



REPORT

# Six years of the Revolution of Dignity: what has changed?

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# **Report**

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Mychailo's book "Ukraine's Maidan, Russia's War: A Chronicle and Analysis of the Revolution of Dignity" was published by Ibidem Verlag in April 2019.

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# Abbreviations

ABCA – the Annual Business Cost Assessment  
ACC – Anti-Corruption Court  
ATO – AntiTerrorist Operation  
BPP – Block Petro Poroshenko  
CIPE – Center for International Private Enterprise  
CIS – The Commonwealth of Independent States  
CoE – Council of Europe  
DCFTA – The Deep and Comprehensive Free Trade Agreement  
EBRD – The European Bank for Reconstruction and Development  
ESS – European Social Survey  
EU – European Union  
EUAM – The European Union Advisory Mission  
FDIs – Foreign Direct Investments  
GDN – Global Research Network  
GDP – Gross Domestic Product  
HQCJ – High Qualification Commission of Judges of Ukraine  
ICT – Information and Communication Technology  
IER – the Institute for Economic Research and Policy Consulting  
IFIs – international financial institutions  
IMF – International Monetary Fund  
IT – Informational Technology  
KGB – Committee for State Security  
LAO – limited access order  
MBA – The Master of Business Administration  
MPs – Members of Parliament  
NABU – National Anti–corruption Bureau of Ukraine  
NAS, NASU – National Academy of Science of Ukraine  
NATO – The North Atlantic Treaty Organization  
NGO – Non-governmental organizations  
NKVD – The People's Commissariat for Internal Affairs  
OAO – open access order  
PF – the Peoples' Front party  
PGO – Prosecutor General's Office

PIC – Public Integrity Council  
PIT – Personal Income Tax  
PM – Prime Minister  
PPO – Public Prosecutor Office  
PR – public relations  
PROMETHEUS – online lectures <https://prometheus.org.ua/>  
PhD – Doctor of Philosophy  
RoL – Rule-of-Law  
RPR – Reanimation Package of Reforms  
R&D – Research and development  
SAP – Special Anti-Corruption Prosecution (bureau)  
SBI – State Bureau of Investigations  
SBU – Security Service of Ukraine  
SMEs – Small and medium-sized enterprises  
SME Platform – Small and medium-sized enterprises Platform  
SOEs – State owned enterprises  
SUP – the Union of Ukrainian Entrepreneurs  
SWP – Stiftung Wissenschaft und Politi  
UkrSSR – Ukrainian Soviet Socialist Republic  
URB – Ukrainian Council of Business  
US – United States  
USSR – the Union of Soviet Socialist Republics  
WGI – Worldwide Governance Indicators  
WVS – World Values Survey  
WW2 – Second World War

# Introduction

The aim of this paper is to establish whether irreversible (or nearly irreversible) systemic changes have occurred in Ukraine over the course, and as a result, of the Revolution of Dignity, and to identify what practical steps could be taken in the near future to advance those changes. We consider these changes in the perspective of systemic transition from what North et al. call "limited access order" (LAO)<sup>2</sup> governed by a "natural state" (ibid) while incorporating Acemoglu and Robinson's concept of "extractive institutions"<sup>3</sup> and what Hale<sup>4</sup> calls "patronal politics" towards "open access order" (OAO) that includes what is called the "liberal democracy", "free entrepreneurship", "open society", etc. We use the concept of "systemic transition" as outlined by North et al. because it appears to us the most general and encompassing all other definitions used in Economics and Political Science. "Modernization" is an even broader term for this transition, however, that also includes societal processes which are far too slower than economic and institutional changes.

Ukraine's systemic transition (commonly called "reforms") has been a subject of great interest both in and outside the country given how crucial these changes are to the survival of Ukraine<sup>5</sup>. However, most analyses lack two crucial components. First, almost nobody addresses the issue of "change strategy". Here, in the introductory chapter, we address this issue head-on in a methodological sense and try to analyze the changes not as a laundry list of necessary changes (as many others do), but in how these changes affect one another and have the potential to bring about systemic transition in Ukraine. We see this approach as more intellectually ambitious and therefore potentially more useful than simple checklists of the recent changes in Ukraine that do not clarify the connections between the different areas of reform. Our approach demands also establishing priorities of reform which is usually missing in the "laundry list" approach that has been so prevalent during the 2014-9 period. Second, most analyses of the reforms fail to take into account the constraints inherent in the deeply entrenched system that has developed in Ukraine during 28 years of independence, as well as those more broadly inherent to a LAO.

The Ukrainians, who are struggling to modernize their country, rightly call the setup that evolved in the last 28 years "The System", it is indeed a well-established socio/politico/economic system. In this introductory chapter we present our brief theoretical analysis of and methodological approach to "The System" and the resulting implications for our further analysis.

This report is based upon the analysis of primary and secondary sources (mainly, review of literature and government records, social research data). We can only collect limited empirical evidence in favor of our proposition, but hope that other scholars will follow up with their own empirical testing. So far we have to largely rely on logically grounded hypotheses.

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<sup>2</sup> North D., Wallis J., Weingast B. *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. Cambridge University Press, 2009 (North et al.)

<sup>3</sup> Acemoğlu D., Robinson J. *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*. Crown Publishers, 2012

<sup>4</sup> Hale H. *Patronal Politics: Eurasian Regime Dynamics in Comparative Perspective (Problems of International Politics)*. Cambridge: Cambridge University Press, 2014

<sup>5</sup> This in itself is a highly debated issue that later we will address in detail.

## Theoretical inference: The System's logic

In order to introduce our approach better, we first lay out our vision of what constitutes "The System" that is seen as a subject of revolutionary change. We feel that most analysis of the Ukrainian reforms have not clarified this concept and therefore move a bit in vacuum. Few go beyond calling the incumbent socio/politico/economic setup "The System" and try to describe its main characteristics. By definition, a system implies not just the combination of parts into a whole but also the interactions between them. A system is sustainable and resilient to external shocks because its interlinkages form series of positive and negative feedback mechanisms that allow the system to react to such shocks while maintaining homeostasis.<sup>6</sup> In other words, certain critical components of a system form vicious circles that allow them to be self-supporting and self-propelling and therefore able to compensate for any incremental changes brought on by external shocks without altering the nature of the system as a whole. In turn, almost all of these components are themselves sub-systems. This results in a complex web of interlinkages that is, however, rooted in a few fundamental phenomena.

Dismantling "The System" requires breaking these vicious circles or transforming them into virtuous ones in a new system that would emerge to succeed the present one. However, in certain cases breaking or altering the interlinkages within the system can cause a chain reaction that almost inevitably leads to systemic change,<sup>7</sup> while in some other cases such incremental changes can be reversed by the systemic mechanisms that maintain the system's homeostasis. The idea behind our approach is that even incremental changes can culminate into a broader systemic effect on the fundamental variables that underlie the system, altering the critical systemic balances (described below), which, in turn, change the vicious circles into virtuous ones. Respectively, one can derive conclusions about the depth and irreversibility of systemic changes from studying the current state of these balances and their change in the course of the transition process.

### Zero-sum vs. win-win thinking

Numerous losers in the LAO fail to fight it properly mostly due to zero-sum thinking known also as "the perception of the limited good".

First, it prevents them from distinguishing of rent seeking and a normal profit seeking business. This shifts natural economic balance from profit seeking to rent seeking as (a) there is no way to really distinguish between them at the legal level, (b) there is no incentive for businesses to abstain from rent seeking as long as their property rights are equally illegitimate whatever they do, (c) raiding is not perceived as a dangerous crime, since both sides are equally illegitimate. As a result, rent seeking dominates, further reinforcing zero-sum thinking. This, in our view, is the most fundamental element of the vicious, socioeconomic circle.

Second, this kind of thinking prevents people from collective actions because other people are perceived as competitors for limited resources rather than partners in a common win-win deal. But such kind of collective actions are necessary for overcoming the natural state's extractive institutions and establishing in their place "inclusive institutions" that serve the public. As long

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<sup>6</sup> We are referring here to the so called Le Chatelier's principle. See: <https://courses.lumenlearning.com/introchem/chapter/le-chateliers-principle/>

<sup>7</sup> In fact, exactly this happened after the collapse of the Soviet Union and its institutions, ideology and economy. Nobody "planned the new system, it happened in a way that is analyzed in the next chapter.

as institutions remain extractive, and therefore hostile to the people, they feel insecure. This feeling restrains peoples' time horizon and creates a permanent sense that they are struggling to survive – which, in turn, reinforces zero-sum thinking. When people endowed with "survival values" assume power, they tend to replicate and reinforce the same behavior that sustains extractive institutions. This vicious circle represents the sociopolitical dimension of "The System".

Third, people trapped in zero-sum thinking struggle for redistribution rather than opportunities. This makes them rent seekers themselves, although as a collective not as individual actors ("oligarchs") because even when they perform a collective action (like a strike, street rally, or even a revolt) they strive only for "fair redistribution", not for systemic change – "for a fish, not a rod." Therefore, social capital, even if accumulated, results in what Mancur Olson calls "distributional coalitions"<sup>8</sup> that only partly redistribute rents without changing the system. To the extent they pose a threat of violent action, they are pacified by allocating to them certain rents – a natural state just incorporates them into the system by sharing a slice of pie with them but without changing the LAO's fundamental principles. Their success then supports not only building of the social capital, but also zero-sum thinking because it demonstrates a feasible way of getting certain benefits within the system through redistribution.

Therefore, this vicious circle is also characterized by the following observable fundamental balances:

– *rent seeking vs. profit seeking*

– *insecurity vs. sense of confidence/long time horizon (or "survival values" vs. "self-realization" and "self-reliance")*

### **Vertical of power vs. checks and balances**

Rent seeking – like, for instance, lobbying for government subsidies or other privileges – is by definition a zero- or negative-sum game. As such, it requires external control and coordination, otherwise unrestrained competition for the sources of rents will result in their exhaustion (the tragedy of the common resources<sup>9</sup>). In some cases this problem can be solved through the collective action of actors but it is complicated and incurs high transaction costs.<sup>10</sup> Much easier, though less beneficial for the actors, is the emergence of an external arbiter – a violence specialist (in North et al. terms) that imposes quotas on all actors or helps them in restraining competition. For instance, this happens when one of the actors invites a violence specialist proposing that he forces out all competitors so the two alone can share the rent. However, a violence specialist may soon realize that his negotiation power vis-a-vis a single rent seeker will be lower than if he betrays his ally and becomes an arbiter over all the rent extractors, just auctioning the quotas between them. In such a way he can theoretically extract the whole rent

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<sup>8</sup> Olson M. *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities*. New Haven: Yale University Press, 1982.

<sup>9</sup> In case of natural resources, normally the best solution is private ownership – see Demsetz H. *Toward a Theory of Property Rights*. *The American Economic Review*, Vol.57, No.2, Papers and Proceedings of the Seventy-ninth Annual Meeting of American Economic Association, 1967, 374-359.

<sup>10</sup> See, for example, Ostrom E. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge: Cambridge University Press, 1990.

due to his own monopoly on coercion. Or, rather, the arbiter leaves a part of the rent to the actors on his own volition in exchange for loyalty – thereby turning them into his clients. We (after Dubrovskiy et al., 2010<sup>11</sup>) call this particular form of a LAO the "arbiter-client model".

Rent seeking is intimately connected to authoritarianism. As long as an arbiter's legitimacy and power is largely based on his role in preventing the tragedy of the commons as described above, he has a vested interest in weakening alternatives to it, namely property rights and social capital, as well as potential personal competitors. However, democracy is commonly believed to be even more threatening to property rights so long as people are trapped in zero-sum thinking because if they get a voice they will demand redistribution, and hence expropriation. This becomes yet another reason why rent seekers might support an arbiter as opposed to democracy. But the arbiter may realize this too, and become interested in further undermining other actors' legitimacy, for instance by presenting all conflicts with them in terms of "good Tsar, bad boyars." The stronger the arbiter, the more danger there is for the rest of the actors to try and remove him. This problem is more acute in countries with a tradition of strong centralized power and capable bureaucracy, like Russia, and less in ones with traditionally stronger informal checks and balances, like Ukraine.

As long as a ruler's power relies on societal legitimacy, there is another critical balance in this context:

*identification with a leader vs. imaginable community – tendency to personify vs. admittance of impersonal principles, phenomena, and institutions.*

## **Personal rule vs. the rule-of-law (RoL)**

The issue of power is intimately connected to one of the most fundamental differences in social order. Politically, the power of an authoritarian leader is grounded in self-fulfilling expectations of his or her subordinates (as described by Hale) about his future ability to reward and punish arbitrarily, at his own discretion, not restrained by enforceable formal rules. As long as such expectations persist, his orders (including the ones rewarding loyalty and punishing traitors) are fulfilled. But the RoL cannot be established as long as none of the leaders want it for obvious reasons, nor if the people do not aspire for it– since they may not really believe in the protecting power and benevolence of independent institutions and instead identify themselves with a leader rather than with an imagined community. Hale stops there, but we could also add peoples' tendency to personalize any kind of communities and phenomena inherited in their mythological consciousness<sup>12</sup>.

According to North, et al., a LAO is defined by a system of power in which personal rule as a principle spreads across all spheres and types of organizations, including enforcement. The way this rule is exercised as self-fulfilling expectations of the persistence of a particular ruler (Hale's "patronal politics"), while a need in a patron is, in turn, caused by the absence of the RoL. This forms arguably the most fundamental vicious circle at the institutional level.

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<sup>11</sup> Dubrovskiy V., Szyrmer J., Graves W., Golovakha Y., Haran' O., Pavlenko R. The Driving Forces for Unwanted Reforms: Lessons from the Ukrainian Transition. Edited by Dubrovskiy V., Szyrmer J. and Graves W. The country study prepared within the Global Research Project of Understanding Reforms conducted by the Global Research Network (GDN).

<sup>12</sup> As, for instance, ancient Greeks interpreted a sea storm as Poseidon's anger.

Respectively, there are three necessary (but not sufficient) preconditions for a transition to an OAO. The authors (ibid) describe them as (a) the rule-of-law, at least for the elites, (b) political control over the use of force, and (c) perpetual organizations<sup>13</sup>. None of this can be fully achieved within a LAO, but transition further reinforces these preconditions.

## Extent of corruption

Ukraine, like most developing countries (and like all post-Soviet ones) *formally* has all institutions of the RoL. But they are mitigated and emasculated by discretionary implementation of law by dependent police, prosecution and courts. This situation provides the officials and other (often even informal) decision-makers with a personal power almost totally unconstrained by formal rules. The rulers and other beneficiaries use their power for various purposes, including personal enrichment (corruption), unconstrained power, and replication, if not amplification, of the impracticability of the law. Thus, another vicious circle is legislation (impracticable) – discretion (inevitable) – corruption. It can be broken mainly by making legislation practicable, which includes but is not limited to deregulation, streamlining of norms and procedures, tax reform (in the same direction towards more implementability), administrative procedures' reform, party reform, reform of election financing, etc.

The respective balance can be best characterized by the *extent of corruption*, that is real corruption, not the "corruption perception" that is usually referred to in the public discourse (in our view, this perception is usually shaped by mass awareness of corruption, which is rather contingent upon freedom of media than by personal experience). However, in light of the description above, the problem is, first, only one specific sort of corruption – namely collusion in circumventing impracticable<sup>14</sup> law – should be assessed for the purpose of systemic analysis like ours but that includes not only bribes but also patronalism/favoritism, the informal exchange of favors, etc. Second, as a kind of LAO's component, corruption matters a lot when it comes to business and political opportunities, whereas opinion polls address lay citizens that not only face the necessity of colluding with the officials in order to circumvent an impracticable law much less often than political activists and businesspeople, but also the price they pay is much smaller than the involuntary contributions of businesses. Benchmarking here is also complicated because, on the one hand, corruption of this sort is present to some extent in any country; on the other hand, it never pervades all business operations or contacts with government authorities. Therefore, in practice we cannot observe the "balance" simply because there is no benchmark for comparison with certain types of corruption that cannot be quantified. Unfortunately, as of now we cannot offer a tangible proxy for this kind of corruption, hence we provide no assessment for this balance<sup>15</sup>.

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<sup>13</sup> Perpetual organization is one whose existence is not dependent on one person. "Perpetually lived organizations must have an impersonal identity."

<sup>14</sup> That is a law that cannot be impartially implemented because it contains either internal contradictions or contradiction with other regulatory acts, probably purposefully to create a room for extracting illegal revenues; or contradicts to the widespread practice and common sense so that it gets mostly violated; or it contains so vast opportunities for personal discretion of the implementers (e.g. inspectors) that makes a law just cover for personal arbitrary decision

<sup>15</sup> For analysis of the anti-corruption reforms see Lough J., Dubrovskiy V. Are Ukraine's Anti-corruption Reforms Working? Chatham House, 2018.

From this perspective, "The System" can be characterized by the following factors, none of which themselves are specific to Ukraine, but together form a rare combination:

- a "mature" limited access order<sup>16</sup> akin to the other Western Eurasian countries, but with a strong tradition of plurality and more inclusive political culture with informal veto rights of minorities, represented by the "arbiter-clients" model described above<sup>17</sup> rather than a strong single-pyramid vertical, as explained in more detail below;
- a transitional public consciousness, meaning that it is not a traditional (patrimonial) public consciousness anymore in many respects, but not yet a modern one either;
- personal rule (*vlast*) and corruption by means of selective and arbitrary implementation of largely impracticable law;

They shape the peculiarities of The System in the transition process in many ways, as will be described in this study.

## Post-colonial context and the nation-building

The transitions historically often went hand-in-hand with nation-building, because the subject and object of transformation should be an independent state as opposed to a semi-autonomous part of the former empire. For the transition from LAO to OAO to be commonly accepted, understood, and supported as a common goal – a national project, based on either identity or values,<sup>18</sup> should serve as a clue for integrating the "holy trinity"<sup>19</sup> of state, market, and society in the most effective way for inclusive participation and empowerment.

According to the concept of integration, that we find particularly useful here, "true integration is achieved through the implementation of a promise" by leaders, actors, or parties "to engage in a particular course of action over a period of time"; this "entails a lengthily process of estab-

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<sup>16</sup> According to the definition (see North et al.), "mature" refers to the kind of LAO in which numerous organizations not related directly to the State and, respectively, the dominant coalition, may exist unlike in a "basic" LAO in which they are repressed and forced to subdue.

<sup>17</sup> "Arbiter-client model" refers to the framework offered for description of the Ukrainian political economic model of the 1990th, however it equally applies to many other cases as well. This framework is briefly described above. It did not get a broad recognition yet, but nevertheless seems to be quite fruitful. In a way, it describes, although from different perspective (political-economic rather than socio-political) how certain kind of "pyramids" emerge and which interests keep the participants together. Precisely speaking, this model refers to modus operandi of a single level of a pyramid (of this kind), explaining why do the players of different sorts (immediate rent seekers and the "violence specialists") are getting together, but not going into details of operations, as Hale does. "Competing pyramids" is hence a different story. However, not all of the pyramids can be described as "arbiter-client" ones: if the rent seekers are totally dependent of a leader on the top of a pyramid (or, for the same token, if he owns the rent sources (formally or informally), then the rent seekers work as employed "managers", rather than independent players. The "arbiter-client" therefore refers to more "feudal" organization of the society, whereas the other model is "oriental". See more details here: Dubrovskiy V., Szyrmer J., Graves W., Golovakha Y., Haran' O., Pavlenko R. The Driving Forces for Unwanted Reforms: Lessons from the Ukrainian Transition. Edited by Dubrovskiy V., Szyrmer J. and Graves W. The country study prepared within the Global Research Project of Understanding Reforms conducted by the Global Research Network (GDN).

<sup>18</sup> See Fukuyama F. Against Identity Politics. The New Tribalism and the Crisis of Democracy. Foreign Affairs, 2018, Available at: <https://www.foreignaffairs.com/articles/americas/2018-08-14/against-identity-politics-tribalism-francis-fukuyama> .

<sup>19</sup> Civil society is seen by development theorists and practitioners as a "counterweight to vested interest that promotes accountability between state, market and society." For more discussion, see Forsyth T., Green E., Lunn J. Introduction to International Development. University of London, London School of Economics and Political Sciences, 2011, 45-55; Leach M. Introduction: States, Markets and Society—Looking Back to Look Forward. IDS Bulletin 47, N 2A, 2016, 1–17.

lishing common rules, regulations, and policies."<sup>20</sup> Particularly, Ukraine is the largest country in Europe in terms of territory with a population that is linguistically, ethnically, culturally, and religiously heterogeneous. Therefore, the integrative principles behind common development are too complex to remain indisputable.

On the cultural/ideological level, the Ukrainian nation has two definitions: a narrower "ethnolinguistic" one that emphasizes Ukrainian ethnicity, language and the respective national heroes; and a broader "political" one that prioritize primarily peculiarities in sociopolitical culture and informal economic institutions that have emerged as a result of unique historical experience. Both kind of patriotisms oppose Ukraine to the Russian Empire in all of its reincarnations, but along different axes: many ethnolinguistic nationalists dream about a statist, centralized, imperial Ukraine under a "strong hand" leader – in fact, very much resembling the hated Empire, just with different titular nation and, respectively, the language; while the "political" nationalists see Ukraine as a liberal-democratic modern alternative to Russia and, of course, independent from it. The former, if win, could result in a "conservative" nation-building without transformation, or even based on consolidation of the LAO. The latter one, on the other hand, promises rapid modernization.

Obviously, language, ethnicity, confessional affiliation, and historical memory are not factors that easily unite all Ukrainian citizens into one community. At the same time, identification with the Ukrainian political nation based on equal rights and common goals of the different communities and groups, as parallel or opposed<sup>21</sup> to local self-identifications and identities linked to the Soviet empire or its post-Soviet reincarnations<sup>22</sup>, can serve as instrumental principle for future OAO development. In historical perspective it is also important that the modern Ukrainian political nation offers an attractive modernization project that would be unachievable in contemporary Russia or any other state which follows a similar development path in terms of institutions and values and, by and large, moving away from OAO. This is a point of unity in the critically important alliance between the "creative class" (represented by Western-oriented liberals) and the "conservatives" preoccupied with Ukrainian ethnolinguistic and cultural identity (these groups partly, but not fully, overlap). For the former, modernization in itself is a goal, which, however, requires strengthening Ukraine's independence from Russia. For the latter group, independence is the main value in itself, but it cannot be sustained without modernization.

Therefore, a number of indicators gauging the degree of establishment and maturity of the Ukrainian political nation (in the described above sense) are also necessary for measuring the progress towards the OAO. Although the respective balance between national self-identification comparing to different other ones does not characterize the transformation itself, it assesses one of the critical necessary conditions for successful transformation.

The nation-building as such is necessary but definitely not sufficient condition for systemic transformation: there are lots of well-established nations that continue living under a LAO and show few signs of transformation yet. However, this is hardly the case in Ukraine due to its

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<sup>20</sup> See Mattli W. *The Logic of Regional Integration: Europe and Beyond*. Cambridge: Cambridge University Press, 1999, 3, 12.

<sup>21</sup> The pyramid of identities and how they affect each other require further studies. As the Ukrainian Society survey data suggest, if the respondents are asked whom they most consider themselves as, since the Ukraine's Independence, a majority of them choose 'a citizen of Ukraine'-identity (from 45% in 1992 to 58% in 2018). However, the local identity remains rather stable (compare 24% in 1992 and 22% in 2018). Apparently, the Soviet identity is gradually decreasing (from 12% in 1992 to 3% in 2018). The dynamics of change is traced in the Ukrainian Society Survey, 1992-2018 by the Institute of Sociology, Kyiv.

<sup>22</sup> This issue is also discussed in the recently published Veira-Ramos A. et al. *Ukraine in Transformation*. London: Routledge, McMillan, 2020. Available at: <https://www.palgrave.com/gp/book/9783030249779>.

geopolitical situation and historical specificity. At the geopolitical level, breaking with the Russian Empire necessarily means drifting towards the West, which is, in turn, impossible without a transformation. In this regard, shifts in all kinds of economic, cultural, human and other kinds of connections from East to West solidify and amplify the transition. Particularly, the balance of foreign trade matters a lot, as well as, perhaps, other less easily measurable balances in the cultural sphere.

## **The role of the revolution(s)**

North et al. describes transition as a predominantly evolutionary process, emphasizing that the most fundamental changes occur in the "informal institutions", which are rooted in people's beliefs and social practices. This is of course true, but at the same time it takes at least one revolution for this change to happen, because a transition from one system to another that is based on the opposite principles can never be fully evolutionary. At least one major disruption is needed in order to eliminate certain critical institutions of the "old" system (in this case the LAO) that maintain the homeostasis described earlier, which prevents new institutions from development. No country that now has an OAO avoided having at least one revolution or military occupation that changed its institutions in a forceful way. In most, multiple revolutionary episodes took place. For example, France underwent four revolutions; the US, a Revolutionary War that was, at the same time, a War for Independence and then the Civil War; Japan, the Meiji Revolution followed by a civil war and American occupation after the Second World War; England had two; and The Netherlands was the luckiest having only one revolution, which was tied to both independence and religion.

In terms of institutional change, the essence of a revolution, unlike a simple revolt, is subduing of the state to the nation, thereby changing its nature from "extractive" to "inclusive". A "natural state" that serves the dominant coalition originates from a cartel of ancient "stationary bandits", or from conquerors. In both cases, its main task is to extract the resources in favor of the elites and to provide public goods only to the extent they need to be to secure those resources, or are necessary for the legitimization and maintaining of power. Such a "natural state" actively opposes any transformations towards OAO: it actively suppresses economic competition, persecutes counter-systemic political opposition, supports "traditional values" and the informal institutions of a traditional society, etc.

Even if some elites start thinking positively about transitioning to an OAO, there is always an important and influential faction that opposes it till the end because this part of LAO beneficiaries realize that they will lose everything in a competitive society. This raises the cost of an uprising for the elites who are interested in systemic change since an open conflict will inevitably result in fighting that destroys many lives and wealth on their side too. Therefore, even for dissidents among the elites, it is rational not to insist on pursuing their own interests, unless they suffer severe oppression or are being repressed. If some lower-class people rebel, the elites either suppress it or share some part of their income as sops – in full accord with the LAO's logic. This system is remarkably stable – it has sustained numerous riots and wars during thousands of years without changing its essence; and OAOs still remain rare in the world now.

However strong the system's homeostasis, it may still slowly evolve in areas that do not pose an immediate threat to the dominant coalition's monopoly on power and access to economic opportunities. Some of these changes may eventually appear to have a systemic effect, as it was with the destruction of traditional society's institutions, the development of education, and the proliferation of the natural sciences, engineering and mathematics in the USSR. Accu-

mulation of such developments can steadily undermine the fundamentals of the LAO. However, a natural state (and/or traditional society) begins to strongly resist such changes when they pose real challenges to the essential privileges of elites and their mechanisms of power.

In contrast to a natural state, a modern state is believed to serve the people (the political nation) by providing public goods by various legitimate means. Using power for personal enrichment beyond what is legally sanctioned by citizens is considered a crime (corruption) and severely persecuted. Although not without its problems and difficulties, a modern state nevertheless can evolve towards an OAO in a more or less smooth, evolutionary manner. But it needs a revolution to change the state's nature first. Or a series of revolutions, if the first one fails to make a sufficient change that enables further evolutionary development.

From the socio-historical perspective, a "real" revolution follows a defined lifecycle described by Crane Brinton<sup>23</sup>. The first phase is regime change, the second is moderate reform. Then, the country's development may follow the classic French/Soviet revolutionary path with terror as a third phase (i.e. the rise to power of a Robespierre or Stalin). The academic literature predicts a "thermidor" period after the terror phase, i.e. the cooling of social passions and a return to a form of pre-revolutionary autarchy but in an evolved form. However, this chain of events is neither necessarily pre-determined nor necessary. In the US case, terror was avoided because the passion of the revolution was channeled into institution-building (enshrining them in a constitution) and social discourse avoided a "left-ward shift" (see Hanna Arendt's extension of this analysis<sup>24</sup>) from idealism to materialism. Hence, at the end of the second phase a revolution faces a "fork", with one path representing further evolutionary development based on institutionalized achievements of the revolution, while the other promises future disturbances, in which case the changes brought about by the revolution become reversible and a 'thermidor' essentially resurrects the problems that have once led to this revolution.

With regard to systemic transformation to OAO, whether or not the changes to the public consciousness can be reversed becomes a crucial question. Following Hrytsak's arguments drawn from European history,<sup>25</sup> several patterns may emerge. The pattern with the most sustainable and long-term changes is brought about by evolutionary developments such as demographic change, the development of infrastructure, and technological progress (with a national project needed as a framework for development that covers the 'holy trinity' of state, market and society, as we mentioned before). Another pattern, in which changes to public consciousness prove irreversible, is brought about by abrupt and dramatic emergencies such as wars and 'total revolutions', followed by a phase of terror. Strong personal emotions associated with such change can solidify it and produce a "hysteresis" effect. In this case, the change cannot be reversed without an equally strong emotional impact. Finally, geopolitical changes such as, for instance, joining long-term multinational unions like the EU and NATO are hardly reversible, especially if they mean a change from one civilizational center of gravity to another that ultimately affects all spheres of nation's cultural and intellectual life.

The purpose of this work is to assess if the Ukrainian Revolution of Dignity has succeeded in such hardly reversible changes. We suggest (and attempt to prove below) that in Ukraine the components of the LAO still dominate over the OAO, although some of the latter are already present. It is also very likely, though, that the "old" system will be hard-pressed to resist the

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<sup>23</sup> Brinton C. *The Anatomy of Revolution*. First ed. 1938; revised ed. New York, Vintage Books, 1965.

<sup>24</sup> Arendt H. *On Revolution*, Penguin, 1963.

<sup>25</sup> Hrytsak Y. *Selected issues of the European history*. Series of online lectures, PROMETHEUS, 2017. <https://prometheus.org.ua/>

forces of change so long as it retreats (even if puts up a fierce fight), such as in case of the Anti-Corruption Court. However, the Revolution is still in progress, and it is a matter of balance between the forces of systemic change and the forces of systemic conservation that determines the pace of changes, and its final destination. Here two questions arise: are the revolutionary forces sufficiently strong to win at this stage, and, if so, whether they can do it in an evolutionary, gradualist way, without yet another uprising.

Therefore, we formulate the following research questions:

1. Have the changes that occurred in the process of the Revolution of Dignity (including the Maidan uprising of 2013-14 and the following six years full of dramatic and tragic events) already put Ukraine on the path to smooth evolution towards OAO?
2. If not, then, have they already created a momentum that will soon complete the revolution process aimed at the mentioned above goal (direction)?
3. If not, what further changes, if any, should occur in order to give a positive answer to the previous question?
4. Can they occur in an evolutionary way, or further forceful changes are necessary (inevitable)?
5. Are the achievements listed above permanent/sustainable, or may they be rolled back?
6. In the worst case, will the remaining permanent changes be sufficient to serve as a ground for further (r)evolutionary process?

The working hypotheses are as follows:

1. The Revolution of Dignity so far has failed to change the nature of the State. The State is a monopolist on legitimate violence, thus the nature of regime is primarily about who controls the violence. The respective institutions have not changed in their nature, institutional role and corporate culture, except for the patrol police. Neither of the three "doorstep conditions" listed by North et al.<sup>26</sup> is in place yet.
2. For the country as a whole, the move from the Russian field of gravity to the European one is irreversibly accomplished. This may have long-term systemic effect, although contingent upon the EU's ability to understand the deeper nature of "harmonization" as opposed to often formalistic blueprinting of "European" norms or following the "best practices" of already successful countries. In any case, the visa-free regime and temporary labour migration and other forms of population movement will continue to steadily erode the "Soviet mindset" and bring changes in prevalent values.
3. The core of a Ukrainian political nation is already formed, and has started modernizing.
4. In the political sphere, a "competing pyramids" regime is firmly established and will sustain from now on – a "single pyramid" regime will unlikely be possible again. As such, the system will likely become more open to political competition and further evolution. However, it is still unclear whether or not such evolution can ultimately alter the nature of the State.

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<sup>26</sup> North, Waingast and Wallis (2009) define them as (a) rule-of-law (at least for the elites), (b) political control over use of force, and (c) perpetual organizations.

# Section 1. Historical inference: Ukraine's transition from the LAO vs OAO perspective

Post-soviet developments in Ukraine can be viewed in three intertwined dimensions. The broadest and deepest one is societal modernization. Ukraine underwent a substantial part of this before its independent history begun. Unlike in a typical traditional society, Ukrainians live mainly in urban, nuclear families, preoccupied with non-traditional work. From this perspective the Revolution of Dignity and the continuing volunteers' movement are important steps in the long process of societal modernization necessary to form a political nation, increase social capital, develop civil society, etc. In this regard, Ukraine's trajectory is not unlike Georgia's since 1991 with each wave contributing further to the still unfinished formation of the independent and open access state.<sup>27</sup> Transition from the USSR's socialist economy and totalitarian regime to market economy and democratic rule is a stage in the transformation from LAO towards OAO. However important this stage was, it was not the ultimate one—contrary to optimistic expectations of mainstream economists and political scientists, but—in line with contemporary institutional and political economic theory. Instead of a liberal market democracy this transition so far has resulted in a "mature" LAO in the form of "oligarchic" capitalism and patronal politics. In this regard, the Revolution of Dignity is potentially the next step on the trail from both of them towards an OAO.

