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Europe, Popular Politics and the Ukrainian Presidential Election of 2004[1]

Abstract

This chapter argues that Ukraine's Orange Revolution in 2004 upset the pre-election consensus amongst political scientists about Ukrainian voter behaviour. It argues that that passivity is no longer the essential characteristic of the Ukrainian voter, since the key factor in determining the outcome of the 2004 Presidential Election was the sustained presence of mass protest on the streets of Kyiv and other Ukrainian cities. Corruption and sleaze, rather than political incompetence or economic failure defeated the outgoing regime of Leonid Kuchma and Viktor Yanukovych. The support of Ukraine's expanding and prosperous upper middle class for Viktor Yushchenko reflected their interest in a more transparent business environment, the strengthening of the rule of law, and the progress towards European integration.

Introduction

Ukraine's 2004 presidential elections, punctuated in the middle by the 17-day 'Orange Revolution', provide an interesting platform from which to observe the emergence of a new phenomenon in Eastern Europe: popular democracy. This chapter investigates the factors that determined the outcome of Ukraine's 2004 crisis. Its central argument is that one factor above all else was crucial in determining the outcome of the 2004 presidential election in Ukraine: the crowds of protestors in central Kyiv.[2] The scale, duration, and level of professionalism of the mass protests took political scientists and commentators in Europe and North America completely by surprise, and, as this chapter demonstrates, these events form a major challenge to the pre-2004 presidential election consensus on the behaviour of Ukrainian voters.

This chapter has three parts. First, it examines the pre-election consensus on the behaviour of Ukrainian voters in relation to the rest of the polity. Second, it briefly overviews the Ukrainian election campaign itself, investigates the differences between the two candidates and points to the crucial election campaign issue: corruption, and explains how this links into the importance of mass protest. Third, it examines the events of Ukraine's Orange Revolution, and by analysing the different roles played by the various actors, contextualises the importance of mass protests.

I. The Consensus about Ukrainian Voters Prior to the 2004 Election

Prior to the election campaign of 2004, a consensus existed amongst Ukraine-watchers that the Ukrainian electorate itself was the least likely segment of the Ukrainian polity to determine the outcome of the election.[3] This consensus was based

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[1] A separate version of this article appeared in *Politics* in 2005.

[2] Protests were not limited to Kyiv. Demonstrations were also staged in most cities of western and central Ukraine, but also spread to Kharkiv. It is also a myth that the demonstrations were exclusively in favour of Yushchenko. Eastern Ukraine also witnessed rallies of support in favour of Yanukovych.

[3] As Viktor Chudowsky and Taras Kuzio have argued, 'passivity is the essential characteristic of the Ukrainian "public" as a whole'. 'Does Public Opinion Matter in Ukraine? The Case of Foreign Policy', *Communist and Post-Communist Studies*, 36, (2003), 275.

on the combination of a number of factors, including, most notably, the legacy of totalitarian Soviet rule, which led to a structural and crippling weakness in Ukrainian civil society, which in turn hindered the development of political parties in the post-Soviet period.[4] This was the view that predominated amongst political scientists of Ukrainian voter behaviour throughout the 1990s.

This consensus opinion when applied to the Ukrainian presidential election of 2004 went further: victory in the election would fall not to the candidate able to offer voters the most attractive and convincing vision of Ukraine's future, but to the candidate best able to mobilise the administration of outgoing President Kuchma and the actors operating behind the scenes in Ukraine's fledgling democracy. These could broadly be classified as: Ukraine's fabulously rich oligarchs, and Russia with its popular president, 'political technologists',[5] and seemingly limitless financial resources.

As will be demonstrated throughout this chapter, this consensus view of Ukrainian voter passivity no longer applies.

II. The Ukrainian Presidential Election Campaign of 2004

Twenty-six candidates registered for the Presidential elections, but from the start the campaign was effectively a two-horse race between the two candidates that made it to the second round play off: Viktor Yushchenko, leader of the Our Ukraine block, and the incumbent prime minister Viktor Yanukovych, representing the Party of the Regions. Yushchenko was an advocate of European integration, complemented by close cooperation with Russia, but outside the framework of the Single Economic Space. Yanukovych, had supported leading Ukraine into the Single Economic Space; moreover, he promised to deliver dual Russian nationality for all Ukrainians that wanted it.

