

The 1996 Constitution of Ukraine:

A reflection of the values of the political elite.

Ukraine in its modern history, has experienced two historical moments of global compromise. The first was the Declaration of Independence, when most Communists voted for the national ideals that we promoted, and the second was the adoption of the Constitution

Ukrainian Parliamentary deputy

(Interview #8)

To

Tato & Moko

without whom my time in Cambridge
would not have been

The Illusion is not shattered
Like a child it has grown.
In a maturing reality,
It became unrecognizable
But it remains good.

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Introduction

On 28 June 1996, almost five years after achieving independence, and after an exceptionally prolonged framing process capped by an all-night marathon session, the Parliament of Ukraine (the "Verkhovna Rada") passed the new state's first Constitution. This document has been widely heralded in Ukraine as confirmation of the permanence of that country's transition to democracy and statehood, and as a blueprint for the next stage of state-building reforms (Tatsiy et. al. 1996). According to such claims, the Constitution establishes ("zatverdzhuye") Ukraine as a European nation-state with a firm system of democratic institutions, and with citizen's rights enshrined in law. As such, it represents the completion of Ukraine's first stage of transition from Soviet rule, and permanently installs a stable political order within which further reforms are to be enacted.

The purpose of the following dissertation is to qualitatively examine the values and beliefs that underpin Ukraine's Constitution, and to discover the degree and type of ideological consensus that has evolved within the political elite as a result of its adoption. As one western constitutional scholar has pointed out, a Constitution "and its consensual meaning represent a covenant within a society in the form of an accord between elites within the political class as well as the classic contractual agreement between state and citizen" (Sharlet, 1996:17). The subject of the present investigation therefore, is the ideological framework of this elite covenant.

This study is not intended to be a complete account of the Constitutional drafting process, nor does it pretend to examine all aspects of the text. Such an exhaustive account is beyond the scope of the present work. Furthermore, I do not claim to provide a complete characterization of the values and beliefs of the Ukrainian political elite. Indeed, the present work is based strictly on an examination of the currently in-post Parliamentary elite's views on three specific issues: nationality, political (institutional) culture, and social policy rights. Thus, in order to maintain consistency, the use of supplementary sources of attitudinal data provided by non-Parliamentary members of Ukraine's political elite (e.g.: the media, academia, the civil service, the

Presidential and regional administrations outside of Kyiv¹), have been purposely avoided. Despite these limitations however, I have attempted to treat the collected data with as much objectivity as possible, constantly taking into account my own biases as a Canadian-born member of the Ukrainian Diaspora.

The basic premise of this study is that the political elite of Ukraine was substantively divided and fractured prior to the adoption of the Constitution. Cleavages were manifest in differing interpretations of Ukrainian nationality, involving divergent views of history and regional linguistic differences, as well as concomitant disagreements on the optimum means of organizationally defining the structures and institutions of democratic government in the new state. As I hope to show in the following work, the adoption of the Constitution allowed such differences to be flushed out, and resulted in the formation of some degree of elite unity on fundamental issues relating to national ideology and political culture. As many Parliamentary deputies interviewed as part of this study pointed out, compromise on basic principles does not always yield optimum results. However, in the case of Ukraine, such compromises seem to have led to a definition of the ideological field of contestation within which developing political forces will be able to propose further socio-economic reforms. As such, the adoption of the Constitution should be viewed in a positive light, as a culmination of the new state's first stage of transition from Soviet rule.

Throughout the prolonged Constitutional drafting process, many prominent political actors had expressed hope that the document's adoption would directly lead to the resolution of some of Ukraine's current economic problems. It did not. It did however establish the boundaries of legitimacy, within which individual political actors can seek solutions in the future. As such, the adoption of the Constitution did indeed fulfil the primary desire of many of Ukraine's Parliamentary deputies: it secured the long-term existence of the Ukrainian nation-state as a democratically structured entity. Furthermore, in practical terms, it strengthened the political elite's ability to enact the

¹ In accordance with the request of the Ukrainian government to the UN, I have transliterated all place and person names directly from Ukrainian to English (avoiding Russian), using phonetic equivalents.

next stage of transitional economic reforms, and defined many of the social aspects and limits of such reforms.

Theoretical Framework

Social scientists generally accept two distinct points of departure for analysing social change or stability within a given state. The first (broadly sociological approach) sees politics as a reflection of societal features such as class divisions, religious cleavages, ethnicity, socio-economic development or modernization. The second views politics as a domain of elites that act more or less independently of such features. Although I do not discount the importance of social structure and congruence between elite and mass opinion, in the present case, issues of elite recruitment and power distribution (Giddens, 1974:4-6) are treated as secondary. The focus in this dissertation are the values and beliefs of the Ukrainian political elite *qua elite*.

In this approach to political analysis, I follow the work of Higley and his colleagues who define elites as "those who individually, regularly and seriously have power to affect organizational structure" (Higley, 1976:17), and link political stability in modern industrialized societies to elite unity. The term 'unity' in this case refers to a consensus of political actors within a given state, who agree to avoid the usurpation of power by force, and therefore to respect the institutions of power regardless of their own immediate political interests. Thus, transition to a stable democratic state involves elite agreement on "an institutional framework that permits open, albeit limited, contestation (and that) engenders continued compliance" (Przeworski, 1991:80). Such an institutional framework necessarily involves not only consensus on procedural structures (the role of political parties; the formal separation of executive, judicial, and legislative branches; free elections), but also, as will be argued further, involves a substantive commitment to common values.

Higley et. al. (1976:24) define two main types² of elite unity: consensual and imperfect. Consensual unity is characterized by the agreement of all significant

² Higley et. al. actually propose a third type also (ideological unity) in an attempt to explain the perpetuation of non-democratic "totalitarian" political systems, like the USSR and Nazi Germany. Although ideology is central to my argument, I believe the consensual/imperfect unity models to be sufficient for a typology of elite unity within democratically constituted political systems, as long as

political actors to "play according to the rules" - to respect the legitimacy of the institutions of power and to work to achieve their particular political programs within the field defined by such institutions. Imperfect unity involves consensus on the part of most elite actors, but may exclude a certain radical minority group (often referred to as an 'anti-system party' - e.g. the French 'Front National') from regular involvement in the structures of power. Imperfectly unified elites effectuate a tenuous balance of power, and therefore preside over a less stable political order.

The achievement of either type of unity, and by extension of a relative degree of political stability, occurs as a result of a settlement or non-aggression pact. Participant elite groups "agree to disagree" (Higley et. al., 1976:32), and to work within the system which they themselves establish and codify (usually in a Constitution or Basic Law), to effect their respective policy goals. By establishing the framework for contestation, elites also accept the legitimacy of the state and the congruity of its institutions with their own particular political ideals and interests. A logical precondition of political stability therefore, is an agreement "between formerly threatening ideological standpoints" (Higley, 1976:90) on the basic compatibility of the values each standpoint engenders.

Values

The term 'values' is relational, and refers to a *subjective* understanding of some *external* field of vision - often referred to as a "worldview" or "taken for granted belief" (Young, 1977). The political actor's 'values' are thus a set of descriptive and normative assumptions ("subjective orientations" in Parsonian terms) with which all issues are approached and analysed, and according to which plans of action are constructed. Furthermore, as Young has noted, values "seem to be organized hierarchically, with specific beliefs, attitudes, or precepts derivable in some sense from a more generalized 'cast of mind'." Thus, for political actors, "we might set out a hierarchical organization of *ideology*, the most generalized symbolic representation of the world and our relation to it; of *attitudes* in the light of which we manage the concrete world presented to us; and of *opinions*, the circumstantially forged and specific representations of the world in day-to-day encounter with us." Regarding

the definition of 'ideology' remains sufficiently broad to allow for significant pluralism within the main

specific issues, political actors are therefore "armed with powers of discrimination and judgement, as well as a set of 'core beliefs' or ideology... Tactics are validated by strategy, and strategy by purpose. Opinion change comes easily; adaptive changes in attitudes may be made, but the ideological fundamentals are almost immutable." (Young, 1977:7-8).

My argument therefore, is that any evaluation of elite unity is necessarily an assessment of individual political actors' agreement on the fundamental aspects of a common state ideology. In this case, I use the term 'ideology' in the descriptive (neutral) sense: "a set of beliefs which, without specifying a programme of political action, express a political commitment and may be recognized as reasons for acting" (Oakeshott, 1980). Although 'ideology' may also carry a pejorative connotation - a tool of domination and propaganda used for purposes of maintaining asymmetrical social relations (Thompson, 1984:4 and Pierson, 1995:53), such a definition³ is less relevant to an analysis of the value orientations of an elite qua elite.

For the purposes of evaluating elite unity, the term 'ideology' refers to the individual actor's experience of what may be collectively (consensually) viewed as *political culture*. The latter term refers to a fundamental "pattern of orientations toward political objects" (Almond & Verba, 1963:15), and is therefore the core set of subjective criteria that govern the cognitive, affective and evaluative interpretations of the political actor's environment. From the perspective of the individual actor, one might describe such criteria as basic ideology. For the political elite as a whole, this same value orientation constitutes its political culture.

Political Culture

In their now classic work on political culture, Almond and Verba (1963) sought to explain the relative degrees of stability exhibited by various democratic regimes in terms of the cultural value orientations of the *mass* populations of these states. Stable democracies were found to be those in which a significant proportion of the citizenry

ideological framework.

³ Through popular convention 'ideology' has also come to connote specifically socio-economic values (e.g. liberal, capitalist, or socialist ideology) with an implicit plan of action for their enactment. In order to avoid conceptual confusion, I shall use the term 'social policy culture' when referring to the latter form of ideology, and reserve the term 'ideology' to the more general definition.

possessed a "civic" culture of interpersonal trust, and an active participant orientation to politics. These characteristics were deemed to be causally related to political stability, suggesting that a democratic political culture is a phenomenon that is causally prior to both government policy and to the establishment of stable state institutions (Almond, 1989:31). Following this vein, several empirical investigations into the political cultures of both masses and elites in post-Soviet states have been conducted (Miller et al., 1994, 1995a, 1995b), and each has found a disappointingly poor level of development of democratic political culture in these states: "attitudinal commitment to democratic principles was the least consistent set of attitudes examined" (Miller, et. al., 1995a:31). Thus, the generally accepted conclusion has been that an insufficient period of time has elapsed since the collapse of the USSR for the process of socialization, which leads to the development and reproduction of a stable democratic political culture, to occur.

Implicit in such a conclusion is the assumption that there exists a single set of ideal cultural preconditions for the development of the structures of a stable democracy. As Carol Pateman (1989) has pointed out in her critique of Almond & Verba's work, any attempt to define such an ideal democratic political culture is necessarily misguided. The theoretical problem is twofold. Firstly, political culture, and the structures and institutions of government which lead to political stability, develop concurrently. Stable democratic states do not first develop a democratic political culture, and then establish working institutions of government. Although culture and institutional (structural) stability seem indeed to be linked, the causal direction, according to Pateman, is unclear.

Secondly, Almond and Verba suggest that the causal link between a democratic culture and institutional stability is provided by the process of adult socialization, which perpetuates the legitimacy of social and political structures (through experiences in the family, in the workplace, in voluntary organizations). However, as Pateman points out, in modern democracies, socialization does not occur evenly: "not all citizens can be treated as equal 'carriers' of civic culture" (Pateman, 1989:76). Gender, education, and socio-economic status directly affect citizen's socializing experiences. Furthermore, although socialization may explain the perpetuation of

structure (social reproduction - including inequalities), it does not account for the origin of stable state institutions.

Following Stepanenko (1995), I would argue that the initial causal link between institutional stability and political culture in societies undergoing transitions from authoritarian rule to democracy is provided by political elites. It is ridiculous to suggest that these elites, many of whom tend to be middle-aged former members of the previous regime, have been somehow socialized into a democratic culture - particularly given that empirical research has shown the formidable period of adult socialization to be between the ages of 18 and 27 (Schuman & Scott, 1989). The adoption of a political culture conducive to stable structural perpetuation therefore, must be considered the result of the very elite pact (settlement) which establishes the governmental institutions of democracy. Transition to democracy is thus an elite-led series of events, whereby both procedural and substantive institutions are established (and codified), to be later perpetuated through the mechanism of cultural socialization - for which constitutional documents are often a symbolic, yet tangible, tool.

The substantive content of the political culture that members of the elite must agree upon (consensually or imperfectly), can be subdivided into three distinct components: system culture, process culture, and policy culture (Almond, 1989:28). System culture refers to elite (initially) attitudes to the organization of the state, including the legitimacy of the regime, its effectiveness, and the parameters (boundaries) of the polity or nation. Process culture involves attitudes towards the self and others in the sphere of politics, and is usually reflected in a sense of respect for the institutions of democratic government (e.g. elections, judicial process, parliamentary duties and privileges). Policy culture denotes attitudes towards the distribution of economic outputs and the outcomes of politics - social welfare, security, citizen rights.

Using this threefold division of political culture, it is clear that the elite compact that is at the basis of a transition to a stable democracy, must involve broad agreement between the critical factions on the substantive principles of nationality (for nation-states), style of government (e.g. presidential or parliamentary rule, structural forms for participation and representation), and social policy (e.g. the role of the state regulation of the market, welfare rights). The establishment and stable perpetuation of

a democratic state, is thus much more than mere elite acquiescence to the formal procedures of democracy. It involves accord on the fundamental values that are to be engendered in the institutions of state. This ideological agreement (in the sense of 'core belief') defines the field of political contestation beyond which ideas and proposals are to be considered subversive, anti-systemic, or simply utopian.

Plan of the Dissertation

The underlying assumption of this dissertation is that the 1996 Constitution of Ukraine represents the codification of a compact that was negotiated by a previously divided political elite. My purpose therefore, is to evaluate the degree of elite unity that has developed since Ukraine's declaration of independence in 1991, with a view to assessing the long-term stability of the fledgling state, and the practical viability of the current constitutional document. The means by which a determination of elite unity may be forthcoming is through an analysis of the core value-orientation (political culture) of the present in-post parliamentary elite of Kyiv. After providing a brief overview of the constitutional drafting process, which demonstrates the level of disunity existing within Ukraine's political elite prior to the document's adoption, I shall structure the bulk of the discussion around the three main aspects of political culture outlined above: nationality, institutional organization, and social policy culture, and attempt to demonstrate that the Constitution has indeed produced an (at least imperfectly) unified elite. Conclusions as to the level of such unity are drawn from an analysis of comments made by political actors themselves in interviews, during Parliamentary debates on the Constitution, and in the press.

Methods

In previous cross-national West European (Higley, 1976; Putnam, 1977; Aberbach et. al., 1981) and post-Soviet (Miller et. al., 1994, 1995; Lane, 1996) studies of elite values, attitudinal data was collected directly from statistically representative samples of political actors, using the standard instrument of sociological inquiry - the structured questionnaire. In each case, the intent was to generate easily codable quantitative data from relatively large samples. As Zuckerman (1972) and Young (1977) have pointed out however, this approach is not necessarily the most appropriate for gaining a complete qualitative understanding of elite values: "Elite actors define the research situation differently from non-elites. The best kind of techniques (therefore) are those which are adjusted to their worlds" (Young, 1977:13). Among those recommended, are the conversational interview (open-ended questioning), combined with the unobtrusive method of document analysis.

Used in tandem, document⁴ analysis and elite interviewing are complimentary methods, ideally suited to exploratory research: "Rather than insulating methods from one another to ensure cross validation, exploratory studies may deliberately foster interdependence and interaction" (Brewer & Hunter, 1989:84). Thus, textual analysis can be seen as a means of corroborating opinions generated through interviews - particularly when the sample is too small to be considered representative - but also as a means of determining the issue salience of particular questions to be asked during an interview. Conversely, interviews are a means of generating thematic units which can then be actively sought when analysing both published texts and transcripts of spoken words (Krippendorff, 1980:62).