Finally, at the political and institutional level, Ukraine has gained independence and started developing its own statehood, which it had lacked since the Mongol invasion in the 13th century. The previous two such attempts at independence in the 17th century and in 1917-19 had been, in a long run, unsuccessful. Although Ukrainians were one of the core ethnicities of the Russian Empire and later the USSR, institutionally Ukraine remained a colony and suffered from a number of policies deliberately detrimental to its further development as an independent nation – such as the extinction of both cultural and economic elites, as well as the co-opting of national elites into metropolitan ones; the Holodomor; and the emasculating of its national policymaking institutions. Many structural features of Ukraine's economy, polity and public services have developed according to Russian or imperial patterns and interests, but contradictory to Ukrainians' historically inherent fundamentals<sup>28</sup>. In this regard, the Revolution of Dignity is a groundbreaking event that seems to have ultimately established Ukrainian independence. The consequences would probably be somewhat less dramatic were it not for the role that the Kremlin played in the Maidan confrontation, and the further Russian "hybrid" aggression that immediately followed Yanukovich's flight.

None of these three components (modernization, transition and decolonization) ever proceeded smoothly anywhere, with the arguable exception of post-colonial transition in a handful of

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<sup>27</sup> See for this point on Georgia: Mizsei K. The New East European Patronal States and the Rule-of-Law. In: Magyar B., ed. *Stubborn Structures. Reconceptualizing Post-Communist Regimes*. CEU Press, Budapest-New York, 2019.

<sup>28</sup> See excellent popular description of these historical traditions at Ploky S. *The Gates of Europe: A History of Ukraine*. Basic Books. 2015; Riabchuk M. *Two Ukraines Reconsidered: The End of Ukrainian Ambivalence?* *Studies in Ethnicity and Nationalism*: Vol. 15, No. 1, 2015; *Understanding Ukrainian history: interview with Yaroslav Hrytsak*. *Ukraine/World*, 2019, available at: <https://ukraineworld.org/articles/ukraine-explained/history-hrytsak?fbclid=IwAR2DqIFafNJ96GpmQkXHWpJsryfntlKAEBoiG-u2qATilk5lWQn-mto7AB4>

countries that not only gained their independence peacefully, but also were lucky enough to avoid revolutions and civil wars afterwards. However, none of them so far could be qualified as an OAO.

In Ukraine societal modernization had started as early as 1861 when serfdom was abolished in the Russian Empire. Then, along with the whole Empire it went through the First Russian revolution of 1905-07 that resulted in a constitutional monarchy, and the February Revolution of 1917 that ousted the Tsar and abolished all aristocratic privileges. However, after a short and dramatic period of independence of its parts, the country was occupied by the Red Army with the support of local Bolsheviks and Ukraine became part of the USSR. In the beginning of the Second World War the Soviet army also occupied Western Ukraine, including the territories which never belonged to the Russian or the Soviet Empire before.

The next event in this row that some observers call the "Revolution on the granite" occurred in 1990 and was related to the ousting of UkrSSR's PM Masol under the pressure of the students' "occupy" hunger protest at the Maidan Square (still the October Revolution Square then) in Kyiv. However small, this episode was crucial for Ukraine's evolution as first time since the Bolshevik occupation a group of activists (supported by many Kyivians) managed to force the government to yield regarding crucial issues. The innovative way it was organized (by occupying the main square with tents) was then replicated in all other later revolutionary episodes, successful or not, that took place in Ukraine. A number of participants then became prominent politicians, artists and journalists. Still, in some other Soviet republics at that time protests were much louder and resolute, somewhere involving violent confrontation with numerous casualties.

Ukraine eventually gained Independence after the unsuccessful August 1991 coup in Moscow that also could be treated as a revolutionary event for the whole former USSR. At that time the Ukrainian *nomenklatura*, however, was strong and smart enough to hijack this process and maintain its privileges, although transformed according to the new concept of capitalism and democracy – just as in all other post-Soviet states (except the Baltic countries). But in Ukraine, as a rather rare example, the former *nomenklatura* never managed to restore a "real" LAO in the form of an authoritarian regime, and even the strong ("semi-authoritarian") president Leonid Kuchma had to accommodate a vigorous opposition. Although he built a kind of "single pyramid" with a working political machine (as the 1999 presidential elections proved), this Ukrainian version was much less strict than in any CIS country other than Moldova and Georgia, and maybe Kyrgyzstan. Regional, as well as some other differently organized, "clans" (sub-pyramids) always remained strong and partly independent. This remarkable and crucially important difference with the rest of Eurasian countries, in turn, was caused by a number of fundamental factors that, as we suggest, have largely resulted from the multiple overlapping historical legacies and transitional social and political settings in Ukraine:

1. By and large, Ukrainians have a deep tradition of plurality and no tradition of single-man rule.<sup>29</sup> The tradition of the Russian Empire and later the USSR was considered rather alien. Although the people more often perceive state power as vested in the President rather than in the Parliament or Cabinet, no Ukrainian President was ever overwhelmingly popular (unlike in Russia, Belarus, Kazakhstan, or almost any other post-Soviet state), and from his second year in the office his popularity never exceeded 25%, with a net rating deep in the red. Kuchma, Yushchenko and Poroshenko spent most of their tenures with ratings well below 10% (even in spite of spectacular economic boom during Kuchma's second term and Yush-

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<sup>29</sup> Ibid.

chenko's first few years), and only Yanukovich was a bit luckier due to his core electorate in the Donbas – though he became so wildly disliked in the rest of the country that he was the first to be ousted by a popular uprising. Remarkably, Ukrainians have never acquired their own inherent tradition of absolute power even though they lived under one during both the Russian and Soviet occupation<sup>30</sup>.

2. Against the background of strong, informal vertical structures, the state institutions in Ukraine remain rather weak and incapable of exercising tight control. For example, even Leonid Kuchma's "single pyramid" that existed for more than eight years failed (or perhaps did not even try) to achieve the degree of control that Lukashenko (elected just two years later) established within a couple of years. Note also that all attempts of restoring price controls in Ukraine in 1992-94 failed miserably. According to the Ukrainian Society Survey of 2015, oligarchs were considered the most influential actors in Ukraine (with 44,6% respondents choosing them over the 21,8% that chose state officials).
3. Sources of rents are plural and of comparable size. Although the highly concentrated industries that the country inherited from Soviet times are prone to monopolization, and as such prone to oligarchic rule, they are still plural. Unlike in Russia where drillable hydrocarbons strongly dominate the economy over all other rent sources, in Ukraine rents of mutually comparable magnitudes can be found in many different sectors, including but not limited to power generation and distribution, natural gas drilling and trading, ferrous ore mining and processing, agriculture (which itself is diverse), and more. In addition, of course, there are common rent sources in fiscal (e.g. government subsidies) and financial spheres, as well as natural monopolies, state-owned enterprises and procurement, not to mention large scale organized tax evasion. All of them gave rise to numerous of what Hale calls "pyramids" (inaccurately called "clans" in the Ukrainian political jargon), which no one has ever managed to make more dominant than the rest. Instead, these power pyramids have appeared, disappeared, and oscillated in degree of influence.
4. For all of the time since independence, the East-West division remained strong enough so that a single leader could hardly be sufficiently popular in both parts. However, the growth of a relatively unified Ukrainian civic identity as described in Section 5 has recently blurred this division that helped Volodymyr Zelenskiy and his party to win virtually in the whole Ukraine.

The USSR's meltdown launched a chain reaction of changes that led to a drastic increase in the proliferation of liberal Western values in Ukraine, in this sense of a very real "modernization". The abolishment of ineffective central planning and the total price control inherent to it inevitably resulted in the closing down of many inefficient Soviet 'enterprises without entrepreneurs'. This process was magnified by the loss of the Soviet defense industry that in Ukraine comprised the largest share of industrial mix among all Soviet republics. In conjunction with delayed privatization and, even by post-Soviet standards, the extreme docility of government to the 'intermediate winners'<sup>31</sup> in this first stage of post-soviet transition (mainly 'red directors') led to an unprecedented volume of loans to support domestic producers, resulting in hyperinflation and, eventually, economic collapse.

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<sup>30</sup> Data of the Ukrainian Society Survey. See: Українське суспільство: моніторинг соціальних змін. Київ: Інститут соціології НАНУ, 2015, с. 620.

<sup>31</sup> Hellman J. Winners Take All. The Politics of Partial Reform in Post-Communist Transitions. *World Politics* 50: 1998, 203-234.

This, in turn, triggered further changes. At the political and policy level, the rather inert and cautious but democratic Leonid Kravchuk lost the early Presidential election to the more resolute and entrepreneurial Leonid Kuchma. The latter realized immediately after his unexpected and remarkably peaceful victory that he can hardly maintain power without an inherently unsustainable combination of, on the one hand, urgent, liberal economic reforms imposed by international financial institutions (IFIs)– meaning the "Washington consensus trinity" of financial stabilization, privatization and further liberalization– and, on the other hand, the building of his own "single pyramid"<sup>32</sup>. In doing both he had to betray the "red directors" who brought him to power. They had to be substituted by some other kind of subdued or at least loyal business supporters and, just as Yeltsin a couple of years before, Kuchma found them among the rising oligarchs. He also believed that Ukrainian tycoons would be the strongest pillars of Ukrainian statehood in its confrontation with the former empire.

Contradictorily, because he was a stubborn industrialist Kuchma continued state support of the Ukrainian mining and manufacturing industries. Moreover, he allegedly failed to resist declining a personal stake in gas trading offered to him by the Kremlin<sup>33</sup>. The Ukrainian industrial sector was still heavily rooted in the former USSR and was endowed with a Soviet corporate culture that even privatization failed to wipe out, and the main rent sources for newly ascendant oligarchs were also linked to the CIS, mostly to Russia. The latter deliberately kept the price of natural gas low, and even tolerated theft or non-equivalent barter payments in exchange for maintaining Ukrainian oligarchs' and political leaders' dependency on the Kremlin. Russia also kept its market open for Ukrainian machinery production in order to nurse dependent oligarchs. Some of the latter, like Igor Bakay, Dmytro Firtash, and Pavlo Lazarenko, who was later succeeded by Yulia Tymoshenko, made their fortunes on gas trading and as such immediately benefited from these Russian policies. Rinat Akhmetov and Sergey Taruta also had rents from gas trading for a long time, and then benefited from the cheap gas they used in metallurgical processes. Similarly, the "red directors" of the mostly Eastern Ukrainian machinery plants (such as Vyacheslav Boguslayev of Motor-Sich in Zaporizhia, or Georgy Skudar' of Novokramatorsk Machinery Works) enjoyed ample access to the traditional Russian market. All of this was a series of time bombs with controls in the Kremlin that could be triggered at any time.

Privatization and the further tightening of the budget constraints for Ukrainian enterprises, including the ones owned by oligarchs and the remaining red directors in the decade after Kuchma's second election, led to a dramatic shrinkage of rent sources. Competition in most sectors increased and led to the emergence of some genuinely competitive industries and firms. It resulted in quick economic revival on the back of the global economic boom in 2000-2008.

In line with these dramatic institutional changes, not less important processes occurred on the societal level. The economic meltdown of the early 1990s forced millions of people to give up paternalistic expectations and start surviving on their own. For many of them it just unleashed new opportunities that a market economy provides, but for even more, survival entrepreneurship became their last resort that saved them from hunger. Of course, their opportunities were strictly limited by various formal and informal barriers so that any kind of vertical mobility, at

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<sup>32</sup> We refer here to Hale's terminology.

<sup>33</sup> Ukraine used to import up to 50 bkm of natural gas from Central Asia and Russia through highly opaque barter deals operated by intermediaries informally controlled by Russian and Ukrainian presidents. The last of these intermediaries, Dmytro Firtash's RosUkrEnergo, was explicitly co-owned by GazProm. At the first gas supply negotiations after the Orange Revolution, Russian PM Dmitry Medvedev said to Oleh Rybachuk, then Head of President Yushchenko's staff: "You are now in power, so here is your share in the gas deal – you will get it provided that you agree on our conditions". Evidently, before this, a corresponding share went to Leonid Kuchma. <https://gordonua.com/publications/rybachuk-medvedev-skazal-mne-perestan-vse-chestno-vi-teper-vlast-vot-vasha-polovina-za-gaz-dva-milliarda-lyamov-v-god-232058.html>

least above certain very low level, remained subject to personal connections and patronalism and small business remained predominantly unofficial or "gray". Nevertheless, most of the new entrepreneurs had to play by these rules unwillingly.

In 1997-99 the situation for SMEs (small and medium enterprises) significantly improved due to some limited but successful deregulation (mostly imposed by the IFIs) and, more importantly, the introduction of simplified taxation for small business (which was demanded by entrepreneurs through street rallies and strikes and at that time supported by the IFIs). Simplified taxation as it appeared in Ukraine was especially effective in making small entrepreneurs' activities legalized and really independent from the system of personal rule and extortion. Fierce competition in the retail and wholesale markets, as well as in the service industries, swiftly eliminated transitory rents from arbitrage, and largely reduced the rents from the import of consumer goods. Leonid Kuchma in this period supported these policies because rent in the form of bribes extorted from micro business (mostly open market and street vendors) were highly dispersed and costly to control, and therefore of little interest to high-level actors, while the millions of small entrepreneurs and their family members could provide much needed political support for the 1999 elections.

Both developments resulted in a remarkable shrinking of the rent seeking sector of economy as a whole that elites could not prevent. The oligarchs and state officials led by the President as their arbiter had to withdraw from sectors that brought less concentrated rents, such as retail and services which required a higher cost to control and coordination (although some forms of racketeering still remained there). They focused instead on commodity trading, metallurgy, the financial sector, large-scale real estate, etc. Simultaneously, impudent rent seeking in the energy and fiscal spheres (particularly through opaque barter trade and financial operations) resulted in the fiscal and currency crisis of 1998 that eventually forced Kuchma to launch a new wave of reforms, this time focusing on imposing transparency and tightening "budget constraints". Soft budget constraints benefitted many firms earlier on (those mainly controlled by the "red directors" and oligarchs). These reforms were done by the Yushchenko-Tymoshenko's Cabinet that Leonid Kuchma appointed and pushed through the Parliament (controlled by oligarchs and red directors) immediately after his crafty victory in the 1999 elections. However, as soon as the economy was stabilized and started to grow this Cabinet was ousted while Kuchma remained remarkably indifferent, signaling that he was not willing to proceed any further with reforms.

As a consequence of this wave of partial reforms, the space for competitive business has widened further, and the "ceiling" at which a firm should necessarily find a patron increased so that many more SMEs remained below the radars. In other words, the islands of truly competitive markets expanded. At the same time on the social level, a non-Soviet middle class emerged: small entrepreneurs finally could fully legalize, which gave them confidence; strong economic growth also quickly enriched many white-collar employees who by this time had succeeded in getting a good education, often even in Western universities. Though these may seem insufficient changes, they are significant both from the perspective of understanding system dynamics and when considering what the alternative situation would have been without these reforms.

Although the Orange Revolution of 2004 perfectly fits Hale's description of the dynamics of political regimes that considers changes of power supported by massive street rallies as parts

of normal political process<sup>34</sup>, it nevertheless was an important step in societal and institutional transformation of Ukraine. Started as a political technology project that was prepared and tightly controlled by its initiators<sup>35</sup>, the Revolution soon gained its own momentum that well-exceeded initial expectations, making it a genuine revolution, although with limited goals and also limited consequences. And although politics, in full accordance with Hale's analysis, remained "patronal", the rules of the game changed substantially and irreversibly. Before the revolution politicians used to believe that they don't need to be politicians, that technologies (machinery) will achieve everything. In 1999 it was enough that President Kuchma sent a *raznoriadka* (an informal order transmitted downward the hierarchy through the vertical of power) regarding how much votes in his favor should be "delivered" – by all means! – in each oblast. Governors had to obey: failure to fulfill the *raznoriadka* resulted in immediate dismissal, even between the first and second rounds of elections. The same process took place at each level below, securing the President's victory. There were neither major protests nor any serious attempts to question the results since none of the opponents were genuine politicians. Nobody in Ukraine had the skills and political capital to create an uprising in his or her favor, and no one believed that was it possible. But after Yushchenko proved the opposite, no "machine" politicians could feel safe anymore.

In terms of political institutions, Ukraine got a "dual" constitution that largely weakened the President in favor of the Parliament. Victor Yushchenko fiercely opposed this, but had to eventually accept it as part of a broad compromise that resolved the political crisis. However, this constitution tailored by Putin's crony and semi-official resident agent Victor Medvedchuk was designed in such a way that it makes a President nearly omnipotent to the extent he is skilled in selective persecution and punishment through the Soviet means of selective justice or, rather, through enforcement of impracticable laws. The President kept control over the secret service (endowed with the authority of investigating economic crimes and corruption) and law enforcement represented by the Prosecutor General's Office (PGO), which was empowered to perform all investigations of officials, as well as the "general supervision" of the legality of their decisions. On top of this, a President had enormous control over judges. With these tools in his hands, he or she could potentially blackmail any elite member, so full (informal) control was only a matter of his/her willingness, skills, and impunity.

At the political level the Orange Revolution marked the limits of "machine" politics very clearly: despite all the "administrative resources" employed by Kuchma with the support of Putin, the political capital accumulated by Yushchenko and Tymoshenko prevailed. Since then, even the "*khoz'yaistvennyks*" (former Soviet bureaucrats in charge of economic tasks) that despised politics and politicians had to become politicians themselves, as Yanukovich had to. A portion of the elites that rebelled and split off, at least for a while, had no choice but to appeal to a broader society – and this made them accountable to the voters. When they failed to justify the expectations they created, they lost support and were replaced. Notably, the Socialist Party that once had been quite powerful and who had joined the winning Orange coalition in 2004

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<sup>34</sup> By 2004 Kuchma was a deeply unpopular lame-duck president who failed to find a compromise person as a successor, while Yushchenko appeared as attractive alternative for his charisma, popularity, and support by the West. At the same time, Kuchma's political machine was still strong, as well as interests vested in his rule, and this prevented from peaceful, democratic, transition of power. Hale argues that such kind of revolutionary alternations of the leaders are normal for patronal politics, and they routinely happen across the Eurasia region, usually without any substantial effect on the system's nature.

<sup>35</sup> See Lane D. The Orange Revolution: 'People's Revolution' or Revolutionary Coup? The British Journal of Politics & International Relations. 10, 2008, 525 – 549.

later lost the elections and disappeared from the political scene after they betrayed the Orange coalition and joined Yanukovich's in 2006. Later on, almost the same happened to most of the Orangers themselves.

Yushchenko was known to be personally reluctant and not skilled enough to use the described above informal instruments of power to their full capacity – thus, he predictably appeared almost powerless and had to employ Victor Baloha, infamous for his Byzantine and even cruel management as Chief of Staff (but it was too late anyway, and only further destroyed the remnants of Yushchenko's ratings). While, Yanukovich once elected successfully employed all of these methods to gain full control over the polity<sup>36</sup>, and, as a corollary, rolled back the constitutional amendments of 2004 for the obvious formal reasons that they were adopted in a revolutionary way, with no respect to proper procedure.

At the geopolitical level, as a result of the Orange Revolution Ukraine made a significant step out of the former empire by rejecting the Kremlin-backed candidate and electing the Western-oriented nationalist Victor Yushchenko instead. Although initial pro-NATO and pro-EU moves had already been made under Kuchma during his two-vector foreign policy, further practical actions followed after the Orange Revolution, like start of the Association Agreement and DCFTA negotiations with the EU, and an attempt (though then unsuccessful) to join the NATO action plan. Russia reacted by hiking gas prices to an market above level, thereby exploding a part of previously mentioned "landmines". However, the Ukrainian economy sustained this, and started to quickly adjust by decreasing natural gas consumption. The ferrous metallurgy industry reacted with particularly rapid technological modernization that saved more than 60% of the natural gas that it had consumed previously.

At the societal level, the Orange Revolution was a successful collective action that inspired millions of people, increasing their social capital by a great deal. This time most of them were eventually frustrated by the ultimate results of this Revolution but the very fact that the people can change the power by collective action imprinted deep in the memory of society. Their frustration also had a positive effect: people have partly lost their naïve faith in the "good politicians" that will make reforms in favor of the whole society without further pressure. These two lessons were learned well. In 2010 when Yanukovich and Azarov tried to abolish simplified taxation (understanding that this was creating their most dangerous enemy, the middle class), small businesses organized themselves (this time without any politicians and political technologists) into the Tax Maidan<sup>37</sup>, and again the people were able to defeat the government. This episode convinced people further that they can win if united in a decisive action, and warned the authorities about the limits of their tyranny.

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<sup>36</sup> The extent of his real power became clear as soon as he was elected, well before he managed to undo the constitutional amendments. Yanukovich succeeded in appointing Nikolay Azarov as PM against the interests of everyone else, including not only the Orange parties (who formally still had a majority in the Parliament), but also the oligarchs. In only a couple of months he also managed to push through the Rada (which remember was still formally dominated by the Orange MPs) the notorious Kharkiv treaties with Russia – the ones that allowed the Kremlin to deploy about 40,000 Russian troops to Crimea till 2041, which later in 2014 became instrumental for Russia's annexing of the peninsula. In doing this, he also broke the old Ukrainian tradition of political inclusivity (respecting the informal veto right of a minority) that his party broadly exploited while being in opposition. For the first time in Ukrainian history, the MPs that tried to blockade the Rada's tribune were physically beaten with a few seriously injured by their colleagues from the Party of Regions (many of them former thugs).

<sup>37</sup> Massive (tens of thousands of people) rally at the Kyiv's central square that gathered in Fall of 2010 in response to some provisions of the new Tax Code prepared under direct supervision of Prime Minister Mykola Azarov. These provisions effectively abolished simplified taxation by raising taxes and, most important, restoring some bookkeeping for small vendors that would make them subject to pressure and extortion by tax inspectors.

Still, Yanukovich failed to learn these lessons and sparked a new revolution that appeared remarkably different in many aspects. Unlike all similar events in the post-Soviet space, the Revolution of Dignity differs in many ways from the revolutionary patterns described by Hale. Thus we believe that it carries the potential to break Ukraine out of limited access order and patronal politics for the following reasons:

1. The Revolution of Dignity happened when Yanukovich was in full force – not a lame duck by any means (as he did not even finish his first constitutional term) – and still relatively popular by Ukrainian standards. Thus, both criteria for a successful revolution mentioned by Hale were missing.
2. Not only did the political opposition not prepare this uprising in advance, as they had in 2004, but themselves were not prepared at all for such course of events. It joined the events only hesitantly, with some resistance from the "Maidaners". Although formally the official political leaders were present and even tried to negotiate on behalf of the Maidan community, they were never respected and trusted, and certainly did not control the Maidan – in sharp contrast to the Orange Revolution. Particularly, the agreement signed with Yanukovich and guarantors on February 21st was never respected by the rebels. From the beginning to the end it was organized for the most part horizontally. Actually, the protest had no strong leaders at all, and failed to form a "winning party". This is also why the revolution did not result in overwhelming political victory for the revolutionaries.
3. Unlike the Orange Revolution, the motives of "fair redistribution" were much less pronounced. Instead the main mottos were anti-corruption (or more precisely anti-extracting), pro-Europe (that is mostly pro-market and for equal opportunities for all), and, of course, the "dignity" for which the revolution was named. "Ukraine 2.0." was one of the most popular slogans of the uprising, implied to restart the country on the principles of the OAO.
4. The Revolution of Dignity resulted, among other positive things, in the restoration of the dual constitution – this time likely permanently.
5. Apart from changing the persons in power and, arguably, the nature of the power, the Revolution of Dignity ultimately changed the geopolitical orientation of Ukraine. It used to be one of the countries least economically and politically dependent on Russia among the whole CIS, and for all of that time, even in the Yanukovich era, tried to exercise "two-vector" foreign and trade policies. Nevertheless, it largely remained within the gravity of Russia, particularly by having a free-trade zone with it, plus numerous cooperation agreements, especially in the defense industry (although Ukraine was not a fully participating member of the CIS). The DCFTA was about to balance this with free trade and the Association Agreement with the EU, although with no definite obligation for eventual membership. Should Yanukovich have signed it, this would have just become yet another piecemeal step of the drift towards Europe and out of Russia's orbit, with no immediate dramatic consequences.

However, the way that Russia treated the pro-European intensions of Ukraine – from the trade war of autumn 2013 to the military invasion of 2014 – triggered a revolutionary reaction that ultimately and drastically pushed Ukraine into the orbit of the EU and NATO. In Ukraine this happened perhaps to an even greater extent than in Georgia a few years earlier due to coinciding with the revolution and the war that ended in the occupation of a part of the country's territory. Notably, after "exploding" its second "landmine" by erecting trade barriers against Ukrainian-made commodities and goods and by forcing Ukraine to impose sanctions on trade with Russia – the former empire utterly lost its main economic leverages over Ukraine. The post-revolutionary Ukrainian government was strongly motivated to curtail all kinds of trade relationships with Russia and did so even in the most problematic spheres such as nuclear fuel supply.

6. Unlike in the other revolutionary episodes in Eurasia, the revolution not only changed the parties and persons in power, but dramatically altered their relationships with civil society that arose as a new and powerful player in policymaking – although of course decision-making is still vested in legitimately elected and appointed politicians. At the same time, the desperate economic situation caused mainly by Yanukovich's detrimental and irresponsible plutocratic policies, as well as by Russia's aggression, has sharply increased the influence of Western countries and international institutions. They have found powerful leverage over Ukrainian authorities like never before. Therefore, the distribution of de-facto power in Ukraine has changed substantially, at least for the moment.
7. In sharp contrast to the remarkably peaceful Orange Revolution, the EuroMaidan has had to break with the tradition of non-violence that seemed to be inherent to Ukraine<sup>38</sup>. Although the protest started as totally peaceful, and although the protesters did not even try to install tents (in spite of the harsh weather) to avoid provoking violence, they were cruelly beaten by riot police and dozens were severely injured. Still, only some marginal radicals resorted to violence at the huge rally that followed the next day, and they were mostly treated by the protestors as provocateurs. However, the regime instantly ratcheted up violence, and this spiral eventually ended with a massacre that killed more than a hundred people, mostly unarmed rebels. It is noteworthy that the return fire that killed a few policemen is perceived by most of Ukrainian society as justified. Thus, all in all, the Maidan has partly legitimized political violence. Along with a huge number of firearms that leaked during the dramatic events of the Maidan's final days, and, to much larger extent, the war in Donbass, this largely changes earlier expectations as to further possible upheavals.
8. As we will show in more detail in Section 5 devoted to societal change, the main cleavages that split Ukrainian society have, arguably, been altered: instead of an ethnolinguistic "East-West" division that used to dominate for many years, the new cleavages are more between the emerging "creative class" and the "oligarchic class" (the LAO's beneficiaries).

The ensuing events after the Revolution, particularly the Russian aggression against Ukraine, not only pushed the country towards the West and facilitated the proliferation of firearms; they had deep and far-reaching sociopolitical and economic consequences that deserve separate treatment due to their importance.

First of all, at the societal level, in spite of historical ethnolinguistic, cultural and religious cleavages, in 2014 Ukraine emerged as a political nation. This is the most fundamental and positive consequence of the chain of events that began in late 2013. It has been suggested that this may entail a systemic risk: could the higher level of social homogeneity and unity finally bring about a "single pyramid" regime? In this respect we remain optimistic. The diversity and strength of the regional "clans" (pyramids) along with vibrant civil society seems to remain sufficient enough to uphold plurality, as the recent Presidential election so vividly demonstrated. Even the "Donetsk clan" still exists, although largely weakened compared to its hey-day and is no longer able to dominate the others. Strong and independent local elites in Dnipro, Kharkiv, Odessa, and L'viv (in each case represented by multiple pyramids), along with a number of Kyiv-based powerful pyramids, ensure sufficient competition, and seem to unite only when confronting the real threat of Putin's clearly visible imperialist goals, if at all.

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<sup>38</sup> To be sure, there were two events when it was not obeyed: the funeral when the violence on religious ground sparked; and the "Ukraine without Kuchma" unsuccessful revolution attempt that ended up with violent confrontation between radical nationalists and police. Both led to no casualties, although a few people were injured; and both were condemned by overwhelming majority of the Ukrainian society, including its most active parts.

Second, in politics since the Revolution every move has been viewed through the lens of the ongoing "hybrid" war with Russia. Particularly, Poroshenko's government used to defend itself with arguments that the opposition's actions play into the enemy's hand even if they are radically anti-Russian (for instance, calling for the forceful liberation of Donbass) or just anti-corruption. The organizers of street rallies also feel responsible for not allowing any provocations or other actions that would destabilize the country or allow one to associate these rallies with Russian influence. The main line of attack against Zelenskyy has also been his vague position on the issues of Russia and the war on the Donbass. At the same time, Russia continues to play an important implicit role in Ukrainian politics, just as it apparently does in America and Europe, but not as overtly and intensively as in Ukraine.

Third, the war has largely increased the presence of armed forces of all kinds, and complicated their civic oversight. They have received much better funding, higher legitimacy and increased in number. In addition to the army, police, secret service and the PGO, Ukraine has voluntary battalions (*dobrobats*) that formally belong to the army or the National Guard (that also has largely changed and strengthened), but actually are built on different principles and values, and have gained a great deal of independence. Later on, a special anti-corruption investigative agency (NABU) was created that, though not armed, has extensive authority.

Fourth, the confrontation with Russia legitimized discrimination against Russian capital in Ukraine and the sharp shrinking of trade with the aggressor, even if this resulted in higher prices for consumers, or the loss of workplaces. The political-economic positions of formerly pro-Russian oligarchs respectively weakened. However, the most notorious of them, Vadim Novinsky, was not prosecuted and expelled, as expected, but Dmirty Firtash largely lost his positions (also because of simultaneous prosecution by US authorities for bribing Indian officials), and the "Yanukovich wallets" just flew to Russia. As a result, the political-economic landscape has substantially changed: it is still dominated by oligarchs of different caliber, but the ones whose rents originated mostly from relations with Russia have lost a lot or disappeared, while the new ones are rather tied to domestic sources. And these sources are much less abundant.

## Section 2. Rule-of-law vs discretionary justice

The main demands of the Revolution of Dignity and developmental science coincide in that both consider an honest, competent government and a fair judiciary and law enforcement based on the RoL to be two of the most important predictors of long-term developmental success. Looking back on the last 5 years, one can conclude though progress towards both in Ukraine has been small, it certainly has not been non-existent. In this chapter we try to establish what the state of affairs is in Ukraine on these two subjects and what has brought it about so that we can in the last chapter suggest further practical ways to move the country forward towards an effective and efficient RoL based state.

The main concern of the public during and immediately after the revolution was the rampant and gigantic corruption of public officials, including gross embezzlement, raiding, tax fraud, gas arbitrage, and other practices by Yanukovich and his entourage that also became very visible as the revolution opened up his Mezhyhirya palace and other excesses. The mass public movement appropriately acquired the name 'The Revolution of Dignity'. Public desire was similar to that of Georgia after the Rose Revolution, which triggered sweeping reforms. Georgia's success in systemic transition has been spectacular in the 15 years since the Rose Revolution, even if not conclusive in that Georgia has not established a fully independent judiciary and some of the reforms may prove to be less than sustainable; also, on top government level arbitrariness remained part of the repertoire. Even considering these factors, Ukraine's state reform compared to the highly ambitious albeit imperfect standard of Georgia has so far been rather modest.

Georgia wiped out most corruption after the Rose Revolution in a country that was not only famous for corruption but also was a former home and incubator of organized crime in the entire Soviet and post-Soviet area. Crucially, in the years after the Rose Revolution Georgia radically deregulated the economy, eliminating many of the opportunities for corruption. It also reformed public administration and much of the judicial sector, though without making the latter independent of the executive branch. Georgia, as a consequence of its reforms, has since seen superior economic growth despite the war in 2008 waged against it by Russia. There have been shortcomings in the Georgia reforms other than failing to grant independence to the judiciary or prosecution, mostly issues connected to the still overly powerful office of the President during Saakashvili's time: a degree of arbitrariness, exceptions for the President from certain rules and an excessive degree of informality in the day-to-day functioning of the government.

Given that Ukraine had better conditions before its revolution and that its revolution was more dramatic than Georgia's, it should have implemented even deeper reforms. Ideally, the judicial system and law enforcement, especially the prosecution, should have been severely reformed along four lines:

- Changing legislation to functionally secure the independence of both the courts and the prosecution;
- Thorough re-staffing on the basis of the state's new principles and strict attestation criteria under control of an independent body made up of reputable members of civil society and international experts to apply the principle of transparency to its fullest;

- The power of prosecution thoroughly reduced and the power and prestige of judges greatly increased;
- A radical increase in the remuneration for these professions, including investigators and policemen, to a level that corresponds to the high social importance of these state services.