Both candidates issued manifestoes at the outset of campaigning in August 2004. It could be construed that Yushchenko's manifesto displayed a high degree of political immaturity, since it made pledges that would be impossible to carry out within the limits of a five-year presidential term. Yanukovych's programme could be interpreted as a more measured document. The headline promises in Yushchenko's programme[6] included: the creation of five million new jobs; increases in pensions and benefits; immediate payment of wage arrears; reduction of taxation; a war on corruption; protection for all citizens against crime; reversing the decline of the population [sic]; promotion of spirituality; the doubling of agricultural productivity together with a pledge to close the income gap between rural and urban areas; the abolition of conscription by 2010; and, an honest, transparent and consistent foreign policy, complemented by good relations with Russia and the European Union. Yanukovych's

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[4] Paul D'Anieri, Robert Kravchuk, and Taras Kuzio, *Politics and Society in Ukraine*, Boulder: Westview Press, 1999.

[5] On political technologists, see Andrew Wilson, 'The Russians are Coming (Again): The Role of Political Technology in the 2004 Election', in Nathaniel Copsey and Alan Mayhew (eds), *Ukraine and European Neighbourhood Policy*, Sussex European Institute, 2005.

[6] For Yushchenko's official manifesto, see http://www.razom.org.ua and also his election broadcast on UT1 TV2, 2 September 2004, taken from BBC Monitoring http://www.monitor.bbc.co.uk/

manifesto[7] pledges included: the reduction of presidential powers in favour of parliament; provincial governors to be appointed by the cabinet, not the President; a greater role for the regions in forming the national budget; much closer economic cooperation with Russia, especially in the production and export of arms, within the framework of the Single Economic Space; putting a hold on NATO entry; raising the Russian language to equal status with Ukrainian; and, an even more gradual pace for integration with the EU.

In essence, what divided the candidates was not their overarching stated aims – both claimed to seek a prosperous, stable, and above all, united Ukraine – rather their preferred means of reaching this goal. Yanukovych's accent was on order and stability of the kind that proved so popular in Putin's Russia at the turn of the twenty-first century, and which Ukrainians in the populous eastern regions (from which Yanukovych drew most of his core support) were keen to emulate. Yushchenko offered a 'European' solution for Ukraine in the longer term: anchoring Ukraine to Western liberal institutions and values, in particular: the rule of law, freedom of speech, and the gradual strengthening of the market economy.

Manifesto pledges aside, the real issue in the 2004 presidential election was corruption. It is this factor which is of key importance in understanding the role of mass protest in the Ukrainian election of 2004. As has already been noted, the overarching aims both candidates were similar: a stable and prosperous Ukraine, profiting equally from close cooperation with the European Union and Russia – in many ways, a continuation of the official line of President Kuchma (1995-2005). What divided the two candidates and gave Yushchenko the edge in voter appeal was the crucial issue of corruption. Yushchenko's self-image as the anti-sleaze candidate was bolstered by a number of factors, including: Yanukovych's two previous criminal convictions and his status as the choice of the then outgoing regime in a country with exceptionally high levels of corruption in all areas of public life. Yushchenko's point is further illustrated with a sound-bite from the campaign trail: 'Ukraine is not divided into those born in east and west. Ukraine is not divided into Orthodox and [Greek] Catholic. Ukraine is not divided into Ukrainian speakers and Russian speakers. Ukraine today is divided into two categories. There are the bandits and the honest people.' As the representative of the outgoing regime, Yanukovych could hardly portray himself in a similar light, preferring to present an image that could be interpreted as conciliatory,[8] as demonstrated, for example, by his comment on the Soviet era, a period for which many elderly Ukrainians are nostalgic: 'It should not be forgotten that virtually all the existing economic, scientific, educational, medical, and cultural potential in Ukraine was created during the Soviet years. All sorts of things happened at that time – both vast achievements and great suffering. That is all part of our history, the story of each of us individually and all of us taken together.'

