

The Emergence of State Polity and National Aspirations in Ukraine — Two Coins or Two Sides of One Coin?

Introduction

Starting 22 November 2004 and for more than two weeks, the whole world witnessed the emergence of the Ukrainian state polity.¹ Some heard the words "Ukraine" and "Ukrainians" for the first time in their lives; others saw it as the realization of their most sacred dream and the dreams of their parents and great-grandparents. The famous modern Ukrainian poetess Lina Kostenko had foreseen this event and described it in her poetic words:

*"And still we live. And that is the greatest miracle,
That this nation has risen once again. "*

For those who know Ukrainian history, it truly was a miracle. For hundreds of years, Ukraine did not have her statehood; as a result, Ukrainians naturally treated states in which they were doomed to live as something alien. Ukraine had been divided from the 12th century onward, either by inner conflicts or by foreign invaders, and parts of Ukraine had been taken over by different states. The periods of independence were so short that people hardly had time to realize what they embodied. Those periods of independence were never completely peaceful. Thus, because all of the population's energy went into combating outside invaders, little energy was left to build or even contemplate a common Ukrainian future.

¹ State polity is defined as "an organized society, a state as a political nation" [L politia f.Gk politeia f. polites citizen f. polis city]. See J. Pearsall and B. Trumble (eds.), *The Oxford English Reference Dictionary* (Oxford, N.Y.: Oxford University Press, 1996), p. 1121.

Against a background of almost a millennium's history of statelessness, the mere fact of the revival of a Ukrainian nation seemed a miracle which made people all over the world watch with fascination the events in Ukraine in November and December 2004.

In this article I shall attempt to answer three questions:

1. What caused the emergence of state polity in Ukraine during the last weeks of 2004?
2. How did it correlate with the national aspirations of Ukrainians who fought for independence for hundreds of years?
3. Are these two processes two different coins or two sides of one coin?

The Emergence of State Polity in Ukraine

In November-December 2004, Ukrainians demonstrated to the whole world — but first of all to themselves — that they constitute the state polity. For everyone, it was a revelation.² As Vsevolod Rechytskyi stated, the "Orange Revolution" evidently proved that Ukrainians were ready to strive for freedom.³

Having benefited from the Pylyp Orlyk Constitution of 1710 — a Ukrainian document that was one of the first in the world to define standards of political and legal thought and to create a division of powers — as well as the 1918 Constitution of the Ukrainian People's Republic, which established broad rights and liberties, Ukrainians were bound to be democratically minded. So, it was only natural that we should have risen in opposition, when we realized that our right to choose our president in a free and fair election, guaranteed by the 1996 Constitution of Ukraine as well as by international human rights instruments, had been so rudely violated. Thus, the Ukrainian "Orange Revolution" proved once again, as Petro Rabinovych stated, that the modern history of mankind is the history of struggling for margins of human rights.⁴

² Andrew Wilson used the term "unexpected nation" in relation to Ukrainians in his book, *The Ukrainians. Unexpected Nation* (New Haven and London: Yale University Press, 2000).

³ Vsevolod Rechytskyi, *Ukrayina: zнову na rozdorizhzhzi* (manuscript).

⁴ Petro M. Rabinovych, "Mezhi prav lyudyny (deyaki pytannya zahalnoyi teorii)", *Ukrayinskyi chasopys prav lyudyny*, nos. 3-4 (1997), p. 14.

Probably for the first time in our history, Ukraine has experienced 15 years of peaceful independence since 1991. Throughout 13 of those years, a few oligarchs robbed their own people by privatizing factories, all the time reassuring people that they were fortunate to be living in peace. And we came to accept that as a significant achievement, because Ukrainians know full well that poverty is nothing in comparison with war. And the period of peace bore fruit. "Independence provided the space needed for this nation to grow up at last."⁵

With the support of the international community and non-governmental organizations (NGOs), a civil society developed in Ukraine. Opposition politicians, journalists and hundreds of Ukrainian and international NGOs have worked actively and consistently to advocate human rights, freedom of the press and the rule of law in Ukraine. Throughout those 13 years, it was extremely dangerous to be in the opposition; this danger reached its culmination before the presidential elections of 2004. Assassinations of journalists and politicians and the poisoning of Viktor Yushchenko are only some examples.