We shall see below what happened relative to these expectations. But first let us deal with the usual excuse for modest action that a) Ukraine has been mired in a war and b) it could not afford financially the costs of the governmental overhaul. As to the first counterargument, surely the war required a careful approach in dealing with staff of law enforcement, particularly police. But the partial success of reforming the patrol police shows that there were ways to deal with the sector in spite of the war. And deep reform in the prosecution and justice system could have guaranteed firm punishment of those who turned against the state or society in the critical situation of Ukraine. The elimination of the Berkut did not cause insurmountable problems either. One would assume that a great deal of caution was needed in this area, but clearly the President's motivation was not to soften the pain of reform but to avoid it largely altogether. Also, a functional law enforcement and judicial system (from the point of view of a RoL state) is a strong guarantee against the infiltration of the system by hostile powers.

As to the second argument, again, a leadership that believed in the critical importance of reforms could and should have engaged the international community to help cover the costs of such an overhaul. The opposite happened: even when reforms did take place, such as the initial steps towards reforms of the prosecution, the national budget did not allocate as much funds as has been envisaged by the law, effectively sabotaging the reforms.

This is not to say that the international community can be completely exonerated for the lack of breakthrough reforms in the RoL sectors. True, the most important international partners had by 2014 learned a lot about the nature of the system in Ukraine, and thus concentrated on issues pertaining to the RoL. This has been a very positive development that needs to be recognized. However, implanting the RoL culture is a complex thing and in this respect the international community has for the most part failed. Particularly regrettable is that the International Monetary Fund – a critical player for a country that was in desperate need of liquidity financing in 2014-15 – has largely ignored dedicated professional expertise when establishing conditionality in the area of the RoL. Its commendable that they wanted to apply conditionality in this area; but due to lack of expertise they chose an incorrect, formalistic approach by demanding simply the creation of the National Anti-Corruption Bureau of Ukraine (NABU).

## **Lack of genuine change strategy**

In 2014 Ukraine did not have a leader with such charisma and commitment to sweeping reform as Georgia had in Saakashvili in 2004. This is one of the important differences between the two countries regarding reforms. Although one might argue that Ukraine actually had a better chance for reform than Georgia: Ukraine in 2014 was more reliant on the support of the West than Georgia had been in 2004, thus the EU and the United States had more leverage over policies in Ukraine. Of course more leverage is only useful if international powers have a solid understanding of how to reform in the given specific country and historical situation. They also lacked a consensus on a workable change strategy and in many crucial instances they actually used their influence to put the brakes on reforms – from the Council of Europe's approach to judicial reform that is described below, to the recent ban on corporate tax reform. Bendukidze in Georgia in similar instances just showed them the door and did what he considered appropri-

ate and mostly succeeded. Ukraine also had a better starting point in that its people were more inclined to law-abiding behavior than the famously rebellious Georgians. Georgia also had a much stronger tradition of organized crime than Ukraine. The fact that Georgia was a living example for Ukraine's reforms is demonstrated by the eagerness of the Ukrainian leadership in 2014 to use Georgian experts as advisors, even in high, official state functions responsible for various reforms.

However, the situation also differed in the two post-revolutionary countries. Besides a lack of genuine leadership for reforms in Ukraine, the effect of the war that began right after the revolution and economic crisis were important determinants. Also, the support for the revolution among Ukrainians was not as strong as it had been in Georgia in 2003. Ukraine lost the chance to build momentum for sweeping reforms. After events like the Revolution of Dignity (as well as the Orange Revolution) there is usually a short window of opportunity to capitalize on that momentum and initiate quick, radical changes while the public still expects them and the period of exceptional politics<sup>39</sup> lasts. Instead, Ukraine's post-Euromaidan leadership adopted processes in the most politically sensitive areas that often only pretended to make reforms. The creation of the reform coordination body, the National Council of Reforms in the Presidential administration<sup>40</sup> was one example of this.<sup>41</sup> This office, instead of establishing quick and ambitious priorities, engaged in lengthy processes of creating hugely complex reform matrixes that targeted many different areas, which meant the government had no practical priorities. Thus both the official center of reform and later the numerous "monitors" of reform fell into the same fallacy: their change strategy was to break down the needs for reform into many different components and hope that "many" of them will be fulfilled, and thus a critical mass will be automatically achieved. "Reform scorecards" proliferated in the whole period without much thinking about the critical mass that can trigger real fundamental systemic reform.

Similarly, a pseudo-reform activity was the adopted law in 2014 on the anti-corruption strategy, the real function of which was to placate Ukraine's foreign friends and avoid the truly painful measures that had been adopted head-on in Georgia. Similar measures, adopted to Ukraine's actual situation could also have rapidly reduced the level of corruption here as well. By welcoming the package of laws the international community performed a double fallacy. It allowed the government to confuse a vague strategy and the proliferation of new institutions with two types of real action: first, against obviously corrupt people and second, targeting the systemic mechanisms of corruption in an effective manner. Moreover, in some cases the international actors directly blocked such kinds of reforms. For instance, an attempt to apply the "regulatory guillotine" that had been so successful in Georgia was blocked by arguing that such drastic deregulation would contradict the EU Association agreement. Instead, it embarked on a steady, costly, and poorly focused process of revising business regulations. But still in many cases harmonization with the cumbersome, burdensome and often discretionary EU norms without prior establishment of genuine European-conforming institutions, especially the RoL, and a correspondingly high quality of bureaucracy resulted in enhancement of corruption opportunities. In a similar way, the IMF has banned corporate tax reform, which is currently the area with the most corruption due to the inherent vulnerabilities of profit taxation to corruption. The second broader and more complex fallacy was the mistaking of anti-corruption activities

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<sup>39</sup> The term coined by Leszek Balcerowicz describing Poland's own period of radical reform.

<sup>40</sup> National Council of Reforms to be Created in Ukraine. Kyiv Post, July 22, 2014. <https://www.kyivpost.com/article/content/ukraine-politics/national-council-of-reforms-to-be-created-in-ukraine-357333.html>

<sup>41</sup> <https://web.archive.org/web/20150104200004/http://www.president.gov.ua/en/news/30717.html>

for the establishment of the institutions and real mechanisms of the RoL. While the public was undoubtedly right to demand a clamping down on the people who had robbed the nation during the Yanukovich era, the government was able to partially get away with empty pretensions because of a lack of clarity in defining clearly the long-term systemic goals of anti-corruption efforts and RoL reforms and their interlinkages among the international partners of Ukraine and the policy think-tank community.

Later, in absence of enthusiasm for reform at the top level, concentrated "critical-mass-oriented" reform activity dissipated. Between the government institutions on one hand and the international institutions and NGOs on the other a kind of a game set in with the latter trying to corner President Poroshenko on the reforms, particularly of the judiciary and prosecution, while he pretended that he would do it sneaked out with newer and newer tricks. This has been particularly true in the reform of the judiciary and law enforcement, which has been the most sensitive of all reform issues as it directly affects raw political power and the potential criminal responsibilities of high and not so high level politicians.

## Partial reforms

At the same time, however, looking back over the last four years, perhaps overly gloomy evaluations may cloud some of the important and potentially positive, albeit incomplete, systemic developments, recently analysed by John Lough and Vladimir Dubrovskiy.<sup>42</sup> Their report admits that, though punitive anti-corruption measures have fallen short of their ambitious promises, some really important shrinkages in corruption opportunities have occurred, particularly regarding deregulation, natural gas supply, tax administration, and some other spheres. For instance, the Annual Business Cost Assessment (ABCA) survey demonstrates a decrease in the total cost of compliance with non-tax regulations for SMEs by 8% in absolute numbers, not corrected for inflation, in a single year of 2016<sup>43</sup> (other economic effects are analyzed in the section devoted to rent seeking), and a national opinion poll's respondents admit some decrease in the frequency of bribes, which can likely be associated with the reform of administrative services. The reforms – where they took place – also managed to create reasonably trusted government bodies<sup>44</sup>, like the new patrol police and NABU. However, such successful reforms have been rare elsewhere, especially in the judiciary and law enforcement.

To understand why this has been the case, we first need to scrutinize what has and has not happened in the judicial and law enforcement sectors. While no change strategy that outlined priorities among the different subsystems of these sectors, a number of initial actions began already in 2014 that have proven to be of modest – but again not totally insignificant – value over the past 5 years. Initial action took place in each of the large subsectors already in 2014, in the judiciary, prosecution and police and, as we mentioned, in anti-corruption activities, which given their perceived importance also gained the status of a quasi-"sector". In three of the main sectors for the RoL the main responsibility belonged to the Presidency, while

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<sup>42</sup> Lough J., Dubrovskiy V. Are Ukraine's Anti-corruption Reforms Working? Royal Institute of International Affairs, Chatham House, 2018. <https://reader.chathamhouse.org/are-ukraines-anti-corruption-reforms-working#>

<sup>43</sup> Although we cannot directly compare to previous years, since this survey was conducted only in 2015-17, the respondents admitted that the situation improved comparing to 2013 – although, Ukrainians generally tend to be rather negative (for instance, the same period of 2015-2016 the balance between those admitting improvements and lack of improvements was – 7.2% in spite of objective decreasing the cost).

<sup>44</sup> Rating Group, Socio-political moods of the Ukrainians: new challenges, 2018. Available at: [http://ratinggroup.ua/en/research/ukraine/obschestvenno-politicheskoe\\_nastroeniya\\_ukraincev\\_novye\\_vyzovy.html](http://ratinggroup.ua/en/research/ukraine/obschestvenno-politicheskoe_nastroeniya_ukraincev_novye_vyzovy.html)

responsibility for police reform to the government; the minister of internal affairs was also a key member of the junior coalition party. Naturally, there have been overlaps and disputes over competencies such as over distribution of investigative functions among different agencies.

In absence of overall understanding and genuine desire, and thus leadership, of reforms on the top of the executive, each of these actions were results of particular tugs of war among sectors of government (mainly presidency) on one hand, and the major donors, the US and the European Union, as well as think tankers and civil society activists on the other. The latter gathered mainly in the Reanimation Package of Reforms, a unique reform pressure group for any post-socialist country. This fragmentation of reform actions was also furthered by the earlier mentioned checklist approach of the reformist public and also of the reform center of the Presidential Administration. The Renaissance Foundation, together with the EBRD, supported the reform process with financing a large number of experts in different ministries. This happened without a clear view of a desirable change strategy that could have been a good selection criterion for placing people into these ministries and, even more, could have helped prioritize talent and attention.

This strategy-less strategy could have worked here like it did in the new EU-member states if Ukraine's challenges in its transition were similar to theirs and if the "carrot" encouraging the transition was EU membership. In the case of the new member states, particularly the "Visegrad"-countries the transformative power of the EU was formidable even if its interventions and influences were often bureaucratic and formalistic, interested mainly in legislation and much less in actual processes. But in those countries the initial consensus about reforms was very strong, so when the EU became very influential such a broad strategy without a clear hierarchy of goals was acceptable. Also, implementing law according to its letter and spirit was historically a known concept in those countries. Thus the reward was powerful. Ukraine's more challenging and difficult situation requires a much deeper understanding of the viable change strategies that was clearly lacking in 2014. When the window of opportunity finally arrived there was obviously no time to study Ukraine and its reform opportunities thoroughly; the friends of Ukraine were not well prepared enough to assist the reforms in a truly effective and tailor-made manner. The key personalities of the government, on the other hand, were pre-occupied with optimizing their own short-term positions of power in the political arena, which was not perceived as being consistent with driving radical reforms. However, this situation still allowed some modest and controlled reforms. The results of these main vectors shaped what we have gotten in Ukraine over the past 5 years.

Different change strategies could have been imagined back in 2014 in the most critical RoL area. Clearly, the final check on disputes and crime belongs to the judges. Therefore court reform had the appeal of fixing the independent position of the ultimate gatekeeper – and in a liberal order, indeed, their power would clearly overwhelm that of prosecutors, policemen and secret service officers. However, prosecution reform could also be seen as key by another reasoning: since prosecutors are such a pillar of the oligarchic state and for the creation of local and national monopolistic situations even with competing oligarchs that here reform could have triggered such a vacuum in *oligarchic power* that could have opened most radically the road to the open access order. The power, and with it level of corruption, of the prosecutors was so overwhelming that it cried for action to weaken the anti-reform camp and the organized corruption networks. Finally, in the whole system somewhat marginal patrol police reform could be seen in the generally reluctant reform environment as a first, "moral boosting" step, visible to the public, that then could be followed by other, more complex and ambitious reforms overseen by the Minister of Internal Affairs.

But as it happens, these initiatives remained fragmented, without strong political support (with the initial exception of the "patrol police reform" that helped the PR of the President, the Min-

ister of Internal Affairs and made donors and civil society also happy for a while). The pro-reform community was pushing with little discrimination for all significant reforms in the belief that some will succeed and the changes will perhaps reach a critical mass to generate irreversible systemic transformation. There was clearly no change strategy at hand. The mirror image of this strategy-less approach was the equally intellectually undemanding production by many of "reform score cards" – a poor indirect admission of no clear idea of what kind of system to build and how.

In well-established democratic societies there is a large variety of regulations and institutional setups in the justice sector. One axiom is that "the courts should be independent," but even this sits oddly in Georgia, the only successful site of anti-corruption reform in the CIS-space, where in the initial phase of the Saakashvili reforms justice was so centralized that the President personally presided over the council of the judges. Obviously, there should be no debate that ultimately courts must become independent. However, Saakashvili's route was not only self-serving, it also was a response to the local reality of massive organized crime. Regarding the prosecution, the necessity of independence from executive power is equivocal. So much so that in many countries the norm is for the prosecution to be subordinate to the executive branch to various degrees (mainly to the minister of justice) – of course without the institutional history prevalent in Ukraine<sup>45</sup>. Georgia, again as the closest success example to Ukraine, did not make the prosecution independent in the Saakashvili period and this ultimately became the source of significant abuses of power. In Georgia, the prosecution modernized very intensively and underwent deep reforms of its organization and budget, internal organizational and salaries but remained still under the executive with a large propensity for arbitrary action.

## Judiciary – interface with public and with prosecutor

Judiciary and prosecution are core elements of patronal politics, "the system" because the very essence of a patronal leader's rule is, according to Hale, his right and ability to punish and reward at his own discretion. This is opposite to the rule of law where independent judges have the last word on punishment, which is regulated by law, and where the prosecution is independent in its action from executive power, let alone oligarchic power. This makes judicial reform key to combatting patronal politics, which is, in turn, a key part of the LAO. The most powerful players in Ukrainian politics and business clearly understand this too<sup>46</sup>, so an independent and effective judiciary is the last thing they would allow to emerge, because by losing control over the courts and prosecution they actually lose much of their informal power<sup>47</sup>.

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<sup>45</sup> "...the exercise of public interest functions (including criminal prosecution) should not be combined or confused with the function of protecting the interests of the current Government, the interests of other institutions of state or even the interests of a political party. . . . The functioning of such a system however depends on legal culture, and especially in younger democracies, where there is a history of abuse of prosecution for political goals, special precautions are needed." Venice Commission's 2010 report on the PPO standards.

<sup>46</sup> «Якийсь мудака з-за бугра приїде і буде розказувати нам, як тут жити і будувати свою країну? Вони зроблять свій ручний суд і це все-кінець. Вони замкнуть вертикаль: НАБУ-САП-суд. І далі підуть "антикорупційні трійки", як в НКВС. Бо прийдуть, по кого захочуть і коли захочуть. Це буде держава в державі", – обурюється не під запис один із впливових депутатів БПП.

«Захід хоче поставити нас уже під повне зовнішнє управління!»

"Some asshole from abroad will come and tell us how to live and develop our country? They will make their manually controlled court, and this is the end. They will complete the vertical NABU - SAP - ACC. And then there will be anti-corruption "trinities", like in the [Stalin's] NKVD. Because they will go after whoever they want, and whenever they want. This will be the state within the state". And another one added: "The West wants to get already complete external control over us!" (author's translation).

<https://www.pravda.com.ua/articles/2018/01/23/7169243/>

<sup>47</sup> Liberal reformers only in the last period pay anything near to adequate attention to reform of the judiciary and prosecution nationwide.

On the formal level, transformation towards an OAO presupposes changing the power relationship between prosecutors and judges, with the influence of the former needing to be weakened. There are thoughts that one at least needs to be reformed. This may be a necessary position if the capacity of government to reform is very limited. However, the risk that reforms may be reversed remains high so long as either prosecutors or judges remain unreformed. The prosecution's power should be broken, its hierarchy weakened, mandate reduced, and number of prosecutors reduced, while their salaries should be seriously increased. The judiciary meanwhile should be professionalized, their salaries increased, and ethical standards and the authority of judges raised. This is a very complex set of tasks and, thus, will not happen overnight and inevitably will require some trial and error.

When it comes to judicial reform, an additional difficulty is that the system is complex. Initially it had four judicial levels (merged now into three) and many institutions. In order to make the judiciary function properly, the whole system needs to be reformed as blockages resulting from the combined effects of political pliancy and corruption can occur on different levels of the judicial hierarchy and even one in the chain can stop the process of delivering justice. A major difference between the approach of the chief European standard setter, the Council of Europe, and the Ukrainian radical reformers is that the latter assert that Ukraine only has a chance to achieve breakthrough judicial reform if there is a near complete overhaul of the system of corrupt judges as well as reform on every judicial level, while the former assumed that applying the CoE norms in every area will result in more or less the same Western European system, ignoring the enormous differences in attitudes and institutional behaviour. The radical reformers' rationale for their approach has been that such corrupt institutional culture dominates Ukrainian courtrooms that can only be changed by a critical mass of new blood. It is a real dilemma as, on one hand, there have been positive examples of systemic change the way the Council of Europe recommends it – Poland and Hungary are very good examples, despite their late reversals – but, on the other hand, these judiciaries had never been so deeply rotten and, from a liberal perspective, dysfunctional, as the one in Ukraine (and in the majority of post-Soviet states). Ukraine has its own uncharted path, and earlier examples of judicial reform in other countries are only so helpful<sup>48</sup>. The Council of Europe – and in its footsteps the European Union – would be well advised to take this problem seriously and raise their expectations of what breakthrough reforms in Ukraine will take.

The reform of the judiciary has been tried via many avenues in the last 4 years. The process of firing all the Presidents of district courts and reappointing them by votes from the local judges illustrated perfectly the fear of the radical reformers: 80 percent of the Presidents, deemed to be long hands of the previous Yanukovich government, were simply reinstated by the local judges, illustrating just how much organized crime had penetrated the courts<sup>49</sup>.

There was a short naïve moment after the Revolution of Dignity in which the main path forward seemed to be through the lustration law. Lustration was a dead end not only because of the failure to purge corrupt senior judges – though undoubtedly a worthy cause – but also because the goal of lustration could not be defined in a way that would have satisfied the requirements of "justice". Firing the leaders of the border guards – arguably the most professional segment

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<sup>48</sup> "The European standards on the composition of the judicial governance bodies based on the principle of "majority of judges elected by judges" do not work in transitional democracies, Ukraine might need to change this approach, with recognition from the EU and international organizations" Zhernakov M., Judicial Reform in Ukraine: Mission Possible? Policy report. International Renaissance Foundation, 2017. [https://rpr.org.ua/wp-content/uploads/2017/02/Renaissance\\_A4\\_5JURIDICIAL-REFORM.pdf](https://rpr.org.ua/wp-content/uploads/2017/02/Renaissance_A4_5JURIDICIAL-REFORM.pdf)

<sup>49</sup> See Mykhailo Zhernakov, *ibid* and Popova M., Ukraine's Judiciary After Euromaidan: Continuity and Change. Comparative Politics Newsletter, Volume 25, Issue 2, Fall. file [https://www.researchgate.net/publication/289529086\\_Ukraine's\\_Judiciary\\_After\\_Euromaidan\\_Continuity\\_and\\_Change](https://www.researchgate.net/publication/289529086_Ukraine's_Judiciary_After_Euromaidan_Continuity_and_Change)

of law enforcement at the time because of many years of intense EU assistance – exemplifies the point. They were fired on the basis of having been trained in the old KGB academy, however, it had earlier been a strict formal requirement for them to attend it! The other problem was that such purges are only feasible in a situation where the leaders of the revolution take over the state apparatus and if they work according to their professed goals. Here the revolution did not result in a takeover of the political leadership, thus there was no strong push to manage the process in an honest way other than from NGOs and international actors, so lustration ultimately lacked the critical political power needed to break through vested interests. In certain segments of government the lustration process was manipulated in various ways by the people already in power<sup>50</sup>. On top of this, lots of law enforcement officials and servicemen lustrated or screened out by attestation commissions in the course of these reforms eventually managed to return to the same positions or to similar ones through court decisions.

In the 2014-15 period the strong position of non-governmental reform experts gathered in the Reanimation Package of Reforms which, combined with the Council of Europe's advocacy, pushed the presidency towards declaring a reform strategy and even constitutional amendments to create an independent judiciary. The country's vital dependence on Western aid meant that such a strong reform push could not go unanswered. However, afterwards the leadership of the country lacked the guts to do what was necessary to completely renew the judicial corps, or rather was not willing to for the reasons explained above. In each step brakes got built in and the incumbents got the upper hand, though not totally. At the same time, judiciary was still not left the same either. In the Supreme Court, thanks to the involvement of independent experts in the High Qualification Commission of Judges of Ukraine (HQCJ) and even more for their opinions and monitoring in the Public Integrity Council (PIC), significant changes did occur, even though the opinions of the PIC were often disregarded<sup>51</sup>. According to the PIC, the integrity of half of the 118 judges in the new Supreme Court is in question. Its, however, a glass half empty or half full situation: if half of the judges are competent it is a big achievement and a very significant step forward. As such, the change in the Supreme Court could turn out the most consequential reform in the RoL and law enforcement sectors.

This, combined with the substantial but still insufficient increase in judges' salaries makes it more feasible for them to live professionally honest lives without bribes. Salaries at the low-level courts are still very low though, while even in the upper levels they are hardly comparable with the lawyers' honorariums of the respective professional levels). However, the above reforms, as well as the impact of free media, bode well for the prospect of the emergence of islands of honesty in the judicial corps that can, over time, show a positive example of judicial ethos to the whole profession. Such evolution happened in other post-communist countries earlier. But in those countries, the reforms were supported by an intense adjustment and monitoring process under the supervision of the European Commission, were reinforced by reforms in other areas relevant to the RoL, and also took place in a period of rapid economic growth that certainly contributed to the emergence of an honest RoL ethos. In those countries the gap between their governance culture and that of the West was historically not as deep as in the case of Ukraine. So, comparatively Ukraine's judicial reforms so far have produced modest and tentative results. If they are not enthusiastically continued, surely their impact will quickly erode. The changes will only continue if in the new political period intense and competent work will be devoted to continuing, hopefully much more energetically, the started modest changes.

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<sup>50</sup> Lezina E., Украинская люстрация. Два года спустя. Вестник общественного мнения, № 3–4 (122), July - December 2016.

<sup>51</sup> See Brillat R.: The work of Supreme Court shows that Qualification Commission performed its task with success. Interfax, June 6, 2018. <https://en.interfax.com.ua/news/interview/510317.html>

## Anti-corruption institutions

Creation of a separate or partially separate anti-corruption chain in Ukraine has been predicated on the vaguely articulated philosophy that since one of the core characteristics of the current system is rent seeking via extra-legal means, and because radical overhaul of the whole system was not politically feasible in 2014-15, reformers had to fight corruption. But there were three unspoken interpretations of what that fight against corruption meant.

For many in the public it simply meant putting corrupt politicians and business people behind bars (not to mention the perpetrators of the murder and beatings during the Euromaidan). The second interpretation was wiping out corruption through repressive measures, while the third was to reduce the scope of corruption via radical deregulation, privatization and positive incentives for lawful behavior. The third approach never got much exposure in the international support community or among reform professionals, such as those in the RPR. A notable minority, however, like the authors of this paper, Alexander Danilyuk, and a few others, have advocated for such a complex and more incentive-oriented approach but haven't so far gained strong political backing. The main reason for this, other than the very understandable populist line of thinking that corruption should be "fought" by punishing it, is a professional one: lawyers are generally less likely to advocate for radical shrinking of the role of the state as part of their professional bias. At best they do not have a (usually un-spoken) belief in the unlimited capacity of the state to regulate and enforce. Usually the question is not even asked but state capacity is, erroneously, assumed. It is mainly liberal-minded economists who come to the conclusion that the role of the state should be reduced, like in Georgia under Saakashvili, which was helped by Bendukidze's enormous charisma and focus on reducing the state's role. They, however, rarely have a sufficient understanding of state organization.

After the failure to radically overhaul the system, legal professionals' main focus was to find alternative routes to create an independent state capacity to persecute corruption, seeing it as one of the gravest ills of the state. While we maintain a certain distance from this approach, we do not *necessarily* disagree with it. We do, however, consider it an open question of what policy approach would be most likely to ultimately establish an open access society in Ukraine with a firm RoL, and we are particularly interested in how that course would affect the country's relationship with its largest neighbor, a permanent existential threat<sup>52</sup>.

What Ukraine has found itself in is the *proliferation of new institutions without eliminating or seriously shrinking any of the old ones*. First, on the basis of the 2014 legislation, NABU was established. Then the institution of anti-corruption prosecution was created. Just as is currently going on in the anti-corruption court, there has been public controversy surrounding the appointment of the head of the anti-corruption prosecution. Later ferocious and very public inter-agency infighting ensued between the anti-corruption investigative agency, the prosecutor's office and the state security services. Rather than siding with any one side we simply want to point out that this proliferation of different agencies around corruption has certainly been one of the reasons for such infighting. While writing this paper the preparations for the selection of judges for the anti-corruption court is still under way. Like with the establishment of NABU and of the anti-corruption prosecutor's office, the establishment of the courts has also been part of the IMF's conditions for the new stand-by loan facility, which is vital to Ukraine's financial sustainability. The founding of each of these institutions was because of the hope of Ukrainian think-tanks, NGOs and international supporters for one day creating a liberal, European state.

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<sup>52</sup> [https://www.kyivpost.com/ukraine-politics/activists-say-prospects-of-anti-graft-court-look-bleak.html?utm\\_source=traqli&utm\\_medium=email&utm\\_campaign=traqli\\_daily\\_editors&tqid=nf0zaiR9H00BU8Zw6.cV9PTKjrSf1xqnARoue24%24](https://www.kyivpost.com/ukraine-politics/activists-say-prospects-of-anti-graft-court-look-bleak.html?utm_source=traqli&utm_medium=email&utm_campaign=traqli_daily_editors&tqid=nf0zaiR9H00BU8Zw6.cV9PTKjrSf1xqnARoue24%24)

So far, 5 years on, the hope put into the new set of anti-corruption institutions has not materialized, which makes it a legitimate question whether this strategy was wise to begin with and whether it needs major correction or at least some augmentation. NABU, however, has done some robust work, more than was expected of it. Yet, the ruling elite has plenty of ways to neutralize one institution if it really starts to act according to the expectations of civil society institutions and the supporting international partners. We will return to this question later in the study. A possible answer is that, while the apparatus for repressing corruption is important to establish but it is going to be a longer process in the best of circumstances; by a less fortunate scenario the different institutions can get under the influence of powerful interests (since Ukraine does not have a single pyramid political formation, it may well be that competing politico-business interests acquire positions in different law enforcement and judicial agencies). Therefore, it is important to seek other means to reduce the scope of corruption in Ukrainian society. Yet, the costs of revisiting the establishment of the new institutions and eliminating any of them is too high, plus there is no alternative strategy so far that has been articulated in a convincing manner. If the above set of points is true the task is to improve the institutions and design mechanisms that guarantees that they focus on well-defined mandates and that they will not fall prey to particular political and corrupt business interests.

## **Prosecution – a core institution for conserving the existing patronal system**

If it is true that the prosecution has become a core institution in preserving the patronal state in a large majority of the post-Soviet states, it should also be true that its appropriate and right reform is one of the critical components of reforming the system as a whole irreversibly. As said before, the prosecution has a very bad institutional history in post-Soviet societies. In the Soviet Union, by Stalin's design, it was a core institution to secure general repression and fear. Subsequent post-Soviet Ukrainian regimes failed to dismantle this horrible organization as well as its excessive mandate to investigate, i.e. to harass arbitrarily. Thus its control has remained a key issue in the political fight for power. Crucially, the Ukrainian state in the Yushchenko period missed a uniquely favorable opportunity to cut the prosecution's strong ties to the Donetsk clan (controlled by Yanukovich and Akhmetov), thereby weakening the clan's institutional position. Because of this missed opportunity, when Yanukovich became president, the prosecution remained a powerful ready-made tool, a de facto criminal organization, which in his hands was used to exert monopolistic control over potential rivals, i.e. to establish a single power pyramid.

Reform of the prosecution in the post-Euromaidan situation thus became critical but also of course more difficult because by now its new role in the mafia-like political and business elites<sup>53</sup> became much more entrenched than it would have been if the core reforms had come right after Ukraine had gained independence or even after the Orange Revolution. As much as

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<sup>53</sup> When using the term "mafia" the authors of the study want to express tremendous debt to Bálint Magyar who made, in our view, paradigmatic inroads into understanding the post-socialist system and in whose work the term has a key significance. See particularly because of the clarity of conceptual elaboration, Bálint Magyar, Bálint Madlovics, *The Anatomy of Post-Communist Regimes. A Conceptual Framework*. Central European University Press, 2020.

Timoshenko at the Orange period was responsible for the economic mismanagement, in this area reform should clearly have been initiated by the President, which he critically failed to do. We should also note that the international and NGO pressure at the time was also much weaker than in 2014 as people's understanding of the real systemic features was more limited than it is now<sup>54</sup>.

In 2014 the pressure increased for the leadership to dismantle the powerful prosecution, in part because of the very ostentatious role that Pshonka, the prosecutor general under Yanukovich, played at that time. The normative knowledge of how prosecution should be structured in a liberal state mainly rests in the Council of Europe that runs its largest field operation in Ukraine. In the Parliament the President's junior coalition partner, *Samopomich*, as well as RPR in civil society, were strong partners in this endeavor. The EUAM and European Commission's capacity concerning the design and execution of prosecutorial reform was modest in this period, later it gradually grew. One of the authors of this paper, at that time head of EUAM, strongly advocated for there to be a primary focus and radical reform in this area, but at the time EU institutional support was modest. The US Ambassador Geoffrey Pyatt, with the strong backing of US Vice President Joe Biden, were perhaps the strongest political pushers for prosecution reform.

For President Poroshenko the risks were high in this situation as he must have clearly remembered the consequences of leaving the prosecution in the hands of Yanukovich' gang during the Yushchenko era. His response was similar to his handling of the judicial reform: try to yield enough to satisfy the donors, coalition partners and civil society while not to such an extent that he would lose control over this critical institution in the fight for political power as well as losing his own "pyramid" functioning. Legislation thus moved in the right direction but his appointments were such that he would not lose personal control over the prosecutor general, effectively safeguarding against any radical changes in the organization of the prosecution. His first appointments were not successful and he had to fire them eventually due to pressure from the reformers listed above, but he did gain critical time. His first two prosecutor generals did as much as possible to delay the reforms outlined by law. By the time Yuriy Lutsenko was appointed, Poroshenko's room to maneuver domestically and internationally was large enough to be able to appoint his core political confidante without even the legally necessary preconditions<sup>55</sup>.

In this situation reform proved to be mostly cosmetic, but it did open the door to further, more substantial changes. Perhaps most importantly the constitutional provision about the *general oversight* power of the prosecutors was eliminated and its role has been reduced to managing – though not actually conducting – investigations. Although research shows that this has not yet been put into practice<sup>56</sup> and the excessive power of the prosecutor has remained in place in criminal proceedings, legal change now enables reformers to closely monitor the implementation of the new legal provisions and push for real improvements. It leaves room for dismantling the system over time.

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<sup>54</sup> We also are due of self-criticism on this since the Blue Ribbon Commission that one of the authors set up also missed on advocacy for dismantling the excessive power of the prosecution and establishing a balance with the judiciary in our recommendations in 2004-5.

Aslund A., Paskhaver O. Blue Ribbon Commission Proposes "New Wave" of Reforms for Ukraine. January, 2005, See: [https://carnegieendowment.org/2005/01/13/blue-ribbon-commission-proposes-new-wave-of-reforms-for-ukraine-pub-16377?fbclid=IwAR2Tx2XNiODLAG8Qk0xFC-gIDlz5x7iMUXAbTNY\\_nHmbQiJU7wtze9TUAElc](https://carnegieendowment.org/2005/01/13/blue-ribbon-commission-proposes-new-wave-of-reforms-for-ukraine-pub-16377?fbclid=IwAR2Tx2XNiODLAG8Qk0xFC-gIDlz5x7iMUXAbTNY_nHmbQiJU7wtze9TUAElc)

<sup>55</sup> For Lutsenko's lack of formal qualifications for the job it was necessary to change the law.

<sup>56</sup> Процесуальні гарантії затриманих осіб. Міжнародний фонд "Відродження, October 13, 2015.

Four other important elements of the reform have been tried that together, including the above mentioned reduction of the roles of prosecutors, could have prepared the ground for radically altering the system over time. They have all been successfully neutralized by entrenched interests, but again they leave the door open for further reforms.

First, the *excessive centralization* of the institution of prosecution needs to be dismantled in order to make the system less prone to top level political or corrupt interventions as well as interventions of local strong interests. Here the progress has been very minor and partly reversed recently.