In the present case, qualitative data was collected using both interactive interviews and primary source documents (examined before and after the interviews). The interview phase (a two-week period: 9-23 April 1997) involved 18 encounters with members of the currently in-post Ukrainian Parliamentary elite. Questions were formulated using both the previous inquiries of investigators of Western political elites, and a rudimentary familiarization with published materials from Ukraine (i.e.

newspapers and Internet resources⁵), as guides. Unfortunately, due to time and financial constraints,⁶ the interview sample itself was relatively small, and cannot be considered strictly representative. Interview data was therefore subsequently supplemented with an analysis of transcripts from the plenary sessions of the Ukrainian Parliament which dealt with the Constitution (Second and Third Readings: June 19-28, 1996), and through an examination of primary source documents available in the UK - specifically the newspaper "Holos Ukrainy" - the official media organ of Parliament. In an effort to maintain coherence throughout the research (all primary sources are spoken or written by deputies of Parliament), the use of newspaper texts was strictly limited to opinion articles submitted for publication by Parliamentarians themselves (thus avoiding editorial bias), and published during the final stages of the constitutional drafting process (April 1995 to June 1996).

The Interview Sample

As has been noted, the present research design singled out members of the currently in-post Ukrainian Parliamentary elite only. During the initial planning of this project, a random sample of 150 Parliamentarians, out of a total of 404⁷ was selected, using a random numbers table (Bernard, 1995:513), with selection based on the deputy's constituency number. A letter was drafted on Cambridge University SPS Faculty letterhead and sent to each of the sampled deputies with a reply card. Due to financial constraints, follow-up telephone calls were not possible, but 22 replies were received by mail (to an address in Kyiv), with only one refusal (the present Chairman of Parliament, citing lack of time). Further scheduling difficulties eventually reduced the total number of respondents to 18.

⁴ For purposes of methodology, I submit that there is little difference between analysing official transcripts and formally published texts, as long as the latter are opinion statements rather than analytical texts.

⁵ Specifically: <http://www.rada.kiev.ua> (Home Page of the Ukrainian Parliament); <http://www.un.kiev.ua> (U.N. Human Development Agency in Ukraine); gopher://kiev.sovam.com (Ukrainian Press Agency); gopher://infomeister.os.edu (Description of Ukraine's Political Parties, and 1994 electoral results)

⁶ I am most grateful to the SPS Faculty for having agreed to fund a portion of the expenses of my trip to Kyiv.

⁷ Selection was based on electoral results from 1994, including those elected in run-off votes up to December. Deputies elected in later supplementary elections were not included in the gross sample.

No claim is made as to the statistical representativeness of this sample, and it certainly does not reflect the relative numerical strength of each of the factions within Parliament. However, as is shown in Table 1, of the 12 factions currently existing in Ukraine's Parliament, at least one member from all but 3 was interviewed (including one non-aligned deputy⁸), allowing for attitudinal characterization of each of the 3 main blocs within the legislature (i.e. National-Democrat, Centre, and Left - Wilson, 1994:365). In addition, Table 2 shows that each of the regions of Ukraine (Wilson, 1997:xviii) is represented in the sample, although not necessarily in proportion to its relative importance in terms of population.

Table 1 - Ideological representation of interview sample:⁹

Blocs	Factions	Sample	Total in Parliament
<i>Right</i>	Rukh	2	29
	Statehood	3	29
	Reform	3	31
<i>Centre</i>	Agrarians for Reform	1	25
	Centrists	2	28
	Independents	1	26
	Social Market Choice	2	26
	Unity	0	28
	Inter-regional group	0	26
<i>Left</i>	Communist Party	2	87
	Socialist Party	1	28
	Selianska Party	0	25
<i>Non-aligned</i>		1	27
	Totals:	18	415

⁸ By his own admission, this deputy considers himself to be "Red" - i.e. radical Left.

⁹ Ideological characterization based on voting patterns of factions throughout 1994-96 (F-4, 1996:21-24) Factional breakdown and totals, based on published data as of 29/05/96 (Holos Ukrainy, 1 June, 1996).

Table 2: Breakdown of the interview sample by regions and factions:

Region		Factions	
<i>West (Galicia and Volyn')</i>	5	Rukh	2
		Reform	2
		Statehood	1
<i>Right Bank (Central)</i>	2	Agrarians for Reform	1
		Reform	1
<i>Kyiv</i>	1	Statehood	1
<i>Left Bank (Northeast)</i>	4	Statehood	1
		Non-aligned	1
		Independents	1
		Centrist	1
<i>East (Donbas & Zaporizhia)</i>	5	Socialist Party	1
		Centrist	1
		Social Market Choice	1
		Communist Party	2
<i>South</i>	1	Social Market Choice	1

All respondents except one were male - a relatively accurate reflection of the gender composition of Ukraine's Parliament. Six were incumbents that had served in the previous Parliament (elected in March 1990), and two were former political prisoners during the Soviet regime. Seven of the respondents were former members of the CPSU. All interviews were conducted in Ukrainian, except one in which questions were asked in Ukrainian, and responses were provided in Russian.

As has been noted, elite interviewing is a particular variation on the standard sociological method of data collection through "purposive interaction" (Moyser, 1988:116). "Political leaders have, by and large, quite sophisticated and complex belief systems - one can justifiably say philosophies - and the cruder techniques of survey research cannot do justice to the nuances that are critical to understanding these philosophies" (Putnam, 1973:22). Question variation, and flexibility in the conduct of the interview, are therefore key to eliciting complete qualitative responses through which indicators of fundamental ideology can be differentiated from situationally specific attitudes towards particular political issues. In the present case, interviews ranged from 25 to 90 minutes, and although a standard series of questions was prepared, their order and specific wording varied - a fact which has unfortunately made comparative statistical analysis with previous cross-national elite studies,

dubious. However, as was confirmed during the course of this project, in conversational interviews with elites,

it is almost impossible to stick to (a pre set question order and wording) in any very strict or rigid way and still maintain the conversational style that is required. For example, it is often the case that in responding to one question another will also be answered. Equally a new line of questioning may open up unpredictably that seems promising enough to be followed even at the expense of some subsequent areas of the agenda. (Moyser, 1988:126)

Indeed in the present research, although the three main analytical themes (nationality, institutional organization, and social policy) were covered during each interview, specific queries were modified as the project progressed. As time passed, my own emerging understanding of the most salient issues, and the significance of each respondent's factional affiliation and constituency, led to considerable modifications in the lines of questioning adopted.

Overall Approach

In general terms, the present research is clearly qualitative, and the design was, to a large extent, intended to be an "emerging" one (Creswell, 1994:5). However, one should not confuse this approach with what has come to be known as 'grounded theory'. In the present case, the inquiry was targeted at understanding the social conditions that led to the drafting of a promulgated Constitution - first through direct inquiry (interviews), and subsequently through an analysis of Parliamentary debate transcripts and newspaper texts. Although the design was exploratory, the analytical themes were in fact derived from the Constitution, and it would be dishonest to claim that the examination of other documents, or the selection of interview questions, were not framed in terms of the issues it raised, as well as those that arose from secondary sources.

One of the concerns however, expressed by as many as 5 interviewed deputies, was that many western investigators of Ukrainian society, lack an understanding of the specificities of "the system" and "the Ukrainian mentality" - i.e. the interpretative context of their research. The express purpose of this project was to attempt to "reconstruct the imagination of the author(s)" (Scott, 1990:11) of the Ukrainian Constitution, or more precisely, to gain an understanding of the socio-psychological, political, and ideological context in which the document was written. The approach to doing so, can therefore best be described as hermeneutic, in that the views that respondents expressed during each interview, directly affected my own "interpretative schemes" (Giddens, 1976) used in subsequent interviews, and later in reading both the final debate transcripts, and newspaper opinion articles.

The obvious drawbacks of such an approach are that it is highly subjective,¹⁰ and completely ungeneralizable. However, the basic assumption underlying this research, is that any investigation into elite values is context sensitive. Ukraine is therefore treated as a unique case, and it is my claim that any conclusions as to the values that its Parliamentary elite holds dear, cannot even be generalized to other post-Soviet states. With this in mind, the results should be judged in terms of the cultural picture which they convey.

Coding

Although data was collected from three substantively different sources - interview transcripts,¹¹ newspaper opinion articles, and Parliamentary debate transcripts - a single coding technique was used for analysis. In the first phase, textual and verbal passages were indexed according to the themes (nationality, institutional organization, social policy) which they reflected. Thematic statements were then nominally categorized according to the attitudes that were expressed towards particular units of analysis, as defined by the operationalization of the three main themes. For example, conceptions of the boundaries of legitimate national identity expression were

¹⁰ Given my background as a Ukrainian Canadian whose family has always been active in that diaspora community, I have been particularly conscious that my views could be considered inherently biased. I have therefore made a special effort to understand the political views of the Ukrainian Left, as they are likely to be more distant from my own than those of the Right or Centre.

¹¹ I am particularly grateful to my mother, Iroida Wynnykyj, for her help in transcribing 5 of the interviews.

indicated by attitudes towards minority languages, and opinions on the criteria for membership in 'the nation' (i.e. citizenship or ethnic descent); attitudes towards elite privilege, conflict, and the role of referenda as a desirable form of direct public participation in government, were seen as indicative of consensus or dissensus on ideological factors underpinning differing institutional models; the perceived legitimacy of state activism in the provision of welfare, the importance of equality and social justice, and justifications for the inclusion of social rights clauses in the Constitution (i.e. moral vs. political/situational) indicated the degree of collectivist culture that has survived from the Soviet era.

The results of such nominal categorization showed widespread (although not complete) agreement within the elite on broad areas of common ideology. However, as many respondents emphasized, and as is clear from an examination of opinions published prior to the adoption of the Constitution, such agreement is a relatively recent phenomenon. As a result, any description of the consensual political culture that has emerged most recently, must necessarily distinguish attitudes to specific short term policies (which obviously differ according to factional and party affiliation) from their more fundamental ideological basis. Most importantly, elite consensus is a function of historical events, and subsequent policies that are derived from differing interpretations of consensual political culture, must therefore also be viewed as a function political actors' varying experiences of the formation of that consensus.

A Note on Presentation

In the interest of maintaining respondent anonymity, in the following text, comments made during interviews are cited using an arbitrarily determined numerical designation. Although all interviewed deputies regarded the preservation of their anonymity as unnecessary, I have nevertheless decided to cite interview extracts¹² anonymously, and attribute authorship only to those opinions that were either published or expressed during debates in Parliament.

Furthermore, citations referring to the political orientation of respondents are based on their factional affiliation, classified into three broad categories: Left, Right, and

Centre. To some extent this classification is arbitrary and inexact. It is based on the designations commonly used in Ukraine to describe the political orientation of individual political actors. However, as one Centrist deputy noted:

We don't have a Left-wing force. The classification of Left and Right used in Europe, is inapplicable to Ukraine. It actually doesn't apply to Ukraine with reference to Russia either, because there, Leftists are not Leftists because they believe that Russia should be united with France... Our Left is something unique, phenomenal. It is an anti-statist Left,¹³ so the classification of them as Leftist, does not apply for us (Interview #11).

Similarly, the 'Right' designation, should not be confused with either an integral nationalist (fascist) orientation, nor a Thatcherite liberal position. As will be discussed further, the latter simply does not exist in Ukraine, and the former (referred to as 'radical-Right') has been effectively neutralized, or at least marginalized, as a result of the Constitutional process.

Nevertheless, these designations are convenient as they reflect the political cleavages inherent in Ukraine's Parliament, and therefore will be used extensively. As will hopefully become evident however, such labels are not transferable beyond specific discussions of the political elite of Ukraine.

¹² Cited extracts from interviews have been translated by me, and I therefore take full responsibility for any possible linguistic misinterpretations.

¹³ The Communist Party denies that its program is "anti-statist" or against Ukraine's independence. They argue that the Leninist interpretation of 'independence' and national self-determination is achievable only through a renewed union of "brotherly Slavic peoples" and mourn the destruction of the USSR as such a union. (Hol. Ukr. 15/02/96).

Historical Overview of the Constitutional Drafting Process

Unlike other former Communist states, the process of framing a new post-Soviet Constitution in Ukraine was exceptionally prolonged. The first Constitutional Commission was formed by the Ukrainian SSR Supreme Soviet on October 24, 1990 - three months after the republic's Declaration of State Sovereignty, but still within the context of membership in the USSR. During subsequent years, a series of Constitutional drafts was produced, each reflecting a different vision of the new state's future. Clearly, although united in 1991 in its desire for independence, consensus within Ukraine's political elite was shortlived.

The Early Drafts

In the months following the December 1991 referendum, a series of five draft proposals were published by the Constitutional Commission (nominally headed by President Kravchuk, but primarily chaired by Professor Yuzkov - later to become Chief Justice elect of the Constitutional Court until his untimely death in 1995). Each draft can be characterized as extremely lengthy and detailed - a reflection of the framer's desire to legally define multiple aspects of their vision of post-Soviet Ukraine, and impact the rate of development of new legal traditions:

The text was heavy, with extended accounts of nearly every feature of public and social life. In a society long bereft of associational life, an entire section of eight chapters and 43 articles was devoted to "Civil Society." In the section entitled "State Power," the draft (January 1992) hopefully promised that the three branches of government would "cooperate with one another in solving general tasks faced by the state" (Sharlet, 1996:24).

Obviously, such an idealistic vision did not materialize, and in subsequent drafts the issue of checks and balances between the three branches of government (legislative, executive, and judicial), became the focus of much debate. Specifically, controversy centred on the role of Parliament as a body that exercised direct control over the activities (not just the appointment) of members of the Cabinet of Ministers, and the converse powers of the Presidency. Similarly, although overt references to Ukraine's

"socialist choice" were omitted, each draft promised universal social rights and a significant role for the state in protecting citizen welfare (Hol. Ukr. 28/09/93).

To the framers' credit, a great deal of input on these issues was sought from Western constitutional advisors. However, as these scholars were primarily legal experts who lacked an understanding of the current political situation in Ukraine, they could provide little input on possible modifications to those sections of the text that were seen as controversial by much of Ukraine's population: proclamation of the blue and yellow flag and trident as state symbols; enshrining of Ukrainian as the sole state language, and requiring linguistic proficiency from all government officials. Nevertheless, extensive consultations with both foreign legal experts and the population as a whole (the drafts were extensively discussed in the media), did produce a substantially improved document by October 1993:

Procedurally, the last Kravchuk-period draft was better written, leaner and more economical in phrasing, and shorter in length (211 articles). Substantively, a sea change had taken place in the drafting process as the framers' intent shifted from presidential preference to political parity, in order to achieve a better balance between the power branches and even a slight edge for the parliament... Constitutionally, the president was no longer part of the cabinet.. In effect, parliament would have more influence over policy-making and implementation processes... (Sharlet, 1996:27).

The 1994 Elections

During the summer of 1993, under pressure from striking miners, both Parliament and President Kravchuk opted for early elections - to be held in March and June 1994 respectively. The incumbent Kravchuk was replaced by his former Prime Minister, Leonid Kuchma, whose campaign had promised decentralization, a referendum on state symbols, closer economic and political ties with Russia and the CIS, and official

bilingualism. All were issues aimed at gaining support from the primarily Russophone population of the eastern and southern regions, and capitalized on popular slogans that blamed independence and "Ukrainianization" for the country's economic crisis (Wilson, 1995:368).

Similarly, the 1994 Parliamentary elections, held in the context of hyper-inflation and plummeting living standards (GDP was estimated to have fallen 14% in each of 1992 and 1993, and a further 25% in 1994 - UNHDR, 1995), produced a highly politicized, and activist legislature. Left bloc deputies from eastern and southern regions loudly proclaimed their hostility to the institution of market reforms, which they viewed as a conspiracy of foreign powers designed to transform Ukraine into a colony of Western capitalism (Hol. Ukr., 30/05/96), and were openly belligerent towards all hints of Ukrainian nationalism (Kuzio, 1995). Conversely, reformist deputies from western Ukraine and Kyiv campaigned on a "European-orientation" platform, and viewed all links with Russia as a return to imperialism. Although each side was in the minority in Parliament,¹⁴ with the Left (Communist, Socialist, and 'Selianska' (Villagers)¹⁵ Parties) having 140 seats, and 90 seats for the Right (Rukh, Statehood, and Reform¹⁶ factions), the inexperienced Centrist majority (160 deputies divided among 6 factions - referred to as "the mud" ("boloto") due to their lack of political cohesiveness), and many of the 25 non-aligned deputies¹⁷ remained disorganized and rudderless.