Despite all the above, it is worth noting that the ratings gap in opinion polls between the two candidates was never huge. Yanukovych found it seriously difficult to reach

[7] Yanukovych's manifesto is available in Russian and Ukrainian at http://www.ya2004.com.ua/our-choice/program. Material from his election broadcast at http://www.monitor.bbc.co.uk/ gathered from Ukrainian Radio First Programme on 7 September 2004.

[8] Yanukovych's speeches and statements during the presidential campaign of 2004 were reminiscent of President Kuchma's political thought, expressed most notably in his work *Ukraine is not Russia*, Kyiv, 2004.

beyond his core constituencies: Ukrainians living in the east and south, and especially older voters. What is also interesting is that a prime minister who had presided over strong economic growth and an increase in prosperity for most Ukrainians – especially pensioners who received an inflation busting 107% rise in benefits prior to the election – should be rejected for the presidency. Only part of the explanation for this lies in his above-mentioned criminal convictions. In fact, that Yanukovych's premiership was marked by economic success could be another factor that marked his downfall: the Kyiv business community (where much of Ukraine's economic success is concentrated) felt that Yushchenko offered the best chance of a stable environment in which to do business. As Tocqueville observed in the nineteenth century,[9] revolutions tend to follow a period of rising prosperity and moderate reform: two factors that characterised the period of Yanukovych's premiership. What Tocqueville observed may be equally applied to Ukraine at the turn of the twenty-first century: a period of reform and rising prosperity creates its own momentum, building expectations of further change, which if unfulfilled may be channelled into more radical enterprises. Thus whilst Yushchenko did not win over the oligarchs who control much of eastern Ukrainian industry, he did attract the votes of the medium-sized businessman, and Ukraine's burgeoning, Kyiv-based upper middle class – the group that gained most from the moderate reforms of the Yanukovych era, and the section of society with the most gain from the further strengthening of the market economy and the rule of law. As has been succinctly observed elsewhere, the Ukrainian revolution could be interpreted as the revolt of 'the millionaires against the billionaires'.[10] Nonetheless, although the support of the Kyiv business community was important to the outcome of the Orange Revolution, as the next section will illustrate, the protestors were not merely being manipulated by Kyiv's millionaires.

II. The Orange Revolution and the (Repeat) Second Round Result

Given the expectation of falsification[11] of the ballot in favour of Viktor Yanukovych, it came as little surprise that Ukrainians took to the streets of Kyiv on the evening of 22 November 2004 to protest. What was unusual was the scale of the protests, and their duration. The figure varied from day to day, but during the course of the Orange Revolution, between 100,000 and 300,000 people gathered in Kyiv each evening. The demonstrations were not limited to Kyiv, nor were they exclusively in support of Yushchenko. Rallies were held in other cities of Ukraine, including: Lviv, Vinnitsa, Ivano-Frankivsk, Kharkiv and Poltava. Yanukovych's supporters also took to the streets, albeit in far fewer numbers. Given the size and scale of the protests, and the fact that they continued over seventeen days, it is highly implausible that the protestors were being paid for their participation by sources unknown. Nonetheless, considerable sums of money did find their way to the protestors, in particular from the Canadian diasphora. This certainly made it easier for the protestors to maintain the level of pressure by subsidising the provision of an 'infrastructure of protest', such as: food, sanitation, and a large video screen – in short, all that would be necessary for a large music festival. Protest was certainly coordinated in close collaboration with Yushchenko's Our Ukraine movement, but it is also false to suggest that Yushchenko was acting as the puppet master, as this section will demonstrate.

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[9] Alexis de Tocqueville, *L'Ancien Régime*, Oxford, 1904, pp. 175-185.
[10] This expression has been so widely quoted that it is hard to say who first coined it.
[11] Later substantiated in the first and second rounds by the OSCE/ODHIR report.
http://www.osce.org/odihr/elections/field_activities/?election=2004ukraine

This section examines the role of mass protest in comparison to the various other domestic actors in the events that took place between the announcement of the provisional results of the second, falsified ballot on 22 November 2004 and the eventual victory of Viktor Yushchenko on 28 December 2004.