Second, Ukraine's prosecutorial force, thanks to the Soviet heritage, is excessively large. The law has ordered to reduce this force from 18,000 to 10,000. Only a small part of this reduction has been implemented. The initial progress was lukewarm. Simultaneously and in an attempt to shake up the system, David Sakvarelidze, the deputy prosecutor general at the time appointed by Poroshenko and a close associate of Saakashvili from Georgia, initiated a reorganization that aimed to create larger territorial units and, simultaneously *reduce the number of prosecutors*. He also launched a new appointment system. Through the active resistance of the Prosecutor General at the time, as well as the failure of the government to allocate the funds necessary for the salary increases envisaged by the law for the Office of the Public Prosecutor<sup>57</sup>, caused this effort to only very partially succeed. The number of prosecutors has over time decreased but the system was not shaken up, partly because the extremely low salaries at the time only attracted either incompetent people or those who had the aim of enriching themselves from the still powerful position of the prosecutor in criminal investigations. This happened despite the strong participation of civil society in monitoring the selection process<sup>58</sup>.

*Salary reform for prosecutors* was delayed in this period, causing serious damage to the reform in the critical period of the bottom-up cadre renewal. While the Law on the Public Prosecutor prescribed large salary adjustments following the inflationary hike after the Euromaidan and the wars, the government did not provide the necessary budget allotments in 2015 and the adjustments only came in 2017<sup>59</sup>. While the delay can, to some extent, be justified by the tough budgetary situation in those difficult times, not abiding by the law and not providing the necessary funds critically slowed down the personnel changes in the prosecution, thus reducing what should have been a radical reform of prosecutorial culture to a barely significant minimum.

Elimination of *general oversight*, the loosening of centralization, the half-hearted reorganization (including cadre change), salary reform, and the newly introduced – but so far timid– internal controls are changes that have not yet resulted in a definitive altering of the role of prosecution in Ukraine towards one that resembles liberal democracies. Yet, these are leakages in the system that not only leave hope for further gradual change but may have actually prepared the ground for it, and perhaps even for a radical change, if and when the political constellation becomes favorable. However, the timidity of these changes also leaves the door open to an even stronger restoration of the patronal system. More ambitious and faster reform, however, will need to take radical steps when the opportunity arises, and the piecemeal reforms of the

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<sup>57</sup> Law on the Public Prosecutor's Office in Ukraine. European Commission for Democracy through Law (The Venice Commission). Strasbourg, November 5, 2014.

<sup>58</sup> We do not cover the most recent PGO's reform because Kalman Mizsei, the principal author of this section, was not able to take active part in the project since he took the position of the EU High Level Adviser to the government of the Republic of Moldova for Confidence Building

<sup>59</sup> Governmental Decree №657 "On amendments to some decrees of the Cabinet of Ministers of Ukraine concerning payment of work of the prosecution employees". August 2017

Poroshenko-period will be only of little assistance in that process. However, the know-how is there to make changes in each of the 5 areas mentioned in this section to pave the way for radical reforms that would change the balance of the criminal process as well as tear apart the so far dense web of prosecutorial and judicial corruption.

## State Bureau of Investigations

The need to establish an independent investigative state body first officially surfaced in the very first year of the independent history of Ukraine. A combination of a need to balance political power in the higher echelons of society, in lieu with the fear that such an organ could be abused by the already powerful for political purposes, as well as bureaucratic and professional inaptitude, prevented the creation of such office for long. Finally in 2012 its establishment was decided in the Criminal Procedural Code, a quite high quality legal document for the Yanukovich era that was greatly assisted by international expertise, particularly from the Council of Europe. It was because of the Council of Europe's pushing that the State Bureau of Investigations (SBI) was to be established within 5 years. The extinguishing of the investigative functions of the Office of Public Prosecutor made the creation of this function more urgent. However, the question loomed as to what its exact functions were, given that the task of investigation primarily rests with the police under the supervision of the Ministry of Internal Affairs.

The SBI was established to investigate crime committed by public officials that do not fall under the jurisdiction of NABU<sup>60</sup>. Concerning questions related to clashes/overlaps of competencies and the use of organizations for political gains also applies to the SBI, which has a quite large staffing ceiling, up to 1500 investigators<sup>61</sup>. On one hand, if done well, creating this new institution is an opportunity to break with the Soviet (and post-Soviet) past and create institutions that conform with Western standards. On the other hand, there are again risks in the proliferation of large, overlapping law-enforcement institutions that can be misused for political purposes. Creating a good institution ultimately depends on leadership and honest effort but the selection of the leadership of SBI was also marred with controversy<sup>62</sup>.

## Security Service of Ukraine (SBU)

The issue of reforming the SBU has received less public attention in the period since the Revolution of Dignity than that of the public prosecution, although the misuse of the secret services has been another massive pillar of presidential patronal power in Ukraine and elsewhere in the former Soviet space. As part of the "*silovik*" sector was left with the minor coalition party, the presidential political camp felt that the "check and balances in relation to Ministry of Interior" necessitated that they not only keep this organization but also give it a wide mandate, causing it to overlap with the jurisdiction of other institutions. This broad mandate means the President of Ukraine essentially has the ability to collect easily "*kompromat*" on his potential political opponents or misuse this for other reasons.

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<sup>60</sup> "Whereas NABU focuses on high-level corruption cases, the SBI will be mostly responsible for investigating those crimes by public officials not covered by NABU. For example, if a judge is implicated in a traffic hit-and-run or a high-ranking official orders an election fraud, they must be investigated by the SBI." In <http://www.euam-ukraine.eu/news/the-sbi-ukraine-s-civilian-security-sector-reform-will-not-be-complete-without-it/>

<sup>61</sup> *ibid*

<sup>62</sup> <https://antac.org.ua/en/analytics/who-will-lead-the-state-bureau-of-investigations/>

Reforming the SBU means, among other things, depriving the SBU of functions such as anti-corruption investigations and "fighting economic crimes" is crucial for dismantling the patronal state and for establishing real checks and balances and the separation of powers. In addition, this is one of the conditions for the NATO accession plan. But such a reform will be as difficult to accomplish as the judicial one.

The international community has been arguing that the functions of the SBU should be clearly delineated, narrowing its jurisdiction to counterintelligence, counterterrorism and the protection of state secrets. This found its way into the Law on National Security in June 2018. However, like in the case of the prosecutorial reform as well as fight against corruption, the law lacks proper implementation mechanisms that, incorrectly, the SBU itself is supposed to draft. It is particularly important that the SBU's functions in anti-corruption, organized crime fighting and economic crimes investigation be clearly separated, but it is hard to do so if the organization itself is left to decide how the law should be implemented and when the President himself is interested in maintaining unduly broad mandates.

The new President has better chances of implementing such reforms earlier in his term rather than later, when the vested interests of his administration and the logic of power struggles will make it more difficult. Blueprints for reform are available but it is important that the reform's design is not left to the organization itself, which will inevitably be interested in maintaining as big a mandate as possible for both its own institutional power interests and because of corruption, since dealing with economic crime is the most lucrative criminal activity within the state apparatus with the largest opportunity for extortion. Formally he agreed with depriving the SBU from any functions in economic and anti-corruption sphere, but so far he seems to be as reluctant to implement these promises as his predecessor was – perhaps, for the same reasons.

## **Police**

In 2014-15 police reform was mistakenly seen as the bright spot of the broader reform picture in Ukraine. The creation of the patrol police was sold to the public as a major reform of the whole system. It followed in the footsteps of the Georgian patrol police reform but with big differences. In Georgia the patrol police immediately replaced the road police and in a short amount of time, mainly due to the completely new workforce and better pay, which radically improved service. This reform was then followed by the less glamorous but important professional reforms within the system of the Ministry of Internal Affairs. The Ukrainian police reform shared the PR part – it hired new, young, good looking police, including women, and with better pay. But this was only very gradually introduced. This in and of itself would not have been a problem since Ukraine is in a war and is a much larger country than Georgia, so the operation was inevitably more complex. However, it also took a very long time to replace the road police, so the two worked side-by-side – the new and modern next to the low paid and corrupt, but also in some areas more competent. Finally, the bigger problem was that this partial but still meaningful reform was not followed by any robust changes in other, more complex parts

of the police system and the giant Ministry of Internal Affairs<sup>63</sup>. In Georgia police were also dramatically downsized and IT staff systematically employed, but in Ukraine this process was also much more timid.

So, while patrol police in Georgia was the skillful opening salvo of a very radical and thorough reformation in policing, which gained popular support for reform, in Ukraine it has remained a PR exercise without depth. Some results of the reform have so far been maintained, such as the lack of corruption in the new patrol police who have over time acquired basic policing skills. Also, the EUAM mission has contributed to certain changes such as a rationalization of police structure in rural areas to be less bureaucratic and more service oriented. The EUAM's assistance in police training and building connections to European colleagues may also have a long-term impact on police attitudes and organization. Also, in some areas service towards the citizens has improved to some extent.

Another fault of the Ukrainian reforms is that most officers who had been lustrated or screened out by attestation commissions soon managed to be restored by the courts – either because the latter are also corrupt, or because the process of firing was not duly arranged and supported legally. Some others also found new opportunities at business controlling agencies or other places with high opportunities for extortion.

So, in the political cycle since the Reform of Dignity Ukraine has failed to make an ultimate turn towards a RoL state. On the other hand, partial reforms serve as useful basis for further reforms in case the political will emerges in the current cycle. Ukraine's international friends and think tanks should take stock of why the breakthrough reforms have not yet happened and formulate with greater clarity and precision their expectations towards the holders of power as to reform expectations.

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<sup>63</sup> "Звісно, для власних цілей певний аналіз ми здійснюємо. Користуємось також і даними із відкритих публічних джерел. І так, ми маємо деякі підстави для стурбованості, спостерігаючи досі значне зменшення рівня довіри українських громадян до правоохоронної системи." «Of course, we do perform some analysis for our own purposes. Also use the data from open sources. And, yes, we do have some reasons for worrying about fairly significant diminishing of the Ukrainian citizens' level of trust in the law enforcement system"

Назарчук І. Сектор цивільної безпеки в Україні. Оцінка реформ від голови місії ЄС. <https://www.radiosvoboda.org/a/29652816.html?fbclid=IwAR30YHVZ6mTgTHBj-leGsEmcO7rwc1llhulitf-uuwexruW10Uc85ERNxoA>

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Назарчук І. Сектор цивільної безпеки в Україні. Оцінка реформ від голови місії ЄС. <https://www.radiosvoboda.org/a/29652816.html?fbclid=IwAR30YHVZ6mTgTHBj-leGsEmcO7rwc1llhulitf-uuwexruW10Uc85ERNxoA>

# Section 3. The Economy: Rent seeking versus profit seeking; Eurasia versus Europe; Post-industrial versus Industrial

In the last five years, the Ukrainian economy underwent deep structural change. It has been a continuation of trends that can be traced back to the 1990s. However, after the EuroMaidan, structural changes speeded up, and in many cases (especially in the geographical mix of foreign trade) the fundamental systemic balances triggered. In any case, we cannot yet state that profit seeking overshadows rent seeking: although substantial changes took place, overall Ukrainian balance between these sectors described in Introduction is likely to remain in red.

## Rent seeking versus profit seeking

By "profit," we refer to a kind of net income that is received in relation to creating a value recognized by a competitive market or a transparent public procedure ("value-adding rent"). This is posed in opposition to "rent", which is defined as net income generated by explicit (e.g., through subsidies) or implicit (e.g., through limitations on competition) redistribution of value ("value-subtracting rent"). In a political-economic sense, the former is rather associated with open access order (OAO) that is based on competition, whereas the latter is characteristic of a limited access order (LAO) in which rents in the aforementioned meaning play a critically important role. Although, of course, some mode of rent seeking can always be found under an OAO and, conversely, some competition (or, at least, value creation) is always present under a LAO. The hypothesis here is that the balance between the two activities matters.

Under a LAO, the rent-oriented business that is based on (formal or informal) privileges rightly fears that it will fail if deprived of them, therefore that business would support the status-quo. Furthermore, it also upholds existing limitations on political competition too, because such a business would normally be connected to certain politicians and/or has its own political wings in the form of parties or factions. Under an OAO, the profit seeking business feels more competitive in open markets, and thereby fears a rent seeking one that could outperform it in a "competition" for privileges. Of course, no business would mind having privilege itself, but a risk is always that once that privilege is given, that same privilege can eventually go to a competitor. Besides, unlike rent seeking, value-adding business is a positive-sum game, in which a win-win mutual agreement about the rules of the game is normally reachable and can be made self-enforceable or be enforced by the participants without an "arbiter."

For these reasons, a certain balance between rent seeking and profit seeking can be self-sustainable or even self-propelling, and, therefore, not only characterize the existing social order, but also be one of the predictors of that social order's further evolution. Namely, if profit seeking already prevails under a LAO, that aspect of economic life can become one of the driving forces for the entire system's opening.

Unfortunately, estimating the balance between rent and profit seeking in a given system is not a routine exercise in contemporary economic literature. To the best of our knowledge, nobody has tried to undertake this type of research before. Therefore, the methodology discussed and used below is tentative.

Of course, much depends on the ability of businesses to organize in collective action in support of their best interests: history is full of examples of small but well-organized groups able to mobilize large resources and win privileges at the expense of others even under a mature OAO (the metallurgical industry in the United States is but one recent example). Unfortunately, this ability is hard to assess empirically<sup>64</sup>.

The resources at the disposal of rent seekers can be approximated by the volume of rents, or by the total value added (formal) by the respective industries. The former may be more precise in the sense that it captures the actual amounts in question—it can be assumed that motivation for rent seeking is roughly "proportional" to them. However, these amounts are hard to estimate and the low precision of these estimates can cancel out the precision of the whole method. At the same time, the second gauge approximates the relative influence of an industry, which that industry can then use (or, rather, abuse) for rent seeking activities. Ideally, one should probably take a product of both, although such a number can hardly have any meaning in itself.

The resources available for profit seeking could be best approximated by cash flows (and then compared to rents) or, similarly, the value added. Another problem is, however, that small businesses only report their total sales.

Unfortunately, available data are scarce and scattered. The World Bank has recently performed a useful exercise concerning "crony capitalism" in Ukraine that estimated the share of politically connected firms in the country at about 20%<sup>65</sup>. This means that their share in the total amount of firms' true profits can be a few times more, despite poorer reported performance analyzed in that paper. As anecdotal evidence suggests (and the report itself admits), their real profits are much more likely to be concealed in tax havens. Normally, such firms are monopolies or close to it. They also receive favorable regulations, state procurement orders, etc., hence their profitability should be higher than the average, politically unconnected firm. However, all of these considerations are much too vague for any concrete conclusions and estimations.

Another recent study, performed by the Institute for Economic Research and Policy Consulting (IER), is devoted to the shrinkage of major rent sources in Ukraine that resulted from post-Maidan reforms. Particularly in the natural gas sector, the elimination of price arbitrage and production-share agreements with crony firms reduced rents to about 0.3% of GDP; in public procurement, between 0.3% and 0.8%. The Table 1 below presents an estimated overview of some major rent sources from before the Revolution of Dignity and at the present moment, which we managed to collect from various sources footnoted at the end of the table (unless specified, the source is the author's calculation based on governmental statistics from DerzhComStat or the Treasury).

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<sup>64</sup> Industry concentration (measured by the Herfindahl-Hirschman index, or otherwise) can serve as a proxy, if considered with other data such as past experience of the respective sector.

<sup>65</sup> World Bank. Crony capitalism in Ukraine: impact on economic outcomes (English) Washington, D.C.: World Bank Group, 2018, <http://documents.worldbank.org/curated/en/125111521811080792/Crony-capitalism-in-Ukraine-impact-on-economic-outcomes>.

Table 1  
**Evolution of some major sources of rents in the Ukrainian economy**

Source of Rent	Value at End of 1990s (or earliest available year)	Value Before the Revolution of Dignity (2013, if not dated)	Current Value (2018, if not dated)	Comment
<b>State subsidies to firms</b> (as % of GDP)	20%* (direct and indirect)	8% (including quasi-fiscal hidden subsidies)	0.9%	By now hidden subsidies are largely eliminated
<b>"Tax pit holes" own income</b> (as % of GDP)	No data	2.2%**	~0.2%***	
<b>Kickbacks in VAT refund</b> (assuming 30% rate, as % of GDP)	No data	1.0%	0%	Fully eliminated for law-obeying firms
<b>Share of the SOEs in total sales</b>	Close to 100% in 1991	10.4%	7.3%	
<b>Share of competitive markets</b> (% of total sales)****	No data	42.7% (by 2014)	43.4% (by 2016)	

\* Lunina I., Vincetz V. The Subsidisation of Ukraine's Enterprises. In Ukraine at the Crossroads: Economics Reforms in International Perspective, Axel Siedenberg and Lutz Hoffmann, eds. Berlin-Heidelberg: Springer-Verlag, 1999, 118-32.

\*\* According to the government's claims, Yanukovich's "licensed platforms" for tax evasion had a turnover of 300 billion UAH in 2013, or about 20% of the GDP. Lyamets S., Арсеній Яценюк: Усі схеми попередньої влади ліквідуються. Економічна правда, May 14, 2014, <https://www.epravda.com.ua/publications/2014/05/14/452304/>.

\*\*\* For 2017, based on an assessment of annual turnover at about 60 billion UAH. Дубровський В., Черкашин В., Порівняльний аналіз фіскального ефекту від застосування інструментів ухилення/уникнення оподаткування в Україні. Київ, Інститут соціально-економічної трансформації, 2017, <https://rpr.org.ua/wp-content/uploads/2018/02/Instrumenty-uhylyannya-vid-splaty-podatkov-2017-1.pdf>.

\*\*\*\* Anti-Monopoly Committee's annual reports for 2015 and 2016. Звіт Антимонопольного комітету України за 2015 рік <http://www.amcu.gov.ua/amku/doccatalog/document?id=122547&> and Звіт Антимонопольного комітету України за 2016 рік respectively [https://amcu.gov.ua/storage/app/sites/1/Docs/zvity/2016/AMCU\\_2016.pdf](https://amcu.gov.ua/storage/app/sites/1/Docs/zvity/2016/AMCU_2016.pdf). Later data are not available.

As one can see, the sources of rents, although substantially reduced, still remain vibrant, and rents, especially from the market power, most probably still politically dominate over profits. The markets where rent seeking is substantial still prevail in the economy; the shadow economy (represented mostly by the unregistered and concealed incomes of large business) persists; corruption remains rampant.

There is not yet a sign that respective vested interests have lost their political connections so that their abilities to influence the rules of the game for maximizing rents has been substantially restricted. It did happen in a few particular and important cases: tax authorities are no longer drafting tax legislation (although here we have an unfortunate partial reversal in 2019), the management of state procurements has become much more transparent (with the important exemption of military procurement) and largely unified, and a number of notoriously corrupt government bodies were eliminated or dramatically re-organized. A few dozen, presumably clean and benevolent, civil activists entered the legislature in 2014 and even more are expected to appear in the new Rada. However, the vast majority of MPs remained connected to business interests and/or are dependent on the leaders of engaged factions. Certain private firms and SOEs still keep strong connections to the executive power, law enforcement, police, and secret service, which allow them to influence enforcement and application of laws, by-laws, and informal rules.

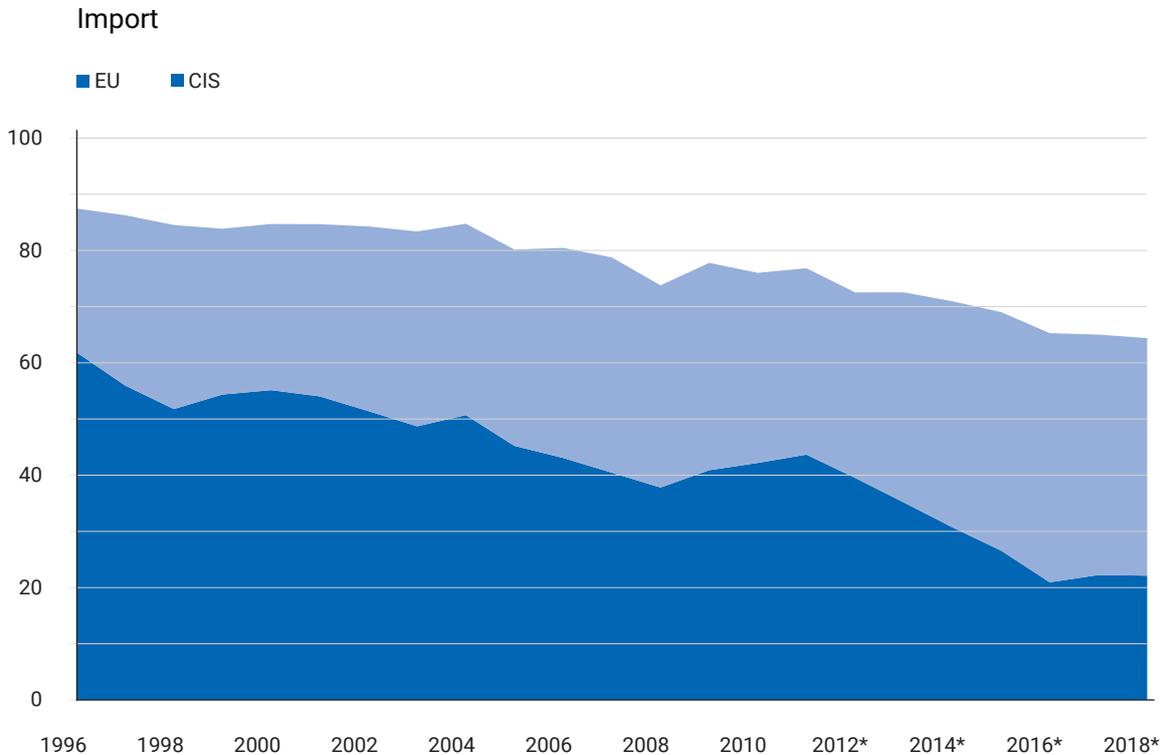
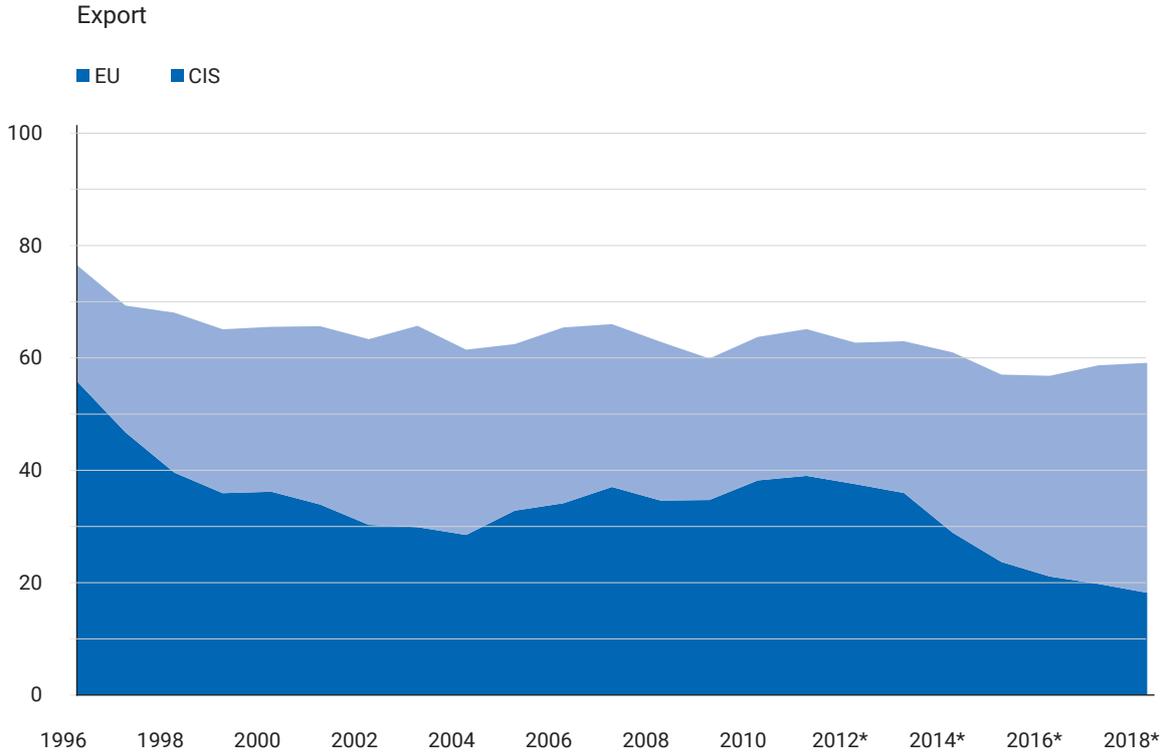
Among the positive trends, we can admit some consolidation of a predominantly competitive—"non-oligarchic"—business community. At least three strong new players of this sort appeared in Ukraine after the Revolution of Dignity: the Union of Ukrainian Entrepreneurs (SUP), and two "associations of associations"—the SME Platform, and the Ukrainian Council of Business (URB), not to mention informal clubs like the "Top 100 Ukrainian Businesses." The National Business Platform that has united them with the support of US-based think tank CIPE has recently put forward ambitious goals, which, if implemented, could mostly open access to economic opportunities for all. At the same time, as usual, only some business interests are truly benevolent from the national perspective—others are ill-informed and/or harbor unrealistic expectations, or merely rent seeking ones.

In sum, the balance of influence between rent seeking and profit seeking businesses has substantially shifted toward the latter, but has not yet triggered fundamental change in the entire system.

## **Socioeconomic shifts**

Although immediate short-term changes in the fundamental balance look insufficient for any qualitative conclusions, the long-term structural trend works against the main rent-oriented industries and toward real value-adding. This issue deserves a special separate study, but we can give a few examples that illustrate this statement. Above, in the Table 1, the most impressive numbers concern subsidies to firms. Chart 1 illustrates the evolution of foreign trade (with goods and services taken together) during the years of independence. As one can see, the exports to CIS countries (predominantly Russia) have decreased in the post-Maidan years as sharply as it did right after gaining independence. As a result, these exports, as well as imports, are now not more than half as much as the amount going to and coming from the EU. In 2018, only 18% of all exports went to the successor states of the former Soviet Union. Russia, for the first time, ceased to be the main trading partner.

**Chart 1**  
**Export and import of the goods and services by main neighboring groups of countries**



Source: author's calculations based on the DerzhComStat's data

Of course, the higher share of EU exports does not, in itself, drive a country towards an OAO. However, dependence on the CIS markets often does the opposite, as access to them serves as a source of rents for obsolete and non-competitive post-Soviet firms, let alone for corruption affairs, like the notorious gas-trading proxies, that are mostly possible among post-Soviet states. At the same time, firms already selling in the EU and other competitive markets abroad should, as a rule, feel less fear of opening up to competition and the impersonal application of norms than those selling in the CIS. This rule, however, is not iron-cast and thus should be taken cautiously. Numerous such firms actually belong to "oligarchs" and can compete mostly due to explicit subsidies (like in poultry production), privileged input prices (as in the ferrous-alloy industry), or ample opportunities for large-scale tax avoidance and evasion.

In the meantime, new sectors have emerged that work completely outside the rent seeking "oligarchic" economy. The main—but not only—one is ICT, which already produces about 4.5% of the Ukrainian GDP (although still almost three times less than manufacturing) and together with other intellectual services (consulting, R&D, etc.) brought in 5.2% of all export proceedings in 2018<sup>66</sup>.

These dramatic shifts in the Ukrainian economy's structure, as well as the persistence of strong trends in the industrial mix from mining and manufacturing towards modern agriculture, services, and post-industrial sectors, are long-term ones and hardly reversible. They have already largely helped in reducing rent seeking activities due to the very nature of post-industrial sectors and trade with OAO countries compared to those with a LAO. It is just as important that they result in gradual but inevitable demographic and other social consequences that eventually have decisive impacts on electoral patterns, and, respectively, are manifested in politics and policies.

During Ukraine's first two post-Soviet decades, resource extraction and processing sectors (coal, metallurgy), as well as energy and industrial manufacturing, had become largely monopolized by business-owners who linked their wealth to direct and indirect state subsidies and to preferential tax regimes secured by lobbying the government<sup>67</sup>. The enterprises that these "oligarchs" controlled were generally located in Ukraine's eastern regions (Donetsk, Luhansk, Dnipropetrovsk, and Zaporizhzhia oblasts), where the country's Soviet-era heavy industries had been located. These regions generated most of Ukraine's export revenues; they were heavily populated, generally Russian-speaking, and supported the Communist Party or, later, the Party of Regions. Conversely, the Ukrainian-speaking, relatively poorer western regions voted for "Orange" parties (i.e., Yushchenko's "Our Ukraine," or Tymoshenko's "Batkivshchyna").

However, during the decade preceding Maidan, this stereotypical picture of Ukraine gradually changed: the economies of several cities in the western region began to grow, benefitting from the inheritance of Soviet-era educational centers that excelled in mathematics and engineering, and (ironically) from a dearth of industrial enterprises worth privatizing. For over two decades, Lviv had not spawned a single national-level oligarch (unlike every other large Ukrainian city). This region had survived through entrepreneurship, and its "de novo" firms (primarily in the IT and tourism sectors) had developed strong horizontal networks and organizational cultures

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<sup>66</sup> The industry's analysts operate with significantly higher numbers, saying that the national statistics underestimate real proceedings that often go underreported. This is probably the case, given that immaterial exports are easily concealable. So, the numbers provided should be treated as conservative estimates.

<sup>67</sup> Hawrylyshyn O. *The Political Economy of Independent Ukraine: Slow Starts, False Starts, and a Last Chance?* London: Palgrave Macmillan UK, 2017.

well-suited to a post-industrial economy. Already in the late 1990s, Ukraine's "de novo" sector, composed first of small- and medium-sized business-owners, and later (in select cases) representing quite substantial firms (those with over 1000 employees)—concentrated primarily in Ukraine's western and central regions' large cities—employed up to 1/3 of Ukraine's workforce. Since the 2000s, the share of such companies in the overall economy has been growing<sup>68</sup>. The distinguishing characteristic of the entrepreneur-founders of these "de novo" enterprises (who were interviewed by one of the authors, Mychailo Wynnyckyj, throughout the 2000s)<sup>69</sup> has been their radical skepticism of the state as an institution, and their contempt for other business owners who accumulated capital through insider privatization or other forms of interaction with the state. Furthermore, these owners have exhibited an ethic of social responsibility that is neither paternalistic nor patrimonial, but rather reflects civic-mindedness: they view Ukraine as the country in which they have *lived*, nor merely as a territory on which to make profit. Their entrepreneurial ethos has been reflected in everyday business practices: horizontal management, self-reliance, civic activism, and rules-based relations with the state.

In contrast, the cities of the east, from which Ukraine's "oligarchs" built their post-Soviet economic empires, began to shrink. Statistics are always difficult to judge in Ukraine because of its massive shadow economy (said to be almost 50% of total GDP during the Yanukovich period)<sup>70</sup>. However, one thing is clear: individuals tend to migrate to areas where economic opportunities are prevalent and higher quality of life can be secured. It is therefore notable that, according to a UN Habitat 2012 study of the top ten fastest-shrinking cities in the world (!)<sup>71</sup>, four were Ukrainian, and all were located in the eastern part of the country. Dnipro (formerly Dnipropetrovsk) topped the list as the city with the world's fastest rate of population shrinkage (a decline of 16.78% projected between 1990–2025); Donetsk was third, and Zaporizhzhia fourth in this global ranking. As a result of Russian aggression, the downfall of Donetsk as an economic hub accelerated. Yet, even prior to 2014, the structure of Ukraine's economy had begun to shift fundamentally. The heavy industries of the east were gradually losing both their attractiveness to the population and their significance as economic engines.

It is notable that the relative decline of the Ukrainian east, and the improvement of living standards in the western and central regions, did not magnify Ukraine's traditional geographic political cleavage as described in Section 5, devoted to societal change.

Partly as a result of the sudden reorientation of Ukrainian firms' export markets from east to west, and also due to the abrupt diminution of the previous dominance of financial-industrial

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<sup>68</sup> Wynnyckyj M., *Institutions and Entrepreneurs: Cultural Evolution in the 'De Novo' Market Sphere in Post-Soviet Ukraine*. PhD dissertation, University of Cambridge, 2003, <https://pdfs.semanticscholar.org/ac6d/d4946a2fa63fe19975f26b80fd533857e02a.pdf>.

<sup>69</sup> In 2001, one of the authors, Wynnyckyj M., conducted fifty-three interviews with "de novo" business founders in Kyiv, Lviv, and Donetsk as part of his dissertation research. Thereafter, beginning in 2003, Wynnyckyj taught courses at the Kyiv-Mohyla Business School, where many of his students were "de novo" business owners. He was part of the team that founded the Presidents' MBA program (exclusively for business owners) in 2007.

<sup>70</sup> Vinnichuk I. and Ziukov S. *Shadow Economy in Ukraine: Modelling and Analysis*. *Business Systems and Economics*, 3, No. 2, 2013, 141–152.

