state created an important opening for Putin to sow disorder. Thus, when insurgents began to seize local governments in March and April in cities in Donetsk and Luhansk, local authorities did nothing to stop them and may have given them assistance. "Once protests started seizing government buildings across the region, police either fled or defected to the protesters' side."⁷⁷ Top leadership within the Party of Regions did not support the war, comparing Donetsk's secession to tossing the oblast "from a tenth-floor window."⁷⁸ Yet by March, the party ceased to function and could do nothing to shape events.

Developments after the fall of Yanukovich and future directions for Ukraine

Euromaidan and the war that followed have fundamentally destroyed the fundamental set of compromises that contributed both to massive corruption and peaceful relations between east and west. First, the conflict resulted in the disenfranchisement of Russophiles within what was left of Ukraine. In large part due to polarization from the war, pro-Russian political forces were in retreat. In the presidential election held at the end of May, pro-Russian candidates together gained less than fifteen percent of the vote. In the parliamentary elections of October 2014, the only Russophile party to gain seats was the Opposition bloc, consisting of former Party of Regions leaders, that garnered nine percent of the vote. As a whole, pro-Russian forces (including the Communist Party and another party that failed to gain seats) garnered a stunningly low 16 percent of the national vote. These poor results appear to have resulted both from the loss of highly Russophile voters in Crimea, Donetsk, and Luhansk as well as from dramatically reduced turnout in those parts of the east that remained under Ukrainian control.

Once again, issues of federalism and decentralization became salient in Ukraine. The insurgents in Donetsk and Luhansk called for federalism. In mid-March, Prime Minister Yatseniuk reached out to Russophones in the east announcing plans for increased decentralization.⁷⁹ Yet, federalism was intensely unpopular among Ukrainophiles and was widely seen as a backdoor means for Russia to control Ukraine. Thus, Putin's proposals would have essentially made it impossible for Ukraine to join

⁷⁵ Rosaria Puglisi, 'A Regional Perspective on Post-Maidan Domestic Security' (University of Ottawa 10th Annual Danyliw Seminar on Ukraine, Ottawa, 31 October 2014).

⁷⁶ See КІІС, "Думки Та Погляди Жителів Південно-Східних Областей України: Квітень 2014" (*Kiev International Institute of Sociology*, 20 April 2014) <www.kiis.com.ua/?lang=ukr&cat=news&id=258> accessed June 2014.

⁷⁷ Sergiy Kudelia, 'Domestic Sources of the Donbas Insurgency' PONARS Eurasia (Eurasia Policy Memo No 351, PONARS Eurasia September 2014).

⁷⁸ Lucan Way, 'Putin's Move' (*The Walrus* 16 June 2014) <<https://thewalrus.ca/putins-move/>>.

⁷⁹ Gwendolyn Sasse and James Hughes, 'Building a federal Ukraine?' *The Washington Post* (19 March 2014) <www.washingtonpost.com/news/monkey-cage/wp/2014/03/19/building-a-federal-ukraine/?utm_term=.49d378937b3f>.

European institutions without the support of representatives in the east. For many in the Ukrainian elite, federalism was seen as a means for Putin to revive the Soviet Union.⁸⁰

At the same time, Ukraine faced considerable pressure from Russia and the West to carry out a plan of decentralization. The Minsk agreements to end the conflict – conducted in September 2014 and February 2015 – included commitments by the Ukrainian government to decentralize power. The agreements incorporated a provision calling for constitutional reform by the end of 2015 creating “special status” for Donetsk and Luhansk.