¹⁴ Quoted numbers are approximate. Factional affiliations in the Ukrainian Parliament are not stable, and precise membership figures change often.

¹⁵ "Selianska" is often translated as "Agrarian" rather than "Villagers" Party. I believe the latter term to be a more accurate reflection of the Ukrainian word "selo" meaning not only farming village, but also carrying connotations of a distinct village lifestyle.

¹⁶ The "Reforms" faction is often considered Centrist (Hol. Ukr. 14/02/96). However, an analysis of their voting patterns in 1994-95 puts them clearly on the Right with little variance between Reform and Statehood (F-4, 1996).

¹⁷ Non-aligned deputies are usually those that represent the radical Right and Left, as well as those who are in the Left-leaning Presidium of Parliament - e.g. Chairman Moroz.

Regardless of the lack of a consolidated Parliamentary majority, all deputies recognized that some measure of structural reform was long overdue, but each side offered radically different solutions to the twin problems of local and central institutional organization. The Left lobbied for a return to the old system of directly elected regional Soviets (Rada's), that exercised both legislative and executive powers (through executive committees), arguing that a Parliamentary system was the sole means of ensuring democracy and accountability in government. President Kuchma on the other hand, in October 1994, announced a complex radical reform program that required an increase in the independence of the executive branch at all levels to enact. The President's proposal, largely supported by Rightist deputies in Parliament, and by the IMF and World Bank, involved the introduction of a new currency (the Hryvnia) by an independent central bank, quick privatization of state assets, integration with the world economy (beginning with membership in the Council of Europe), and decentralization of fiscal responsibility for social expenditures (UNHDR, 1995). In order to accomplish these goals, Kuchma argued that the administrative structure in both the centre and periphery would have to be changed, and asked to be granted temporary powers to rule by decree in 'economic' matters (interpreted in broad terms).

Although many on the Left had supported Kuchma's candidacy during the previous presidential election campaign, they reacted fiercely to such a program of radical economic reform. Right-bloc Parliamentarians endorsed the program in principle, but did not yet trust Kuchma's commitment to Ukrainian national ideals, and therefore were hesitant in giving the President their full support. Thus, in late 1994, when the newly appointed Constitutional Commission restarted the framing process, it did so in the context of an elite divided along two substantive cleavage lines: the nationality issue (embodied in the issue of language and the adoption of distinctly Ukrainian state symbols, and the eastward vs. westward orientation in economic and foreign policies), and the Presidential vs. Parliamentary power struggle (later to be personified by public quarrels between the Chairman of Parliament and the President).

In the ensuing months, Left bloc deputies accused Kuchma of attempting to institute authoritarian rule, interpreting his actions as outright betrayal of their previous support during the June 1994 campaign. (CPU Open Letter to Kuchma - Hol. Ukr. 26/07/95). Conversely, Right-wing leaders, realizing that they had misjudged Kuchma began to successfully pressure him into forgoing his eastern orientation in favour of a European nation-state institutional model. They insisted however, that his desires for a strong Presidency embody the specifically national trappings (state symbols, language, currency) of independent Ukraine - anathema to the Left.

Given the polarization of Parliament, by early 1995, it became clear that a Constitutional majority (300 votes) required for passage of a Constitution would be impossible to obtain, regardless of the merits of the proposed bill (Holovaty, 1995). However, Kuchma's policies plainly stated that membership in the Council of Europe was to be a priority (Hol. Ukr. 08/06/95), and this international body exerted considerable pressure on all new members to adopt some form of institutionalized system of separation of powers, and conform to its own "Charter on Local Self-Government." Clearly, the adoption of a Constitution in some form was to be a priority for the Kuchma administration, but its passage required co-operation from an inherently hostile and split Parliament.

The June 1995 Constitutional Agreement

The impasse was finally broken on 8 June 1995 with the signing of the "Constitutional Agreement between the Verkhovna Rada of Ukraine and the President of Ukraine." This document, based largely on Kuchma's proposed Law on State Power and Local Self-Government (an integral part of his reform package), was eventually signed by the President and 240 deputies - less than the Constitutionally required 300 for a 2/3 Parliamentary majority (a fact that has never been forgiven by the Left - see Hol. Ukr. daily articles June/July 1995). According to the Agreement,

the 1978 Constitution of the Ukrainian SSR was suspended for a period of one year, during which time the President could rule by decree, but Parliament could veto such decrees with a 2/3 majority.

For Centrist and Right-wing deputies, the Constitutional Agreement represented a break in the political deadlock between Kuchma and Parliament, and proved to them that the President was serious about adopting a new basic law quickly (Hol. Ukr. 21/05/96). In order to comply with the one-year timetable, the new authors decided to draft a general document that left many crucial elements of state organization and procedure to be regulated later by statute. Although most of the social rights clauses, as well as those referring to language and state symbols, were carried forward from the 1993 draft, the new text was to be much less specific in its description of social structures that did not pertain directly to the operation of government (e.g. Civil Society). Rather than attempting to write a Constitution designed to exist in the long-term, the authors made a conscious decision to enshrine the status quo with respect to rights, and to draft a generalized framework for structural reform.

The Syrota Committee

In March 1996, the new Constitutional Commission (nominally co-chaired by Kuchma and the former Socialist Party leader, now Chairman of Parliament, O. Moroz) finalized its new draft, and presented it to Parliament for first reading. It was concise and relatively short (169 articles), but structurally, it effectively tipped the balance of power between the branches of government in favour of the Presidency. The Constitutional Commission (made up of an equal number of representatives from the Presidential administration and Parliament) had introduced a document with several new innovations that were unacceptable to both the Right and Left in Parliament (with some exceptions - see V. Lanovyj, Hol. Ukr. 22/05/96). Most importantly, Parliament was constituted as a fractured bicameral legislature, with a

lower house based on the current 450 single-constituency deputies, and a Senate composed of three deputies from each of Ukraine's 25 oblasts, plus three from the city of Kyiv and two from Sevastopol. Furthermore, a significant number of executive and judicial branch appointments were relegated to the sole competence of the Presidency.

Left-wing deputies in Parliament, who still did not recognize the validity of the Constitutional Agreement, insisted that the Commission's text be examined in conjunction with all other alternative drafts, including the draft Constitution of the Ukrainian Soviet Socialist Republic, proposed by the Communist Party (Hol. Ukr. 25/07/95). Although Chairman Moroz could have easily by-passed such a delay tactic, he chose to hide behind procedural norms thereby further hardening the divisions both within Parliament, and between himself and President Kuchma (the two co-chairs were by this time not on speaking terms). However, despite pronouncements to the contrary, the Left's delays were not really resisted by most Centrists or Right-wing deputies: almost all Parliamentarians opposed the reduction of the legislative branch's powers in the Constitutional Commissions draft (see CPU position - Hol. Ukr. 29/05/96 and Right objections 17/05/96)

During the first days of April 1996, just as a renewal of the Constitutional crisis seemed imminent, the leaders of the Centrist and Right bloc factions, together with the Selians'ka Party (Hol. Ukr. 26/05/96), formed an informal committee in an attempt to rescue the situation. Although their committee was not officially recognized by Parliament, representatives of these ten factions began meeting regularly under the chairmanship of the Centrist deputy Mychailo Syrota. In the third floor foyer of the legislature they were soon joined by officially delegated representatives of the Presidential Administration, and began sifting through each article of the Constitutional Commission's draft, amending and changing them until a consensus of all factions could be reached. Theoretically, even without the Communist and Socialist deputies, these ten factions controlled 275 votes - enough, if the 25 non-

aligned deputies and some 'soft' Socialists could be brought on board, to pass the Constitution (Hetman, 1996).

Members of the Socialist faction had in fact, expressed interest in participating in the work of this informal committee, but it was not until the May 1st, unannounced visit by Oleksander Moroz to the meeting table, that a member of the eleventh faction was formally delegated. During the May 5th plenary session, the Chairman, rather underhandedly, since similar motions had previously been voted down, introduced and passed a motion formally recognizing the informal inter-factional committee as a Temporary Special Commission on Reworking the Constitution (henceforth referred to as the Syrota Committee), thereby forcing the Communist faction to participate also (Hetman, 1996:24). Due to its larger presence in Parliament, the CPU was allowed to delegate six representatives, rather than the customary two from each faction.

Upon arrival at the new official committee's first meeting, the Communist deputies insisted that the process of achieving consensus on each article be restarted from the beginning. When the committee disagreed, the Communist deputies left the table in protest. Such filibusters continued throughout the first weeks of May, but to the dismay of the CPU representatives, their protests were generally ignored by the other factions. (Hetman, 1996:20-32). Clearly the CPU was not interested in seeing the constitutional process come to a successful conclusion, and the actions of their representatives were therefore interpreted as a deliberate sabotage of the committee's negotiations. To their credit however, the six Communists on the Syrota Committee, together with the two delegates from the Socialist faction, did compose an alternative text that reflected their own political values, and contrasted sharply with the 1995 dogmatic and unrealistic draft "Constitution of the Ukrainian SSR" published by the CPU. Unlike that document, the 1996 CPU-Socialist alternative draft seems to have

been a genuine attempt by the Left, to negotiate with their political opponents. Its main elements were:

a) On the nationality issue: official bilingualism; a referendum on state symbolism (Article 23); dual citizenship based on international agreements (Article 4), and a rephrasing of the preamble from "We the Ukrainian People ("Ukrayinskyj Narod") - Citizens of all Nationalities" to "We the People of Ukraine" ("Narod Ukrayiny"), with several mentions in the text as to the multiethnic definition of this term.

b) On the institutions and structures of the state: a single chamber national Parliament with powers to confirm *and dismiss* individual members of the Cabinet of Ministers (Article 119), offer official interpretations of the Constitution, call a referendum of confidence in the President, and veto his decrees (Article 90); proclamation of the Chairman of Parliament (rather than the Prime Minister) as the effective vice-president with powers to assume the leadership of the executive branch in cases of Presidential incapacity (Article 116).

c) On social policy: strengthening of all social rights clauses with a reference to the state as guarantor of such rights, including the right to employment; proclamation of the goal of society to be the creation of equal opportunities for all citizens in all spheres (Article 12), including gender equality in the workplace and state provided privileges for mothers (Article 27).

Although the insistence of the Left-bloc deputies that their alternative draft be examined by the committee as one that carried equal weight with the document that had previously been drafted by the representatives of the ten other factions was clearly a stall tactic, many of these proposals did eventually gain acceptance and were included in the final version in some form.

Final Stages

On May 17, 1996 the Syrota Committee completed its last revisions, and proposed them to Parliament. The new draft was passed in first reading on June 4th by 258 votes (primarily Centrist and Right bloc factions), and returned to Committee for reappraisal with a set deadline of June 19th for second reading. During this two week period, the Committee was showered with almost 3800 proposals, corrections, and comments - all submitted by officially sanctioned entities (Parliamentary deputies, the Supreme Court, the President, and Procurator General). Although many were duplicates, each proposal was officially read, discussed and voted upon in committee, and was considered passed if it gained the support of 15 of the 28 faction representatives. On the evening of June 15th, by a vote of 16 to 12, the Syrota Committee adopted a revised draft Constitution, and officially submitted it to Parliament for second reading (Syrota speech to Parliament, June 19th).

According to Parliamentary norms, each proposed change or comment on any draft legislation submitted for second reading, must be officially published and handed out to all deputies in tabular format, showing the original draft, all submitted changes, and the final version agreed to by the committee in question. In the case of the Constitution, this comparative table amounted to over 1100 pages of text, and due to the amount of preparatory work required, was not handed out to deputies until the day before the commencement of its second reading. This provided an additional opportunity for the Left to delay the constitutional process, by insisting that a minimum of eight days be set aside for review of the draft by deputies and consultation with constituents (transcripts, June 19th). Although this delay was not accepted by the plenary session, the examination of the proposed draft proceeded exceedingly slowly, with filibusters organized by both sides.

After five days of debate 42 of the 175 articles in the proposed draft were examined, but three key issues were unable to obtain the required 2/3 majority of votes. Although Moroz insisted that debate on the balance of the Constitution continue, Right-wing deputies left the plenary session in protest: For them, continued debate was pointless if agreement could not be found on the issues of language and state symbols, and on a constitutional guarantee of the right to private property (transcripts, June 26th).

Recognizing that in such a polarized atmosphere, Parliament would be unable to pass the Constitution, President Kuchma took the initiative, and on June 26 announced a decree authorizing a referendum on the Constitution. In a surprise move however, the question to be voted on referred to the March 1996 draft of the Constitutional Commission, not the revised document of the Syrota Committee that had been approved by representatives of the Presidential Administration. Although the President's draft included articles on symbolism and language that were acceptable to the Right, it indisputably tipped the balance of power between the branches of government in favour of the executive, and was therefore universally regarded as unsatisfactory by Parliament. Nevertheless, given the apathy of the Ukrainian electorate, no one doubted that Kuchma's referendum would result in the adoption of the Constitution regardless of the merits or faults of the proposed draft (Bilous et. al, 1996:39).

Analyses of the reasons Kuchma chose to announce a referendum are mixed. One interviewed respondent close to the Presidential Administration described the President's action as a precisely calculated political move designed to dislodge the deadlocked Parliament (Interview #12). Another saw it as a miscalculation, claiming that Kuchma had expected Right-wing deputies to walk out of the session in protest at the Left's intransigence on the language and symbolism issues, and thus effectively declare support for the President's move (Interview #8). Whatever its justification, the

referendum decree resulted in a fundamental change in attitudes on both sides of the chamber towards the constitutional process. Most significantly, it led to the long awaited (Bilous et. al., 1996:26) split within the normally monolithic CPU faction, with a significant proportion of its deputies resolving to pass the Constitution in Parliament, rather than campaign for its rejection in a referendum (Interview #10).

On the morning of June 27, a shocked Parliament reconvened, and it quickly became clear that Chairman Moroz had decided to dispense with the formal procedural norms that had previously stalled debate. He announced the formation of inter-factional committees that were charged with drafting compromise texts on the most controversial sections of the draft: language, state symbols, property rights, status of the Crimea, and the organization of government structures. When the plenary session reconvened that afternoon, only the language, symbolism and Crimean questions remained unresolved (transcripts June 27th).

After prolonged wrangling, a compromise text was finally passed that proclaimed Ukrainian as the sole state language, but specifically mentioned Russian in the context of minority languages enjoying protection from the state. On the question of state symbols, several revised compromise texts were prepared, but none was able to garner the required number of votes. Rightist deputies were adamant that national symbols should be enshrined in the Constitution, and insisted that there could be no deviation from this. Debate had not yet progressed to the section of the draft referring to Crimea (Articles 134-139), but it was widely recognized that on this issue, the Left's principled stance would be equally intransigent. Regardless of the Right's insistence on a unitary structure for Ukraine (Hol. Ukr. 01/06/95), the Left was unyielding in its demands for broad independent powers to be granted to the Crimean Parliament, including the right to a separate Constitution. Recognizing that both positions were irreconcilable, Chairman Moroz decreed that the symbolism article and the section

referring to Crimean autonomy¹⁸ be adopted in a single package vote. Compromise amendments to specific clauses were proposed by both sides, and after a series of over 20 votes, a bare majority of 302 was finally achieved (transcripts, June 28th).

In the aftermath of this crucial decision, debates on the remainder of the draft proceeded relatively quickly. In a final stab at deputies who had supported the President's referendum decree, Moroz proposed a motion that was overwhelmingly approved, rescinding the mandates from those Parliamentarians who were not present at the all-night session if they did not appear within one hour. By 6:00 am Parliament was present in its full complement, and by 9:00 am deputies were joined in the chamber by President Kuchma. At 9:20 am on June 28th, in a final vote on the text of the Constitution in its entirety (formally its third reading), the document was passed. 315 deputies registered their approval, 36 opposed with 12 abstentions and 30 not registering votes (Hetman, 1996:7).