<sup>71</sup> UN-Habitat's *State of the World's Cities 2012/2013* ranking counts cities that had populations over 750,000 in 1990. In a similar study, with a time range of 2005–2014, two Ukrainian cities were ranked in the top ten global shrinking cities: Makeyevka (Donetsk oblast) and Dnipro. See Allen K., *Shrinking Cities: Population Decline in the World's Rust-belt Areas*. *Financial Times*, June 16, 2017, <https://www.ft.com/content/d7b00030-4abe-11e7-919a-1e14ce4af89b>. UN-Habitat, *State of the World's Cities 2012/2013*. New York: UN-Habitat, 2012, <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3387>.

groups, Ukraine witnessed its second (after the late 1990s) start-up boom after the Maidan.<sup>72</sup> Three sectors may be identified as particularly entrepreneurial: export-oriented information technology, consumer product provision, and service provision for the domestic market. In the first case, programmers and managers of outsourcing companies, which had been established during the 2000s to serve North American and EU clients, used their accumulated experience and social capital to grow their businesses rapidly and to establish new companies that gradually shifted Ukraine's IT sector from project outsourcing to the provision of full-cycle technology services and (in some cases) ready products for western markets<sup>73</sup>. Outside the technology sector, and sparked by the drastic devaluation of the country's currency (which suddenly made imports exorbitantly expensive), Ukraine experienced an explosion of domestic consumer product and service provision. Examples include overnight delivery services, small businesses sewing clothes, manufacturing furniture, restaurants providing unique thematic ambiances, etc. For the entrepreneurs who established these businesses, and the consumers who purchased their offerings (i.e., the "creative class" employees of Ukraine's "de novo" economy), the previously entrenched system of neo-feudal rents, hierarchical government, and widespread corruption was an affront to their basic values. Self-realization, individual rights, transparency, rule-based government, and perhaps most importantly, the dignity afforded by heterarchical social structures were principles for which they proved willing to make sacrifices in 2013–14 and thereafter.

All of this has largely contributed to the expansion of the Ukrainian "creative class" as described in the Section 5.

Therefore, although we cannot accurately assess the real balance between rent seeking and profit seeking in Ukraine's contemporary economy, we can confidently state that:

1. Rent seeking has substantially shrunk, although it may still dominate in some areas;
2. The foreign trade mix has dramatically and probably irreversibly shifted out of the CIS and towards the EU;
3. New sectors and "de novo" firms have emerged and strengthened rapidly; and
4. These factors have changed Ukraine's social structure (with the emergent creative class expanding) and economic geography (from east to west) with respective social and political consequences—these processes appear irresistible and irreversible.

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<sup>72</sup> Hulli E., "Ukraine: The Next Startup Nation," startupgrind, August, 2017, <https://medium.com/startup-grind/ukraine-the-next-startup-nation-d81e0b7cffcc>.

<sup>73</sup> For examples, see Abrosimova K., "Interview: Ukraine May be the Next Start-up Nation." Yalantis, <https://yalantis.com/blog/ukraine-can-become-next-startup-nation-interview-yevgen-sysoyev-ukrainian-investor/>, and Ternovi D., "10 Ukrainian Startups that are Revolutionizing the Tech Industry." Ignite, November, 2018, <https://igniteoutsourcing.com/publications/best-ukrainian-it-startups/>.

## Section 4. Political institutions: vertical of power vs. checks and balances and the change in the elites

The Revolution of Dignity has clearly shifted the balance from "vertical of power" (or "centralized bureaucracy" in Brian Levy's sense<sup>74</sup> as it's core element) towards "checks and balances" comparing to Yanukovich regime, although did not alter it yet. Moreover, at least by formal account it failed to reach the level of the "Orange era" that was later on successfully reversed under Yanukovich. However, the formal indicators may fail to capture some fundamental changes that happened since then. Neither can they reflect the fact that politics remained "patronal" – which was to be expected given tiny progress in the RoL. Therefore, the risk of reversals still persists, although emergence of a single pyramid became even less likely due to the fundamental changes that occurred since ouster of Yanukovich.

The "Voice and accountability" score of the Worldwide Governance Indicators (WGI) calculated by the World Bank returned to positive values since 2016 but remains as low as 0.01 in 2017 comparing to 0.09 in 2008. The Polity IV indicators characterizing constraints to the executive (XCONST and EXCONST) are 5 out of 7, although during the Orange era they were at 6; the indicators for political competition (PARREG and PARCOMP) are at 3 out of 5 – the former improved from 2 since 2014. However, the Polity IV indicators are estimated based on mostly formal rules that are not always correctly representing the realities. All in all, these assessments suggest that "checks and balances" are almost in parity with "vertical of power", maybe marginally stronger; and overall situation is no better than it was ten years ago when it proved to be reversible.

The detailed picture mostly confirms this<sup>75</sup>, however with important reservations.

The "dual" constitution that had created two centers of power comparable in strength was restored as a result of the Maidan uprising. Although nobody can be sure about the future, so far it helped securing checks and balances, and prevented from building a "single pyramid" even in spite of the described above vulnerabilities inherent to it, even though President Poroshenko was (unlike Yushchenko) skilled and decisive in employing informal tools for selective reward and punishment, and has had a fully loyal Head of SBU and head of prosecution.

Having won Presidential elections in 2014 with overwhelming majority in the first run, he nevertheless failed to create a pro-President majority in the Verkhovna Rada with the block of his name (Block Petro Poroshenko, BPP), and had to share power in a broad coalition with the Prime Minister Arseny Yatseniuk representing his own party, the Peoples' Front (PF), and a couple of smaller political forces as well as single-district MPs. Still, in the process of subsequent political brewing the coalition in fact crashed, Petro Poroshenko failed to fully control even his own BPP faction, although managed to replace Yatseniuk, who by then became very unpopular, with his long-time ally Volodymyr Groysman. But the latter, contrary to initial expectations, emancipated and distanced from his former patron although, unlike in the situation in

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<sup>74</sup> See Levy B. *Governance Reform: Bridging Monitoring and Action* (English). Washington, DC: World Bank, 2007. <http://documents.worldbank.org/curated/en/276631468328173186/Governance-reform-bridging-monitoring-and-action>

<sup>75</sup> Matsiyevsky has also reached similar conclusions in his work: *Has Ukraine's Regime Changed Since the 2014 Revolution? EU-Eurasian Relations at the Crossroads*, The EU Centre of Excellence - Montreal and PONARS Eurasia, Montreal, Canada, December, 2016.

the Orange era, still didn't seriously compete with the President. However, after Poroshenko's defeat at the 2019th elections Groyzman created his own political project competing with his former patron's one, and even quarreling with it. Finally, Poroshenko's pyramid was successfully and peacefully removed from power by democratic elections, which is at best untypical to "single pyramid" regimes as described by Hale. Hence, premature conclusions about successful "single pyramid's" re-building after the Revolution of Dignity that were made by some observers are proven patently wrong.

In reality, a second, more informal, center of power emerged in this period, according to some observers, in the person of Minister of Interior Arsen Avakov representing the PF, which was the second largest faction in the Rada, somewhat more disciplined than the BPP. Fully in line with Hale's predictions, the existence of two competing powerful pyramid networks allows a plurality of others, less powerful ones, to co-exist and compete without being subordinated. At the same time, clashes between the formal and informal leaders in the period of Poroshenko's presidency never reached the degree of fierceness that had been notorious during the Orange period. This is partly due to the external threat and to dependence from the West that discipline the Ukrainian elites, and partly due to personal factor: unlike Yulia Tymoshenko, Volodymyr Groyzman had neither had his own political party, nor a political capital sufficient for challenging his former patron; he has just recently stepped out of the latter's political shadow. Besides, both Poroshenko and Groyzman were much less inclined to public fighting, not to mention Avakov who always plays behind the scene.

Ukraine has arrived to the end of the post-Maidan political cycle with such imperfect situation: checks and balances were provided not so much by real segregation of powers, as in a classical democracy, but by a balance of political powers, which is the "second best" under patronal politics. Moreover, this balance was maintained partially due to the fear of a common enemy. It is impossible to evaluate the systemic development much deeper in the midst of the electoral season, but the logics of developments suggests that within Ukrainian political culture further strengthening of checks-and-balances should sooner or later come as a natural reaction to the risks that election of inexperienced and unpredictable President have brought about. So far, however, President's party's landslide victory at the Parliamentary elections has effectively eliminated checks and balances, which is extremely unusual situation for Ukraine that largely magnifies risk of fatal mistakes and possible disturbances. Only the future will show how it plays out.

Therefore, post-revolutionary developments have probably altered the balance between "vertical or power" and "checks and balances". However, this balance in itself is still extremely fragile, and by no means irreversible. Most probably, no stable "single pyramid" regime can be established in Ukraine any more, but an attempt of this sort is still possible and can result in disastrous consequences. More institutional checks are needed in order to prevent such developments, including but not limited to:

- closing the opportunities for usurpation that are still present in the Constitution;
- changing the electoral law to open party lists one without any single-district model (already done, but will take force only in five years);
- Furthering judicial reform with the aim of genuine judicial independence and competence and also prosecutorial independence;
- completion of decentralization reform with establishment of sufficient checks to possible unconstitutional decisions and other forms of power abuse by local authorities.

## Is a new sustainable "single pyramid" possible?

It may turn out, that the Maidan was a high watermark of enthusiasm for the idea that the Ukrainians are not comfortable with living under a "single pyramid", and that dramatic experience with a "vertical of power" under Yanukovich serves as a lifetime authoritarianism vaccine. As the available data suggest, throughout the Independence, the surveyed Ukrainians in all regions and across all demographic groups, with minor variations, are likely to welcome Charismatic authority, as Max Weber would have put it: from 52,6% of the respondents in 1992 to 58,2% in 2018 agreed with the statement that 'a few strong leaders could make this country better than all the laws and talks'. This characteristic of the local political culture, acutely defined by Yevhen Golovakha as archaic democracy<sup>76</sup>, that tends to increase during the periods of political turbulence and economic hardships, leads to personification of political attitudes and partly explains the current success of Zelenskyy type of political behavior. It is noticeable that, according to the Ukrainian Society Survey, Belorussian President Alexander Lukashenka remains the most popular foreign leader in Ukraine since 2010 – more popular than any domestic one<sup>77</sup>.

However, in fact this is rather a paradoxical effect of "ambiguous consciousness" characteristic to a transitional society<sup>78</sup>. These sociological data can be misinterpreted by politicians as a real request for a "vertical of power's" return, like Yanukovich has done. But, as the dramatic experience with him exactly demonstrates, for a political leader to be successful in Ukraine, one should keep juggling a thin line between a strong leadership and democratic type of authority, because in the meantime the most Ukrainians pay their tribute to democracy and closely watch its development. From 2006 to 2018, nearly 60% of respondent believe that 'democracy provides more opportunities for individual political choice, as compared to other political regimes' (only from 10,5% in 2006 to 14,8% in 2017 disagreed with that statement). Also, from 57,7% in 2008 to 61,4% in 2018 are dissatisfied with the way democracy develops in Ukraine (see Tables 2,3 below<sup>79</sup>). These data provide a clue to understanding the difference between democratic leadership alike Thatcher or Reagan that many in Ukraine do welcome (however, with unclear chances), and de-facto authoritarian or semi-authoritarian "vertical of power" that they will hardly tolerate long.

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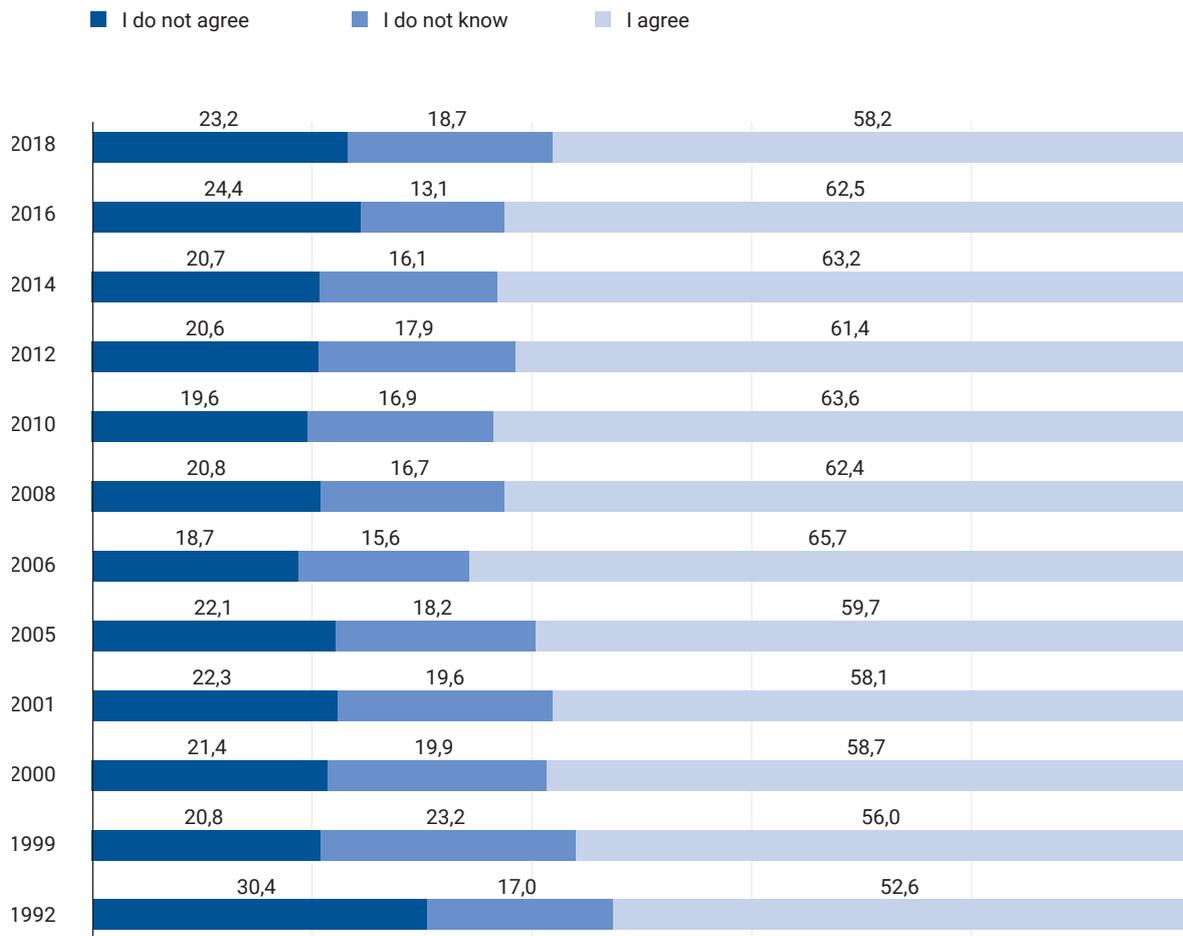
<sup>76</sup> The Ukrainian archaic democracy is characterized by the modern vision of the goals but old-dated methods of implementations which can be traced back to the Cossack traditions of strong leadership behind the representative participation and a range of individual freedoms. See Golovakha E. V ukrainsiv I rosian rizni tradycii. Delova stolytsia, November 2018. Available at: <http://www.dsnews.ua/politics/evromaydan--krok-upered-chi-stribok-u-arhayiku--26112018220000>.

<sup>77</sup> Ukraining Society Survey, Issue 5(19), 2018, 429.

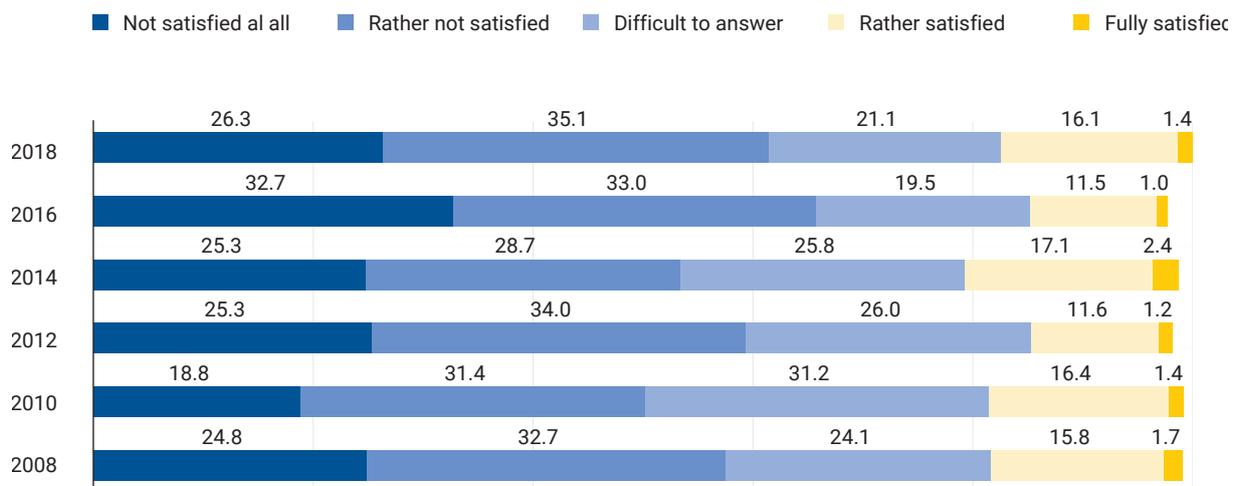
<sup>78</sup> Also see Fesenko V. Особливості та тенденції розвитку політичної культури в українському суспільстві. Ukrainska Pravda, March 2018. Available at: <https://blogs.pravda.com.ua/authors/fesenko/5ab61e2b1e0ad/>

<sup>79</sup> Until 2014, the survey was conducted in all administrative unites of the Donbas and in Crimea.

**Chart 2. A few strong leaders could make this country better than all the laws and talks<sup>80</sup>**  
(Ukrainian Society Survey, %)



**Chart 3. Are you satisfied or not satisfied with the way democracy develops in our country?**  
(Ukrainian Society Survey, %)



<sup>80</sup> If not indicated otherwise, in this section we refer to the Ukrainian Society representative survey conducted by the Institute of Sociology, NAS Ukraine, since 1992 (the sample size is 1800 respondents).

Moreover, an attempt of building a new vertical, if any, may end much faster and even more disastrous for the country than the one of Yanukovich, because Ukrainians have already proved by actions that although some of them support "enlightened autocracy" in theory, they get very agitated when they realize that normally (with just a handful of exceptions) autocracy = plutocracy, and for the countries like Ukraine this is the only really possible scenario. Also, they do not accept when "restoring order" comes at the expense of their own interests – the state institutions are simply not trusted enough, as we elaborate in more details in Section 5. In the meantime since 2013 when the Maidan started, the potentially violent groups got organized much better, the firearms and munitions have spread widely among the population, and tens of thousands of people have got a real war experience. Therefore, it is most necessary and urgent to complete the "checks and balances" construction on the formal institutional platform, at least in order to prevent them acting on the informal "street" platform, and gross change of all branches of power provides an excellent window of opportunity for such reforms.

Paradoxically, even concentration of power can be conducive for this task because as long as President Zelenskyy effectively controls all branches of power by purely formal mechanisms, he can safely afford building real separation of powers and other institutional checks and balances without the risk of any decrease in his real authorities. For instance, unlike his predecessors, he can initiate legislative changes (including even Constitutional ones) necessary for implementing a doable impeachment procedure – because the current Rada's convocation is fully controlled so that this procedure will not be used against him. Neither he necessarily requires dependent judges and law enforcement for building and disciplining of his team – duly enforced formal norms are fully sufficient for execution of his power as the President, while the intra-party discipline can be imposed in the same way, hence the only real matter is keeping a partnership between the President and his party's leader.

It is hard to predict how this situation will develop, but given all that we know about Ukraine's society and political traditions, a bright future under the rule of a politically strong but still democratic leader seems very unlikely. Even less likely is a return to something like Yanukovich's semi-authoritarian regime, not to mention full-fledge dictatorship comparable to Lukashenka's. However, although at the central government's level developments seem to be not far-going and, probably, reversible, the balance could have been triggered at the local level. Besides, external factors have also become subversive for a possible "vertical". We would like to emphasize three important developments in this respect.

First, Ukraine has, at least temporarily, lost a considerable share of voters in Crimea and Donbas that were among the most rigid supporters of the political forces based on strict hierarchies (the Party of the Region support was the strongest there). Therefore, electoral balance has ultimately triggered from 'south-east", which is to larger extent influenced by industrial culture of hierarchies<sup>81</sup>, towards the rest of Ukraine that is less supportive to authoritarianism.

Second, the main difference in the Orange era at the level of the polity's organization is decentralization. Since 2015 about 10% of budget resources was re-allocated to the communities' level along with respective responsibilities and authorities so as of now they operate with more than half of all consolidated budget, with own revenues constituting more than a quarter of their budgets. This is not necessarily helpful in improving transparency and democracy, since,

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<sup>81</sup> See Ivashchenko-Stadnik K. What's Wrong With the Donbas? The Challenges of Integration Before, During and After the War in Ukraine in Transformation. From Soviet Republic to European Society. Edited by Veira-Ramos A. and Liubiva T. Palgrave Macmillan, 2020.

just as in Italy (as described by Putnam et al.<sup>82</sup>) in modern Ukraine a lot depends on the development of social capital, and also, occasionally, on the personal factor. There are numerous success stories of great improvements at the communes that managed to really change their members' lives to the better. At the same time in many cases decentralization has just enhanced the local "baron's" powers not countervailed so far by sufficient institutional checks in form of the prefects<sup>83</sup>, stipulated by the reform's original design. In this sense, decentralization as of now is stuck in "institutional trap" thus it has often failed to enhance checks and balances at the local level. However, it has still strengthened them at the whole polity's organization by empowering the local pyramid networks that are plural by their nature in their bargaining with central authorities. This makes a possible building of a single pyramid more costly, thereby less rational for a whole-nation authoritarian arbiter<sup>84</sup>. For this reason, it may be tempting for a President, in the pursuit of building a single pyramid, to try to reverse decentralization. But this will create extremely fierce resistance, and will most likely fail and, at best, will end up establishing the prefects, therefore completing this reform in the right direction.

Instead, we expect that decentralization has got its own momentum, and will probably continue. So far, all major political forces compete in buying the loyalty of local leaders by promising even deeper decentralization. At the horizontal level, success stories of neighboring communities already inspire citizens to "local revolutions" – replacing their long-term "barons" with leaders of the new generation, mostly local civic activists or businesspeople. There is a hope that this process will spread further. At the "vertical" level, the more resources (formal and informal) become allocated to local leaders of both sorts, the more negotiation power they get towards central authorities, which potentially leads to further trickling down of power<sup>85</sup>. Both processes taken together can potentially steadily alter the whole polity's nature. The more voters will manage to put local authorities under account, thereby establishing a real self-governance instead of feuds, the less possible is building of the national political machine, which is an indispensable part of a "single pyramid". Of course, the process is not linear: once occasionally built in the mid stage, such a pyramid can try to reverse it. However, even at the present stage the cost incurred by necessity of subduing the local leaders (even the ones of "old" nature) may have become prohibitive for a single-pyramid's building.

Third, again unlike in the Orange era, the foreign factor now works against a new single pyramid. Previously, the West tried to support checks-and-balances, while Russia favored a single-pyramid arrangement provided that the President on its top is under Kremlin's control – as it was to a significant extent with Kuchma after the "tapeagate", when he mostly lost his Western arm and had to employ Victor Yanukovich as a PM and Victor Medvedchuk (Putin's crony)

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<sup>82</sup> Putnam R., Leonardi R., Nanetti R. *Making Democracy Work: Civic Traditions in Modern Italy*. Princeton: Princeton University Press, 1993.

<sup>83</sup> There is still some discussion on whether this institute is necessary, for it is not universal across the countries with successful decentralization models. Perhaps, it would be less necessary should the legal culture and civil society at the local level be more mature, and the judiciary act as it should and does in those advanced countries that have no special checks and balances at the local level. Otherwise, the local authorities in many cases adopt unlawful decisions that nobody can oppose and deny, because local civil society activists are corrupt, intimidated or even repressed (Katheryna Gandzyuk's case is the most notorious because she was assassinated in especially cruel way, but it is not the only one), while local barons have strong informal ties with judges and law enforcement officers at their level. Under these circumstances, a prefect responsible for oversight of the normative acts produced by local authorities and endowed with a right of suspending unlawful ones, becomes a necessary countervail at least partly balancing arbitrariness of local authorities and serving a sort of ombudsman for their victims.

<sup>84</sup> On the one hand, presence of a strong local pyramid can reduce the transaction cost because a potential single-pyramid builder should negotiate with just one person – a local baron. But, on the other hand, such single local leader has much stronger bargaining power, than dispersed would-be clients competing for the nationwide leader's protection – which means that, as a result, a baron is likely to gain a larger share of the pie, respectively less will be left for the nationwide level.

<sup>85</sup> Of course, this process has its natural limits because the resources are supplemented with responsibilities, and no leader wants to find herself responsible for the things she cannot control.

as his chef de cabinet; and with Yanukovich who actually outsourced the country's defense and security policies, along with education, to Kremlin agents. At the same time, the Russian leadership feared a strong and patriotic presidency that was, according to Russian tradition, wrongly associated with capable governance. Since Ukraine has become heavily dependent on Western support, the "West" imposes checks and balances with somewhat larger, although still marginal effect<sup>86</sup>, whereas Russia paradoxically does the same by its informal tools. The problem will occur, however, if the Russian analysts will eventually recognize that their attempts of undermining the "vertical of power" and desacralization of a president's power only help making the Ukrainian state and society stronger.

We suggest that, despite the obvious concentration of power that has resulted from elections of 2019, preconditions for building of a new "vertical of power" (cf. "single pyramid") are now worse than ever. Besides, Volodymyr Zelenskyy neither has his strong pyramid already built before being elected, besides a handful of his former colleagues and business partners, nor possesses skills necessary for building a vertical. It is suggested that he can hire an experienced pyramid-builder, or such a person is already around. But it looks unlikely that any President would be happy to become a hostage of such a person, like it has nearly happened with Yushchenko. The demise of Bohdan as the president's strongman Head of Cabinet lately illustrates this point. It is more likely that in this situation Zelenskiy will try to employ formal mechanisms of power, however futile they are in Ukraine, repairing them when necessary.

## Recent developments

Some observers describe the result of the 2019 dramatic election campaign as a defeat of the Revolution of Dignity, or, at least, as a major retreat from its ideas and values. However, in fact the picture is mixed.

President Poroshenko's convincing loss of the presidential race can mainly be attributed to three intertwined factors – all relevant to the subject of this study.

First, his lukewarm attitude to reforms grossly backfired. In Section 1 we have already explained in detail the reasons that made the President unable and not wanting to provide a breakthrough in the RoL, as well as to make the "oligarchs" normal businesses by cutting them off from the state and depriving them from rents. Both are among the main demands of the Revolution, not less important than the Association Agreement with the EU. Moreover, perpetrators of the Maidan and the thieves of Yanukovich were not persecuted during this period fundamentally for political reasons as the President was seeking political support among those oligarchs that were involved in the Yanukovich era. Corruption (and the failure of fighting it) was the most visible and popular manifestation of these shortcomings. But instead of removing the wittingly corrupt officials (including presidents' cronies)<sup>87</sup> Poroshenko started to fight with anti-corruption activists.

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<sup>86</sup> The EU institutions have inherently limited effect in this, just as inside, in the case of Hungary and Poland.

<sup>87</sup> Indeed, punishing selected people, even at high positions, as aspired by laymen Ukrainians, some activists and donors, does not necessarily mean fighting corruption (as the Russian example certifies). A systemic corruption of the Ukrainian kind requires much more sophisticated systemic treatment, in which some of the anti-corruption reforms were quite effective (see Lough and Dubrovskiy, 2018 for detailed analysis), however still scattered and, in most cases inconclusive.

Second, Ukraine was in dire straits in 2014, for objective reasons. This has not only led to adverse consequences, such as dramatic devaluation of the Hryvnya accompanied by banking crisis, but also required resolute reforms aimed at contraction of the rent seeking at all levels. At the same time, such belt-tightening reforms, as deep price increases for household energy, can hardly be made popular. Therefore, to be politically sustainable they should be implemented top-down (and by no means vice versa!) and packed with not less dramatic "popular" reforms – the 'fairness-restoring', opportunity-opening, ones; leaving alone obvious necessity of their adverse consequences' mitigation<sup>88</sup>. The elites should deserve the legitimacy and trust first than implementing such reforms, or, at least, in the course of them – as it was, for instance, in Georgia. Instead, the incumbent political elites led by Poroshenko (and personified in him by the public) have done right the opposite. For instance, in case of utility tariffs increase the people suffering from it at the same time could see Akhmetov's energy monopoly not only surviving, but also being bailed out by the regulator (controlled by Poroshenko) with infamous "Rotterdam+" pricing formula. Moreover, nothing at all was done to improve transparency and regulation of natural monopolies in the utterly inefficient/corrupt district heating and energy supply, which could have largely mitigated the bills' increase if implemented.

As a corollary of all of this came a major political mistake: he (or his advisors) thought he can win by playing the ethnolinguistic card. In fact the elections proved clearly the opposite to be true, because, as we describe in more details in Section 5, by the time of elections (and, perhaps, already in 2014th) the main societal cleavages have shifted. This mistake was, however, not occasional. The creative class was his most natural supporter, as it strives for an OAO, and, at the same time, fears any radicals – thereby, praises moderate and capable reformers. But to attract this category of voters Poroshenko should have done much more and much better in described above matters. In the meantime, relying on conservative slogans such as "Ukrainian [ethnolinguistic] identity" issues that worked so well for many times in previous campaigns along with clericalism and militarism did not require parting with patronal politics and rent seeking – so the choice was predetermined, However, it could have worked only against an openly pro-Russian challenger, and in reality have rather repelled many Russian-speaking and purely secular Ukrainian political citizens that have fairly seen these slogans as substitute to modernization they were aspiring for. The positive news from this is that civic identity is striving in Ukraine more than ever and the political leadership in the future can build on it and cultivate it while the gradual but tactful process of spreading the use of the Ukrainian language can and should continue.

All of these and other mistakes were, of course, captured and inflated by the Russian propaganda along with political foes, such as Igor Kolomoysky. But Poroshenko failed to confront this campaign, instead his and his allies' vast media resources were focused on smearing campaigns against civil society (mainly, anti-corruption) activists, the competitors or would-be competitors from the same pro-Western political camp, and those who threatened his or his cronies' business interests, as in cases of the Donbass's blockade or abolishment of protectionism to automotive industry. Such tactics failed to help him improving his own ratings, but resulted in the political vacuum<sup>89</sup> that Zelenskiy and his party has handily filled, despite severe lack of competence.

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<sup>88</sup> For more details see Dubrovskiy V. Political, Economic And Institutional Aspects Of Making Cuts To The Ukrainian Budget. VoxUkraine, February 2015. <https://voxukraine.org/en/political-economic-and-institutional-aspects-of-making-cuts-to-the-ukrainian-budget/>

<sup>89</sup> A half year before the Presidential elections none of the main candidates had a positive net rating (with Poroshenko having the highest negative one), and all ratings of all major political parties able to pass the threshold constituted just slightly more than 40%, [http://ratinggroup.ua/en/research/ukraine/elektoralnye\\_nastroeniya\\_i\\_problemy\\_naibolee\\_volnyuschih\\_naselenie\\_ukrainy\\_osen\\_2018.html](http://ratinggroup.ua/en/research/ukraine/elektoralnye_nastroeniya_i_problemy_naibolee_volnyuschih_naselenie_ukrainy_osen_2018.html), author's calculations.

The very fact that the Ukrainians managed to punish these political mistakes by changing the power at the free and fair competitive elections testifies the Revolution's success. Transition of power was smooth, and – admittedly – for the first time the loser has congratulated the winner after exit poll's results were released. New President initiated a major elite's change (see below) and announced many reforms that should, if implemented, further advance the revolutionary changes within the Maidan's agenda. But as of now, the results are rather disappointing.

On the institutional level Zelenskiy's win in both Presidential and Parliamentary elections poses a challenge exactly to the checks and balances. While the independence of judiciary and strength of Parliament are not yet established, an overwhelming victory by one politician leads to unprecedented concentration of power. Even worse, "The new team" started with a Bolshevik-style neglecting not only the Parliament, but also of constitutional procedures, and formal law – everything is subdued to a sort of "revolutionary expediency". The Parliament works in a "turbo-regime" with draft laws not properly discussed, the opposition's amendments denied blindly, and the MPs voting also almost blindly just because they are not given enough time to even read the bills. This inevitably results in fatal mistakes. Among them, the provisions that further concentrate de-facto power in the president's hands are likely to be blindly voted, along with rent-securing provisions lobbied by various vested interests.

At the personal level, so far we see rather continuation of the old-school style of personal ruling. This is not necessarily too bad in itself, because given the public attitudes described above, such a style can well be just a cover allowing for keeping high popularity that is badly needed for real reforms, especially politically complex ones as liberalizing the land market. Note that Mikeil Saakashvili in Georgia also behaved this way when his team's members were making deep and mostly successful reforms. Not to mention that an attempt of blueprinting Lukashenka in Ukraine will most certainly fail miserably due to a number of reasons such as different size, economy's structure, culture, and historical circumstances – particularly, inability to live largely on the Russian market and part of Russian natural resources' rents, like Belarus' does for decades.