However, the perseverance and rudeness of the political powers of that time were one of the factors which provoked Ukrainians to rise against a despotic regime. It united people in their resistance to the violation of their fundamental rights of freedom of elections and dignity. Ukrainians from the west and the east, from the north and the south, came together as a single nation on the main Maydan Nezalezhnosti (Independence Square) in Kyiv and on similar "Maydans" in most of the cities and villages all over Ukraine. That was the way in which the Ukrainian nation exercised popular sovereignty and testified its will in the results of the 2004 presidential elections.

It is worth mentioning that, for Ukrainians, gathering on the Maydan has been a symbol of marking crucial events throughout history: "There is a revolution at the Maydan near the church" wrote Pavlo Tychyna.⁶ However, such a gathering of millions of people from all over Ukraine in November-December 2004 happened for the first time in our history.

⁵ Matthew Kaminski, "The Birth of Ukraine," *The Wall Street Journal (Europe)*, 13 December 2004, p. A17.

⁶ EDITOR: Pavlo Tychyna (1891-1967) is considered one of the major modern Ukrainian poets.

Another proof of an emerging European civilized state polity in Ukraine was that the demonstrations were totally peaceful — and yet extremely effective. To my knowledge, it was a unique event. Nowhere else in the world has such an event taken place — without one shot being fired or one person dying. There was no hatred toward opponents, only great sympathy from the side of Orange protesters for the supporters of Viktor Yanukovych, who were brought into Kyiv by special buses and trains. People actually gave them food and warm clothes. Ukrainian efforts in December 2004 to rid the country of the violations of human rights, dignity and democratic law were very gallant; they also emerged as one of the most profound movements toward human rights and freedom in western history — and manifested the emergence of state polity in Ukraine.

Thus, Ukrainian state polity first and foremost emerged as a result of a struggle for democracy and human rights which had been rigorously violated by the government: the people used their right to protect themselves against the government. This natural liberty which can be asserted against a tyrannical régime is a core chain in the natural rights theory⁷ and has been confirmed into positive law by many states, as well as in international instruments.

In a speech delivered to the European Parliament on 15 December 2004, Yuri Andrukhovych, a famous modern Ukrainian writer, stated that what was going in Ukraine was "a universal historical drama ... a clash between a society, which, in considerable and additionally most active, most conscious and most enlightened part, wants democracy, prosperity and a nation of laws — against a power that with all its strength is trying to save an authoritarian, neo-totalitarian form of government, so successfully and so cynically embodied in reality by all the successor Soviet Communist régimes in all of the post-Soviet territories (with the exception of the Baltic countries)."⁸

In feedback to my article "From the Dream to the Streets of Kyiv,"⁹ in which I described events in Ukraine, Americans compared this

⁷ William of Ockham, *A Short Discourse on the Tyrannical Government* (translated by John Kilcullen) (Cambridge: Cambridge University Press, 1992); Thomas Hobbes, *Leviathan* (Harmondsworth: Penguin, 1981).

⁸ Yuri Andrukhovych, "Saving a 'Cursed' Ukraine," *The Ukrainian Quarterly*, LXI, nos. 1-2 (Spring-Summer 2005), p. 33.

⁹ Antonovych, "From the Dreams to the Streets of Kyiv. We cast a vote for freedom," *The Washington Post* (5 December 2004), p. B01.

Ukrainian historical endeavor with the spirit of the Founding Fathers who established American democracy and a free society. People on the Maydan valued freedom and independence as much as they valued human rights and, together with the whole world, they perceived what was happening as a birth (or rather, a rebirth, considering Ukraine's history) of democracy.

As President Viktor Yushchenko wrote, "The Orange Revolution proved that individual yearnings for freedom are universal and that the abuse of public trust can be overcome anywhere."¹⁰

National Aspirations of Ukrainians: A Brief Survey

During all the periods of Ukraine's struggle for independence, the national idea was based on the right of Ukrainians to national self-determination. Prohibition of the Ukrainian language and Ukrainian culture only increased the efforts of Ukrainians in their struggle for independence. Even some ethnic Russian writers started to write or to speak Ukrainian as a result of this vivid and savage *linguacide*. In the 1970s, this struggle was blended with the struggle for human rights, proclaimed in the 1948 UN Universal Declaration of Human Rights, the 1975 Helsinki Final Act of the Conference on Security and Cooperation in Europe and other international human rights acts. The Ukrainian Helsinki Group was created in 1976 to implement the Helsinki Accords and focus on human rights and the rights of Ukrainians as a nation.