¹⁸ A complete account of the issues involved with the Crimean question are beyond the scope of this dissertation. I have therefore specifically refrained from expanding on this issue beyond the brief mention here.

Nationality

Prior to the passage of the 1996 Constitution, the issue of what constituted the Ukrainian nation, and the legitimacy of Ukraine as a *nation*-state, was the subject of much controversy. The 1991 referendum had confirmed Ukrainian independence overwhelmingly, and in the nationalist euphoria that ensued, the symbols of the short-lived 1918-21 Ukrainian National Republic (the trident, blue and yellow flag, and the anthem “Shche ne Vmerla Ukrayina”) were quickly adopted by the new state. However, the concept of Ukrainian nationality that such symbolism embodied were not universally accepted throughout Ukraine, nor was the new administration’s emphasis on instituting Ukrainian as the single official state language particularly popular in the eastern and southern regions where the population is largely Russophone. Thus, during the first five years of independence, a clash of identities occurred - one that was rooted in differing interpretations of Ukraine’s linguistic and historical past, and consequently in divergent perceptions of the new state’s future. In the Parliamentary debates that preceded the adoption of the Constitution, this clash of identities reached a feverish pitch, making its resolution the greatest stumbling block to the document’s passage.

Clash of Symbols and Myths

A common concept of nationality can be a powerful social force that provides a source of strength and solidarity to the citizens of a state, particularly as divergent political views and socio-economic backgrounds necessarily lead to disunity (Miller, 1994:23). John Stuart Mill argued that without a sense of common identity, politics inevitably becomes a zero sum game between competing interest groups. Conversely, radical nationalism (one possible political expression of national identity) has in history, often led to violent division and conflict (e.g. both World Wars, Bosnia, the Caucasus).

Nationality is both an existential and socially constructed phenomenon: “a subjective concept with objective features” (Freeman, 1994:83). The need to belong to a community, beyond an aggregate of individuals, is a basic part of human personality (Averineri, 1994:30), rudimentarily expressed through family, and one’s immediate social environment (e.g. village or town). However, the extension of this sense of

community to encompass the modern nation, although a natural progression from the familial expression, is fundamentally an act of faith. Nations do indeed occur naturally, but the borders that define them do not. The nation, as a fundamental unit to which individuals attest allegiance, is therefore an “imagined community” (Anderson, 1983).

Clearly one of the most important elements in the formation and generational transmission of national identity is one’s concept of the past. In this respect, questions of the scholarly validity of divergent interpretations of historical events by individual national groups are irrelevant: the significance of a particular interpretation lies in its ability to constitute a coherent myth of national descent, and thus to provide meaning to identity symbols that are inevitably rooted in history (Armstrong, 1992; Plokhly, 1994:151). Debates over the appropriateness of state symbols (flag, coat of arms, anthem) are therefore necessarily reflections of disagreement over interpretations of history, and the identities that each engenders.

Official versions of Ukrainian historiography during the Soviet era were largely based on the works of 19th century imperial Russian scholars (suitably modified by Marxist historical materialism), who portrayed Ukraine’s past as inescapably linked to that of Russia. The 10th century Kyivan Rus’ state was viewed as the birthplace of the three “brotherly Slavic peoples of Russia, Ukraine, and Belarus,” and it was not until the 17th century Cossack uprisings against Polish land-owning magnates that a separate Ukrainian nation emerged. In 1654, the Cossack Hetman Bohdan Khmel’nytskyj “fulfilled the ancient dream of the Ukrainian people for reunification with their Russian brethren” (CC CPSU Decree, 1954) by signing the Pereyaslav Treaty, recognizing the suzerainty of the Muscovite Czar. Thus, according to the official Soviet view of history:

Ukrainians were not to be concerned with the status of their own nation but to rejoice and glorify in Russian accomplishments. At no point in history could Ukrainians have any legitimate interests that would not coincide with Russian ones. Nor did Ukrainians have any future as a separate nation, since Soviet nationality policy called for their merger into a wider Soviet people (Kohut, 1994:127)

During the late 1980's, under the influence of western Ukrainian nationalist and Diaspora groups, a rival interpretation of history began to be popularized throughout Ukraine. Developed in the 19th century by, among others, the poet Shevchenko, and the eminent historian M. Hrushevsky, this distinctly Ukrainian historical myth claimed Kyivan Rus' as the ancestral root of the Ukrainian nation only. Thus, the Russian nation was not at all organically tied to Kyivan Rus'. Rather, it had developed and evolved separately from the Ukrainian-Rus' tradition in the north-eastern territories, and at times (particularly with respect to the spread of Orthodoxy), the fates of the two peoples had intertwined. After the 13th century destruction of Kyiv, the inhabitants of Rus' were said to have remained in the territory of modern Ukraine, and subsequently established the Galician-Volhynian kingdom in Western Ukraine which in turn became the nucleus of the 16th century Polish-Lithuanian Commonwealth (Kohut, 1994). Their descendants later fled to the south and east in search of freedom from their Polish land-owning masters, and established Cossack settlements. According to this interpretation of history, Khmel'nytskyj, although castigated for his blunderous treaty with Moscow, is glorified (together with the later Hetman Mazepa who rebelled against Czar Peter I of Russia), for having led mass uprisings against foreign occupiers.

Since independence, the "mythomoteur" of Cossackdom (Armstrong, 1992) has become a powerful tool for popularizing a sense of separate identity, particularly in the eastern and southern regions of Ukraine. Its appeal is tied to the idea of democracy: the Zaporozhian Sich (the Cossack Host) was organized under a nominally democratic form, where leaders were elected by popular vote, and Mazepa's successor Orlyk is often credited with having produced Europe's first democratic constitution,¹⁹ while in exile with the Cossack army in Bendery (now Moldova) in 1710 (Kohut, 1994:134). Inevitably however, Cossackophilia has clashed with the traditional Soviet-Russian historical myth, with its anti-nationalist emphasis, and its portrayal of Ukrainian and Russian histories as one and the same.

¹⁹ This document never went into force. In a previous essay, I argued that the view of the Orlyk Constitution as a 'democratic' document is largely misplaced. It was however mentioned as such several times in the context of the 1996 Constitutional debates, and by two respondents from Central Ukraine - Interviews 5 & 11.

Twice, during the 20th century, this conflict of historical myths has led to tragic consequences. During the First World War, the blue and yellow flag (claimed to have originated in Cossack times) and the trident (the state symbol of Kyivan Rus'), were adopted by each of the three short-lived governments of independent Ukraine, including the controversial 1921 Directory headed by Symon Petliura, who Soviet historians accused of being responsible for pogroms and a general blood bath in Ukraine (Kohut, 1994:136). Similarly, during World War Two, the western Ukrainian nationalist OUN-UPA (the guerrilla army that fought both the Nazis and Soviets, and did not disband until 1952) adopted the trident as its symbol. In many cases, members of the Soviet forces sent to combat the insurgents, originated from eastern Ukraine, and stories of butchery and collaboration with respective enemies (Nazis and Soviets) have since gained a religious status in the memories of participants and descendants on both sides (Wilson, 1997). As one Centrist deputy from eastern Ukraine lamented when asked about the symbolism issue: "How was I supposed to vote, when half of my family died under the red flag, and the other half under the blue and yellow flag? One and the other are covered in the blood of my family..." (Interview #17).

Illustrative of this dilemma, are the comments of one Russian-speaking Communist deputy from the Donbas region of eastern Ukraine (Interview #10). As he pointed out 90% of his constituents speak Russian as their first language, but 70% consider themselves ethnically Ukrainian. In 1994, in his published electoral platform, he had specifically renounced the "falsification of history... (through) attempts to rehabilitate the bloody crimes of OUN-UPA" For this respondent, the USSR was "*Our* Soviet Union," and on several occasions the positive elements of the old system were stressed. Conversely, the interview left little doubt as to his sense of pride in being Ukrainian. For him, the trident represented a symbol of his own historical roots in Kyivan Rus', that had been hijacked by western Ukrainian extremists during World War Two, and by Petliura's government in 1921.

Given such historical cleavages, it is perhaps surprising that the first section of Article 20 of the Constitution was finally passed in the following form:

The state symbols of Ukraine are the State Flag of Ukraine, the State Coat of Arms of Ukraine and the State Anthem of Ukraine.

The State Flag of Ukraine is a banner of two equally-sized horizontal bands of blue and yellow.

The Great State Coat of Arms of Ukraine shall be established with the consideration of the Small Coat of Arms of Ukraine and the Coat of Arms of the Zaporozhian Host, by a law adopted by no less than two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine.

The main element of the Great State Coat of Arms of Ukraine is the Emblem of the Royal State of Volodymyr the Great (the Small State Coat of Arms of Ukraine).

The State Anthem of Ukraine is the national anthem set to the music of M. Verbytskyi, with words that are confirmed by a law adopted by no less than two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine.

Although some leeway is provided by this article, in that the specific descriptions of Ukraine's state anthem and Coat of Arms are entrusted to later regulation by statute, the enshrined essence indisputably conforms to the nationalist mythomoteur. Clearly, this article was passed as a result of significant compromise by the Left.

As is evident from the transcripts of the second reading of the Constitution, the issue of symbolism was the most polarizing and emotional element of the debates in Parliament (see outbursts on June 24th between Moroz and Syrota, and on June 28th between deputies Porovs'ky and Alekseyev). From the perspective of the Right, the adoption of national symbols was a matter of fundamental principle, embodying the essence of whether or not Ukraine was to be permanently established as an independent state. Recognizing the firm posture of their political opponents, Left-bloc deputies, who claimed that their constituents rejected the "nationalist symbolism of Western Ukraine" proposed to relegate the state symbols issue in its entirety, to statute law (Proposal #166 - leader of the CPU faction, Symonenko), but although this proposal was voted on several times, it was repeatedly unable to gain the required 2/3 majority of votes. On June 25th, Moroz's insistence that debate on the rest of the draft continue while a compromise formulation of Article 20 was drafted by representatives of all factions, resulted in a walkout of Right-wing deputies from the Parliamentary session in protest.

On the evening of June 27th, in a first attempt at real compromise, the word "tryzub" (trident), proposed in the original text of the draft submitted to Parliament by the

Syrota Committee, was replaced with a reference to the symbol of Kyivan Rus'. As several Right-bloc deputies mused in retrospective accounts of the reasons for this modification, the fact that the omission of the word "tryzub" placated many on the Left, "is an indicator of the low intellectual level of these Parliamentarians" (Interview #6, also #1). Such ridicule notwithstanding, the desire to link the symbolism of the State Coat of Arms specifically to the ancient Kyivan state is significant, in that it reflects a consensual emotional connection to that period of history, and not necessarily to the controversial conflicts of 1918-21 and 1939-52.

Furthermore, although none of the western region interviewees mentioned this, each of the Centrist deputies whose constituencies lie outside of Galicia and Volyn', viewed the inclusion of Cossack elements into the Great State Coat of Arms with extreme pride. This point is doubly significant in that in *every* case, mentions of Ukraine's Cossack past were completely unprompted (Interviews 2, 5, 10, 15).²⁰ Clearly for eastern and southern region deputies, the inclusion of the Cossack mythomoteur was one of the deciding factors in the search for compromise on Article 20.

From the point of view of pragmatism, the final clinching arguments that seem to have swayed many on the Left, were those expressed during the early morning hours of June 28th by former Prime Ministers Masol and Marchuk (both from north-eastern Ukraine), as well as the speech by deputy Shybko (a Ukrainian ambassador). Each argued that Ukraine's international prestige required stability. During the five years since independence, the trident and the blue and yellow flag had become recognized by the international community as symbols of the young nation. Changing them was neither economically feasible, given the costs of reissuing government stationary, and military and police uniforms, nor desirable from the perspective of foreign relations. Explaining his own views after these speeches, Chairman Moroz summarized the dilemma that many Left-bloc deputies faced that night:

²⁰ The question on symbolism was phrased using the following approximate wording: In Article 20 it states that "the main element of the Great State Coat of Arms of Ukraine is the Emblem of the Royal State of Volodymyr the Great." This text was changed from the 1993 draft version, where it stated that the State Coat of Arms is the gold Trident on a blue shield. Both texts obviously refer to the same symbol. Why was it necessary to change this text, and did you agree with the change?

Few in this Hall, during the previous session of Parliament, fought against this symbolism, as I did... And up to the last moment, even now, I have been voting in the same way - abstaining from making a choice. But at this point I believe, that perhaps even though my conscience will bother me because I am, well let's say changing.. not changing my views... I am not changing them. I simply believe that today it is more beneficial to the general cause of the state, if we do not change our symbols. Because changing them will result in greater trauma for society than if they continue to exist (transcripts, June 28th).

Such recognition of the importance of fostering unity and harmony within an inherently divided polity were also universally expressed by all respondents (regardless of factional membership) when questioned about their attitudes towards the removal of Soviet-era monuments from public areas. In all cases, deputies recognized that the destruction of such remnants of the past would be seen as a positive step forward by some, but as a personal attack on the historical memories of others. It would seem therefore, that since passing the Constitution, some level of consensus has been achieved within Ukraine's parliamentary elite on the desirability of a pluralist status quo on questions of differing interpretations of history (see also Kuchma's speech on the 50th anniversary of the end of World War II - Hol. Ukr. 11/05/95). As a result, over time and by force of inertia, the historical myth emphasizing Ukrainian distinctiveness is likely to become increasingly accepted, together with all of its symbolic attributes.

Although some Right-bloc deputies see the adoption of Article 20 in its present form as a clear victory over the "anti-statist Left" (Interview #3), such a view is somewhat simplistic. Clearly, several Left-bloc deputies would have preferred the enshrinement of the hammer and sickle, rather than the trident, as the main element in Ukraine's Coat of Arms (Proposals 180, 184, 187, 443). Others suggested compromises involving the addition of a red stripe to the blue and yellow flag (Proposal 179 and deputy Boldyrev - transcripts June 28th), or the omission of the trident from the Coat

of Arms and its replacement with the crest of the Zaporozhian Sich (Proposal 446). However, whether one considers it a victory or a compromise, the text that was finally adopted, in the long term, should prove to be a unifying and consensual one: it smooths over the painful memories of both World Wars, and accentuates those elements of a unique identity that are common to all Ukrainians, i.e. Kyivan Rus' and Cossackdom. Western Ukrainian nationalists would be well advised to recognize the importance of the latter as a powerful and unifying source of identity for their eastern cousins, and to allow the passage of time to heal the wounds inherent in controversial aspects of Ukraine's past.

Language

Unlike the symbolism issue, since 1990, the question of official languages had been repeatedly discussed in Ukraine's Parliament, not only in the context of the constitutional process, but also as it related to educational bills, consumer protection laws (i.e. linguistic requirements for product labels), and other legislative initiatives. As a result, although Constitutional debates over the language issue were emotional, they tended not to be as explosive as those regarding state symbols. Since the 1989 passage of the Law on Languages (Wilson, 1997:153-157), a level of consensus had already been reached within the Parliamentary elite. For example, with one or two exceptions on the radical Right (Khmara - Hol. Ukr. 30/04/96), all agreed as to the need for tolerance and the provision of state protection for Ukraine's national and linguistic minorities (e.g. Tatars in the Crimea; Slovaks, Romanians and Hungarians in the west; Greeks and Bulgarians in the south). Most importantly, Parliamentarians universally recognized that the Ukrainian language should indisputably enjoy official status as the language of state (Socialist leader Chyzh's speech - June 26th). In the words of two deputies, each highly placed in their respective parties - one Communist (Interview #16) and one from Rukh (Interview #7) - Ukrainians are the "titular" nationality in Ukraine, and therefore their language deserves special recognition in the Constitution. Another CPU deputy, when asked about his views on the language question answered in Russian (his native tongue): "Ukraine exists. The state is called Ukraine. So the language of the state should be Ukrainian" (Interview #10).

Indeed, it is likely that the Syrota Committee, and the Constitutional Commissions before it, used such sentiments as their point of departure when drafting the original text of Article 10 of the Constitution. The text they submitted to Parliament read:

The state language of Ukraine is the Ukrainian language.