As part of a Ukrainian effort to fulfill this agreement, a law was passed in September 2014 that would amnesty “participants of the events in Donetsk and Luhansk regions” and that included a provision for local militias created by local councils. Further, an initial draft of constitutional reforms, passed in its first reading in September 2015, included mention of a “special status” for Donetsk and Luhansk – stating that “The specifics of executing local governance in certain counties of the Donetsk and Luhansk regions are defined by a separate law.” While highly controversial, these mentions of special status seem to have been included to abide by the letter (rather than spirit) of the Minsk agreements. Indeed, an amendment to the September 2014 law, passed in March 2015 dictated that the law would only take force after local elections conducted under Ukrainian law and monitored by international observers. Furthermore, the Minsk agreement stated that reform would only come into effect after a return of border control to Ukraine.⁸¹ Indeed, rebel leaders in Donetsk referred to constitutional reform as a “farce.”⁸²

At the same time, more genuine moves towards decentralization were also made. On August 31, a decentralization reform package passed its first reading in the Ukrainian Rada (in order to pass, amendments need to be supported by a majority of deputies and subsequently receive the support of at least two-thirds of the legislature in the next regular session.). The reforms, if passed, would significantly bolster decentralization. Most importantly, the proposed reform gives elected representatives the power to select local executives, which since 1996 have mostly been appointed centrally. At the bottom (*Hromada*) level, Ukrainians would separately elect executives and legislators. At the district (*rayon*) and regional (*oblast*) levels, Ukrainians would elect legislators who would then choose an executive.

Yet, the constitutional drafts of late 2015 retained key elements of centralization. In particular, the draft created a centrally appointed prefect within each region to coordinate and supervise the legality of local actions. Specifically, they were given the power to countermand provisions passed by the local government. Such supervision was seen by President Poroshenko as an important “vaccination” against separatism and rogue local councils.⁸³

⁸⁰ See Zerkalo nedeli, ‘Путин выступает за федерализацию Украины’ *Zerkalo nedeli* (17 November 2014) <https://zn.ua/POLITICS/putin-vystupaet-za-federalizaciyu-ukrainy-159013_.html>.

⁸¹ See Kirill Mikhailov, ‘Ukraine’s decentralization and Donbas “special status”: what you need to know’ (*Euromaidan Press* 1 September 2015) < <http://euromaidanpress.com/2015/09/01/ukraines-decentralization-and-donbas-special-status-what-you-need-to-know/>>.

⁸² Sounak Mukhopadhyay, ‘Ukraine’s constitutional reform “a farce”: Donetsk People’s Republic leader’ *International Business Times* (Australia, 3 September 2015) <www.ibtimes.com.au/ukraines-constitutional-reform-farce-donetsk-peoples-republic-leader-1464254>.

⁸³ William Partlett, ‘Agendas of Constitutional Decentralization in Ukraine’ (*Constitution Net* 23 July 2015) <www.constitutionnet.org/news/agendas-constitutional-decentralization-ukraine>.

Such provisions reflect a long standing but mistaken view that formal centralization of power is key to preventing secession. Observers of Ukraine forget that Crimea separated even though power at that point was highly centralized.⁸⁴ There is little reason to think that secession could have been prevented if power had been even more centralized in Kyiv. Furthermore, past experience with prefects – under Kravchuk in the early 1990s discussed above – was not particularly encouraging. Such figures did more to generate confusion about who was in charge than to provide any kind of serious break on secession. Overall, the conflict had and has little to do with the degree of centralization in Ukraine.

Indeed, it is worthwhile to separate the issue of secession and fears of Russian interference from questions of decentralization. Decentralization needs to be carried out for its own sake – because it provides an institutional basis for policy innovation, and economic development.⁸⁵ At the same time, no amount of decentralization is likely to convince rebels in Donetsk and Luhansk to give up territories under their control. As argued above, the war was not the product of a lack of local autonomy per se but Russian aggression, extreme distrust of new authorities in Kyiv, and a breakdown of state institutions in the spring of 2015. Putin chose to interfere in the spring of 2014 not because he was particularly concerned by the lack of local autonomy (or by any supposed discrimination against Russophones) but because the breakdown of state authority in Ukraine made it *possible* to intervene. It is hard to see how any of these factors could have been affected by a different constitutional design – either more or less centralized.