One of the peculiarities of human rights movements in Ukraine was that these movements were never separated from the struggles for independence and were subordinated to the latter. An example of this is the feminist movement at the end of the 19th and the first half of the 20th century, which was called "pragmatic feminism" by Martha Bohachevsky-Chomiak.¹¹ Although feminism and nationalism target different groups for protection, women engaged in the struggle for people's rights did not take

¹⁰ Viktor Yushchenko, "A Year on, Ukraine's Democracy is Showing Results," *The Financial Times* (22 December 2005).

¹¹ Martha Bohachevsky-Chomiak, *Feminists Despite Themselves: Women in Ukrainian Community Life, 1884-1939* (Edmonton: Canadian Institute of Ukrainian Studies, University of Alberta, 1988).

into consideration gender discrimination. They thought that gaining national rights would automatically guarantee gender equality.¹²

Throughout this very long and painful struggle for independence, slogans changed from "Ukraine for Ukrainians" (Mykola Mikhnovsky)¹³ to "Ukraine for its citizens" (Viacheslav Lypynskyi). Lypynskyi tried to base the Ukrainian nation and state on a non-ethnic foundation and was criticized for anachronism. Frank E. Sysyn considers that the "Rusyn nation" (Ukrainians) was an exception in terms of political loyalty already in the early modern *Rzecz Pospolita*. The absence of a Rusyn state raised the "Rusyn nation" to the object of political loyalty.¹⁴ It was the societal élite and political culture that, according to Sysyn, gave the impetus and became a model for the modern Ukrainian movement.¹⁵

It is worth mentioning that Lypynskyi saw *intelligentsia's* natural role in nation-building as one of mediating between social classes by creatively developing culture and by fostering commitment among the people to the basic social values that underlie a respect for law.¹⁶ Thus, at the beginning of the 20th century in Ukraine — alongside its cultural, social and legal aspects — the idea of nation-building was already accepted.

As Matthew Kaminski states: "In the end the state born in 1991, to the world's surprise, reflected that civic as opposed to ethnic definition of the Ukrainian state."¹⁷ "There was no other choice," Kaminski explains, since this new country stretched from once-Polish Galicia in the west, to the Russian-dominated industrial Donbas region in the east, and down to the Crimea, the peninsula once dominated by Tatars. However, this statement on its surface seems too categorical.

The vast majority of inhabitants of the Ukrainian Soviet Socialist Republic in the 1920s and 1930s spoke Ukrainian, and the vast majority of schools were Ukrainian. Even in the regions of Donetsk and Luhansk, not

¹² Bohachevsky-Chomiak, *Bilym po bilomu: Zhinky v hromadskomu zhytti Ukrayiny, 1884-1939* (Kyiv: Lybid, 1995), p. 10.

¹³ Mykola Mikhnovsky, "Samostiyna Ukrayina," in O. Protsenko and V. Lisovyi (eds.), *Natsionalizm: Antolohiya* (Kyiv: Smoloskyp, 2000), p. 158.

¹⁴ Frank E. Sysyn, "Constructing and Reconstructing Nations: Reflections on Timothy Snyder's Contribution to the Ukrainian Case" (translated into Ukrainian by M. Klymchuk), *Krytyka*, IX, nos. 1-2 (January-February 2005), p. 28.

¹⁵ *Ibid.*, p. 29.

¹⁶ Wsevolod Isajiw, "Civil Society in Ukraine: Toward a Systemic Approach," *The Ukrainian Quarterly*, LXI, no. 3 (Fall 2005).

¹⁷ Kaminski.

to mention southern ones, Ukrainians constituted a vast majority. Almost all of the population in Galicia had always spoken Ukrainian. On the other hand, the modern world contains many states, which cover a much larger geographic area and are inhabited by many ethnicities, and yet remain national states.

According to Alia Nastych, the varying degree of Ukrainian identity throughout the country allows one to distinguish both civic and ethnic elements in individual self-identification.¹⁸ In fact, to a great extent the Ukrainian state that appeared in 1991 was the result of a national movement of the second half of the 1980s and exhibited ethnic identity through the Ukrainian state flag (blue and yellow), the emblem (trident) and the national anthem — as state symbols which have always been symbols of Ukrainian independence. All but the Communists unanimously accepted them and, yet, even the Communists voted in 1996 for the Constitution of Ukraine which incorporated these state symbols.