The state ensures the comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine

In places warranted by a density of population of citizens belonging to one or several national minorities, together with the state language, in the activities of the organs of state and in state organizations, the language accepted by the majority of the population of a particular populated area, may also be used.

Ukraine demonstrates concern for the free development and use of all national languages, used by the citizens of Ukraine

Policies governing the use of languages in Ukraine shall be established by law.

When this text was examined during second reading however, Left-bloc deputies from the eastern and southern regions refused to support it, insisting that in addition to Ukrainian, the Russian language deserved special status. Their proposals (95-117, 187-8, 196-7, 200-206, 211) ranged from official bilingualism, to a proclamation of Ukrainian as the “state” language and Russian as the “official” one (the difference between these statuses was never clarified). The authors of such proposals argued that, regardless of historical reasons (the existence of officially sanctioned Russification during the Soviet regime no longer seems to be in dispute), the widespread use of Russian in Ukraine, the reality of its place as the international language of the CIS (CPU deputy Kocherha - transcripts, June 26th), and as one of the official languages of the UN, justifies its being given special status in Ukrainian law (CPU deputy Oliynyk - transcripts, June 21st; also Interview #18).

Notwithstanding the validity of such arguments, the draft text of Article 10 (agreed to by the Right) allowed for the effective adoption of Russian as the official language in relations with the state in regions where Russophones were a significant majority (realistically half of Ukraine’s territory). Thus, it seems that many of the Left-bloc deputies who objected to this formulation of Article 10, did so not because of any real

concern for linguistic freedom, but simply because the text did not specifically mention the Russian language by name. Thus unfortunately, their arguments are evidence of a rather blind refusal to accept the ethnic Russian minority in Ukraine, as a minority (Interview #7). In fact, in the aftermath of the Constitution, such irrational intransigence seems to have produced a split within the normally monolithic CPU faction:

I am categorically opposed to such statements as are heard nowadays: “Well I’m not going to learn the Ukrainian language.” This is stupid. The state is called Ukraine. The root nation as they say, the state-building nation, is Ukrainian, and no other variants are possible. The Ukrainian language is compulsory. I simply cannot understand it when our brother Slavs, some Russian-speakers, say such things, “Why should I learn it?” and the like. This language is very easy to learn. For a Russian to learn to speak on an everyday level, I don’t know, maybe you need a month, no more. (CPU deputy from eastern Ukraine - Interview #16)

Nevertheless, during the final debates on the Constitution, Russophone deputies loudly protested against the omission of a specific mention of the Russian language from Article 10. For their part, Right-wing deputies, together with the majority of Centrists, refused to accept official bilingualism. A compromise formula was proposed that proclaimed Ukrainian as the state language and guaranteed “free development, use, and protection of all languages in Ukraine, including those of neighbouring states...” followed by a list of such states, but this too was rejected (transcripts - June 27th). Finally, the text that was able to gain the required 2/3 support of Parliament, retained the first and second clauses proposed by the Syrota Committee, enshrining Ukrainian as the state language, but changed the final part of the Article to the following:

In Ukraine, the free development, use and protection of Russian, and other languages of national minorities of Ukraine, is guaranteed.

The State promotes the learning of languages of international communication.

The use of languages in Ukraine is guaranteed by the Constitution of Ukraine and is determined by law.

Unwittingly therefore, by insisting that the Russian language be mentioned by name, Ukraine's Russophone deputies actually reduced the rights of all minority languages. As one Right-bloc deputy gleefully pointed out, unlike the draft Article 10 proposed by the Syrota Committee, according to the adopted text, the publication of laws and statutes by the state in any language other than Ukrainian, is not mandatory (Interview #3). Although Russian is mentioned, this a matter of semantics: it has no right to officialdom, nor does it enjoy primacy over the languages of other minorities.

To their credit, several Right-wing and Centrist deputies, when queried on whether Article 10 could be interpreted as a legal basis for the extension of special educational rights to Russians, proudly declared that according to Article 53, all linguistic minorities in Ukraine enjoy equal access to state funded primary and secondary education in the language of their choice (Interviews 2, 3, 6, 9, 14, 15). Although one deputy from the Right (Interview #1), lamented that during a recent visit to Donetsk, he was unable to communicate in Ukrainian with a waiter in a restaurant, it would seem that most recognize that for the sake of social harmony, Ukrainianization (also called 'de-Russification'), must be a gradual process. Perhaps, since becoming Parliamentarians, those who previously advocated radical Ukrainianization (Wilson, 1997:81), have heeded the advice of more moderate ethnic-Russian colleagues:

When I came to Parliament, I couldn't speak a single word of Ukrainian... In the past I didn't need to, not because I didn't want to, I simply didn't need to. I don't speak English either... And when I came to Parliament, I walked up to Porovs'ky and Movchan (the leaders of the 'Prosvita' Ukrainian language society), and said: If you shout at me while I'm at the podium "Speak the official language!" I will never speak it, out of principle. But if you approach me with respect, I'll start. (ethnic Russian Centrist deputy, Interview #17 - conducted in Ukrainian).

Citizenship and Nationality

In addition to the obvious attributes of language and symbolism, the modern concept of nationality also involves more intangible feelings of distinctiveness and pride (patriotism), that can find differing forms of expression. Anthony Smith (1991) distinguishes two types of national identity expression: a “Western” institutional model and an “organic” or “ethnic” non-Western version. The former is characterized by the image of the nation being rooted in conceptions of a “legal-political community, legal-political equality of members, and common civic culture and ideology” (Smith, 1991:11) articulated through such cultural and state institutions as Parliament or, as in the US example, the Constitution. An institutional model of nationality emphasizes an inclusive equality of rights for all members, extending “membership more or less freely to those who are resident and show willingness to exhibit those traits that make up national character”²¹ (Miller, 1994:25).

The “ethnic” conception of the nation is distinguished from its institutional counterpart, through its emphasis on common descent and heritage. Genealogical myths and a “glorious history” form the image of the nation, and can be extremely helpful as an instrument of social mobilization in times of crisis, and as a means of maintenance (or construction) of a cohesive common identity if the particular nation is ruled by a foreign power. However, in stable independent nation-states, continued emphasis on ethnic nationalism may lead to exclusionary discrimination against minorities, or in extreme cases, ‘ethnic cleansing’ and expansionism (Hayry & Hayry, 1994).

In an attempt to determine which model of nationality expression is prevalent in Ukraine’s elite, immediately after being questioned about their attitudes towards the language issue, respondents were asked whether in their opinion, the text of Article 12 of the Constitution applied to me as a Canadian citizen, born in Canada, but of Ukrainian extraction. The article reads:

Ukraine provides for the satisfaction of national-cultural and linguistic needs of Ukrainians residing beyond the borders of the State.

²¹ In this context, the term ‘national character’ refers to collective culture. No implication is intended regarding the immutability of such culture - a common criticism of those who object to the term.

Universally, the answer was yes,²² but several interviewees (#2, 5, 8, 10, 13, 14, 16) elaborated that it also referred to the millions of ethnic Ukrainians who reside in the Russian Federation and in other states of the former USSR. Although due to current economic conditions, aid to such people in the form of newspapers, help for schools, textbooks, and artistic and cultural materials, was limited, each hoped that this would change in the future. In the words of one respondent, helping Ukrainians abroad is a “holy responsibility of mother Ukraine, the mother homeland, before her children who were forced to leave their nest” (Interview #5).

As a follow-up, respondents were asked whether Article 12 could be interpreted as a justification for rescinding those sections of current Ukrainian legislation that prohibit dual citizenship. This issue had in fact been raised previously during debates on the Constitution by several members of the Left-bloc in reference to Article 4 (“There exists a single citizenship of Ukraine”),²³ but their proposals to include a clause allowing dual citizenship based on future international agreements was rejected by a majority of Parliamentarians who viewed this as a first step towards a renewed union with Russia.

Indeed, even after five years of independence, the threat of a revival of a Russian empire still plays strongly in the minds of Ukraine’s elite. Although three deputies (Interviews 3, 7, 16 - those who have travelled extensively to the West), saw the possibility of an extension of special rights (primarily visa-less entry) to members of the Western Diaspora, virtually all respondents rejected the idea of a universal policy

²² Several Right-bloc and Centrist deputies expressed gratitude to the Western Diaspora for having preserved the Ukrainian language and cultural traditions at a time when these were threatened in the USSR (Interviews 1, 5, 7, 11, 13). Such gratitude is obviously not universal, given articles published by Leftist deputies, accusing the Diaspora of funding radical nationalist groups, and supporting corrupt politicians so as to be able to gain control of Ukrainian assets.

of dual citizenship on the grounds that it would be a threat to Ukraine's sovereignty. Some mentioned the practical problems that such an institution would create: where would individuals with dual citizenship pay taxes, or serve in the armed forces? (Interviews 1, 7); which country would be responsible for the payment of pensions? (Interview #16); would non-residents be allowed to own land? (Interview #18). More importantly however, the majority of respondents viewed the actions of the Russian government as the greatest factor preventing dual citizenship (Interviews 1-3, 5-7, 9, 12, 14). In the minds of many, Ukraine's large ethnic-Russian minority is a "fifth column" that nationalists in Russia manipulate in an effort to destabilize Ukraine, thereby threatening its very existence as an independent state. Although, as Kuzio (1995:41) has argued, the reality of such a threat may be exaggerated, examples of Russian official and unofficial intrusions into Ukrainian internal politics (particularly with reference to Russophone populations in Crimea and the Donbas), abound. Thus, although all respondents stressed the need for tolerance of national minorities, most saw extension of dual citizenship to such minorities as impossible until the ethnic Russian population in Ukraine (and the Russian government) reconciled itself to being a minority in a legitimate, separate, and sovereign state.

Clearly, unlike the accepted norm throughout much of the Western world, the Ukrainian elite does not equate citizenship with membership in the Ukrainian nation. Nationality is viewed as a strictly ethnic concept that includes a diaspora, and unlike citizenship, is not open or inclusive. Citizenship on the other hand, is inclusive of all residents (and is limited to them) regardless of nationality. Such a distinction, although not necessarily intolerant of minorities, reflects an organic concept of the nation that is purposely divorced from the institutions of the state - in many ways echoing the old distinction between nationality and citizenship manifest in the Soviet passport system. As one deputy pointed out (Interview #1), nationality is a matter of membership in the Ukrainian "ethnos" while citizenship is an institution that denotes

²³ This clause was can be variously interpreted, but according to Chairman Moroz (transcripts June 24th) it does not imply prohibition of dual citizenship. Rather it means that all Ukrainian passports are equal. Nevertheless, the current Law on Citizenship expressly prohibits dual citizenship.

one's belonging to a certain state. For the time being, these two concepts seem to have been reconciled as separate and not mutually exclusive.

The challenge facing the young state's ethnic Ukrainian elite, is to ensure that the inclusive rights of Ukrainian citizenship eventually extend to an inclusive concept of nationality. As several deputies stressed (Interviews, 6, 10, 18), the prospects of allowing dual citizenship at some point in the future cannot be ruled out, particularly if relations with Russia improve. Presumably such attitudes indicate a slow ongoing transition from a strictly ethnic conception of nationality to one that is based on an institutional model where citizenship and nationality become one and the same. The pace of such transition is dependent on the future development of relations between the Russian Federation and Ukraine, and on the maintenance of an internal policy of respect for ethnic minorities. Both should eventually lead to greater confidence in the long term viability of Ukraine as a nation-state, and therefore to a more inclusive conception of nationality. The institutional model of national identity is necessarily a statist one, so it is not surprising that after decades of stateless existence, Ukrainian national identity continues to be primarily expressed in terms of ethnic allegiance. However, this too may be changing:

“In my passport it says that I am a Russian. If I was born in Ukraine, and have lived all my life in Ukraine, then who am I? And my parents lived all their lives in Ukraine. What sort of a Russian am I? I am Ukrainian”
(Interview #17).

As Wilson (1996:52) has pointed out, the phrasing of the preamble to the Constitution: “...on behalf of the *Ukrainian people* (“Ukrayinskyj Narod”) - citizens of all nationalities” was the result of compromise between nationalists on the Right, and their opponents who proposed the formulation ‘people of Ukraine’ (“Narod

Ukrayiny”). However, such a text may also be indicative of a desire to foster an inclusive conception of Ukrainian nationality. Certainly, a balance needs to be struck between respect for the rights of minorities to remain different, and the emotionally argued (by members of the Right - transcripts June 25th) rights of ethnic Ukrainians to national self-determination and statehood. The sole solution is to be found in an institutional model of national identity, whereby expressions of patriotism and national pride cease to be linked to mythical elements such as history and kinship, and are transferred to a sense of pride in the attributes of citizen-membership in a given territorial state. Perhaps, with the adoption of the Constitution (often considered one of the main symbols of institutional nationality expression), such a process may have begun.

An Imperfectly Unified Elite

As many of the interviewed Right-bloc deputies emphasized, from their point of view, the conflict evident in the Constitutional debates was one of fundamental principles: was Ukraine to be or not to be, a *nation-state*? For the Right, the threat of losing independence, or the diffusion of the essence of the Ukrainian state as a homeland first and foremost, for the Ukrainian nation, was real. As late as 1995, the leadership of the revived CPU (the largest party in Ukraine) had declared itself in vehement opposition to “the criminal destruction of our single unified state, the USSR, and in favour of its restoration on the new basis of a Union of fraternal, equal peoples, as a voluntary coming together of sovereign socialist states” (CPU leader Symonenko - quoted from Wilson, 1997:115). As is evident from the Communists’ subsequent constitutional proposals, such a restoration of the Union also involved the linguistic and national assimilation of Ukraine within a greater Russian federation.

As the final night of debates on the Constitution progressed, a split seems to have developed within the ranks of the CPU faction in Parliament. Prior to June 27, the Left had categorically voted against all elements of the document that forbade a future union with Russia, and those that related to a specifically national characterization of the Ukrainian state. Late that night however, several Communist and Socialist deputies began supporting the compromise clauses drafted after extensive consultations with their political opponents. In the aftermath of the Constitution's adoption, many of them received party reprimands for doing so (CPU deputy - Interview #16).

Striking parallels can be drawn between such actions by members of the Left-bloc and the events of 1991 that led to the proclamation of Ukraine's independence. Most analysts of the latter agree that independence would not have been proclaimed without the active support and participation of the 'national communist' Kravchuk faction of the CPU (Krawchenko, 1993; Kuzio, 1995; Wilson, 1997). By 1994, many of the members of the former 'Group of 239' (the name given to the CPU majority in the 1989-93 Parliament) who had been re-elected to Parliament, had reoriented their political stripes and had become members of the new Centrist factions: Kravchuk, after losing the presidential elections, joined Social Market Choice; former Parliamentary Chairman Pliushch joined Centre. More conservative deputies remained in the reconstituted (after 1993) Communist Party (e.g.: B. Oliynyk) or joined the Socialist Party (e.g. Moroz, Chyzh, Nikolayenko). In the final analysis, it was these conservative Leftists that enabled the Constitution to be passed:

The Communists, notwithstanding their hatred of the Constitution, for the Ukrainian language, for us, objectively proved by their actions that night, that they are working within the framework of this state. This is an obvious fact. And this fact in particular, convinced me and proves that Ukraine as a nation-state, is today established and secure. (western Ukrainian Right-bloc deputy - Interview #8).

However, modifying one's views for the sake of a series of crucial votes carried out in the course of a single prolonged night of Parliamentary debate, does not necessarily mean that such changed attitudes remain constant in the aftermath. Indeed many Left-bloc deputies are likely highly dissatisfied with the adopted text of the Constitution, and have therefore found themselves outside the boundaries of legitimacy established by the fundamental law.