As argued in this chapter, the experience of the last twenty-five years in Ukraine suggests that a better way to reduce tensions and limit Russian opportunities for intervention is to ensure that Russophile parts of the population feel that they have a stake in central power. Giving Russophiles such a stake need not involve increased formal decentralization of power (although that is likely a good idea for other reasons). Ukraine's regions have always been able to use Russian as often or as little as they wish. Instead, this means not enforcing centralized Ukrainization policies aimed at imposing Ukrainian language or anti-Soviet cultural policies on the populations of eastern Ukraine.

Such inclusion has been made substantially harder by the war. First, the war motivated a series of so-called anti-communist laws enacted in the spring of 2015 that restricted the use of Communist era symbols and dictated positive assessments of certain, highly controversial figures in Ukrainian history.⁸⁶ The OSCE has criticized these laws for their negative impact on free speech in Ukraine.⁸⁷ While other countries such as Poland and the Czech Republic have passed laws citing the “criminal” nature of the Communist regime, the Ukrainian laws go much further by imposing penalties for expressing contrarian points of view.⁸⁸ In July 2015, the Ministry of Justice stripped the Communist Party and two of its satellites⁸⁹ of the right to participate in elections.⁹⁰ These laws potentially antagonize populations in the

⁸⁴ Of course, the separation of Crimea was instigated by Russian military intervention. Nonetheless, broad (if not necessarily majority) support for integration with Russia meant that there was more or less no resistance within Crimea to this move.

⁸⁵ Decentralization is also likely as well because decentralization is likely to create a reservoir of new and good politicians, a training ground for national leaders, see Oleh Zahntiko, ‘Decentralization vs Anti-Centralization’ (*Vox Ukraine*, 19 August 2015) <<http://voxukraine.org/2015/08/19/decentralization-v-anti-centralization/>>.

⁸⁶ At the same time, Russian language continues to be widely used in regional governance in southeast Ukraine. There has been very little evidence of forcible linguistic Ukrainianization.

⁸⁷ Organization for Security and Co-operation in Europe, ‘New laws in Ukraine potential threat to free expression and free media, OSCE Representative says’ (Press Release, OSCE 18 May 2015) <www.osce.org/fom/158581>.

⁸⁸ This point was made to the author by Oxana Shevel, Tufts University.

⁸⁹ The Communist Party of Ukraine (renewed) and the Communist Party of Workers and Peasants.

⁹⁰ Mariana Antonovych, ‘Ukraine’s Justice Ministry outlaws Communists from elections’ *The Kyiv Post* (Kiev, 24 July 2015) <www.kyivpost.com/content/ukraine/ukraines-justice-ministry-outlaws-communists-from-elections-394217.html>.

southeast that have so far resisted Russian efforts to foster tensions. Thus, a poll in early 2015 showed that half of the populations of Kharkiv, Dnipropetrovsk, and Zaporizhia in the southeast and 70 percent of those in Donbas regret the collapse of the Soviet Union.⁹¹

At the same time, the Russian invasion has deprived Russophile forces of effective representation in Kyiv. The only Russophile party to win seats in the Rada in 2014— the Opposition Bloc — is almost completely excluded from the political process in Kyiv. As noted above, electoral turnout in the east seems to have declined dramatically since the Euromaidan revolution. Official turnout in Eastern Ukraine in the Presidential election went down from 66 percent in 2010 to about 50 percent 2014. In the October 2014 parliamentary elections, less than half showed up in the East and South. It is likely that some of this decline is due to disenchantment with the political process and the dearth of parties representing their interests.⁹² War with Russia made it substantially harder for politicians to mobilize Russophile support. The pro Russian population in 2014 was demoralized, and weakly organized, and substantially smaller.