An important issue for the new state that appeared in 1991 was that of national (ethnic) minorities — there were more than 100 nationalities within the former Ukrainian SSR. Consequently, it should come as little surprise that developing an appropriate state policy towards ethnic minorities was given a high priority by the authorities, to deal both with the needs and requirements of the national minority populations and to remove the potential for intra-ethnic conflicts within Ukraine. Among the first acts of an independent Ukraine were the Declaration of the Rights of Nationalities (1991)¹⁹ and the Law on National Minorities (1992).²⁰

Such state policy was very consistent. The Ukrainian people could be considered as having had direct experience of being persons belonging to a national minority — that is, they had been a non-dominant "minority" in a land which they considered their own.²¹ This experience, it may be

¹⁸ Alia Nastych, "Nation Building and Minority Rights in Ukraine," Master's Thesis (Budapest: CEU, 2000-2001).

¹⁹ *Natsionalni vidnosyny v Ukrayini u XXSt.: Zbirnyk dokumentiv i materialiv* (Kyiv: Naukova Dumka, 1994), pp. 474-475.

²⁰ *Ibid.*, pp. 491-493.

²¹ Antonovych "The Rights of National Minorities in Ukraine: An Introduction," in Peter Cumper and Stephen Wheatley (eds.), *Minority Rights in the 'New' Europe* (The Hague, London, Boston: Martinus Nijhoff Publishers, 1999), p. 251.

argued, has, presently and traditionally, helped the Ukrainian nation to understand the particular problems and concerns of national minorities.²²

Already at the beginning of the 20th century, the Ukrainian Central Rada, or Council, the highest political body of the Ukrainian People's Republic, issued the Second and Third Universals (Proclamations) which guaranteed equality to all national minorities in Ukraine, including the right to use their native language in dealing with all administrative agencies. The Law on National-Personal Autonomy (1918) granted the right of persons belonging to a particular ethnic group to organize themselves to represent their group to the state authorities. At the beginning of the 20th century, no other European state enjoyed comparable minority protection legislation.

Indeed, the first Deputy Secretary on Jewish Affairs in the General Secretariat of Ukraine, Moshe Zilberfarb, argued that whereas the French Revolution declared human rights, Ukrainian Law on National-Personal Autonomy declared the rights of minority nations.²³

However, when Ukraine became part of the Soviet Union, all the achievements of the Ukrainian nation concerning friendly relations with national minorities in Ukraine were silenced, and the idea of Ukrainian nationalism was discredited. "Yet, facts testify that Ukrainian national liberation movement had never proposed to reach its aims at the expense of, or against, non-Ukrainian population of the state."²⁴

Obviously, as Andrew Wilson wrote, the Ukrainian state which appeared in 1991 was shaped as much by the Soviet experience as by the legacy of the national idea of 1917-1920.²⁵ Moreover, it was also shaped by its ancient history, starting with Kyivan Rus and the Halych-Volyn Principality, the Great Lithuanian Principality, the Ukrainian Kozak Republic, as well as by the national movements of the 18th-20th centuries. The "traditional scheme" of Russian history treated the Kyivan Rus state

²² Zenon Kohut, *Russian Centralism and Ukrainian Autonomy. Imperial Absorption of the Hetmanate 1760s-1830s* (Harvard Ukrainian Research Institute, 1988).

²³ E. Tsherikover, *Antisemitism un pogromen in Ukraine, 1917-1918* (1923), p. 73.

²⁴ E. Malinovskaya, "Preduprezhdenye mezhnatsyonalnich konfliktov — tsel y sredstvo hosudarstvennoho stroytelstva na Ukrayne: zakonodatynaya baza y admynstratyvnaya praktyka," in *Yetnycheskye y rehyonalnie konflikti v Evrazyy: Kn. 2 Rossya, Ukrayna, Belorussya* (Moscow: Ves Mir, 1997), p. 115.

²⁵ Wilson, p. 151.

which appeared in the 9th century on the territory of modern central Ukraine as the first Russian state. Similarly, the Polish "great narrative" regarded Ukrainian historical experience as marginal.²⁶ However, Ukraine wrote its own history — which has been verified by the "Orange Revolution."

So, Two Coins or Two Sides of One Coin?

On the one hand, the 1996 Constitution of Ukraine defines the Ukrainian people as citizens of Ukraine of different nationalities (i.e., ethnicities); on the other hand, it also includes notions of a Ukrainian nation and national minorities. Already in the Preamble to the Constitution, where there is a definition of the Ukrainian people, there is a differentiation between the Ukrainian nation and the Ukrainian people: "Based upon centuries-old experience of Ukrainian state-building and upon acknowledgement by the Ukrainian nation, by all the Ukrainian people a right to self-determination ..." Article 11 of the Constitution provides that the Ukrainian state will promote the consolidation and development of the Ukrainian nation, its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all national minorities and indigenous peoples of Ukraine, including the Crimean Tartars, the Karaims and the Krymchaks.