## **The elite's change**

A genuine revolution should open social lifts for new people, if not change the whole elite. Traditionally, a revolution used to be led by an oppositional political party (or a proto-party) representing a contra-elite, and a new class. In Ukraine in 2014 it went odd way: despite quite significant numbers (see Section 5), so far no political party represents the "creative class". The elections held in the aftermath of Yanukovich's ouster brought to power the parties and the President that had been in big politics (for some period – even in power) since the late 1990s. Still, something has changed.

First of all, civil society representing mostly the "creative class" has significantly strengthened its positions, as we already described. At the decision-making level it manifested in the widespread practice of consulting with the expert community, including the activists into commissions that assessed police officers, appointed the governors, etc. The Civil Council of Integrity was established as a filter for appointment of judges, the National Council of Reforms discussed the main reform proposals, various working groups appeared in the ministries, and so forth.

Even more important, after the regime change in late February 2014, selected representatives of the creative class and civil society (specifically journalists, NGO activists, entrepreneurs, investment bankers, branch managers of Western corporations, etc.) entered the corridors of power, and for this new political elite, Maidan represented a watershed between a post-Soviet period of development and a new Ukraine. Throughout the previous twenty-three years of independent statehood, members of Ukraine's "neo-bourgeois creative class" would have never even dreamed of entering the government on their own conditions, nor would they have been allowed to do so if they had tried. For them, the social lifts of Ukraine's "oligarchic democracy" had been largely closed so that any promotion beyond a certain level was contingent upon accepting the LAO's "rules of the game." In the post-Maidan period, when many representatives of the activist community suddenly entered government, their political program, more often than not, involved the creation of a state that guaranteed a level playing field for entrepreneurs and firms; one in which those with merit (talent, skills, drive, etc.) were able to achieve success; one in which the state was neither partner nor predator with respect to the economy, but whose role in the private sector was limited to that of impartial arbiter in case of a dispute. Later on, most of them left the government for various reasons, but many still preserved a strong appetite for reformist activities and will likely re-appear in new political projects in the near future.

This process has got a new push in 2019. Zelenskiy's team did a good job by providing social lifts to new people, and the Holos (The Voice) party successfully followed this example – as a result, political novices, predominantly representing the creative class, comprise almost 80% of the Parliament. Particularly, in the new convocation of the Rada elected in 2019, former civil society activists constitute as much as 38% with several of them heading Parliamentary Committees<sup>90</sup>. The Prime Minister Honcharuk, as well as a number of prominent ministers were also recruited from creative class. Of course, this does not necessarily mean that these representatives act upon the real interests of this class; neither it necessarily means that they are ready to formulate and impose its agenda. So far it looks rather the opposite: more experienced political players just use the novices as an instrument. But the hurry in lawmaking is partly explained by the fact that these players cannot deny that this grace period will not last long, and newly elected highly educated (with 97% having a Master degree) and motivated people will remain passive performers of somebody else's scenarios.

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<sup>90</sup> Sasse G. Who Is Who in the Ukrainian Parliament? Carnegie Europe, September, 2019

## Section 5. Sociological perspective: new cleavages, identity shifts and the rise of "creative class"

We start from the evidence-based observation that Ukraine's 2014 revolution represented a *social* (bottom-up) appeal for changes that were not, at the time, genuinely supported by any major faction of the elites. Neither has it produced a leader, or a political party able to formulate and pursue the respective reform agenda – this has been done by civil society, not the elites. With nearly a quarter of the population<sup>91</sup> involved in the Revolution of Dignity, and more than a third viewing it as a fair protest for people's rights, it has been a powerful expression of mainstream social attitudes and aspirations (yet, not equally supported across all regions and different social strata<sup>92</sup>). Unlike many of the post-communist, partly elite-led<sup>93</sup>, transformations in the region throughout the 1990s<sup>94</sup>, the institution-building trajectory of the Ukrainian revolution remains open-ended. This process is ongoing: it began with the Maidan protests and the ouster of Yanukovich, and its endpoint is (as yet) unknown – it depends on many fundamental factors, of which social consciousness plays one of the main roles. That is why the societal processes are so very important for understanding the changes that happened, and, where possible, predicting the prospects.

From the perspective of society, the Ukrainian case is a peculiar example of transformation further complicated by multiple overlapping historical legacies<sup>95</sup>, including post-colonialism and post-socialism<sup>96</sup>, among other phenomena shaping the country's contemporary social and cultural profile. We argue that a set of kaleidoscopic historical settings and diverse contemporary experiences contribute to the fact that post-revolutionary Ukraine cannot be explained or predicted with one typology alone. Respectively, the Revolution of Dignity, which took place on the threshold of Ukraine's postponed evolutionary transition from a largely colonial post-Soviet path to an independent pro-European project, and which has been accompanied by the

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<sup>91</sup> According to a survey conducted by the Demographic Initiative Foundation, up to 20% of the population was directly or indirectly involved in the Revolution of Dignity. 38% of that ratio did not participate, but viewed the protests as a conscious protest for people's rights; 17% viewed it as a spontaneous protest; 31% viewed it as a coup d'état, one that was supported either by the West (15%), or by the Ukrainian political opposition (16%). Available at: <https://dif.org.ua/article/richnitsya-maydanu-opituvannya-gromadskoi-ta-ekspertnoi-dumki> .

<sup>92</sup> Ibid.

<sup>93</sup> Some of the Central European transformations truly had their origins in broad popular support. Just to mention, the Polish Solidarność movement and the Czechoslovak Velvet Revolution produced strong and charismatic political leaders; and in all cases there were political parties pursuing the transformation agenda as opposite to incumbents supporting modification of the Communism. To date, the Ukrainian Revolution of Dignity has not given rise to a similar phenomenon.

<sup>94</sup> This refers to the processes that could rightfully be considered "transitions" because they involved democratization and marketization as clear paradigmatic goals.

<sup>95</sup> Todorova M. What is Useful about the 'post-' in East European Studies? On post-colonialism, post-socialism, and historical legacies. Public lecture given at the Charles University, Prague, May 2019.

<sup>96</sup> In line with the conceptual framework of this study, we suggest that both systems are heavily associated with the logic of the limited access order.

Crimea's occupation and war in the Donbas (that directly affects only a part of Ukraine's territory but still has a profound impact on social conditions and the attitudes of a considerable share of population<sup>97</sup>), certainly stands as a separate case of transformations<sup>98</sup>.

In this section, we will take a broader theoretical perspective and view the transition from limited access order (LAO) to open access order (OAO), which is the main focus of this study, in the context of nation-building in the post-Soviet era<sup>99</sup>, societal change (e.g., the emergence of a creative class), and other phenomena making indirect but sometimes decisive impacts on this transition. In this regard, it is crucial to define who the driving forces of social change are, and what their prescribed roles in the development of a state are.

We suggest that it is specifically because of the vague role of political elites, "clans" (cf. Hale's pyramids<sup>100</sup>), and other actors in driving Ukraine's bottom-up revolution that the whole scenario of the events remains fragmented. As argued further below, by mid-2020 it remains an open question whether the trajectory of society-driven revolutionary change has proceeded sufficiently for the transformations to be sustainable, and if a return to a basic LAO is now impossible. What is clear, however, is that the balance of pro-imperial and anti-imperial inclinations has shifted toward the latter (not least due to the fact that a share of the Ukrainian population that has recently developed anti-imperial attitudes, did so due to fierce and often tragic experience caused by the war. We assume that the reversal of such fundamental changes is only possible if a shock of equal magnitude but in the opposite direction takes place.

In our view, altering the main societal cleavages can become yet another irreversible result of the revolution. In their seminal article from 1967, political scientists Seymour Martin Lipset and Stein Rokkan<sup>101</sup> drew a link between the development of European political parties (i.e., in terms of national voting patterns) and their respective societies' historical experiences of revolution. Their claim was that three waves of revolution – involving the Church (the Reformation), the Nation (the dissolution of empires), and the Economy (the industrial revolution) – were experienced by European societies differently, and so left different legacies in the form of lasting

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<sup>97</sup> According to international humanitarian agencies, about 5.5 million people have been affected by war in the east of Ukraine (this figure accounts for roughly 13% of the total population) and nearly a third (according to a survey conducted by the Institute of Sociology of the National Academy of Sciences of Ukraine) have relatives and friends who either live in the war zone or are currently displaced from their homes. According to the Ukrainian Society survey conducted in 2015, 1.8% of the respondents interviewed in government-controlled territory had lost their businesses due to the war in the Donbas; 1.9% had been forced to abandon their houses or other property; 0.7% had been wounded; and 1.4% had lost relatives during the armed conflict. Here, we should also add lots of seemingly unaffected people that nevertheless were touched by the war emotionally and who voluntarily sacrificed their time, money and efforts to support the Ukrainian forces or help the displaced people. It should be also borne in mind that the consequences of the war – as an emergency affecting different spheres of human life, destroying infrastructure networks, and creating a complex set of political, economic, and humanitarian challenges – remain to be observed during the next decades.

<sup>98</sup> In this section, we deal with societal transformations which, as sociologist Nikolai Genov has argued in the context of Eastern Europe, starts with changes of the value-normative system, opening the ways towards establishment of new institutions, largely based on patterns from the Western world. See Genov N. *Managing Transformations in Eastern Europe*. Paris & Sofia: UNESCO-MOST, 1999. and Genov N. *Global Trends and Eastern European Societal Transformations*. *International Social Science Journal*, December 2000, No. 52(166), 539-547.

<sup>99</sup> Beyond the "end of history", described by Francis Fukuyama in 1989 in a now widely criticized article published in *The National Interest*, the Russian imperial doctrine of intervening in the affairs of its satellites survived the end of the Cold War and the collapse of the Soviet Union. Almost thirty years after the Gorbachev's historic speech to the United Nations in December 1988, democratic developments in the Russian neighborhood have triggered out a range of interventionist policies on the side of the Russian state, as has been observed most prominently in Georgia, Moldova, and Ukraine. In this respect, the end of the Soviet empire did not mean the end of the imperial project stemming from its legacy. In November 2016, during an award ceremony for geography students, Putin claimed that 'Russia doesn't end anywhere', and this has been taken as a new doctrine for taking care of Russian interests beyond the boundaries of Russia.

<sup>100</sup> See Hale H. *Patronal Politics: Eurasian Regime Dynamics in Comparative Perspective*. Cambridge University Press, 2014.

<sup>101</sup> *Party Systems and Voter Alignments: Cross-National Perspectives*. Edited by Lipset S. and Rokkan S. New York: The Free Press, 1967.

electoral cleavages. In Ukraine in 2014, Yanukovich's ouster and Russia's aggression seemed to unite majority of the country's regions and partly diminish previous cleavages of the "national" nature. Still, this was only part of the story of Ukraine's revolution. Socioeconomic tensions between proponents of a closed, broadly termed "oligarchic" vision of development (LAO) and advocates of an OAO – tensions that had previously remained hidden – became explicit.

Two fundamental processes of change can be identified as having transformed the Ukrainian society considerably in the five years following the ouster of Yanukovich:

- (a) an unprecedented identity change in Ukraine during the Maidan protests and (largely) in the wake of Russian aggression resulted in the consolidation of an active part of society into a newly-fledged entity, negating previous ethnolinguistic regional cleavages and establishing the foundations of a Ukrainian political nation, including a shift in policy discourse beyond basic foundational questions (e.g., identity, memory politics, geopolitical orientations);
- (b) accelerating the ongoing recalibration of Ukraine's economic structure, which already by 2013 led to the emergence of both new political constituencies and new cleavages (though it has not yet contributed to the consolidation of an ideology-based political force); one of the identified post-Maidan constituencies (the so-called "urban creative class" – see below) openly supports OAO, whereas other socioeconomic groups are ambivalent, if not hostile, to such a system. Specifically, a stratum that we can call "oligarchic class" remains the LAO's main beneficiary. It openly and fiercely obstructs transformations at all levels of social hierarchy.

We suggest that, taken together, the two mentioned trends may be capable of altering the main societal cleavages that represent yet another component of a genuine revolution. Namely, instead of the cleavage that has got partly mitigated, the new, value-based identity has emerged as at least not less important phenomenon.

In this section, we will use available data-based evidence to discuss a part of the interactive dynamics that offer rather clear and established tendencies in social attitudes. Specifically, using the available sociological data<sup>102</sup>, we try to trace the most remarkable societal changes that have been observed since 2014 as compared to the preceding period. Still, the hypothesis of their long-term sustainability, in most cases, remain to be tested by follow-up research and to be verified through time, observing the course of Ukraine's future trajectory as it unfolds. Taking a sociological perspective suggests that "learning from history" cannot give us a "program for the future, but it can give us a fuller understanding of ourselves, so, we can better face the future."<sup>103</sup> In this respect, for the most significant social changes we have observed in the aftermath of the Revolution of Dignity to become irreversible, there needs to be further coordinated efforts and instrumental coherence<sup>104</sup> of many actors – both regional and national, local and international – to implement long-term and country-wide reforms.

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<sup>102</sup> If not indicated otherwise, in this section we refer to the Ukrainian Society representative survey conducted by the Institute of Sociology, NAS Ukraine, since 1992 (the sample size is 1800 respondents).

<sup>103</sup> Warren R., an American poet and novelist.

<sup>104</sup> Jean-Paul Faguet's concept of "instrumental incoherence" refers to cases when politicians pursue discrete, short-term objectives via deep institutional changes whose effects are long-term, multidimensional, and highly unpredictable. See, for example, Faguet J., Shami M. *Instrumental Incoherence in Institutional Reform*. London: LSE Working Paper Series, 2015.

## Where does Ukraine stand in transition from LAO to OAO

According to North et al.<sup>105</sup>, open access is sustainable when a society is able to produce three outcomes: (1) when entry into economic, political, religious<sup>106</sup>, and educational activities is open to all citizens without restraint; (2) when there exists support for organizational forms in each of those activities that are open to all citizens; and (3) when rule of law enforced impartially for all citizens. North et al. discuss the portion of the population enjoying open access in order to sustain open entry in economic and political systems and point to the importance of defining citizens as ‘individuals who possess the right to engage fully in political and economic activities and organizations’<sup>109</sup>. He argues that a society where 5% of the population enjoys the rights of citizens is likely to be a limited access order; a society where a third or more of the population enjoys the rights of citizens is likely to be an open access order that can sustain itself by intra-elite (intra-citizen) competition.

Stemming from the theoretical model of our analysis, we are keen to find answers to the following questions: "Where can Ukraine be placed on the path to OAO?" and "Has it reached the ‘sustainability mark?’". Although the data gathered from the Ukrainian Society survey do not directly correspond to North’s indicators, it show the dynamics in the subjective estimation of the availability of different activities or recourses since the 2000s that, on further stages of research, can be used to develop indicators measuring distance from OAO by combining evidence from different data sources<sup>107</sup> – see Table 4 below).

Table 2. **Subjective social well-being in 2000-2018** (Ukrainian Society Survey, %)

What of the following are you lacking? (% of those who answered 'I have enough')		2000	2002	2004	2006	2008	2010	2012	2014	2016	2018
1.	...ability to live under new social conditions	14,2	17,2	24,6	27,7	28,4	28,4	27,2	30,6	34,9	37,6
2.	...health	28,8	29,7	36	33,4	34,9	35,6	31,2	36,9	43,8	43,6
3.	...good job	19	19,6	25,3	26,4	32	24,6	22,6	28,8	28,2	36,1
4.	...necessary clothing	31,2	31,2	45,5	46,6	57,6	52,4	50,3	60,4	54,7	59,3

<sup>105</sup> North D., Wallis J. et al. Limited Access Order in the Developing World: A New Approach to the Problem of Development. Policy Research Working Paper 4359. The World Bank, Independent Evaluation Group, 2007, pp. 17, 18. Also see the book referred at the footnote 1.

<sup>106</sup> Although religious issues are not discussed in this section, it is worth mentioning that this aspect of OAO requires attention in line with recent developments over the tomos of autocephaly of the Ukrainian Orthodox Church and discussion on the activities and status of the Moscow Patriarchy in Ukraine. Education as well as information are not discussed here, either: these are research questions that require future detailed analysis.

<sup>107</sup> Such as the Human Development Index, where Ukraine was ranked 88th among 189 countries as high development in 2018; or the Democracy Index, where Ukraine was ranked 84th among 167 countries (in 2018, with a gradual decline since 2000s) as hybrid regime (above authoritarian, but below flawed or full democracies). Just to mention, the Democracy Index is published by the Economist Intelligence Unit and measures the state of democracy in a given country by rating electoral processes and pluralism, the state of civil liberties, the functioning of government, political participation, and political culture. The Democracy Index for 2018 states that "democracy is in decline" everywhere.

5.	<b>...good housing</b>	41,9	36	43,4	42,7	46,3	45,6	39,1	45	44,3	49,8
6.	...contemporary economic knowledge	11,4	11,6	15,4	18,2	21,2	19	18,1	19,8	22,6	27,9
7.	...confidence in your own abilities	29,5	31,3	37,6	39,4	40,4	42,1	34,1	40,9	43,4	44,7
8.	<b>...necessary medical care</b>	13,6	14,2	18,8	18,2	25,4	22,9	18,5	21,8	24	29,4
9.	...fashionable and beautiful clothing	10,2	10,8	14,9	20,1	23,4	21,4	20,6	25,9	25,6	32,4
10.	<b>...basic furniture</b>	35,4	28,9	38,7	40	45,9	46,4	42,9	49,2	48	48,6
11.	...contemporary political knowledge	15,4	14,6	15,4	21,3	24,4	22,4	20,2	25	26	25,6
12.	...courage in pursuing your goals	25,4	27	31,5	33,2	37,5	34,9	31,2	35,5	38,1	38,4
13.	<b>...legal protection for defending your rights and interests</b>	8,8	8,3	9,4	12,9	14,8	12,8	10,8	13,4	19,9	20,1
14.	<b>...possibility of having a quality vacation</b>	8,1	8,7	13,9	14,9	16,8	14,8	14,1	16,9	17,3	20,2
15.	<b>...possibilities to have subsidiary earnings</b>	11,7	13,2	21,3	18,9	23,8	17,6	15,9	19,9	19,9	28
16.	<b>...possibility to buy the most necessary food (subsistence)</b>	22,8	29,6	41,6	42,3	47,5	47,3	44,3	50	47,9	53,2
17.	...initiative and independence in solving daily problems	33,6	32	40	40	45,2	43,3	36	41,7	45,3	47,4
18.	...adequate leisure time	18,3	16,2	22,6	24,4	26,3	25,2	23,1	26,4	26,8	29,3
19.	...opportunity to work to full potential	23	28	33,5	35,1	39,3	37,5	28,7	36,4	35,3	41,3
20.	...opportunity to be fed according to your tastes	11,4	12,2	18,8	24,2	29,5	26,8	23,8	27,9	27	34,9

*Although not all 20 material and non-material indicators of subjective social well-being directly refer to OAO, we present them here in the sake of methodology used during the survey. It is worth noting, however, that estimation of such indicators as health and adequate leisure time are not necessarily order-dependent (in contrast to the necessary medical care or possibilities related to work and life style). All indicators directly related to OAO are marked in bold.*

Overall, subjective social well-being, measured as an integral indicator (based on the assessed availability of 20 material and non-material social goods) has a tendency to increase for the last two decades, including the post-Maidan period<sup>108</sup>. As the data demonstrate (see Table 4.), indirect assessment confirms that Ukraine is steadily evolving toward OAO, and in many dimensions even meets the "30%" criteria (see the aforementioned study by North et al.). However, rule of law remains the weakest point and the suggestive bottleneck in this evolution. As Yevhen Golovakha argued, Ukraine is a perfect illustration of the James Davies theory explaining social unrest after a long period of economic growth as an effect of the rising individual expectations<sup>109</sup>. Apparently, Ukraine, while showing progress on its way to OAO, might become a place of civil disturbances if people will 'subjectively fear that ground gained with great effort will be quite lost<sup>110</sup>', particularly if they have low trust in institutions (we will further briefly discuss the data on correlation between subjective social well-being and trust in Ukraine).

## **Ukraine's identity shifts: changes in geo-political attitudes and hierarchy of self-identifications.**

According to a commonly accepted narrative, prior to 2014, Ukraine was a deeply divided country split along ethnolinguistic lines. Apparently (and according to most experts)<sup>111</sup>, residents of the predominantly Russian-speaking East and South preferred closer integration with Russia, whereas the predominantly Ukrainian-speaking West was pro-European. Electoral maps showing the country's West and Center voting for "orange" candidates (broadly termed), and the South and East voting overwhelmingly for Communists and the pro-Russian Party of Regions were repeatedly seen as demonstrative of the pervasive ethnolinguistic cleavage that was said to define Ukraine's political geography. During the crucial months of 2014, however, when the Russian-speaking ethnic Ukrainians of the South and East became a key constituency that led to the failure of Putin's *Novorossiia* project, choosing loyalty to the Ukrainian state over the "Russian world" (*russskiy mir*), the "cleft-country" stereotype proved patently incorrect (at least, at that particular historical moment).

Supporting numerous research-based observations on the widespread pro-Russian vs pro-West orientations, mainly across the right- and left-bank Ukraine, the Ukrainian Society survey's empirical data, during all historical periods of Ukrainian independence, show a great degree of ambivalence, uncertainty, and volatility in geopolitical attitudes across all regions, including the Donbas. Still, three main national trends are worth underlying here<sup>112</sup> – see Table 5.

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<sup>108</sup> See Golovakha Y. The Changes of the Integral Indicator of Social and Psychological Well-being of the Ukrainian Population During the Years of Independence. In *Ukrainian society: the dynamics of change* edited by Vorona V. et al. Kyiv: Institute of Sociology NAS Ukraine, 2019, 300-308.

<sup>109</sup> Davies J. Towards a Theory of Revolution. *American Sociological Review*, No 27, 1962, 5-19.

<sup>110</sup> *Ibid.*

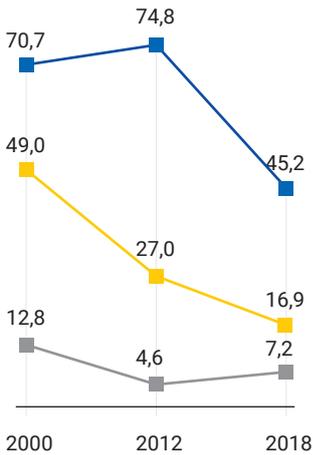
<sup>111</sup> This argument has been repeated extensively. For examples, see Arel D. Language and Group Boundaries in the Two Ukraines. Paper presentation at the conference "National Minorities, Nationalizing States, and External National Homelands in the New Europe", Bellagio Study and Conference Center, Italy, August 1994; Zimmerman W. Is Ukraine a Political Community? *Communist and Post-Communist Studies* 31, No. 1, 1998; D'Anieri P. Introduction: Debating the Assumptions of State-led Nation building in Ukraine. In *Dilemmas of State-Led Nation Building in Ukraine*, ed. by Kuzio T. and D'Anieri P. Westport, CT: Praeger, 2002; Hrycak A. Institutional Legacies and Language Revival in Ukraine. In *Rebounding Identities: The Politics of Identity in Ukraine and Russia*, ed. Arel D. and Ruble B. Baltimore: The Johns Hopkins University Press, 2006; and D'Anieri P. Societal Divisions and the Challenge of Liberal Democracy in Ukraine. Chap. 5 in *Understanding Ukrainian Politics: Power, Politics, and Institutional Design*, Armonk, NY: M.E. Sharpe, 2007.

<sup>112</sup> This is also discussed in Ivashchenko-Stadnik K. What's Wrong with the Donbas? The Challenges of Integration Before, During, and After the War. In *Ukraine in Transformation: from Soviet Republic to European State*, ed. Veira-Ramos A., Liubyva T., Golovakha I. London: Routledge, McMillan, 2020, 236-242.

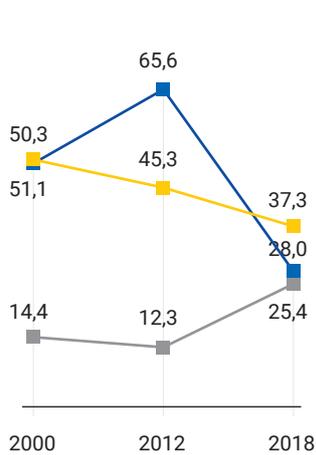
**Chart 4. Geopolitical attitudes in 2000-2018**  
 (% in the selected regions, Ukrainian Society survey)

- ◆ Positive attitudes towards joining the union with Russia and Belarus
- ◆ Positive attitudes toward Ukraine joining the European Union
- ◆ Positive attitudes toward Ukraine joining NATO

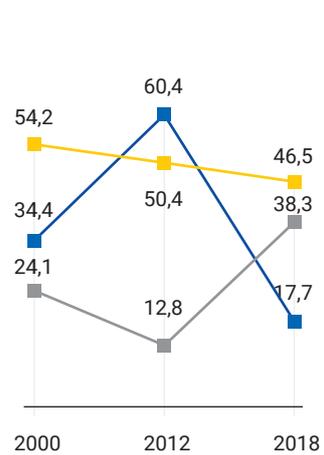
Donbas



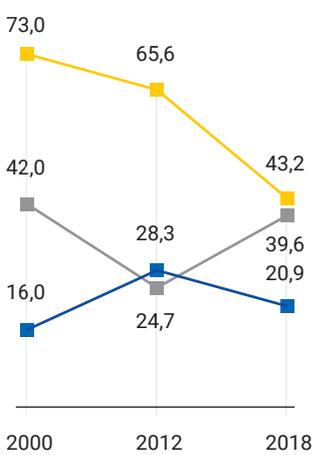
South



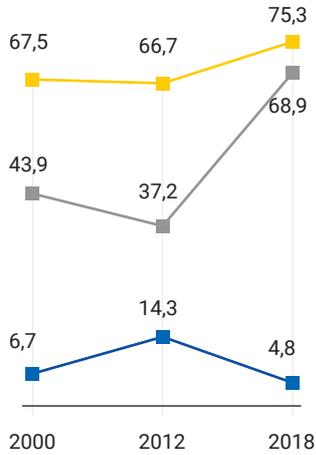
Center



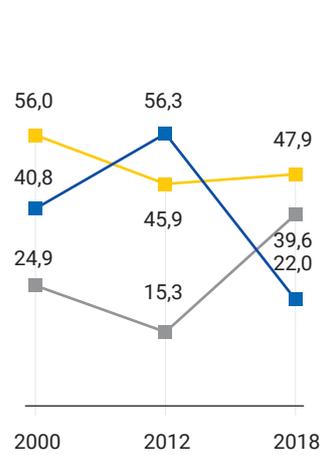
Kyiv city



West



All regions



First, from the late 1990s, when geopolitical questions were introduced into the survey, to 2012, the idea of Ukraine joining a union of Russia and Belarus remained a popular geopolitical plan with a relative majority of supporters countrywide. This changed just before Yanukovich's rejection of the EU Association Agreement: since then, pro-Slavic attitudes as a geopolitical goal decreased from 48.9% in 2013 to 20.3% in 2017 and slightly rose to 22% in 2018. Al-

though pro-Slavic attitudes have remained an important mindset reference on the individual level (44.6% of respondents in 2017 agreed that they felt closest to the traditions, norms, and values of Eastern Slavic countries), public views on the geopolitical vector become less stable and straightforward, as we will see in the data.

Second, parallel to the “Slavic-partnership” project, the pro-EU attitudes have been steadily strong since the early 2000s (with 56% of respondents in favor of Ukraine joining the EU in 2000; although support has dropped soon after and remained at the level of 41-47% during 2002-2013, it has increased back to 54.1% in 2017, the year when a visa-free regime with the EU marked rising pro-European attitudes in Ukraine (just to mentioned, it has dropped to 47.9% in 2018 again). However, even the post-2014 data give no evidence of predominant pro-EU views in most regions except for the West of Ukraine. Certainly, we should bear in mind that identifying the attitudes to EU with pro-Western orientation or “European values” is not fully correct (apparently, most of the “euro-optimists” are Western-oriented, however, the opposite is not always true: just as in the other European countries, for various reasons, not every pro-Western person wants their country to be member of the EU). Thus, we can cautiously assume that the actual share of pro-Western Ukrainians is somewhat larger than is indicated in the data on the geopolitical orientations. This does not necessarily mean that all citizens who show positive attitudes toward Ukraine joining the European Union share the European values, however, it is quite likely that most of them see such values as, at least, attractive.

Third, a share of “geopolitically uncertain” respondents remained substantial until the threshold of 2014, reflecting the problem of low public awareness when it comes to strategic political issues, but has been gradually decreasing since then and shifting in favor of the EU. This also refers to pro-NATO attitudes: while the number of those considered geopolitically uncertain dropped from 41.5% in 2000 to 23.2% in 2017 and 30.6% in 2018, a share of those who support the idea of Ukraine joining NATO increased from 24.9% in 2000 to 40.4% in 2017 and 39.6% in 2018. Universally, observers of post-Maidan Ukraine noted a significant decline in previously manifest regional divisions and an upsurge of national patriotism. Various manifested linguistic identification(s), affinity to symbols, re-evaluation of historical figures, reappraisal of holidays, etc., this process of identity reorientation involved emotional soul-searching.<sup>113</sup> This tendency has still been observed five years after the Revolution of Dignity: besides the role of local identities Ukrainian political identity (e.g., “I am a citizen of Ukraine first”) has increased in all regions over time, including the Donbas and the South, although it remains the lowest there as compared to other regions – see Table 6. Whom do you most consider yourself as? (Ukrainian Society Survey, %), Table 7. The overall share of respondents who are proud of being Ukrainian citizens increased from 40.9% in 2002 to 62.4% in 2017 and 58.8% in 2018<sup>114</sup>.

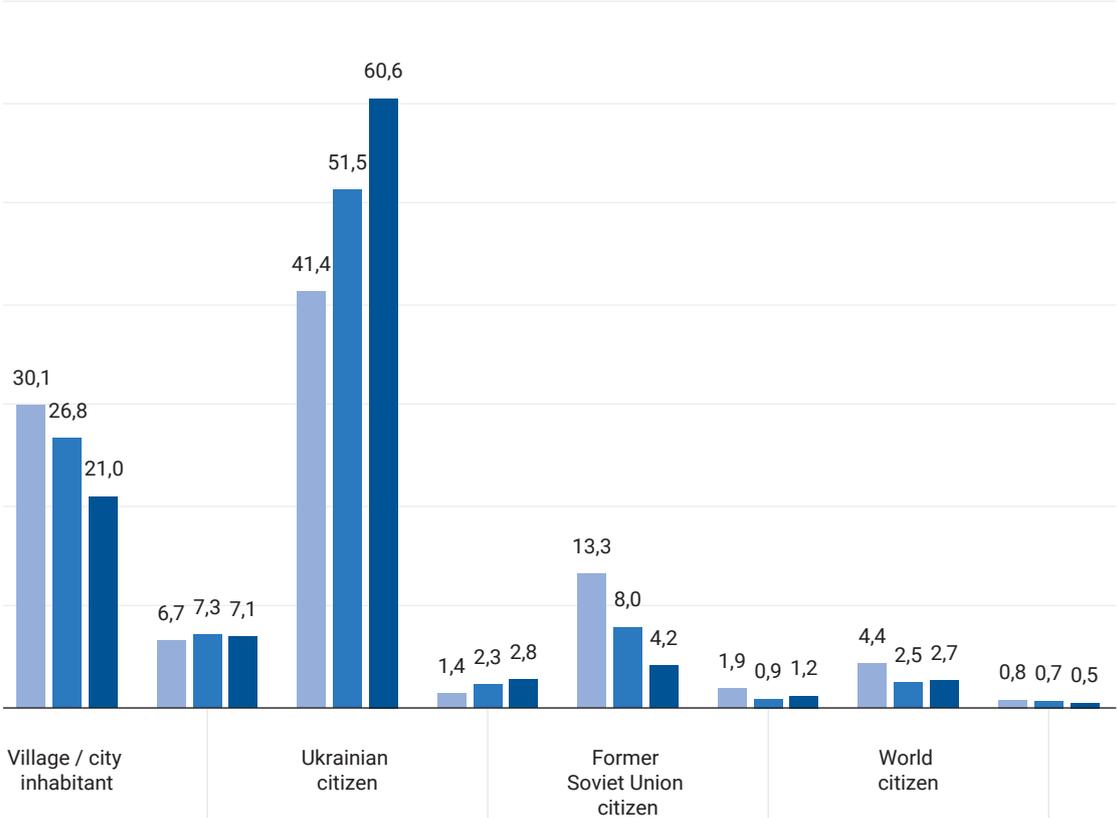
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<sup>113</sup> As Steffen Halling and Susan Stewart of the German Institute for International and Security Affairs note, “Surveys show that the Ukrainian population’s emotional connection to the nation increased sharply in the course of 2014; one can certainly speak of an acceleration of the Ukrainian nationbuilding process. While pro-Ukrainian attitudes are more prevalent in the western, central and northern parts of the country than in the east and south, it should be noted that a majority of Ukrainians in all these areas identify with the Ukrainian state and support its independence. In fact, the strongest growth in pro-Ukrainian attitudes is found in the eastern parts of the country, where more than two thirds of the population now favour Ukrainian statehood. This underlines how regional differences have as a whole declined in importance in the course of the crisis, and that despite regional specifics Ukrainian society is today more united than before.” See: Halling S. and Stewart S. Identity and Violence in Ukraine: Societal Development since the Maidan Protests. SWP Comments 19, March 2015, 1–7.