While conducting interviews for this study, I was fortunate enough to be allowed access to a representative of such anti-systemic views. In addition to the interview itself, this deputy provided me with the opportunity to observe the activities of his Parliamentary office for several hours, and to interact with him in a less structured environment. Interestingly, during the course of that day, several telephone conversations between his staff and members of Moscow-based Russian nationalist organizations occurred, including one between the deputy himself, and Zhirinovsky's private secretary. Extracts from the interview with this deputy (#4) follow:

On historical myths and language:

... the language that today is masquerading as the Ukrainian language, is not really Ukrainian. Western Ukraine is an interesting page in the biography of Ukraine, and the people who live there, work there, they are without a doubt, very interesting... Historically their language is called the "Ruthenian" language, and it is evident from history that in the first century of our era, people settled there, the Gals, who settled in the Carpathians and in Volyn', they brought with them a different culture, different traditions, and a different language... As for the Russian language, it is not 'Russian' ("rosiyska"), but 'Rus'ian' ("rus'ka"), from

the language of Kyivan Rus', which has renowned traditions, and it is that language that united the old tribes...

On nationality, citizenship and minorities:

Tell me, if in England, all Greeks, and everyone else that lives in that country were called English, how would you react? Citizenship, that's one thing, but when the Constitution says that everyone in Ukraine is Ukrainian, I think this is an insult to Greeks, to Belarussians, to Jews... they should be protected and allowed to develop. Not like the situation that we have now: well we were discriminated against in the empire, so now we'll discriminate against them... What discrimination? We lived better than Russia in Soviet times! The leaders in Moscow were who? Brezhnev, Khrushchev - all of them Ukrainians from Dnipropetrovs'k .So if it was an empire, then I guess we were the metropole.

It is important to note that the mere mention of this deputy's name (in the context of being asked whom else had I interviewed), resulted in an immediate negative reaction from other interviewees. Regardless of factional affiliation, other respondents in the current sample made a point of distancing themselves from interviewee #4. One must conclude therefore that his views are not only anti-systemic, but also considered fringe and radical, and not representative of the consensual majority. Precisely determining how close to the mainstream such views are, is unfortunately beyond the scope of the present study, but one indication of distance may be the fact that this respondent has switched factions twice since 1994, and today remains non-aligned.

Nevertheless, many of his views on the nationality issue echo those expressed by Russophone members of the CPU during Constitutional debates, making the continued existence of an internationalist Russophile faction within Ukraine's political elite, a likely possibility. According to the votes on Articles 10 and 20 of the Constitution such a faction constitutes 15-20% of Parliamentarians²⁴ - a figure that also corresponds to the number of deputies that have refused to take the new Parliamentary oath (technically a requirement only for those elected after the next election), which commits them to "protect the sovereignty and independence of Ukraine, to provide for the good of the Motherland and for the welfare of the Ukrainian people" (Article 79).

Given the existence of such an anti-systemic internationalist faction, the adoption of the articles of the Constitution relating to national identity expression (citizenship, language, symbolism) in their final form, can indeed be seen as a victory for Ukrainian nationalism. However (despite the comments of Interviewee #4), it is difficult to claim that the nationalism expressed in this document is of the integral or fascist variety. Rather, the new Ukrainian nation-state has adopted symbols that are unifying (at least in their description), and reflective of a distinct ethnic myth: a combination of Kyivan Rus' and Cossackdom. In the area of language rights, the concession made to Ukraine's Russian-speaking minority is symbolic, which is what this minority seems to have wanted, while other minorities have been provided educational rights well beyond those granted to minorities in other European states. Conversely, the language of the titular nationality has been made official and therefore its knowledge is compulsory for all citizens without prejudice. However, unlike several Baltic countries, Ukraine has enshrined citizenship rights that are inclusive of all residents, regardless of ethnic origin.

²⁴ For its part, the ultra-nationalist Right, which supports ethnic cleansing and forced Ukrainianization, numbers only 3% - 13 deputies (Wilson, 1997:137).

Thus, although the model of Ukrainian nationality universally adopted by the political elite continues to be ethnic, the system culture that defines the polity has, as a result of the Constitutional debates, come to include all residents of Ukraine regardless of ethnic origin or linguistic variance. In this respect, the Ukrainian elite has become unified imperfectly, with anti-systemic malcontents viewing the concept of an inclusionist Ukraine as inherently foreign, but with a majority agreeing that the Ukrainian nation-state has legitimate right to exist, together with all of the attributes that underpin its distinctiveness.

Political Culture and the Institutions of Government

As with the nationality question, during the months preceding the adoption of the new Constitution, controversies within the Ukrainian political elite surrounding the optimum institutional order for the organization of government were founded on differing interpretations of history. For the Left, the pivotal event that defined Ukraine's transition to democracy was the July 1990 Declaration of State Sovereignty of the Ukrainian SSR. This document defined Ukraine as a "people's democracy" where "Rada's" (Soviets or Councils) at all levels (national, oblast, regional, and village/town), represented the voice of the electorate, constituting the primary institutions of state power to which all other government branches were to be directly subordinated. For those who stressed the importance of this Declaration, the August 1991 Proclamation of Independence, was "a mere elementary political move for its (the Declaration's) protection, and a reaction to the August '91 events in Moscow" (Hol. Ukr. 28/05/96). The December 1st referendum was therefore, not a vote confirming the nation's desire for radical political change, but rather a confirmation of the principles enshrined in the Declaration of State Sovereignty. This desire to view independent Ukraine as the legal successor of the Ukrainian SSR was also reflected in the Left's proposals to include a mention of the 1990 Declaration in the preamble of the Constitution (Proposals 15-23, 71-77). Had this been accepted, legislation passed under the previous regime would have been automatically legitimized, together with a purely Parliamentary system of state organization.

It is interesting to note however, that with the exception of the most radical proponents of immediate union with Russia (Interview #4), the Left's interpretation of the events of 1991 generally places little or no significance in the March 1991 referendum which asked: "Do you agree that Ukraine should be part of a Union of Sovereign States on the basis of the Declaration of State Sovereignty of Ukraine?" (passed by 80.2% - Wilson, 1997:126). Although this Declaration was also mentioned in the later referendum question, clearly the issue being contested in that vote referred to complete independence, whereas the previous referendum defined the Declaration as the basis of sovereignty within a renewed Soviet Union. Most political actors therefore (except the CPU and Socialists), interpreted the December 1991 result (90.3%) as firm mandate to break with old establishment traditions, and therefore to

minimize the institutional continuity between the system of organization of the Ukrainian SSR, and its successor state. The latter argument was further strengthened by the fact that presidential elections were held concurrently with the referendum on independence, and turnout at both exceeded 84%.

Regardless of the revisionist tendencies inherent in the Left's historical justification of its arguments, the issue of parliamentary rule versus a mixed presidential-parliamentary system was a valid concern. Rooted within this conflict were differing visions of the role and form of representative government, and the need for elite accountability and direct citizen involvement in government decision-making. Without a doubt, the old system of single-party rule with legislatures acting as "sham parliaments" (Kiss, 1996:2), was universally rejected, but the issue of how to structure an institutional alternative was hotly contested.

Structuring Systemic Reform

Differing attitudes towards structural reform reflected divergent definitions of representative democracy, and resulted in differing visions of institutional organization at both the national level, and in the periphery. The Left argued that true democratic government required strong elected legislatures at all levels, with those at the local level subordinated and accountable to those above. Such legislatures would elect executive committees from among their members who would be "simultaneously bodies of state administration, subordinated to the corresponding Radas, Executive Committees of Radas at the higher level, and to the (central executive) Government" - as in the old Soviet system (Statements of the CPU - Hol. Ukr. 02/04/96, and Socialist - Hol. Ukr. 26/05/95, factions). The Right argued that such a system fostered over-regulation, and though decentralized in theory, eventually resulted in confusion as to the fields of responsibility of each branch and level of government. Their (and the Centrists') alternative was based largely on the organizational system of the French 5th Republic, with slight modifications (Hol. Ukr. 17/05/96).

Arguing that the formation of western-style civil society (which one deputy equated with Cossack "zemstva" - Interview #11), required an independent and clearly defined system of local self-government, members of the Right (and many Centrists) proposed

to limit vertical subordination of the executive branch to the regional (oblast and rayon) level, and strengthen the powers of elected municipal (village and city) legislatures. Such municipal councils would have the power to raise local taxes, and would elect an executive mayor who was directly accountable to the legislature. According to this plan, the effective role of oblast and rayon councils would be drastically reduced. They would be composed of municipal level deputies, delegated to their posts by their respective legislatures, with powers to exercise only minimal control functions over members of regional executive administrations through votes of non-confidence (deputy Bezsmertny - transcripts June 28th) Regional executive branch administrators would be appointed by the Kyiv government, and in addition to being subject to legislative non-confidence motions, would be accountable to the Cabinet of Ministers. The membership of the latter body would be appointed by the President and approved by the national Parliament.

While the Right argued that such a system allowed for direct democracy at the local level without unduly compromising the powers of the national executive in the periphery (Interview #14), members of the Left-bloc saw it as undemocratic, and argued that that it left the executive branch largely unaccountable (Hol. Ukr. 23/05/95). Their objections however, were countered by a third, competing system of institutional organization proposed by President Kuchma.

Kuchma's proposals broadly agreed with the system of local and regional government sketched out by the Right, but rather than making the Cabinet of Ministers accountable jointly to the President and Parliament, he proposed to minimize the influence of all legislative bodies - including the Verkhovna Rada. This would be accomplished in several ways: firstly by dispersing the voice of the legislature through a two-chamber Parliament, secondly by constitutionally guaranteeing the President the power to prorogue either or both assemblies, thirdly by granting the President the power of executive decree, and finally by delegating the appointment of key members of the executive apparatus to the exclusive competence of the Presidency (see March 1996 draft of the Constitution).

For many Parliamentarians on both sides of the political spectrum, such proposals were viewed as a step towards Yeltsin or Lukashenko (President of Belarus) style

authoritarianism (Hol. Ukr. 16/02/96 and Interview #3). Their objections were further strengthened by Ukraine's previous experience of strong Presidential rule under Kravchuk (Interview #8). The Kravchuk administration had replaced the previous system of regional executive committees elected by local Soviets with a network of Prefects (known as "Presidential Representatives") who were theoretically charged with enacting the central government's reform program, and were appointed and accountable solely to the President. In reality, the individuals appointed to these posts were members of the old Party nomenklatura who tended to act as effective brakes on the institution of reform (Kuzio, 1995:27). For some interviewed deputies, this experience of stagnation through executive centralization, reflected a planned conspiracy brought about by individuals who were in positions of power under the old Soviet system (Party apparatchiks, directors of state industrial enterprises, key leaders of the military industrial complex), who had benefited from the destruction of the check on their power previously provided by the structure of the CPSU (Interviews 5 & 9). Kuchma's plans for a strong executive branch, were therefore seen as a continuation of the conspiracy of the "Party of Power," and needed to be checked (Hol. Ukr. 19/05/96).

The Left's solution was radical decentralization, including a proposal to structure Ukraine as a federal state (primarily rooted in Russophone separatism - Proposals 51-53), the empowerment of local Soviets, and the reduction of the powers of the executive branch, particularly those of the President. Centrist and Right-bloc deputies on the other hand, argued that Ukraine should be a unitary state with significant central control over administration in the periphery, but was not prepared to delegate unchecked powers to the executive branch. Parliament in their view, must retain a significant degree of control over the activities of the Cabinet of Ministers, and it is this body that must become the highest organ of the executive - not the President (Hol. Ukr. 29/05/96).

Compromise by all sides was necessary. In the final adopted version of the Constitution, produced through negotiations with Kuchma's representatives in the Syrota Committee, the extensive powers of the Presidency have been tempered, and a much more even balance between the branches of the central government has been the result. The Cabinet of Ministers, not the President, has been declared the highest

organ of the executive branch, "responsible to the President of Ukraine and under the control of and accountable to the Verkhovna Rada of Ukraine" (Article 113). Its chairman is the Prime Minister, whose appointment by the President must be approved by a majority vote of Parliament (Article 114). The Prime Minister in turn appoints ministers and regional executive administrators whose candidatures are approved by the President only. Regional executives are accountable to the Cabinet of Ministers, and in addition can be dismissed by a 2/3 majority vote of no confidence by the appropriate regional legislature (Article 118). The Cabinet of Ministers itself can be dismissed by the President, or by a simple majority vote of no confidence by the Verkhovna Rada (Articles 87& 106). To the dismay of several members of the Left however (Interview #16), Parliamentary no confidence motions cannot be presented against individual ministers, but rather must be moved against the Cabinet as a whole, and result in the dismissal of the entire government (Article 115). Although such a system obviously reduces Parliament's (as a whole) control over the executive branch, individual deputies retain the right to present inquiries to members of the executive at all levels, and to chief executives of enterprises (both private and public), on matters of their own choosing. (Article 86). Given the obligation that such individuals have to reply to deputy inquiries, it is difficult to argue that Parliamentarians have seen their powers significantly reduced by the Constitution.

As for the President, Parliament retains a power of impeachment, although the results of such proceedings must be approved by both the Constitutional Court and a 2/3 majority of deputies (Article 111). All legislation is subject to Presidential veto which may only be overruled by a majority of 2/3 (Article 94). In addition to the exclusive right to approve Prime Ministerial appointments of members of the executive branch, the President appoints 6 of the 18 members of the Constitutional Court (with 6 appointed by Parliament and 6 elected by the Congress of Judges of Ukraine²⁵ - Article 148), and chairs the Council of National Security and Defence. The latter is a new organ created during the final months of the constitutional process as a coordinating body between the Ministries of the Interior, Defence, External Affairs, and

²⁵ The 1993 and March 1996 drafts had the President and Parliament each appointing 7 of 14 judges. Many Parliamentarians viewed such an appointment system as compromising the independence of this body.

the Security Service, and can also include the Ministers of Justice, Finance and Economics, and the Chairman of Parliament (Article 107).

According to the Constitution, the third branch of government, the judiciary, is to be fundamentally reformed during the next five years (Article 12 - Transitional Provisions). The adopted model of the new judicial system strongly resembles that of Germany, where a separate hierarchy of specialized courts exists for specific matters pertaining to common disputes, (i.e. civil, youth, business (arbitrage), divorce, criminal etc.), with a single Supreme Court as the highest organ of appeal for all hierarchies (Kopeychikov, 1997:117). The Constitutional Court is a separate body from the Supreme Court, and its functions are strictly limited to the interpretation of legislation (a function that members of the Left attempted to also delegate to Parliament - transcripts June 27th), and to judgements of the constitutionality of the activities of members of the other branches of government. The apparatus of the Prosecutor General is not structured as an independent branch within the judiciary, but rather falls within the general orbit of the executive branch. The precise organizational structure and functions of the Procuracy are to be determined by legislation, but the Constitution does not specify a timetable for this (Article 9 - Transitional Provisions).

The Aftermath

Almost one year after the adoption of the Constitution, deputies were asked whether they were satisfied with the institutional system that they had created.²⁶ All interviewees from the Right and Centre (and the one Socialist deputy in the sample) agreed unanimously that the political system sketched out by the Constitution is satisfactory, but complained that it has not yet been fully realized. In the words of one deputy:

At the present time, we need to pass almost fifty laws that would enable the full and proper functioning of the Constitution. The most important

²⁶ This question was based largely on the conceptual framework used by Aberbach et. al. (1981) while interviewing Western European elites, and subsequently by Lane's interviews in Russia (1996). In the present case, the following approximate wording was used: The Constitution has been in force for almost a year now. In your opinion, is there a need for reform, not of the economic system, but specifically of the political system? Is the system as it is defined by the Constitution satisfactory, or should it be reformed partially or completely?

ones are already in progress in the Verkhovna Rada and have been passed in either first or second reading. These are the Laws on the Cabinet of Ministers, on Local Self-Government, on Local State Administrations. With these three laws we'll enact the structure of power at the local level... A Law on the President of Ukraine and his administration is needed unquestionably; one on the Verkhovna Rada and its structure is also needed. In other words we need to legislatively protect the functioning of all branches of government. And we desperately need to enact judicial reforms... (Interview #2).

Although the lists of laws were not as extensive, most other respondents echoed the above remarks (Interviews 3, 5, 7, 9, 13, 18). It is clear therefore, that the Constitution is viewed by the elite as a guide and framework for systemic reform rather than a culmination of the reform process. Given the reality of the lack of an existing legal framework and the absence of legal traditions, together with the fact that the respondents were all legislators, it is not surprising that all stressed the need for reforms to be enacted through acts of Parliament, rather than through grassroots change. However, as will be argued further, such a top-down approach is also a reflection of a more fundamental attitude to mass-elite relations inherent in the political culture of Ukraine's elite.