Definitely, the correlation between "nation" and "people" in the Ukrainian legislation is that of the part and the whole, of specific and generic notions. The bearer of sovereignty and the only source of authority in Ukraine under the Constitution are the people, who exercise their power directly or through bodies of state authority and local self-government. The Ukrainian people are the owners of the soil, the subsoil and other natural resources within the territory of Ukraine.

The usage of the term "the people" (*narod*) to define a nation is not new. Not only Ukrainians, but also Belarusians and Poles have traditionally used this term to define a nation (Lat. *gens* or *natio*). These terms historically were used to define language and cultural communities, i.e., ethnic communities, not political nations.

However, in international law, such terms as "the people" and "the nation" have different generally used meanings. It is due to the strong

²⁶ Kohut, "Roots of Identity. Studies on Early Modern and Modern Ukraine" (translated into Ukrainian by S. Hrachova), *Krytyka* (2004), p. 294.

feeling of unity and solidarity, as well as to the realization of its national identity, that a people turn into a nation — which, after having created its state polity, turns into a political nation. Both the 1966 Covenant on Civil and Political Rights as well as the 1966 Covenant on Economic, Social and Cultural Rights proclaim the right of all peoples to self-determination (article 1). The same term is used in the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples. The 1975 Helsinki Final Act obliges the participating states to respect the equal right of all peoples to determine, when and as they wish, their internal and external political status, without external interference, and to pursue, as they wish, their political, economic, social and cultural development (article VIII, paragraph 2).

According to E. Gelner, nationalism loans its symbolism from the healthy, spring-clean, active life of peasants — Volk, people.²⁷ It was only after the French Revolution that the people (*narod*) started to be identified with nation.²⁸ In 1919, Symon Petlyura wrote that after two years the Ukrainian people turned into a nation. Obviously, what is called "the Ukrainian people" in the Constitution of Ukraine should have been called "a political nation" (state polity). On the other hand, when the Constitution of Ukraine was adopted in 1996, there was no state polity in Ukraine; thus, probably without realizing it, the creators of the Constitution used a very accurate term — the people (*narod*).

Obviously, the Ukrainian term "*natsiya*" as we use it, meaning an ethnic nation, does not correspond to the English term "nation," meaning a political nation, a state. Correspondingly, the term "nation-building state" has as its equivalent "the state which creates a political nation." In terms of the Ukrainian Constitution, a nation-building state in relation to Ukraine means "the state which creates Ukrainian people" as a political nation of the Western type.

Such Ukrainian state polity (the Ukrainian people in terms of the Constitution) has emerged after the "Orange Revolution." The Legislature regulates the issues of state language, state holidays and state symbols. A majority of Ukrainian citizens, as the revolution demonstrated, do identify themselves as Ukrainians. On the other hand, ethnic Ukrainian identifica-

²⁷ E. Gellner, "Nations and Nationalism" (translated into Ukrainian) in *Natsionalizm: Antolohiya*, p. 309.

²⁸ A. D. Smith, *Theories of Nationalism* (London and Southampton: Camelot Press Ltd., 1971), p. 191.

tion remains an issue for a big part of the Ukrainian ethnos, which is not a surprise after hundreds and hundreds of years of denying the national identity of the Ukrainian people, the Ukrainian language and culture. Since people have been exterminated for their national consciousness, the revival of Ukrainian self-consciousness will take time.

Final Remark

Every speech by Yushchenko on the Maydan during the "Orange Revolution" concluded with the words "Glory to each of you!", "Glory to Ukraine!" and "Glory to God the Father!" and all on the Maydan sang the national anthem ("Ukraine's glory and freedom have not yet perished"), followed by a spiritual patriotic song ("Almighty and only God, protect Ukraine for us"). While singing these, millions on the Maydan placed their hands on their hearts, thus recognizing Ukraine's state symbols and acknowledging their political loyalty to Ukraine. Yushchenko and other leaders of the "Orange Revolution" addressed all citizens of Ukraine, irrespective of ethnicity, religion or language. Thus, they appealed to their political loyalty and invited them to consider Ukraine's state language and culture as they consider their native language and culture. In the end, this is the only way that Ukrainian state polity can exist and prosper.