<sup>114</sup> Ukrainian Society. The Dynamics of Change. Kyiv, Institute of Sociology, 2018, 504.

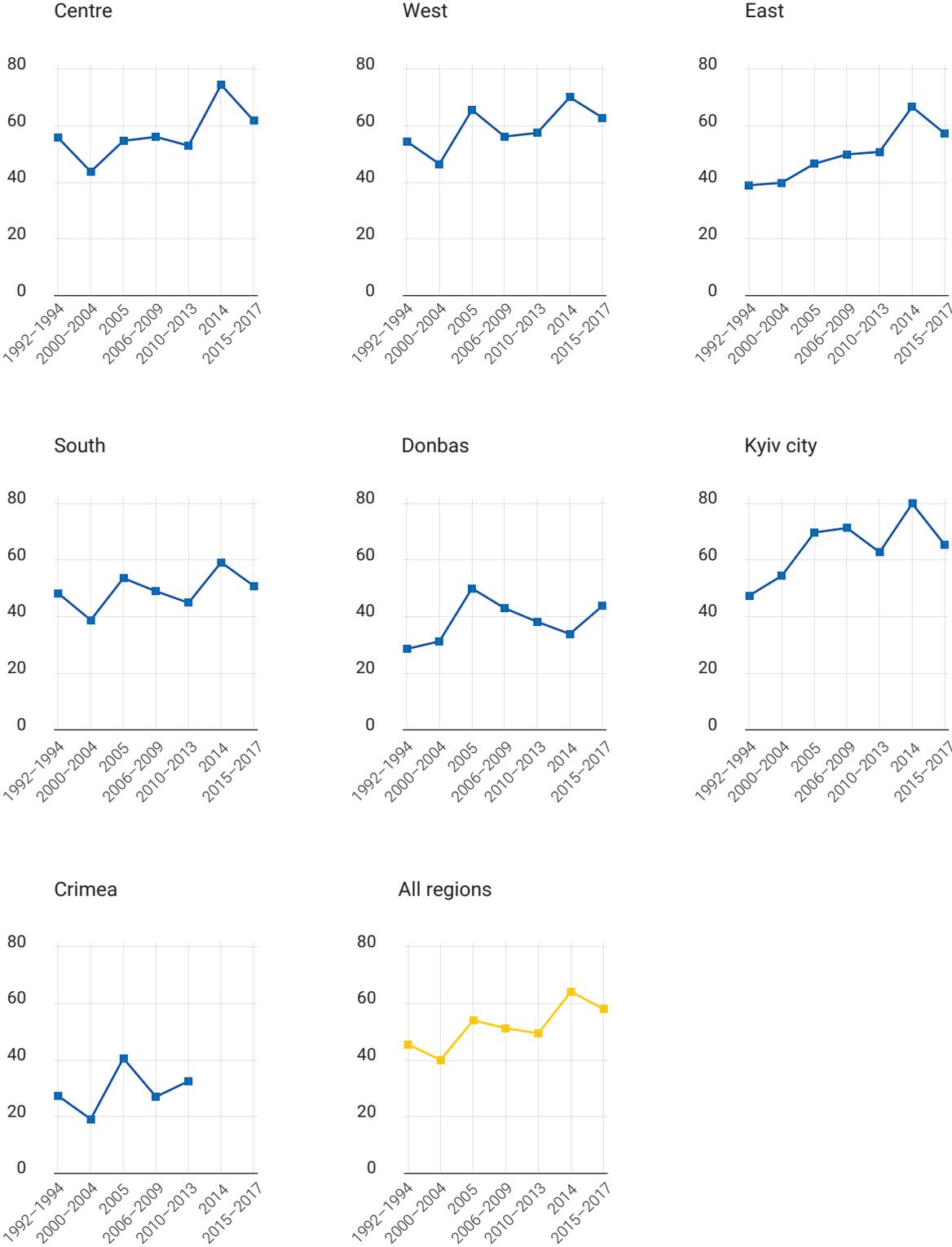
Chart 5. Whom do you most consider yourself as? (Ukrainian Society Survey, %)

- Post Independence 1992-2004\*
- Post Orange Revolution 2005-2012
- Post Revolution of Dignity 2014-2017



\*No data from 1993 until 1999. Based on the data prepared by Antonio Veira-Ramos for "Ukraine in Transformation" (edited by Antonio Veira-Ramos et al.) (London: Routledge, McMillan, 2020), 203-228.

**Chart 6. Whom do you most consider yourself as? (Ukrainian citizen)**  
 (% in the selected regions, Ukrainian Society Survey)



\*No data from 1993 until 1999.

Based on the data prepared by Veira-Ramos A. for "Ukraine in Transformation", edited by Veira-Ramos A. et al., London: Routledge, McMillan, 2020, 203-228.

Finally, there is intergenerational shift that slowly but irreversibly works towards the European choice and out of the Eurasian one. In 2018 37% of respondent above 60 were in favor of Ukraine joining the EU; while among the younger group (under 29) this share was 55%. Regional distribution for the young people (18-29) supporting Ukraine to join the EU is in fact the strongest in Western Ukraine (77%) and weakest in the government-controlled part of Donbas (43,8%) but the tendency is clear that the European direction overwhelms everywhere (compare these 43,8% of young respondents supporting the EU in the Donbas with 21,9% supporting possible union with Russia and Belarus).

To conclude, the Maidan protests and their immediate aftermath (i.e., Russia's annexation of Crimea and the first months of conflict in the Donbas) produced a new conceptualization of geo-political attitudes and self-identifications for many Ukrainian citizens throughout the country. Aside from the obvious and striking increase throughout Ukraine in the number of respondents identifying themselves as citizens of Ukraine first and foremost, this shift has reflected a deeply personal process reported by many as involving introspections, participation in collective actions. Albeit with some variations across the regions, the pro-Russian or pro-Slavic geopolitical orientation is diminishing in Ukraine, while pro-EU and pro-NATO attitudes increase; after the Revolution of Dignity, for the first time since Ukrainian Independence, the Ukrainian political identity dominates over all other identities in all regions of Ukraine. Rather than being taught or implanted by elites (as had been recommended by policy-analysts throughout the post-Soviet period), nation-building seems to have occurred organically from the bottom-up. However, for these fundamental identity shifts to become mainstream and irreversible, similar to what was said in the previous section, a cohesive national project with regard to cultural development and the increasing role of education, with consistent programs of both public and private institutional support and investments, needs to be widely implemented.

## **The changes in social stratification and main cleavages on the way to OAO: the emergence of the urban creative class**

The central question often being asked about the results of the EuroMaidan protests refers to the nature of the socioeconomic transformations it has triggered. We assume that the post-Maidan changes were (and continue to be) fundamental enough to the social fabric of Ukraine to warrant being labeled "revolutionary." The Maidan uprising has manifested the emergence of a new, OAO-oriented strata – the "creative class" described below – and respective societal cleavage between it and the LAO beneficiaries that can be broadly called "oligarchic class". In the course of the Revolution of Dignity these two large groups clashed, while the rest of population remained mostly indifferent.

With a certain degree of generalization, one goal of the protagonists of Ukraine's Revolution of Dignity has been the creation of social pressure to transition the country from a LAO to an OAO: (1) the notion of "Europe" referenced during the revolution was associated with perceived European values (which can be seen as the basis for OAO); there was (2) a strive for "equal opportunities," which belongs to the vocabulary of OAO; (3) the protest against corruption has been targeted against LAO; and (4) the very word "dignity" signifies a transition from the LAO-bound personal dependency to one's right to be valued and respected for what you are and what you do.

The values that the Maidan (as a collective actor) stood for, and the economic and political reforms that its activists lobbied for in the wake of the collapse of the Yanukovich regime, approximated those generally associated with an OAO: self-reliance, innovation, limited gov-

ernment, entrepreneurial freedom, and meritocracy. These values represented the core beliefs of Ukraine's entrepreneurs, managers, artists, young academics, journalists, etc., who made up a majority of early Maidan protesters. Paradoxically, they differed significantly from those of the Ukrainian majority. In the words of the Kyiv-Mohyla Academy sociologists Sviatoslav Sviatnenko and Oleksandr Vinogradov, who compared the results of a survey of Maidan activists taken in early December 2013 with representative values survey data from Ukraine and several EU countries:

*The average Ukrainian and average protester on Maidan are situated on different ends of a trend line. That is why we are speaking about some sort of value or paradigm shift: compared to (the rest of) Ukraine, the Euromaidan (survey data) shows a "value shift," where instead of conservatism and dependence on state, the dominant value orientations are Universalism and Benevolence... a Euromaidaner, similar to a typical resident of Denmark, Finland, Germany, Sweden, Netherlands, and Belgium, can be characterized with high demand for openness to changes... The protester on Maidan is also characterized by a high degree of independence and non-conformism, courage to take responsibility, appetite for risk; (s)he is not in need of defense by the state, strongly expresses the need for novelty, creativity, freedom...<sup>115</sup>*

The above observation was based on the survey data from December 2013. As the protests dragged on, carriers of these OAO values (the capital's self-employed, entrepreneurs, and company managers) encouraged their subordinates to take leave of their jobs to demonstrate on Independence Square during working hours, and it was this "bourgeoisie" that financed much of the supply effort for the Maidan camp. It was this bourgeoisie that formed the heart of the AutoMaidan as well – a very effective "cavalry" force of protesters who would drive their mid-range and upscale passenger vehicles to picket the homes of regime representatives. After Yanukovich's flight, it was this bourgeoisie that financed the volunteer battalions and rejuvenated Armed Forces whose (often rural and/or working class) soldiers defended Ukraine in the face of Russian aggression. And it was members of this bourgeoisie who triumphantly entered the corridors of power after the climax of the Maidan protests.

Therefore, it was mostly the urban creative class that has eventually ousted the incumbent regime in 2014 – because by that time it was strong enough. British scholar Andrew Wilson famously noted that one of the reasons for the failure of the Orange protests to develop into a full-fledged socioeconomic revolution in 2004 (i.e., resulting in structural change) was the weakness, at the time, of Ukraine's "middle class."<sup>116</sup> But by 2013–2014, entrepreneurs and managers of firms operating in Ukraine's services sector, together with journalists, academics, programmers, and other representatives of the country's "creative class," were able to form a critical mass of vocal and mobilized protest against the material excesses of the Yanukovich regime.

According to the 2016 comprehensive study of Ukraine's "middle class" prepared by the Razumkov Center, 27% of respondents (sample size was 10,054 respondents) identified themselves as belonging both to this "socioeconomic stratum" or "class."<sup>117</sup> Interestingly, a larger

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<sup>115</sup> Sviatnenko S., Vinogradov O., Euromaidan Values from a Comparative Perspective. *Social, Health, and Communication Studies*, 2014, No. 1(1), 41-61.

<sup>116</sup> Wilson A. *Ukraine Crisis: What It Means for the West*. New Haven: Yale University Press, 2014, 39.

<sup>117</sup> Rachok A. et. al. *Middle Class in Ukraine: Prevalence and Relevance of the Notion*. Kyiv: Razumkov Center, 2016. The term "middle class" is problematic in the Ukrainian case because it does not necessarily reflect income or spending power. However, as a term designating a values category it is valid. [http://razumkov.org.ua/uploads/article/2016\\_Seredn\\_klas.pdf](http://razumkov.org.ua/uploads/article/2016_Seredn_klas.pdf)

number self-identified as belonging to the "middle class" (almost 50%, just about the numbers that the other polls yield), but when investigators controlled for other factors (e.g., education level, consumption capacity, friends and acquaintances from the relevant class/stratum, etc.) the proportion of respondents who actually adhered to a "middle class" lifestyle declined significantly. The authors concluded that Ukraine's "middle class" consisted of a "core" (amounting to 14.2% of respondents) and "periphery" (numbering an additional 34.8%). The "core" included entrepreneurs, qualified professionals, managers, specialists, and others employed in creative service sector jobs.

Applying the categorization of occupations developed by Richard Florida (author of the best-selling *The Rise of the Creative Class*<sup>118</sup>) to the Razumkov dataset, we find that 25.5% of the study's respondents were employed in jobs classified as a part of the "creative class" (a term that more accurately reflects the socioeconomic status of the Maidan activists and ATO volunteers than "middle class").<sup>119</sup> Applying the same occupational categories to World Values Survey (WVS) and European Social Survey (ESS) datasets from Ukraine, we find 29.8% and 22.1% of the respective samples represent the "creative class." In each case, the "creative core" (as defined by Florida) represents roughly 13% nationally, with slightly higher numbers in Ukraine's West and Center (17.4% and 15.7%, respectively) than in the East (11.5%) and South (10.3%) — a fact that may explain the amplified support for Maidan in these regions.

The dynamics here is modestly promising: since the early 1990s data from the Ukrainian Society survey show a steady but rather slow growth of proactive people who believe that their life fully depends on their own efforts: from 6.6% in 1992 to 12.4% in 2018<sup>120</sup>. Overall, the number of those who believe that their life fully or mainly depends on their own efforts increased from 19,1% in 1992 to 29,5% in 2018 — which almost exactly corresponds to the above provided numbers from other studies. The data also demonstrate some stable, although very modest, increase in the share of respondents who consider themselves "middle-class" (from 38.9% in 2006 to 42.9% in 2018, rather equally distributed across all regions) and a leap for those who support radical market liberalization (from 6.2% in 2012 to 14.3% in 2017). We suggest that, with an observed subjective basic needs fulfillment (such as necessary clothing, housing, food — as shown in Table 4. above), a promising social environment for economic growth can be provided. The promising developments are also observed in the rise of indicators which refer to access to contemporary economic and political knowledge, confidence in own abilities, courage in perusing own goals as well as initiatives and independence in solving daily problems (see Table 4. above). As an illustration, although the number of those who identify themselves as part of the middle class remained rather stable since 2006 when the question was asked in the Ukrainian Society Survey for the first time (compare 38,9% in 2006 and 38,8% in 2015), it has started to grow (42,9% in 2018), and the share of those who are satisfied by their social status has a tendency to increase (from 15% in 2004, 18% in 2013 to 23% in 2014, 24% in 2017 and 27% in 2018) — see Table 8.

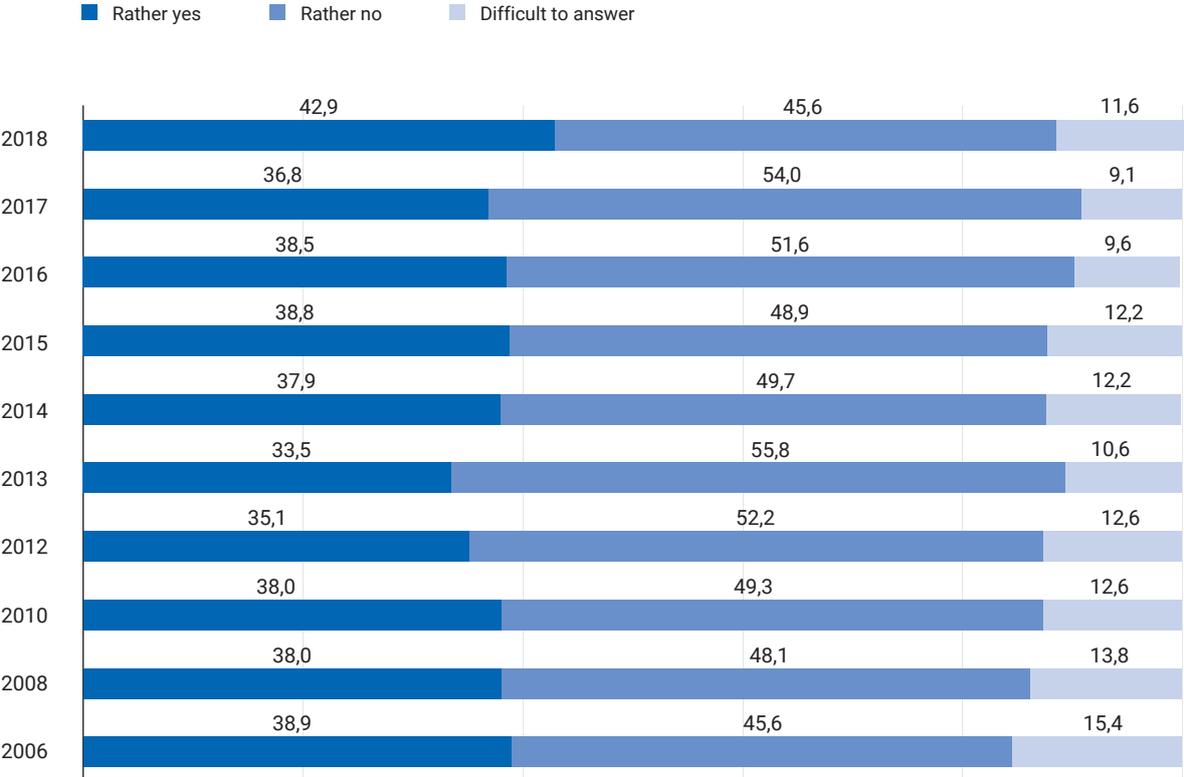
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<sup>118</sup> Florida R. *The Rise of the Creative Class: And How it's transforming work, leisure, community and everyday life*. New York: Perseus Book Group, 2002.

<sup>119</sup> Lavryk D. *The Creative Class in Ukraine in the Context of Revised Modernization Theory*. Dissertation prepared in fulfillment of the requirements of the Masters of Sociology degree, National University "Kyiv-Mohyla Academy", June 2017.

<sup>120</sup> Ukrainian Society: *The Dynamics of Social Change*. Kyiv: Institute for Sociology, NAS Ukraine, 2017, 540.

**Chart 7. Would you refer yourself to the middle class in Ukraine?**  
(2006-2018, Ukrainian Society Survey, %)



Therefore, the emergence of an urban creative class, more inclined toward OAO-values, has been one of the most sustainable and fundamental changes that was brought about by the Revolution of Dignity and can solidify its results – unlike in the years after the Orange Revolution. This class is supposed to drive further changes, it has both motivations and potential to do so. Further economic reforms, together with pro-European developments and further globalization processes in different sectors will enhance the status stability of the most proactive segments of the middle class and facilitate a growing demand for Ukraine’s systemic transition to OAO. Still, this class is highly mobile and globalized, hence a high risk that unless the socioeconomic conditions (e.g., security, availability of basic services, opportunities, etc.) dramatically improve, it can be further eroded by outward migration.

## Post-revolutionary cleavages in attitudes: is Ukrainian society increasingly polarizing, and is it a risk for OAO?

During the two 2014 national elections (the Presidential in April and the Parliamentary in October), the regional cleavages that had defined geographic voting patterns for over two decades seemed to vanish. This political unity may well have been temporary – prompted by a patriotic reaction to the Russian military aggression effected in the name of "protecting" the interests of Russian speakers who needed no protection, and by the complete discrediting of the once dominant Party of Regions (a result of the unmasking of Yanukovich's corruption and his lack of leadership during the Maidan protests). It also may have been indicative of more fundamental structural transformations. The 2019 Presidential and Parliamentary elections have been a new test of whether the regional electoral cleavages that had plagued Ukraine for decades return, or whether other cleavages will replace them. Although the new President won in all major macro-regions and all regions (oblasts) of Ukraine, with the exception of Lviv region, we assume that such uniformity does not mean that the regional electoral cleavages have been fully overcome during these elections. We suggest that it was rather the result of the protest voting against Poroshenko who, apparently, did not succeed in meeting post-EuroMaidan public expectations (this message also prevailed in the top-rated media channels, giving more chances to a new alternative candidate) and because of the aforementioned protest against too strong push for ethnolinguistic identity politics.<sup>121</sup>

Dramatic events in the Crimea and Donbas from 2014 onward created yet another alarming agenda in the social consciousness that potentially lead to a split: the Revolution of Dignity started the hard year when the war, occupation, destruction of infrastructure, mass war-driven displacement occurred for the first time since Ukraine's independence. As recent studies argue, not only the Donbas but other regions in Ukraine also appear to be increasingly polarized and fragmented by the conflict<sup>122</sup>: The results of the 2019 Presidential elections show, people are united by a growing demand for positive changes on both national and local levels but divided by too divergent solutions to reach their goals.<sup>123</sup> Further polarization and cleavage are provoked by external hybrid aggression by the Russian Federation and dramatic war-time experiences gained by a part of Ukraine's population. Unparalleled skills gained by the army, volunteers, civilians, and institutions is a new phenomenon for Ukraine. Yet, overcoming some of the consequences of the war, reconciliation, and peacekeeping remain among the lessons to be learned.

Despite sharp conflict-related concerns, economic "worries" prevail in the hierarchy of subjective problems that "people fear most of all." As it stands in the 2017 data, new cleavages over ethnic and religious issues are unlikely, still fears caused by the threat of a foreign enemy attack and dissolution of the country increase – see Tables 9, 10.

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<sup>121</sup> Ze' Support. What Do the Final Presidential Election Results in Ukraine Reveal? *New Eastern Europe*, April 29, 2019, <http://neweasterneurope.eu/2019/04/29/ze-support-what-do-the-final-presidential-election-results-in-ukraine-reveal/>; Бекешкіна І. Непрогнозований і непередбачуваний: чому і що дали? *Ukrainska pravda*, May 19, 2019, <https://www.pravda.com.ua/articles/2019/05/19/7215427/>.

<sup>122</sup> Dunavova D. et al. Violent Conflict and Online Segregation: An Analysis of Social Network Communication Across Ukraine's Regions. *Journal of Comparative Economics* 44, No. 1, 2016, 177.

<sup>123</sup> Гіць А. Боротьба за дійсність в підмінений реальності. *Ukrainska pravda*, April 5, 2019, <https://www.pravda.com.ua/columns/2019/04/5/7211378/>.

Table 3. In your opinion, what do people currently fear most? (Ukrainian Society Survey, %)

	2004	2014	2017	2018
An increase in crime	54,9	42,5	42,8	43,4
Unemployment	67,9	60,2	60,6	57,8
Attack of a foreign enemy on Ukraine	10,5	59,6	38,3	36,9
Interethnic conflicts	12,8	35	17,4	20,1
Religious conflicts	6,4	12,3	8,2	14,7
Influx of refugees, immigrants and visitors	7,4	13,9	13,2	12,3
A halt in production/manufacturing	35,3	36	33,5	27,4
Returning to the old order of stagnant times	5,2	12	11,1	11,3
Hunger	45,5	33,4	32,6	27,3
Mass street violence	16,1	32,8	21,8	21,4
Not getting paid or receiving pensions	56,5	60,8	62,7	57
Unregulated inflation	75,2	63	77,1	74,3
Dictatorship in country	10,2	16,8	17,7	19,1
Dissolution of Ukraine	10,8	45,9	27,9	25,6
Consequences of the Chernobyl NPS disaster	24,9	9,2	10,6	12,2
Contagious disease which is life threatening (TB, AIDS or other)	43	17,4	23,2	23,2
Unheated apartment	30,7	23,7	25	31,3
Other	3,4	5,1	1,9	0,5
Afraid of nothing	2,6	1,8	3,2	3,4

**Table 4. In your opinion, what do people currently fear most?**  
(% in the selected regions, Ukrainian Society Survey)

	Centre	West	East	South	Donbas	Kyiv city
<b>An increase in crime</b>	42,8	27,2	54,6	51,2	35,5	46,7
<b>Attack of a foreign enemy on Ukraine</b>	38,2	48,5	34,9	34,1	24,9	43,2
<b>Inter-ethnic conflicts</b>	15,3	11,5	23,6	18,1	22,2	15,8
<b>Religious conflicts</b>	5	5,6	10,1	15,5	12	7,2
<b>Influx of refugees, immigrants and visitors</b>	10	15,2	12,8	15,5	14,5	15,8
<b>Mass street violence</b>	17,3	13,3	25,9	41,5	24,7	18,7
<b>Dictatorship in country</b>	12,3	12,8	26,8	19,2	16,9	23,7
<b>Dissolution of Ukraine</b>	24,6	24,3	30,3	30,6	25,3	43,2

To sum up, we assume that, as it stands now, public concern over possible ethnic-religious conflicts is low across all regions. These have given way, to a large extent, to more “normal” cleavages, such as region vs. center as well as LAO vs. OAO. The data demonstrate a growing public concern over a set of divergent problems across Ukraine, such as an increase in crime (the highest in the East and South), foreign attack (the highest in Kyiv and the West), mass street violence (the highest in the South), and the dissolution of Ukraine as a state (the highest in Kyiv). Apparently, the violation of people’s rights in Ukraine (human rights, labor rights, other rights related to individual freedoms) is more likely to cause protests than ethnolinguistic issues.

We suggest that yet another risk is attributable to uneven development and postponed modernization in Ukraine: different “centuries” within one country do not facilitate integrated development. Ukraine is in the trap of cross-civilizations with heavy post-Soviet legacies, lack of critical thinking, old feudal-type hierarchies, outdated technologies, and an underpaid labor force that struggles to survive, on the one hand; and with an urban creative class, Western high school graduates, and segments of highly organized civil society, activists, volunteers, etc., on the other. This is another challenge for the transmission of OAO values, reaching consensus, and ensuring the sustainability of changes.

## Potential for evolutionary development

Already quite powerful and growing creative class provides the engine for further evolution, but the next question is whether these changes can or cannot be smooth. Of course, this mostly depends on the political system, but only to the extent it is being trusted. Besides, the society's readiness to protest plays important role.

Predictably, the most alarming sphere of post-revolutionary Ukrainian society, where the share of respondents who "have enough / full access" is the lowest, was the rule of law (although the recent developments after the Revolution of Dignity have demonstrated a moderate positive dynamic, as we saw it in the data). The lack of legal protection for defending rights and interests involves high pessimism in estimating one's personal future and the future of Ukraine (notably, the level of pessimism and despair increases in the pre-revolutionary years and drops shortly afterward).

This confirms our conclusion that RoL remains the most problematic issue in observable progress in transition. Particularly, Poroshenko's election defeat is, by large, related to his inability or unwillingness to provide full-fledged RoL<sup>124</sup>. Yet, on the positive side we should admit that the existence of high demand for RoL seems to presage its conversion into tangible progress. However, given the importance of personal rule to the functioning of LAO in general and patronal politics in particular, the battle is already fierce and expected to become exacerbated. Then, the next question here is whether it will result in further violent episodes, or whether democratic institutions are already able to conduct further changes smoothly. As long as these institutions are still immature, a lot depends on the attitudes of the population toward violent actions as opposed to using democratic mechanisms and amending them, when necessary, with non-violent protests.

According to 29.1% of the respondents in 2018, mass protests against the violation of people's rights are possible (these include mostly legal forms of protests, although up to 6% anticipate unauthorized meetings and picketing, 1.8% expect the seizure of public buildings, 1.3% expect the formation of paramilitary forces beyond the government's control). It is noteworthy that in 2018 the estimated likelihood of protests (for example, in the form of picketing and the seizure of public buildings) was higher than in 2004 but lower than in 2014.

The data show that people in Ukraine traditionally have a low level of trust in state institutions, including the President, Parliament, central government, courts, prosecutor's office, as well as police and local authorities.<sup>125</sup> Such a trend was widely observed in most post-communist societies that experienced "unsatisfactory financial status", which then created "pessimism about the political institutions"<sup>126</sup>, which was in turn openly manifested after a long period of forceful public legitimization of the political regime under socialism. However, the developments in the post-revolutionary years went in different direction. As mentioned above, in 2017

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<sup>124</sup> We assume that the sharp decrease of the Poroshenko's mass popularity was directly connected to his image of a 'LAO-keeper', particularly in the sphere of RoL, widely promoted by the top-rated media channels, particularly before and during the election campaign. However, the very fact of such open criticism of him as an acting President give an argument of favor of freedom of speech under Poroshenko, something which refers to OAO.

<sup>125</sup> Since the Revolution of Dignity, it is only the army, church, volunteers, and scholars who enjoy relative trust (3.1–3.5 on a five-point scale, where 1 is full distrust and 5 is full trust).

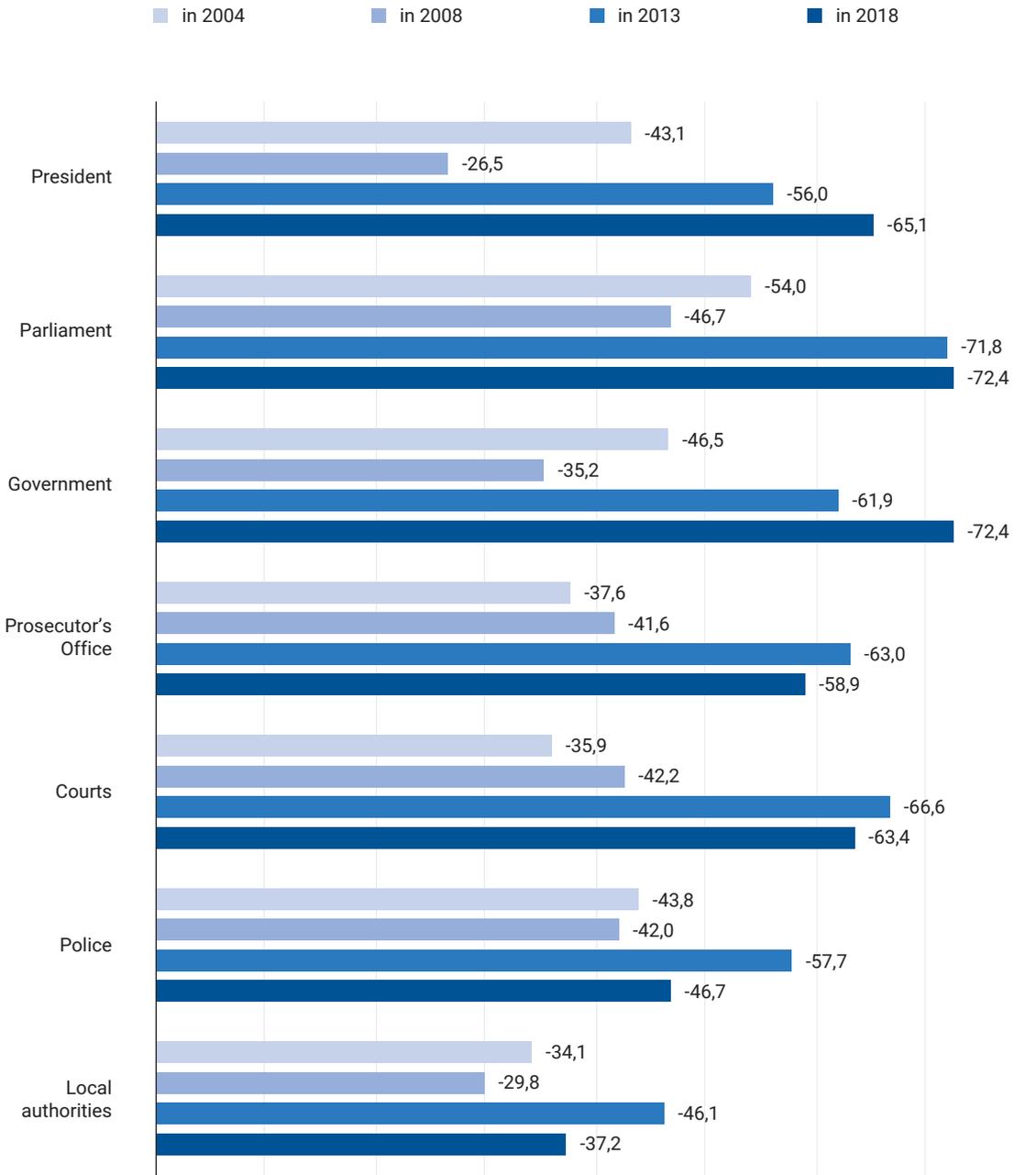
<sup>126</sup> Pehlivanova P. The Decline in Trust in Post-Communist Societies: The Case of Bulgaria and Russia. *SuvremeneTeme, Contemporary Issues* 2, No.1, 2019, 32–47.

the [Index of Social Well-Being](#) has reached 40.7 points<sup>127</sup> for the first time since the question was included in the survey in 1996 (just to compare, it showed very slow growth in the previous decades, from 35.1 points in 1996 to 37.4 in 2012), meanwhile the distrust in state institutions also peaked. Survey data suggest (see Table 11. Trust in state institutions ('Central trust') (2004-2018, balance of trust vs distrust, %, Ukrainian Society Survey)\*1) that the levels of trust, directed toward state institutions, have always been low in Ukraine. Also, there is a tendency toward an increase in subjective well-being accompanied with a growing distrust of central authorities. This creates an interesting phenomenon that can be called «Fata Morgana claims»: as well-being increases, expectations grow, and people become less satisfied with what they get from the state (claims remain unattainable unless they are analyzed and instrumentalized).