Before addressing the issue of why mass protest was the crucial element in ensuring a repeat of the second round, it is worth briefly examining why mass protest was sustained over a longer period, and how this was achieved. Even before the outset of the election campaign, it was widely believed that the election results would be falsified in favour of Kuchma's chosen successor. Local elections in 2004 across Ukraine prior to the presidential ballot in autumn – most notably in Mukachevo[12] – were criticised in the press for numerous violations of good practice, including the use of force against opposition candidates and ballot stuffing. These local elections were viewed by the opposition – and perhaps by the government – as a dress rehearsal for what would take place in the presidential election. Thus well before polling day, the idea that the presidential elections of 2004 could be the last opportunity for anything approaching a fair election had taken hold amongst Yushchenko's supporters in western Ukraine. It was this group that formed the hard core of demonstrators in Independence Square, and this explains the swift arrival of the infrastructure for the Tent City that formed after the announcement of provisional results in the disputed second round. The equipment for protest had been waiting in the wings for some time. It was the success of the opposition in communicating the message that the 2004 presidential election was the last chance for free and fair elections that brought the critical mass of protestors needed to support the hard core. Many protestors took turns in Independence Square, spending a few days at the demonstration before returning to their homes and jobs in other parts of the country. Some funding for the protestors came from the Ukrainian diasphora in North America, smuggled into Ukraine in suitcases. Other funds and help in kind came from Kyiv residents – notably the business community. It was this combination of anticipation, forward planning, and good PR that gave the protests the necessary sustained critical mass.

On the domestic political scene, apart from the protestors, the key players were as follows, in approximate order of significance: the Supreme Court, Viktor Yushchenko, the *Verkhovna Rada* (the Ukrainian unicameral parliament), outgoing President Kuchma, and Viktor Yanukovych.

Ukraine's Supreme Court occupies second place in order of importance amongst domestic actors, since it was this body that upheld the numerous complaints of falsification in the second round. It invalidated the result announced by the Central Electoral Commission on 3 December 2004, in a decision that paved the way for the extraordinary repeat of the second round on 26 December 2004. From the outset of the Orange Revolution, the Supreme Court was viewed as a neutral arbiter in the dispute, as one of few Ukrainian constitutional institutions to remain independent during Kuchma's Presidency – and clearly the institution ultimately charged with ensuring the rule of law. It was this institution in which the protestors placed their confidence at the outset; the decisions of Supreme Court were respected in a way that would not have been the case for a presidential fiat.

[12] RFE/RL NEWSLINE Vol. 8, No. 72, Part II, 19 April 2004.

Yushchenko's role in the crisis at the outset was crucial in calling on his supporters to gather in Independence Square on the night of the first election. Whilst his support amongst the crowds should not be underestimated, it is worth noting that the demonstrations for the most part were not strictly in favour of Yushchenko - a man, who, despite his brief tenure as prime pinister and Governor of the National Bank of Ukraine, was actually relatively unknown to most Ukrainians before the election campaign began. The crowds were protesting for democracy, the rule of law, and an end to the corruption and croneyism of the Kuchma era. On the first evenings of the demonstrations, protestors could be heard to say that if Yushchenko did not do his job, they would remove him as well. In short, the demonstrators wanted the power to determine ultimately who governs in Ukraine – in other words a democratic system. Therefore, Yushchenko's role was essentially to do nothing that might alienate his supporters, whilst playing for time with the international community and the outgoing Kuchma administration. He played this part well, taking part in negotiations designed to end the crisis but not conceding any ground, confident that no decisions could be made against him so long as his supporters remained out on the streets.