It is possible to argue that such marginalization is a good thing. After all, this population would seem to be less supportive of reform and the Opposition Bloc includes some of the most corrupt politicians in Ukraine. Yet, such exclusion is both normatively and pragmatically problematic. First, Ukrainian democracy will remain flawed and unrepresentative so long as major parts of the population are not included and do not feel welcome in the political process. Second, such exclusion is likely to render Eastern Ukraine more vulnerable to Russian interference. Indeed, a critical priority would seem to be the promotion of loyally Ukrainian and less corrupt Russophile parties. In the short term, inclusion of such groups may promote territorial integrity but threaten reform. Yet, reform grounded in wider political participation and consensus is likely to be more enduring.

Lessons Learned:

This chapter has explored the changing ways in which territorially concentrated populations and interests in Ukraine engaged with the constitutional process after the collapse of the Soviet Union in 1991. In a nutshell, eastern interests supported centralization when they have had a stake in central power and fought for federalism when they have felt threatened. In the early 1990s, a deeply flawed Faustian bargain between national democrats and eastern economic interests created the basis for a unitary system. In 2010, this bargain began to break down with the election of Viktor Yanukovich. Then in early 2014, the sudden departure of Yanukovich and the collapse of the Party of Regions, which had monopolized control over the east for nine years, created an opening for Putin to sow unrest in Ukraine.

The Ukrainian case highlights the fact that the existence or absence of politically salient demands for local autonomy often hinges on the nature of politics at the center. Demands for autonomy may diminish when groups are given a direct stake in central power. By contrast, exclusion of important groups may foster such demands. An important lesson of this study is that the best way to reduce

⁹¹ Only about 30 percent in Kharkiv, Dnipropetrovsk, and Zaporizhia and ten percent of those in the Donbas expressed positive views of the Soviet collapse. See Fond Demokratichni Initsiatyvy, 'Що об'єднує та роз'єднує українців - опитування громадської думки України' (Fond Demokratichni Initsiatyvy 2015) <www.old.dif.org.ua/en/polls/2015a/show-obednue-ta-rozednue-.htm>.

⁹² Tadeusz A Olszański, 'A strong vote for reform: Ukraine after the parliamentary elections' (*The Centre for Eastern Studies*, 29 October 2014) <www.osw.waw.pl/en/publikacje/analyses/2014-10-29/a-strong-vote-reform-ukraine-after-parliamentary-elections>.

tensions and opportunities for Russian intervention is to strengthen representation of loyal Russophile forces in the center.

What can be done to ensure that Russophile Ukrainians feel included in the Ukrainian state? One relatively simple step is to avoid central measures such as the anti-communist laws that impose symbolic changes (such as eliminating Soviet era names) that are alien to a large share of the population in the east. A much harder problem is what to do about the marginalization of pro Russian parties in the center. Polarization caused by the war makes it much harder include such parties in the government. Such inclusion is made much harder by the fact that the Opposition bloc is led by formerly pro Yanukovich officials whose attachment to Ukrainian independence is deeply suspect. Some form of consociationalism might be an answer. Yet, such measures seem unlikely to attract support in the context of war.

A longer term (but perhaps no easier) solution would be to break from the confines of the Faustian bargain. This could be done through grassroots efforts to create powerful Russophile parties that support Ukrainian statehood and but that are not – in contrast to the Opposition bloc – tied to Yanukovich and the corrupt Donbas elite. The rise of Russophile forces not tied to Yanukovich's disastrous regime may facilitate the inclusion of such parties in coalitional politics. Given the fact that only small minorities of the southeast oppose Ukrainian independence, there would seem to be political space for such parties.⁹³ None of this will be easy – especially given the governments strong ties to oligarchs. Nonetheless, those who want Ukraine to be a viable and united state need to think seriously about ways to create political space for the majority Russophiles in the country who want to remain in an independent Ukraine.

⁹³ For example, a Democratic Initiatives poll in early 2015 showed that just 15 percent of residents in Dnipropetrovsk and Zaporizhia, Mykolaiv, Odesa and Kherson in the south and a third of residents in Kharkiv and Donbas oppose independence. See Fond Demokratichni Initsiatyvy, 'Що об'єднує та роз'єднує українців - опитування громадської думки України' (п 91).

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CONTRIBUTING ORGANIZATIONS

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