Although the size of the sample in this study makes direct comparisons to other Parliamentary elites dubious at best, it is interesting to note that unlike Lane's (1996) Russian elite respondents in 1993, none of the interviewees in the present study found the political system established by the Constitution to be in need of complete replacement or fundamental reform. In fact, attitudes to political reform seem to resemble those of Western European politicians during the 1970's (Aberbach et. al, 1980:195), with most interviewees best characterized as moderate reformers who approve of the existing system in general, but view ameliorative changes within it as highly desirable. This in itself bodes well as an indicator of future regime stability.

Exceptions were two interviewed deputies from the Communist faction, and the previously mentioned non-aligned internationalist. Although none of them proposed the complete replacement of the system established by the Constitution, their

suggestions for systemic change, were more fundamental than those of their Centrist and Right-wing colleagues. For each, the institution of the Presidency was the primary complaint, leading one to suggest that it should be abolished outright (Interview #4). Others cited the recent growth of the Presidential apparatus as an example of executive duality and excess that needed to be checked by Parliament, but could not be due to the legislature's inability to dismiss individual members of the Cabinet, and the 2/3 majority required to overturn a Presidential veto (Interviews 10 & 16).

Thus, obviously some level of dissatisfaction with the balance of powers instituted by the Constitution is in evidence. However, it should be noted that even the more radical reformers who object to the current system, do not reject the institutions of state completely. Unlike their revolutionary ancestors, the Left seems to be resigned to working within the current framework of democratic contestation established by the Constitution. Looking ahead to the coming Parliamentary and Presidential elections (scheduled for March 1998 and October 1999 respectively), the leaders of Ukraine's Left-wing parties have already begun preparations for the campaigns, as well as internal negotiations aimed at fielding a single Presidential candidate among them. It will be interesting to see if the Left's objections to the institution of a strong Presidency persist if one of their supporters is actually able to win this office through a contested vote.

Without a doubt, Ukraine is today a mixed Presidential-Parliamentary system modelled largely on the French 5th Republic. As in the French case, Ukraine's top executive responsibilities are split between the offices of a directly elected President responsible for overall policy, and an appointed Prime Minister responsible for day-to-day operation of the government. There is however a crucial difference between the French and Ukrainian institutional orders. In France, the President has the right to prorogue Parliament, but has no formal authority to dismiss the Prime Minister. In the past, such a system has allowed appointed Prime Ministers from Parliamentary parties opposed to the President, to successfully manage the executive in periods of 'cohabitation'. In the Ukrainian case, the President cannot prorogue Parliament, but can on his own initiative, dismiss the Prime Minister. Although such a system results in an increase in the degree of subordination in the executive branch, and reduces the duality of the French model by placing the President clearly at the head of the

government, it allows for the renewal of constitutional crisis should a Ukrainian cohabitation occur. At the moment, there is no such danger because the party system in Ukraine is still very weak, but given the four year electoral term of Parliament (Article 77), and the five year term of the Presidency (Article 103), such a crisis could occur early in the next century.

Furthermore, although it was clearly Kuchma's desire throughout the constitutional process to ensure that the powers of the Presidency were not reduced, he may have pressed the issue to his own disadvantage. By placing the Presidency clearly at the head of the executive branch, the Head of State cannot enjoy the aloofness that has historically benefited the popularity of French Presidents. In France, Presidents are notoriously more popular than Prime Ministers due to the formers' ability to project images of themselves as statesmen who are above the fray of party politics. As such, French voters seem to release their Presidents of responsibility for economic problems (particularly during periods of cohabitation), and prefer to electorally punish Prime Ministers and their parties. Conversely, in times of relative stability and economic prosperity, the popularity of French Presidents seems to rise sharply together with that of the government as a whole (Anderson, 1995). Given his position as head of the executive with powers to independently dismiss members of the Cabinet of Ministers, it is unlikely that a Ukrainian President would be able to enjoy the electoral advantages of his French counterpart. In this respect, the Ukrainian Left may have scored an unwitting victory during the constitutional process by unintentionally increasing the voter accountability of the President, and reducing his future ability to use the Prime Minister as a scapegoat (Hol. Ukr. 08/06/96).

Role Perception

In addition to being a compromise between various political actors, the institutional system enacted by the Constitution represents a framework for mass-elite relations, and therefore reflects the elite's perception of its own role as representative of the population. In an attempt to inquire as to the elite's definition of this role, interviewees were asked whether they thought that the population as a whole had had sufficient influence on the constitutional process, and on the enactment of government policies in general. Distinctly different responses were received from those deputies that had personally been members of the Syrota Committee, than from those who had not.

Committee members lamented that, due to the volume of proposals, it had been impossible to fully examine each one, even though many were valid and worthy of inclusion in the final draft (Interviews 6, 12). For those on the extremes of the Right and Left, popular influence was viewed as a tactical measure of last resort, used by political parties to further their own goals. In the case of the Constitution this involved the gathering of petitions and signatures by both Rukh and the CPU in support of their respective alternative drafts (Interviews 7, 16).

The balance of respondents who were not active in the leadership of a political party, or members of the Syrota Committee, viewed themselves as filters of popular opinion, submitting those proposals that they considered valid and rejecting others. According to several deputies from this group, many of the proposals they received from constituents were repetitive, and therefore needed to be consolidated before submission. Universally, they emphasized the low intellectual level of most of the input of their constituents.

Such universally expressed negative appraisals of the Ukrainian electorate's ability to offer valid input into the policies of government are a reflection of the highly paternalistic culture of the Parliamentary elite. Although many respondents recognized that democratic government is to a large degree dependent on a participant electorate (Lijphart, 1989:50), they argued that given the current economic situation, popular input in state affairs is necessarily limited. "In our current situation this is a real problem. Today our cities are ready for local self-government, but villages and towns are completely unprepared" (Interview #1). The problem lies in the mindset of the population: "Today our electorate, the mentality of the voter, it isn't objective" (Interview #11). "In order for things to change from the grassroots upwards, we need to gradually change the rules of the game in our country; create laws; nurture the people so they won't steal and plunder" (Interview #13). Rather than a strictly representative role therefore, the elite's function must be to guide the people throughout the course of reform: "If we waited until the villagers left the "kolhosp" (collective farm) on their own, we'd be waiting for the next 50 years. The initiative must come from the top. People at the top understand new ideas" (Interview #14).

When asked in a follow-up question whether they believed that the adopted Constitution should have been confirmed by referendum, all agreed that there was little need to spend money for such a vote. As several deputies stressed, Parliament is a representative body that embodies the will of the population (Interviews 2, 10, 13, 14, 16). In Parliament, conflicts that boil beneath the surface of society are allowed to escape without threatening social harmony (Interviews 8 & 4). A referendum on the Constitution would have allowed the latent social cleavages evident in Ukraine to explode, even though the overall result would likely have confirmed whatever was asked (Interview 15).

I am completely convinced that a referendum would have confirmed whatever draft was proposed. If a draft instituting a monarchy would have been proposed, we would have a monarchy. If the draft had brought in some other stupidity, it would still have been adopted (Interview #16).

Despite such elitism, several respondents claimed that they could not discount the influence of their constituents when considering their own voting preferences in Parliament. They stressed the need to maintain a balance between the views of constituents and the greater good of the state.

Clearly a deputy should be 'above' in some sense, the average voter. But still their opinions need to be taken into account. So either vote like they want, or convince them that it's necessary and that your way is better. If they believe you, then you can vote with a clear conscience (Interview #13)

In the words of another: "My constituents are good people. They are honest people, They want to do what is best for Ukraine, but they are sometimes misinformed" (Interview #18).

Throughout the interviews, the problem of representation was tied to the idea of nurturing the people out of stagnation, through the development of a "structurized" society. For the Right, structuration involved the creation of a civil society modelled on that of the West, with non-political organizations allowing individual interest expression (Interview #14). For the Left, such expression was to be accomplished

through reconstituted worker collectives and political parties that would speak for particular social interests and classes (Interview #16). Indeed in either case, the perceived nucleus of a structured society with reference to political participation were parties. The fact that a coherent party system has not yet formed in Ukraine (over 50 parties are currently registered) was universally lamented as a barrier to the formation of truly representative state structures.

For Centrist and Right-wing deputies, until such time as a stable party system developed (defined by most as comprising 4-6 main parties), the institute of a strong authoritative Presidency was required to combat Ukraine's poorly developed mass psychology (Interview #5). Obviously Leftist deputies who tend to enjoy a greater degree of party organization, disapproved arguing that the President, though elected by the people, represents the voice of the state, not the electors (Interview #10).

However, even for the proponents of a strong Presidency, extensive executive powers did not mean entrusting it with unlimited responsibility. In each case they argued that the role of Parliament as a body that controlled executive excesses must be preserved. In the minds of such respondents, legislators had a duty to act as arbiters between individual interests and a greater common good. On the level of institutional responsibility, it is Parliament that represents the true voice of the people, and therefore acts as the final guarantor of a just society.

It is interesting to note that this concept of justice for Ukraine's legislators is not necessarily defined as the "rule of law." During the Parliamentary debates on the June 21st and 25th (transcripts & Interview #2), the issue of the textual formulation of Article 8 of the Constitution was hotly contested. In translation the first clause of this Article reads: "In Ukraine, the principle of the supremacy of law is recognized and effective." Unfortunately this wording hides the significance of the Ukrainian version. Supremacy of "law" (French word "loi"), as in written statute, translates into the Ukrainian word "zakon." The text of Article 8 however, proclaims the supremacy of "pravo" - a concept that encompasses not only formal legislation, but also justice and right (much like the French word "droit").

..."pravo" is most often expressed through the laws of the state, but it is possible for laws not to conform to "pravo" (unjust laws)... "pravo" is the expression of the general will of the people, the nation, whereas state laws often express only the particular will of a parliamentary majority, or others (deputy Hoshovska - transcripts June 25th)

Thus, the phrasing used in this Article is highly significant. It indicates that for Ukraine's elite the concept of justice is objective, precedes legislative acts, and is not necessarily defined through them. Clearly the experience of the Soviet regime has shown that the promulgation of laws cannot necessarily be equated with the construction of a just and ordered society. Furthermore, neither is a pluralist contest between a multitude of interest groups that theoretically balance each other to produce the common good, identified with democratic government. Rather, the true interests of the people are served when objective standards of morality and justice are followed (Hol. Ukr. 04/05/96).

During the interviews, several respondents alluded to their conceptions of the objective morality that guides their work as deputies, and mourned the breakdown of ethical values that they believe has accompanied Ukraine's transition to market economics (Interviews 3 & 14). For several members of the Right and Centre, a return to morality involved reviving the principles of Christianity (Interviews 3, 6, 9), while for the Left such desires were expressed through references to the old Soviet "Moral Code of the Builder of Communism" (Interview #4). In either case, ethics and justice are "objectively" defined, and it is the task of the elite to ensure their realization in society for the sake of the common good.

One of the tools that the Parliamentary elite has instituted for the fulfilment of such high moral goals is Article 80 of the Constitution, which states:

National Deputies of Ukraine are guaranteed parliamentary immunity.

National Deputies of Ukraine are not legally liable for the results of voting or for statements made in Parliament and in its bodies, with the exception of liability for insult or defamation.

National Deputies of Ukraine shall not be held criminally liable, detained or arrested without the consent of the Verkhovna Rada of Ukraine.

1When questioned about the last portion of this Article, deputies unanimously agreed that its inclusion was absolutely necessary - although some (Interviews 1, 6, 9, 12) objected to the guarantee of immunity from prosecution, arguing that the original text of the Syrota Committee that had restricted it to a prohibition of arrest, had been changed under dubious circumstances late at night.²⁷ Nevertheless, all believed that enshrining some level of immunity for Parliamentarians was, and continues to be, an indisputable necessity. As one respondent noted "if this clause did not exist, who would be the first to be thrown in jail? Me, as one whose opinions are a little different" (Interview #4).

As the people's protectors against the excesses of the state (specifically the executive branch) respondents argued that they require privileges that are above those of average citizens (Hol. Ukr. 28/11/95). The primary enemy is the state: considered dangerous because it controls a very powerful law enforcement apparatus that can be used to further individual, rather than collective goals. Parliamentarians, in their capacity as the people's representatives, have a duty to protect the rights of individual voters, and must therefore themselves be protected from law enforcement officials who would otherwise regularly fabricate spurious cases against them (examples - Interviews 3 & 16).

When asked if the inclusion of this immunity clause had led to its abuse, most interviewees replied that corruption in the legislative branch did exist, but it was not a serious problem. One respondent mentioned that he had heard of some deputies receiving payment from interested parties for having secured their access to ministers (Interview #18). Another reported that since being elected, some of his colleagues had purchased cars worth 3-4 times a deputy's yearly salary (Interview #16). Generally however, deputies agreed that such abuse was the exception rather than the rule.

A Governance Model

²⁷ The amendment was proposed by deputy Hrabar and passed at 12:10 am on June 28th, immediately after an incident involving the opening of a champagne bottle in the chamber to celebrate deputy Musiyaka's 50th birthday. Its text was not included in the lists of official amendments.

Aberbach et. al. (1981) propose two models which political actors in democratic states, use to define their own role within the system of government. Firstly, the "governance" model views political leadership as a reflection of the will of the polity:

The object of leaders is, or ought to be, to understand and implement the public interest, drawing counsel from the wise, the expert, and the prudent, but giving no quarter to 'self interested' pleas from 'partisans' or 'special interests.' Public issues can be - and therefore should be - resolved in terms of some objective standard of justice, or of legality (Aberbach et. al. 1981:141).

According to this view, the political leader rises to a large extent above the people: he/she is the interpreter of popular will (as a whole), and therefore deserves special rights and privileges.

The competing view is termed the "politics" model: it "endorses a pluralistic conception of the public interest and affirms the reality and legitimacy of conflict. The task of leaders is, first, to ensure the articulation of all relevant interests and, second, to seek to reconcile those interests wherever possible" (Aberbach, et. al. 1981:142). For adherents of the politics model, the clash of divergent interests is inevitable and healthy. Political leadership is viewed in terms of the representation of such interests, and the political actor is merely their voice (deserving no special privileges) in the perpetual negotiations which define the field of politics.

The overall impression that emerges from an examination of the Constitutional debate transcripts, and the comments of interviewed respondents, is that Ukraine's Parliamentary elite operates under a 'governance' model of political culture. Although deputies view themselves as representatives of their constituents, Ukrainian society is generally recognized as being "ill" (Interview #1), and therefore in need of a decisive elite to nurse it to health. The current economic situation has made the individual Ukrainian citizen ignorant, desirous of nothing more than "feeding his family, and finding a piece of bread" (Interview #17). In such an environment, the efforts of the elite must be channelled towards helping voters on an individual level while collectively maintaining social order and harmony.

However, as Reisinger et. al. (1994) have pointed out, a desire for strong paternalistic leadership is not necessarily to be conflated with authoritarian values. On the contrary, respondents all took pride in the democratic nature of the faction system in Parliament. Although faction leaders command respect, and their council is heeded extensively when deciding voting strategy, all respondents stressed the consensual nature of such decisions. Several Right-wing deputies proudly reported that on occasion, the leaders of their Parliamentary groups have been forced to silence their own opinions, and comply with the will of the majority - a manifestation of equality that in their opinion contrasts sharply with the strict discipline of the CPU and Socialist factions (Interviews 1, 2, 14). It should be noted however, that such perceptions of the internal system of unswerving obedience within the Left seem to be unfounded, given one Communist respondent's account of a similar event occurring within the CPU faction on the very day he was interviewed (Interview #10).

Notwithstanding mutual misconceptions, it is clear that deputies take pride in the democratic system that they have established at the elite level, and consider themselves to be a gathering of equals, with leaders viewed as slightly more equal than the rest. In the case of Right-wing and Centrist factions (referred to as "deputy groups"), collective decisions are often non-binding, with individual deputies permitted to vote against their colleagues without fear of later reprisals from them (Hol. Ukr. 28/11/95 and Interview #14). However, such egalitarianism is not extended to the population as a whole. Thus, popular participation in the drafting of government policies is not viewed as particularly desirable, nor are referenda generally seen as a viable means of government. Rather, in the words of one deputy, "a referendum is more elitist than Parliament, because in a referendum, the population will vote as it is told to" (Interview #3). The institution of Parliament is therefore viewed as the sole *informed* voice of the popular will.