Ukraine's parliament, the *Verkhovna Rada*, vacillated in the crisis, waiting to see what was happening before committing itself to any course of action. The parliament annulled the election result on 27 November 2004, only to overturn its decision on 30 November 2004. Parliament was present throughout the crisis as a focal point for demonstrations, and close to the outset of the crisis as the scene for Yushchenko's unofficial Presidential oath on 23 November 2004. Its real importance lay in approving the legislation that eventually paved the way for the re-run of the election on 26 December 2004. Ukraine's Constitution was amended, reducing the powers of the President, but delaying the implementation of this reform until mid-point in a Yushchenko presidency, which coincides with parliamentary elections due in 2006. Ukraine's electoral law was temporarily amended, tightening restrictions on absentee ballot papers, requiring voters to register at one particular polling station in advance should they need to vote away from the district in which they are normally registered. Home voting was restricted to invalids 'of the first category'.

President Kuchma's role in the Ukrainian crisis was minor: he was effectively hostage to events moving beyond his control. Kuchma was unable to use the army and security forces to suppress the demonstrators; they had acquired a critical mass, which would have made it impossible to remove them from the streets without heavy bloodshed. Moreover, the army pledged at the outset of the crisis not to use force against the demonstrators.

Viktor Yanukovych had much to gain from negotiation and everything to lose in a re-run of the third round. He even offered to make Yushchenko his prime minister. Yushchenko's capacity to bide his time seriously undermined any influence Yanukovych might have had on the crisis. It is worth noting, however, that Yanukovych still managed to hold up a respectable 44.19% of the vote in the repeated second round, despite all the bad publicity.

A cosy deal between these domestic players was simply impossible. This was not an option for Yushchenko, since negotiation with Kuchma and Yanukovych would alienate the protestors that formed the bedrock of his political leverage.

All these factors taken together allowed for a repeat of the second round of the election on 26 December 2004. This ran 'substantially closer'[13] to OSCE and Council of Europe standards. Most of the abuses reported in the previous two rounds, such as the overwhelming bias of the broadcast media in favour of Yanukovych or the issue of the '*temnyky*' or guidelines to journalists, did not take place in this round. However, considerable confusion was caused by changes to the laws on home voting, restricted to 'invalids of the first category' (those who cannot walk) by the *Verkhovna Rada* on 8 December 2004, and subsequently overruled by the Ukrainian courts.[14] On 28 December 2004, with 100% of the vote counted, the Central Electoral Commission declared Yushchenko the winner with 51.99% to 44.19% for Yanukovych. Yanukovych at first tried to contest the result, refusing to resign as prime minister until his complaints to the Central Electoral Commission had been upheld. However, on 1 January 2005, he eventually stood down paving the way for Yushchenko's official inauguration as president and the appointment of a new prime minister.

Conclusion

This chapter has argued that Ukraine's Orange Revolution in 2004 upset the consensus amongst political scientists about Ukrainian voter behaviour. As has been demonstrated, it can no longer be argued that 'passivity is the essential characteristic of the Ukrainian voter'. Corruption and sleaze, rather than political incompetence or economic failure defeated the outgoing regime of Leonid Kuchma and Viktor Yanukovych. The support of Ukraine's expanding and prosperous upper middle class for Viktor Yushchenko reflected their interest in a more transparent business environment, and a strengthening of the rule of law. The close ties between Yanukovych and the oligarchs cost him the support the upper middle class, despite the record of moderate reform and economic success that marked his premiership. In short, Yanukovych could not appeal to voters outside his core constituencies: the heavily populated industrial areas of Donetsk and Luhansk, and older Soviet-nostalgic voters in central Ukraine.

The mass protests that followed the falsified second round of voting were expressed of voter frustration with the corruption of Ukraine's old regime. Mass protest became Yushchenko's most valuable, but most demanding ally. It tied his hands in negotiations with the outgoing regime. Thus it was the sustained and overwhelming pressure from the protestors that forced through the legislation that paved the way to a peaceful, and democratic resolution of the crisis.

[13] The OSCE/ODHIR report on the repeat second round is available at: http://www.osce.org/odihr/elections/field_activities/?election=2004ukraine
[14] BBC News Kyiv 25 December 2004. See: http://news.bbc.co.uk/2/hi/europe/4124941.stml