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<sup>127</sup> Index of Social Well-Being is a scale where below 37 points refer to low social well-being, 37-43 indicates an average level of well-being, and 43 points and more characterizes high social well-being. More on the method, see: Golovakha Y., Panina N., Gorbachyk A. Measuring Index of Social Well-Being. *Sociology: Methodology, Methods, Marketing*. 1998, No.10, 47-71

**Chart 8. Trust in state institutions ('Central trust')**  
 (2004-2018, balance of trust vs distrust, %, Ukrainian Society Survey)\*



\*Either the last or second to last year of the Kuchma's, Yanukovych's, Yushchenko's and Poroshenko's presidency is taken for analysis.

Here the nature and functioning of the political institutions is primarily important. We suggest that the high degree of distrust in state institutions at all levels that was reported in all regions in the pre- and post-EuroMaidan periods marks Ukraine's belonging to the post-authoritarian stage, which is good news (as cautious attitudes are characteristic of aware citizens watching their authorities rather than praising them).

However, supporting Patti Tamara Lenard's argument that "distrust is inimical to democracy and trust is central to its flourishing,"<sup>128</sup> we argue that the further development of Ukraine as a democratic country requires more trust on top of critical attitudes. It is trust that makes people ready to abide by shared regulations and encourages them to participate in the process of reform.

Analyzing from this perspective the possible revolutionary path with a further "fork" of development (between "protests, violence, and terror" vs "developing institutions") and building upon the available data, we suggest that in Ukraine the observed drop in the state authorities and public institutes' trust does not necessarily lead to mass protests and bottom-up violence<sup>129</sup>, however, discontent is possible over a range of pivotal issues.

Summing up, the sociological data and evidence-based observations support the hypothesis that Ukraine has undergone fundamental changes in social attitudes that have made the Revolution of Dignity possible; and the Revolution (along with further events) have further accelerated these changes. The most important of them – the identity shift, emergence of the creative class, and altering of the main societal cleavages – are hardly, if at all, reversible. At the same time, the threat of possible violence stemming from social problems related to well-being is low. The most likely issue that may cause an uprising in the future is possible clash with authorities on the RoL, a gross violation of the human rights or lack of public consensus, transparency and proper communication on the peacemaking initiatives of the new Ukrainian President.

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<sup>128</sup> Lenard P. Trust Your Compatriots, but Count Your Change: The Roles of Trust, Mistrust and Distrust in Democracy. *Political Studies*, Vol. 56 issue 2 2008, 312. <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-9248.2007.00693.x>

<sup>129</sup> The course of events in the last three years (2016–19) also confirms this conclusion: despite extremely low popularity of the political class and its institutions, even hatred directed toward President Poroshenko and many other people in power (largely inflated by the media), all attempts to organize violent and massive non-violent rallies failed. Instead, the voters eventually put up with Poroshenko until he was voted out in democratic elections. We suggest that in Ukraine democracy is an established asset for a wide public. A promising sign is that a share of respondents who think that democratic development is important for them remains rather stable (from 64.1% in 2002 to 66.8% in 2017). Freedom of speech remains important as well (from 69.1% in 2002 to 73.1% in 2017).

# Conclusions and discussions

At the beginning of this work we formulated the following research questions:

1. Have the changes that occurred in the process of the Revolution of Dignity (including the Maidan uprising of 2013–14 and the following six years full of dramatic and tragic events) already put Ukraine on the path of smooth evolution towards OAO?
2. If not, then have they already created the momentum to complete the revolution aimed at the mentioned above goal (direction) any soon?
3. If not, then which further changes, if any, should occur in order to give a positive answer to the previous question?
4. Can they occur in an evolutionary way, or are further forceful changes necessary (inevitable)?
5. Are the achievements listed above permanent/sustainable, or could they be rolled back?
6. In the worst case, will the remaining permanent changes be sufficient to serve as grounds for further (r)evolutionary processes?

The working hypotheses were formulated as follows:

1. The Revolution of Dignity so far has failed to change the nature of the State. The State is a monopolist on legitimate violence, thus the nature of regime is primarily about who controls the violence. The respective institutions have not changed in their nature, institutional role, and corporate culture, except for the patrol police. Neither of the three "doorstep conditions" listed by North et al<sup>130</sup> is in place yet.
2. For the country as a whole, the move from the Russian field of gravity to the European one is irreversibly accomplished. This may have long-term systemic effect, although contingent upon the EU's ability to understand the deeper nature of "harmonization" as opposed to often formalistic blueprinting of "European" norms or following the "best practices" of already successful countries. In any case, the visa-free regime and temporary labour migration and other forms of population movement will continue to steadily erode the "Soviet mindset" and bring changes in prevalent values.
3. The core of a Ukrainian political nation is already formed, and has started modernizing.
4. In the political sphere, a "competing pyramids" regime is firmly established and will sustain from now on – a "single pyramid" regime will unlikely be possible again. As such, the system will likely become more open to political competition and further evolution. However, it is still unclear whether or not such evolution can ultimately alter the nature of the State.

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<sup>130</sup>North, Waingast and Wallis (2009) define them as (a) rule-of-law (at least for the elites), (b) politic control over use of force, and (c) perpetual organizations.

In order to assess the progress in systemic transition we have put forward the following fundamental balances between the observable characteristics of economy, institutions, and society:

- zero-sum vs. win-win thinking;
- rent seeking vs. profit seeking;
- vertical of power vs. checks and balances (within the state);
- Rule-of-Law vs. personal discretionary power (by analyzing the most important institutions defining the rule-of-law, such as courts, prosecution office, police and investigative institutions).
- LAO- vs OAO-oriented social transformations (observed changes in values, attitudes, stratifications, such as "survival values" vs. "self-realization" and self-reliance).
- As an additional indicator we also considered the "extent of corruption," predominantly in business-government relations.

Overall, the collected evidence supports most of our hypotheses (at least, as we of spring 2020 when the report was finished). This means that Ukraine is still LAO rather than OAO, but is steadily moving forward and has better prospects than ever for transformation due to much stronger driving forces, and sufficiently mature political institutions able to conduct the necessary changes and corrections in a democratic way.

However, the *doorstep conditions* for this transformation (according to North et al.) have not yet been met, with the lack of RoL remaining the key problem. The balance has shifted in a positive direction but is still deep in the red, and the achievements can be reversed at any moment. There is some hope that the High Anti-Corruption Court will eventually become a critical tool for cleaning up the court system, but so far it is too early to predict. The establishment of RoL is also the most complex institutional challenge that cannot be resolved within "patronal politics." Substitution of informal personal rule with modern institutions takes lots of time and concentrated effort; moreover, such change cannot occur within the system of patronal politics and thus requires a side foothold due to the lack of reliable institutional leverages over old institutions and practices. Civil society and Western/multinational donors—or ideally an alliance between the two—can serve as such a foothold. This could only happen under the pressure of some irresistible circumstances: however, such circumstances already exist.

Rent seeking has partly succumbed to the joint forces of civil society, donors, and the fiscal crisis. Nevertheless, it remains dominant, especially in the energy sector, natural monopolies, to a large extent in agriculture, as well as in other large industries. The share of such predominantly rent-seeking sectors in the overall economy has decreased, but they still dominate in the industrial mix by value added. New sectors and "de novo" firms have emerged and strengthened rapidly. The shifting of exports out of Russia towards other markets, primarily the EU, has also contributed to systemic change. The overall trend is thereby positive, but its sustainability will depend on exogenous pressure, because so far the profit-seeking macro sector by itself, though strengthened politically, still cannot overcome the rent-seeking macro sector alone.

The sharp shift in foreign trade from CIS to the EU and new opportunities for labor migration—further facilitated by the visa-free regime along with far-reaching structural changes in the production mix (and its economic geography), including the emergence of the new post-industrial sectors—are likely to become long-term and near-irreversible drivers for socioeconomic changes, primarily raising up the creative class and drifting Ukraine's economic center of

gravity westwards. Therefore, the economy also anchors Ukraine's geopolitical choice to a significant extent. Besides, with time the new sectors will play an increasingly larger political role, driving not only economic, but also social and political development. Still, permanent out-migration of active people, especially from the creative class, can erode the basis for changes.

Political checks and balances have significantly strengthened, primarily due to the return to the "dual" constitution of 2004 and decentralization. We consider both achievements irreversible because an attempt to cancel either of them will meet very harsh and strong opposition. However, in their present form the political institutions can still fail to secure smooth change, primarily due to the incompleteness of both reforms. The President still holds ample informal power through his influence on the SBU and PGO, with "economic departments" of the former still functioning and supplying their boss with kompromat on his friends and foes that can be used as a powerful weapon either directly (through the PGO), or indirectly, through the media. The election system has yet to be adapted according to the constitution, which stipulates fully proportional representation. A number of other clarifications should be made by the law in order to put it in line with the constitution. Last but not least, although the law on impeachment was eventually adopted after 23 years, which is an unquestionable achievement, the constitutional procedure remains impractical, thus unfeasible and in need of correction. Furthermore, decentralization is still to be completed by establishing the institute of prefects that was, according to the reform's original design, to balance the power of elected local leaders.

The good news is that as soon as all of the above will be accomplished, and given that the crucial 2019 election season has passed without any violence and major mass protests, there is a good chance that Ukraine will eventually get a political system able to conduct even quite radical changes of power in a peaceful, democratic manner. However dissatisfied the majority of voters were during President Poroshenko's rule, none of the attempts at organizing a protest movement to prematurely oust him from office turned out to be successful. On the other hand, even if he indeed wished to establish a "single pyramid" rule, as some observers suggested,<sup>131</sup> this attempt has also failed. Ultimately, he has lost in free and fair elections, and now Ukrainian democracy faces a new test: if the winner will not eventually "take it all," and the loser will not, respectively, lose it all, then we could conclude that the country's democracy is matured enough so that there is a chance for further evolutionary development. Of course, it does not mean that this path would never entail further complications and even reversals.

This test is also important because it would ultimately answer the question of whether Ukraine's revolution is taking a "French" path (where the moderate reformers are followed by radicals, and then a "thermidor" that eventually paves the way for further revolution(s)), or a smoother and more evolutionary "American" one. The Presidential campaign in itself does not provide a clear answer, because on the one hand, the leftist, material, radical discourse that is considered part of the "French" way did largely occur (lowering of utility tariffs, increases in pensions and wages, expropriation of "oligarchs," etc.); but on the other hand, its main proponents lost the race.

The winner has not, as a rule, clearly articulated any concrete slogans or pledges, but rather a few that can be (cautiously) considered as more "idealistic" than "materialistic"—which, if true, would suggest an "American" path. His campaign was focused on anti-elitist, anti-corruption messages and the main, if not the only, clear promise was "change." To some extent, this can be interpreted as an appeal to aspirations of "opening up access" with social lifts, various

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<sup>131</sup> Minakov M. Reconstructing the Power Vertical: the Authoritarian Threat in Ukraine. Open Democracy Russia, June 2017, <https://www.opendemocracy.net/en/odr/reconstructing-power-vertical-authoritarian-threat-in-ukraine/>

opportunities, etc. However, this does not necessarily mean that about a half of all Ukrainian voters (and 73% of those who appeared in the run-off) indeed support "openness." In fact, the extremely opaque and vague communication of Zelenskyy's campaign, along with the extensive use of modern psychological influence tools by both sides, resulted in predominantly irrational voting that had little to do with real messages.

Therefore, although the demand for changes is clear, the sense of the changes desired by different strata of voters varies tremendously and requires further inquiry. Preliminarily we can just hypothesize that "anti-corruption" functions as a proxy for "anti-LAO," because the kinds of corruption that are most irritating for the people are those associated with the inherent features of an LAO, like the fusion of business and power, and the lack of RoL, as manifested in the court system. In this sense, voting for "change" and "against corruption" may be cautiously associated with aspirations of modernization. Still, many voted for Zelenskyy because he looks like the average guy next door, because he is a Russian speaker, because they can easily imagine him as a President due to his show "The Servant of the People," or even because they were dissatisfied with reforms themselves or the way they were implemented.

After the early Parliamentary elections Ukraine, for the first time, has seen a political leadership able to attract a unilateral majority in the Rada. Volodymyr Zelenskyy and his team have now all the requisite means to conduct their policies, and all the accompanying responsibility. At the same time, he faces very fierce opposition, even hatred, among an important and well-organized minority, alongside skepticism from many of the creative class, even those supporting him. Despite a shocking (by Ukrainian standards) electoral harvest, there were only around 20%<sup>132</sup> of all voters that supported Zelenskyy and his party at the ballot boxes in the first round of the Presidential vote, and then at the Parliamentarian one. This is still a minority, although a much larger one than any other politicians and political forces have.

And here the aforementioned "fork" of the revolution's path appears again: if the winners use their incredible power predominantly for individual terror against the losers (as well as, most probably, former allies and some disloyal members), then the French-Russian path will soon lead to a thermidor in some form, however popular such terror may currently look from their perspective. If, however, the winners' zeal for radical changes materializes in inclusive institution building with the aim of an OAO, and personal repressions, if any, are rare, focused exclusively on the staunchest opponents of such changes, then Ukraine has a good chance to find itself on an "American" way. Unfortunately, as of now we observe more or less random persecution of various members of the old elite with a suspected emphasis on predecessors, which looks more like a "terror" phase characteristic to the "French" way. Moreover, in his traditional New Year's address to the nation Zelenskyy has explicitly prioritized the material factors over values, identities, and other immaterial considerations, which is also a characteristic of the "French" way, according to Hannah Arendt.

What is sure, however, is that the "nation-building" agenda as offered by Poroshenko in a strictly ethnolinguistic sense has lost to a conditional "modernization" one. This is in line with our observation, also supported by the Nestor Group, that the Ukrainian political nation has already emerged, and consequently, the need for a nation-building agenda has become less acute than it was before 2014. For most of the country except the Eastern borders and part of Western Ukraine, the most acute issues and corresponding cleavages have altered; this, in turn, means change in the forces driving further developments of the country. As the Nestor Group has noted in its 2015 Manifesto,<sup>133</sup> the political nation has emerged, but now it is time to modernize it.

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<sup>132</sup> The rest of the votes for Zelenskyy, totaling an extra 30% in the run-off, were cast *against* Poroshenko.

<sup>133</sup> Nestor Group, Vision of Ukraine - 2025: Contract of Dignity for Sustainable Development. Available at: <http://ukrainianinstitute.org.uk/wp-content/uploads/2015/03/The-Nestor-Group-English.pdf>, accessed January 25, 2020.

Of course, nation-building should not drop out of the agenda—it still deserves attention and poses challenges—but modernization has become the priority. Among other important things, even many Ukrainian ethno-nationalists admit that Ukraine can hardly sustain its independence and unity without offering its citizens a lucrative and feasible modernization project, not to mention economic viability. After all, the Ukrainian political nation has emerged on anti-Empire, anti-Eurasian, and pro-European ground, and moving along the "European way" (not necessarily towards the current EU, but as a general civilizational vector) is synonymous with modernization.

It is still debatable whether these changes are indeed irreversible, given that about twenty years ago there was also a pro-Western majority in Ukraine that soon disappeared. However, this time the situation is different.

First, at that time the pro-Western mood was "immature," based mostly on some ideas about the West seen on TV that did not necessarily correspond to reality. When the TV started broadcasting other messages, these myths partly disappeared. Now more Ukrainians have personal insights: only in 2017–18, about 18% of survey respondents had visited EU countries at least once,<sup>134</sup> and a few million have personal experience of working and living there. Those people shared their observations with friends, relatives, and neighbors so that many more compatriots can now make a conscious choice. The problem, however, is that active travelers are not equally distributed among the regions (Western Ukraine, closest to the EU border, traditionally sees a higher population mobility). Second, as we demonstrated in Section 5, the new "millennial" generation that has grown up since then is, in many important dimensions, closer to their European peers than to their parents. For them, the "European choice" is incontestable<sup>135</sup> because they strive for openness to the world, while Russia is moving towards autarky. The changes of attitudes among the generations are slow but irreversible.

Finally, the most important point is that, unlike at the beginning of the 2000s, this time both the nation's unity and its turn westward came as a result of shocking events that dramatically changed the public consciousness within just half a year. This may be reversed with the same kind of shock, but it remains highly unlikely otherwise. Of course, we cannot completely rule out the possibility of such a shock in the future, but it is hard to imagine where it would come from. The most likely kind of dramatic events in the foreseeable future are related to Russia's aggression, but they could instead further amplify the impact previously made on Ukrainian nation-building in 2014.

Therefore, we conclude that unless some extreme events occur, the Ukrainian political nation will sustain and develop further. This could become one of the main drivers for systemic transformation, as described in the Introduction.

The dramatic events of 2014 have made abundantly clear that Russia is not going to tolerate any true independence of Ukraine, while continually insisting that "we are the same people," and therefore ought to re-merge sooner or later. And it is ready to prove this by brute force. Ukraine's economic and military capacity is not comparable to Russia's, nor does it have nuclear weapons, hence it cannot win any war of independence without external support. Besides, the desperate economic situation in 2014–15 also required massive help that could be provided only by the West, and Ukraine still needs more loans to manage its huge debt.

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<sup>134</sup> According to an Institute of Sociology survey held in autumn 2018 (i.e., nearly a year and a half since the introduction of a visa-free regime), 7.6% of respondents used the visa-free regime to travel to the EU as tourists, 5.4% to visit friends and relatives, 4.7% traveled to the EU in search of employment opportunities, 0.5% went to study, and 1.1% went to attend professional events (conferences, exhibitions, etc.); however, 81.9% still did not take advantage of the new opportunities for visa-free travel.

<sup>135</sup> See Section 5.

While previous governments could, at least in theory, try to sit on two chairs trading their loyalty to Russia and the West simultaneously, after the Revolution of Dignity, Russian aggression and the beginning of the new Cold War rendered this impossible. At the same time, Ukraine is not strong enough to sustain fully independent "neutral" status. It therefore has no choice but to lean towards the West. However, this way implies forced transformation, because the Western leaders cannot persuade their voters that an LAO regime perceived as repressive, unlawful, and corrupt from the OAO perspective is worthy of their support: the concept of "our son-of-a-bitch" is left back in the mid-twentieth century.

Thus, the logic of sustaining the new Ukrainian political nation's unity and independence will drive the country westward (including in terms of values and beliefs), and, at the same time, provide the West with critically important leverages over its development. This, in turn, may help solving other problems like the aforementioned reform of political and law-enforcement institutions, judiciary, and so forth. But a full-fledged transformation to an OAO requires dramatic personal change in the elites' composition, along with the rules, which normally takes a few generations or a revolution—and Ukraine cannot afford either of those. As such, the Western powers, along with Ukrainian civil society and their allies in the incumbent elites, should carefully implement a sort of "soft revolution" in order to achieve systemic transformation within a couple of decades.

This is probably not impossible but requires a very careful treatment of a number of problems. First and foremost, any such process should be thoroughly tailored to Ukraine's peculiarities so that it avoids creating institutional traps and critical societal tensions. So far, the Western advisors have too often misinterpreted the local realities or imposed an agenda more appropriate to their own countries: from a fixed exchange rate regime in 1996–98 to the treatment of corruption as "just a regular crime that should be simply punished." The country's sovereignty is an extremely fragile and subtle matter, so the scope for pressure of this sort is critically limited and should be precisely targeted. It should also be politically legitimate for the Ukrainian population, requiring effective feedback and correcting the program accordingly. Corrections are necessary also because no one can predict possible developments and problems *ex ante*. However, incumbent elites should not be allowed to capture these corrections, and these corrections should not go so far that they derail the whole program.

Then, the systemic transformation is contingent upon peoples' beliefs and habits, if not cultural patterns and values, that are fundamental for a self-sustaining OAO. Although we observe some provisionally hopeful trends in recent years, the balance is still in the red. Hence, a powerful and permanent campaign for changes at the societal level is a crucially important complementary component of the transformation program.

Last but not least, the political system should be able to conduct dramatic changes smoothly. This requires urgent and sound institutional reforms aimed at strengthening of checks-and-balances, securing better representation, and improving trust in political institutions.

The main condition for smoothness is the cooperation of the incumbent elites. They have formed under the LAO, which means that they were selected or self-selected accordingly, and further develop their competition by investing in the skills, connections, and other assets necessary for the LAO's conditions. Therefore, any direct attack on their privileges or, for instance, corruption, begets consolidated resistance that can be overcome only through violent revolution. The incremental changes they allow are reversible and can hardly cumulate into systemic ones unless they are made in the spheres overseen by the incumbents.

Still, a closer look at these elites reveals that despite that all of them are playing by essentially similar informal (and often illegal) rules, they display a variety of attitudes in the sphere of business and politics. Some of their members play by these "rules" willingly, and cannot imagine

themselves doing anything else, as, for instance, in the case of many corrupt police or secret service officers. Some others, to the contrary, are loath to do so, and impatiently wait for the moment when they could start living and working as their Western peers do: many of them even move their businesses there. Most of the rest think that they could more or less conform to any kind of system, provided they will be able to keep their wealth and not be persecuted for past sins. Respectively, one should expect that the first category of mentioned above people would harshly resist the reforms, the second category would assist the reformers, and the third could be pacified or even engaged on certain conditions. The strategies of reforms should be such that elites are split along these lines, ideally creating more allies than harsh enemies at each step (the so-called subgame-perfect path). This is hardly possible in all cases, but the lesser the need to resort to brute force, the more efficient it will be.

Game theory suggests the following conditions for such cooperation:

1. The elites should understand that transition is unavoidable, and the time of the LAO has come to an end. It is important for making the LAO's games finite<sup>136</sup> thereby breaking the conspiracies and criminal ties, destroying corruption networks, rent seeking cliques, and so on, forcing the players to revise their strategies and increasing the demand for workable institutions. Ideally, there should be a certain firmly-stipulated date ahead, as there was in the EU's new member states.
2. Those who agree on transition do this because they rationally estimate their benefits from capitalization, secure property rights, and other benefits of an OAO. But these benefits work only when the majority play by the new rules, and the violators are punished. Therefore, the potential allies of reformers need a trustworthy arbiter that will enforce the rules, especially during the transition period. Importantly, a person can play this role only temporarily, and such an arrangement is not very credible. A duly operating court and law enforcement system is such an institutional arbiter with a long-term perspective.
3. All participants need credibility and clarity of the rules.

In the Ukrainian case, this can be achieved more easily than in many other examples because the country has an existential external threat, so every sane person understands that—for the reasons described above—there is no other way to proceed but fast modernization, which, in turn, can be largely facilitated and accelerated by the West. Stagnation will ultimately result in failure, and with it, a new violent revolution.

At the societal level, the process requires the intense unity of the creative class and, especially, civil society that is the main, if not sole, consequent proactive driver of transformation. In practice this means that all other goals (except, of course, national security) should be subsumed to the political nation's unity, at least for the period of this speedy transition. Obviously, language, ethnicity, confessional affiliation, and historical memory are not factors that unite all Ukrainian citizens into one community. As such, the methods of using these markers for constructing a national project should be either revisited/applied in a softer way or rejected in favor of "value politics" focused on fighting "survival values," particularly zero-sum thinking, and on establishing instead values such as self-respect, respect of others' rights and privacy, and other basic "European values" such as observation of the rules and changing them if necessary, as opposed to circumventing them, and appointing or hiring on merit as opposed to kinship.

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<sup>136</sup> The so-called folk theorem in game theory states that in an infinite game, the players take strategies different from the ones they use if they know that the game will end after a certain number of repetitions.

In the economic sphere, further opening up both internally (for the development of domestic entrepreneurship) and externally, for the FDIs, is vital, as it can also launch a virtuous cycle of other changes by the creation of payable demand for the rule-of-law, predictable democratic decision-making, and electoral reform. If the progress in these spheres is politically rewarded with an increase in economic growth driven by unleashing the entrepreneurial potential of the Ukrainian nation, as well as FDI inflows, it will create sufficient incentives for politicians. And the new, growing, entrepreneurial class along with foreign investors can further propel such policies—that is, of course, if they join efforts in this, rather than engaging in counterproductive competition for privileges or policies subversive to each other, and, eventually, the country.

To sum up, the answers to our research questions are as follows:

Question	Answer
<p><b>Have the changes that occurred in the process of the Revolution of Dignity (including the Maidan uprising of 2013–14 and the following six years full of dramatic and tragic events) already put Ukraine on the path of smooth evolution to OAO?</b></p>	<p>Not yet: Ukraine remains predominantly an LAO, although competitive sectors in the economy have expanded, political competition has improved, and some other critical balances have shifted in the direction of an OAO.</p>
<p><b>If not, then have they already created the has sufficient momentum been created to rapidly complete the revolution aimed at the mentioned above-mentioned goal (direction)?</b></p>	<p>Yes, provisional success in building a European-oriented political nation can potentially create such momentum, although the process will take time and effort, and faces substantial risks. A return to the dual constitution and decentralization are likely to be important in securing further smooth progress. An ultimate and irreversible shift from the Russian political sphere to the European one can firmly anchor the vector of further developments, provided that Western assistance and pressure for modernization will be well-targeted and well-tailored to Ukrainian realities.</p>
<p><b>If not, then which what further changes, if any, should occur in order to give a positive answer to the previous question?</b></p>	<p>See Recommendations</p>
<p><b>Can they these occur in an evolutionary way, or are further forceful changes necessary (inevitable)?</b></p>	<p>These changes can hardly occur smoothly and, at the same time, sufficiently quickly as a natural endogenous evolution; but they can be accelerated and made manageable if conducted with the skillful help of external players and civil society.</p>

**Are the achievements listed above permanent/sustainable, or could they be rolled back?**

The main systemic change achieved in the previous years—the emergence of a European-oriented Ukrainian political nation, including civil society—is irreversible unless some extreme events change this trajectory.

The background societal and socioeconomic processes that led to the Revolution and were accelerated as a result of it are barely reversible but could be disrupted by a major disaster like a full-fledged war.

Progress in the building of checks and balances is also barely reversible, but still insufficient.

**In the worst case, will the remaining permanent changes be sufficient to serve as grounds for further (r)evolutionary processes?**

In the unlikely event of reversal in the country's nation-building and/or its European choice, any systemic transition will at best be put on hold for a long time. In case of reversal in the progress of political institution-building, this will likely result in a new revolution, with uncertain—but quite possibly disastrous—consequences.

# Recommendations

The analysis provided above allows us to formulate some specific recommendations that are summarized below. We reiterate that they are by no means sufficient for turning Ukraine into an OAO the day after they are implemented; this process will still take no less than a decade or more, and there is no firm guarantee of success. However, such measures can at least create momentum for further changes and facilitate them, ideally making them self-sustainable and self-propelling. At the same time, they should be feasible at present or in the immediate future. According to our methodological approach, they should alter the main balances and create positive feedback for subsequent developments. Of course, this list is subject to further discussions and amendments. Hence, here are our suggestions for what could and should be done soon.

## 1. Complete political reform:

- a. Complete the partially-accomplished electoral reform.
- b. Establish a workable mechanism for impeachment.
- c. Clear the remaining issues in the constitutional division of power and strengthen institutional accountability at all levels.
- d. Eliminate the informal instruments for blackmail that a President has at his disposal, as described before (influence on the SBU, SBI and the PGO).

The aforementioned measures, when implemented, should ultimately lock in the checks-and-balances against the “vertical of power” and, at the same time, secure the smoothness of further changes as the new system should be more representative and thus more legitimate. The demand for such reform is already there, but it is currently vested almost exclusively in civil society. Educating voters, particularly in the advantages of better functioning representative democratic institutions can have a systemic effect.

President Zelenskyy is in a good position to accomplish these reforms, because with his dominant position with respect to all formal institutions, including a Parliamentary majority, he should not fear the checks and balances as much as his predecessors did. Furthermore, even if he were reluctant to strengthen these checks and balances right away for some good reasons, it is rational for him to introduce respective legislative changes by the end of his term, just as Kuchma did with constitutional changes that weakened the presidency.

Towards establishing the rule-of-law, what one can hope for in the current political situation is a few critical steps in reforming the judiciary and weakening the power of the prosecution office. In addition, investigations should be made more professional in the police as well as in the new State Bureau of Investigations, thereby creating firm footholds for further reforms. The reforms that we suggest at this juncture are:

- a. Launch the Anti-Corruption Court and focus its activities primarily on countering judicial corruption.
- b. Review the appointments of Supreme Court judges that were made against the conclusions of the National Council of Integrity.

- c. Create a vetting process for the remaining courts with stronger involvement of civil society experts.
- d. Create special courts that rule according to British law, staffed with foreigners, as was done in Kazakhstan. This will create islands of good justice within the country and experience shows this has the chance to spread good behavioral models and practices.
- e. The prosecution office's power should be diminished; its hierarchy weakened, mandate reduced, and number of prosecutors reduced, while their salaries should be significantly increased. A credible vetting process should be designed.

This should shift the critical balance in favor of the rule-of-law.

Again, President Zelenskyy is in a good position to strengthen the RoL because he is the first President in Ukrainian history that has come to power from outside of patronal politics, thereby has much weaker conflict of interest in respect to independent judiciary and law enforcement than any of his predecessors that needed selective justice to uphold their informal verticals. Regrettably, however, so far he has shown no sign of turning this advantage into real reforms that could be his most important legacy as president.

2. Fight impracticable norms to the greatest possible extent, and dramatically reduce opportunities for blackmailing and extortion, especially with respect to business:
  - a. Apply the "regulatory guillotine."
  - b. Radically liberalize labor regulations for all firms except local monopolists on the labor market.
  - c. Complete the already commenced tax reform so that an honest taxpayer can "pay all taxes and sleep peacefully" (requires corporate taxation reform); eliminate the labor tax and partially substitute the PIT with land/real estate tax.
  - d. Establish a permanent feedback/hotline for identification and elimination (to the greatest possible extent) of further corruption opportunities.
3. Rein in the other rent seeking opportunities by imposing further transparency, de-monopolization, along with opening up the land market, abolishing all subsidies to business firms, and otherwise encouraging the free entrepreneurship and competition.

There is not much new in these recommendations as such: respective draft laws are either already on the table or being developed. But the political-economic key to their implementation is coalition-building among predominantly profit-seeking businesses, as well as education of the population.

Together these two recommendations will shift the balance between rent-seeking and profit-seeking towards the latter, while also positively affecting the RoL balance.

4. Run a broad campaign to enlighten and educate voters addressing, in particular, the most fundamental issues that hamper modernization: primarily, but not only, zero-sum thinking. "Value policies" that should unite the Ukrainian political nation and make it more conducive to modernization should be included. This can incorporate:
  - a. Mass media and social media.

- b. Popular art including films, TV shows, etc.
- c. Modern technologies developed by applied psychology.

Voters should also be taught critical thinking, some basic knowledge of institutions and the market economy, and various other facts falsifying widespread myths, illusions, and stubborn misconceptions.

This will, among other good things, support mostly positive current trends in the fundamental balances of zero-sum vs. win-win thinking, identification with a leader vs. imaginable community, and “survival values” vs. “self-actualization” and self-reliance. This would create a firm base for further positive systemic change.

5. Coordinate the efforts of government, donors, and civil society in the shaping of the reforms’ strategy and tactics according to the priorities and principles described above (with, of course, the necessary further detailed elaboration of these principles and particular recommendations) within a new kind of strategic advisory project that should be inclusive, open to cooperation with civil society, holistic, and involve both institutional and educational components as described above.

Although these recommendations look ambitious, their strikingly advantageous feature is that **none of them belong to so-called “unpopular reforms.”** They are, of course, highly unpopular in certain narrow but influential circles of oligarchs and other rent seekers, such as corrupt judges, state officials and law enforcement officers, and local barons. But they could and should be made popular among average Ukrainians, for whom they will bring greater justice, security, freedom, opportunities, and, finally, material wealth. It is true that currently, people often fail to understand the links between, say, electoral reform and their own well-being: such links are, indeed, indirect and unclear, but can be popularly explained.

Although many of these recommendations look trivial, there are clear reasons why they were not implemented before, at least during the first five years of the Revolution of Dignity. The simplistic answer is lack of political will, but such an answer does not suggest any real prescriptions, because it fails to uncover the reasons that can be changed. A closer look at them yields the following answers:

- Most necessary reforms were not well-prepared at the time of their presentation.
- The prioritization of the reforms was different:
  - partly for good reasons (reforms like macroeconomic stabilization, rebuilding the army, and some others were existential for the country);
  - partly due to a lack of understanding, including by international donors and creditors (like the creation of punitive anti-corruption institutions while prevention lagged behind);
  - partly because of harsh resistance from certain interest groups.

As a result, interest groups have easily diverted attention to secondary issues, substituted the modernization agenda with other problems that simply cannot be solved quickly (for instance the identity cleavage), or just captured the reforms, as in the judicial case.

- Nobody aside from innumerable and mostly powerless civil society activists and second-tier politicians tried to achieve public support for reforms.
- Last but not least, the government and particular persons in power had conflicts of interest with respect to at least some of the reforms, from the abolition of protectionism, to the automotive industry, to judicial reform.

Previously, many observers and advisors lamented the lack of political leadership in Ukraine which, in their opinion, was the main culprit for the lack of speedy transformation. Now political authority in Ukraine, quite unexpectedly, has been consolidated, at least formally, in full. However, many drawbacks remain, plenty of new risks arise, and it is not yet clear if this good chance pays off for Ukraine.