Obviously this voice is not monolithic. When asked about relations within Parliament all respondents agreed that in principle, conflict between elected members of the legislature is a normal part of representative democracy. However in the case of the Constitutional debates, many deputies stressed that the dissonance of opinions was more fundamental than would be observed in a Western parliament. For the Right and Centre this conflict engendered a battle for Ukraine's independence against opponents

(including both the Left and Russophile members of the Kuchma administration - Hol. Ukr. 16/02/96) who sought to undermine it (Interviews 1, 3, 7, 8, 14, 15). For the Left, it involved a contest between the genuine will of the people, and subversive interest groups backing the President and financed by the West (Interviews 4 & 16). Thus, even though deputies recognize the normality of conflict in a democracy, few can be labelled pluralists in the sense of respecting the legitimacy of the opinions of their opponents.

Exceptions to such a universal adoption of the governance model consensus were evident in the remarks of two deputies that had previously held posts in the executive branch (one Centrist and one Right-wing). Unlike the findings of Aberbach et. al. (1981), who observed politicians to be more pluralist than bureaucrats, it would seem that the Ukrainian situation is reversed. Commenting on the debates of the Syrota Committee, one of these two respondents confessed: "I simply cannot imagine myself in these events without the participation of the Communists - without people with whom you need to argue, convince" (Interview #12).

Such attitudes contrasted sharply with those of most respondents who recognized the inevitability of conflict in principle, but stressed the abnormality of Ukraine's current situation, and longed for unity in the face of enemies driven by anti-statist goals (variously interpreted by the Left and Right). An overriding concern was a fear that the fundamental conflicts expressed in Parliament might spread to the streets and threaten peace in Ukraine's inherently divided society (Interviews 1, 8, 17).

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Thus, although the Ukrainian political elite seems to have created the institutional pact that long-term stability requires, members of the elite do not as yet appear to be confident enough in the security of the state's democratic structures to recognize the legitimacy of their political opponents' views. This does not mean that either group is sufficiently discontented to resort to armed struggle - quite the contrary. As one deputy proudly declared: "We today are the only country of the former states of the Union, which up to now has not had any military conflicts on its territory" (Interview #17).

However, one of the dangers of the governance model that the Ukrainian elite has adopted internally is that this peace may be threatened in the future by a group of its own members claiming to represent the national interest as a whole (Przeworski, 1991:92). The rhetoric of both Rukh and the CPU shows a tendency towards such claims with the former purporting to represent the Ukrainian nation, while the latter sees itself as the voice of Ukraine's workers. In the current situation however, these two main actors, together with the Centrist majority, have managed to achieve a structural balance through the Constitution that makes the breakdown of social harmony in the near future an unlikely possibility. If the example of the French 5th Republic on which this Constitution is based, does in fact fit the institutional demands of the distribution of political forces in Ukraine, such stability is likely to become permanent.

Social Policy Culture

The "Human and Citizens' Rights, Freedoms and Duties" section of the Constitution is comprised of 47²⁸ articles (approximately 1/4 of the text), of which 10 specifically refer to social protection and welfare rights. These include: the right to employment (Article 43), right to rest for those who are employed (Article 45), right to pensions in old age and social protection "in cases of complete, partial or temporary disability" (Article 46), right to housing (Article 47), right to a minimum standard of living (Article 48), right to free medical care (Article 49), right to a safe and healthy environment (Article 50), right to fully-funded primary, secondary and higher education (Article 53), and guarantee of social protection for members of the armed forces and their families (Article 17).

Given the current state of the Ukrainian economy, the declaration of such rights seems unrealistic and untenable. However, if one takes into account the extensive social guarantees of the Soviet Constitutions, it is clear that the omission of some form of declaration of socio-economic protection from the subsequent Ukrainian text would have amounted to a significant break with tradition, and would have been highly controversial. Indeed, unlike the issues of nationality and the organization of state institutions, the inclusion of the section relating to citizens' rights into the Ukrainian Constitution was practically uncontested. As one Rukh deputy observed: "The Left... wanted to make this section the fundamental stumbling block in order to wreck the constitutional process. But later, it turned out that we did not oppose them... so as not to give them this kind of ammunition, as if they are the protectors of social rights, and we oppose" (Interview #7).

Despite such a cavalier analysis of tactics, most interviewees from both sides of the political spectrum actually referred to the inclusion of social rights in the Constitution with extreme pride. Although respondents from the Left argued that social protection should have been strengthened with textual formulations explicitly designating the state as the sole guarantor of citizen welfare rights (Interviews 4 & 10), such objections seem to be more on the level of policy opinion and political posturing than

a reflection of fundamental ideological disagreement between various members of the Ukrainian elite.

Right to Employment

One of the central features of the Soviet state socialist system was its promise of full employment. A pivotal element of each version of the Constitutions of the USSR, was the ironclad pledge of each citizen's right to "guaranteed employment with payment for work in conformity with its quantity and quality" (Article 118 (1936) & Article 40 (1977) - Unger 1981). Indeed, whatever evaluative position one adopts with respect to the Soviet regime, its successful realization of this aim is indisputable (Cook, 1993). Beginning in the 1980's however, the Soviet social contract began to unravel, and structural unemployment appeared and grew as a result of the inefficiencies of Soviet industry and the failure of large-scale planning (Lane, 1996). Since the collapse of the USSR, mass joblessness has persisted and continues to rise (up to 40% in Ukraine in 1994 - UNHDR).

Unemployment has led to immense destabilization in each of the post-Soviet states. Out of this chaos has emerged a new socio-economic class, referred to in Ukraine as the "novo-ruski." This group is composed of former directors of state enterprises and young commercial traders who have taken advantage of the current economic turmoil and have rapidly become extraordinarily wealthy. In society, they are generally reviled for their perceived lack of honesty in business, and for having channelled much of their new wealth beyond the borders of their own states. Nevertheless in recent years, several such individuals have risen to the very peaks of political power in Russia (e.g. Berezovsky). Some have made an effort to legitimize their enterprises by employing large numbers of workers (e.g. Taburiansky in Dnipropetrovsk). In an attempt to inquire as to the attitudes of the political elite to such entrepreneurs (ethical or otherwise), and towards the role of the new private sector in job creation, deputies were asked the following question:

Article 43 of the Constitution states that all citizens have a right to labour, and that "the State creates conditions for citizens to fully realize their right to labour." During

²⁸ The balance of articles in this section is primarily devoted to a declaration of human rights and the protection of the individual through privacy, a ban on libel, inviolability of dwellings, habeas corpus, etc.

the last few years quite a few people in Ukraine, acting ethically or otherwise, but basically within the law, have become extraordinarily rich, and these individuals today often employ people, and create conditions for them to realize their right to labour. What do you think the attitude of the state to such people should be?

Respondent reactions to this question can be grouped into two main categories. The first protested that they did not see the connection between the type of wealth that the new rich of Ukraine have accumulated, and job creation (Interviews 4, 11, 13, 16). One deputy actually became belligerently annoyed at the implication that such a connection could possibly exist (Interview #15). The second group argued that it is the state's responsibility to create employment opportunities, and that one method of doing so is to legally legitimize the accumulated wealth of the new commercial class (Interviews 9, 10, 12, 14, 18). Interestingly, respondent attitudes towards the role of the new rich in the economy did not correspond to their factional affiliation, with members of both the Left and Right wings represented in both groups.

Whatever their views however, deputies generally agreed that those who have risen to wealthy status since Perestroika, have not done so through legitimate means. "Those that have become rich, have not become rich legally. There were no such laws ("pravo"). They did this by being able to bypass the law" (Interview #11). "I don't think that its possible within a year, or three or five years since independence, to have billions - to earn them legally, it's unlikely. Ergo it is our laws that have allowed such theft" (Interview #13).

Condemnation however, was not universal:

A characteristic of the Ukrainian mentality is to always take a negative view of someone close by if he is rich. That's why privatization is going very badly for us. It's not so bad if I don't have it, so long as my neighbour doesn't either. This is a very frightening thing... I can say from my own experience, when things were difficult... all my neighbours liked me. But when I became the director of my own firm, when I bought a car and became wealthy, and incidentally everyone knew that I had earned my money, that I hadn't engaged in speculation, that I hadn't taken any credits (loans), nevertheless I lost the respect that people had given me because I had become wealthy (Interview #18).

The issue of private ownership of productive enterprises and of land is one that continues to be hotly contested in Parliament. Although it seems clear that Ukraine's dubious honour as one of the last East European states to privatize its state assets is ending (Kuchma State of the Nation Address, 21 March, 1997), it is also evident that an attempt will be made to avoid the abuses of privatization that have occurred in other post-communist societies. Thus, in declaring the right to property, Article 41 of the Constitution also includes two caveats:

Property entails responsibility. Property shall not be used for the detriment of society. (Article 13)

The use of property shall not cause harm to the rights, freedoms and dignity of citizens, the interests of society, aggravate the ecological situation and the natural qualities of the land. (Article 41)

During the interviews, one member of the Left-wing referred to the inclusion of these two provisions in the Constitution as a major victory (Interview #16). However, during the debates surrounding these articles, the issues were not contested (transcripts June 24th, 25th), and similar phrases appeared in each of the preceding drafts. On the contrary, it would seem that a degree of consensus has emerged within the Ukrainian elite as to the desirability of maintaining of the state's role as the protector of the "social orientation of the economy." (Article 13.4) This includes both a degree of intervention and stimulation through direct ownership of some "natural monopolies" and most importantly, exclusive management of the welfare state.

As for job creation, all respondents agreed that at the present time, the state must remain the main actor in the economy responsible for generating employment. In the case of those who have "stolen" their wealth as a result of the turmoil of transition, the state must encourage them (it was not made clear how) to invest in the Ukrainian economy (Interviews 9, 13, 15). However, such individuals could not be relied upon to be the prime source of job creation in present economic conditions. Besides, such people are active in commercial trading, and do not create "real" jobs in the manufacturing sector (Interviews 4, 10, 13, 16). For the time being, economic transition to a market economy must be state-led, to avoid the "bazar" (Interviews 15 & 18), that has characterized Ukrainian economics since independence.

As for the future, respondent opinions diverged as to the need to maintain planning and continued state intervention in the market. Not surprisingly, such divergence corresponded to factional affiliation. Right-wing respondents argued for a gradual reduction of the state's role in economic affairs (Interviews 1, 8, 12), while the Left suggested the continuation of central planning, arguing that privatization has brought nothing but chaos and strife to Ukraine's population (Interviews 4, 16, and Hol. Ukr. 19/05/96).

Dangers of Collectivist Consensus

Opinions on the desirability of state activism in the economy, whether in the form of direct job creation, or through government stimulation of the private sector, are obviously a corollary of a more general attitude towards the proper role of the state as a provider of economic benefits to its citizens. In the West, such attitudes have been formed over several decades, and as a direct result of grassroots movements insisting on wealth redistribution. In an attempt to determine whether the social rights provisions in the Ukrainian Constitution were the result of such socio-political factors, and more generally to characterize the views of the Ukrainian elite towards state provided welfare assistance, respondents were asked to identify the major sources of influence on the inclusion of these rights in the adopted document.²⁹

Universally deputies cited the inheritance of the Soviet regime as the prime determining factor. Significantly, none cited pressures from grassroots organizations or trade-unions as a source of influence. Thus, although strike committees, and the miners' protests of 1990 and 1993 that united eastern and western region blue-collar workers may have been significant for the destruction of the old regime and its remnants (Crowley, 1995), their leverage does not seem to have carried forward into the next constructionist phase of Ukraine's transition.

On the contrary, respondents agreed that the social rights provisions of the Constitution were a natural reflection of decades of socialization in a collectivist social system (Interviews 4, 5, 10). "It's in our mentality, in our genes, ingrained in

²⁹ The question was phrased: The Ukrainian Constitution is rather unique in that it specifically lists many social rights, such as the right to housing, to medical protection, to employment. What in your

our skeletons, that someone is supposed to care for me. Once there was the father of all nations, Stalin, then there was the GenSec, now I guess its someone else" (Interview #11).

Although Right-wing explanations of the sources of influence on the inclusion of social rights in the Constitution usually began with an attribution of responsibility to the Left, subsequent elaborations made it clear that these articles were not opposed by any of the political actors in the constitutional process. For the Right, the provisions of the Constitution relating to social protection were viewed as a natural (though possibly unfortunate) reflection of the processes of socialization of the Soviet regime. Conversely for the Left, the constitutional protection of citizen welfare was a matter of principle. In their view, it reflected a positive innate aspect of an essentially collectivist Ukrainian culture.

The mentality of our people - well from time immemorial one would say, Kyivan Rus' and the rest of it, the root of our social order was the "obshchyna"... Socialism, with all its as they say, pluses and minuses, it gave the people real social rights... And I believe that every state that is founded, particularly one that let's say, loves its people, the ones that elected the deputies and the President, should make sure that the people receive social guarantees from the state (Interview #10).

However, despite claims that the social rights declared by Ukraine's Constitution reflect an unparalleled collectivist aspect of the Ukrainian people, in reality they do not differ significantly from the real welfare entitlements enjoyed by citizens of Western Europe - though in the latter case social protection is usually enacted at the level of legislation, not through the Constitution. The main difference between the Ukrainian case and that of Western European countries lies in the political conditions that led to the proclamation of the goals of the welfare state, and therefore its subsequent development in each. In the West, welfare institutions grew out of a combination of factors including political expediency (Keynsianism) in conditions of relative economic prosperity but stark social inequality. In Ukraine, social protection goals seem to have been proclaimed from above, and by force of inertia, in a society

opinion were the major sources of influence on the listing of such social rights, and do you agree with

that is at least as stratified as the most unequal Western state, but with no realistic method of fulfilling on the promise of welfare relief for the underprivileged. Thus, just as freedom of conscience and other human rights provisions of the Soviet Constitutions were destined to be declaratory in character, and never actually realized, so too may Ukraine's declaration of every citizen's right to state-funded welfare also remain unfulfilled. As one observer of post-communist transitions has pointed out, the pattern is not unique to Ukraine:

...by constitutionalizing welfare rights, and thus obliging the state to provide welfare services, the relatively poor countries of Eastern Europe are destined either to stagnation and eventual economic collapse, or to a cavalier disregard of constitutional provisions. Such disregard will undermine the constitution's credibility (Sajo, 1996:2).

Such a danger was in fact recognized by several respondents who complained that the declaration of social rights in the present economic context was simply irresponsible and dishonest to Ukrainian voters (Interviews 2, 3, 7). On the other hand, they were not prepared to condemn their inclusion in the final document, but rather saw them as a declaration of their (paternalistic) commitment to building a prosperous Ukraine in the future. As many deputies stressed, the Constitution was not adopted as a short-term measure: "It's quite another matter that we cannot today fully realize all of these rights, but the Constitution is not a document that must be obeyed to its full extent today" (Interview #12 - echoed in #18). "Social policy is a state provided guarantee of its desire for every citizen to become rich. It is understood that today, the state cannot help every person in reaching his ambition to a wealthy lifestyle, but neither should it inhibit its citizens from becoming wealthy" (Centrist deputy - Hol. Ukr. 01/02/96).

Clearly, the Ukrainian elite's goal is to institute the benefits of a Western market economy without jeopardizing the proclaimed socio-economic guarantees of state socialism. Thus the inclusion of welfare provisions in the Ukrainian Constitution underlines "the tension that exists between trying to forget the past, while at the same time trying to preserve the social ideals that the former system never lived up to"

(Futey, 1996:27). As one Centrist deputy, who claimed to be the author of the Right to Housing article (47) explained, the language of this clause is "market oriented":

Everything is properly written there. Market conditions, but the state guarantees everything - protects, creates conditions... In other words there are certain guarantees, but it articulates how these guarantees will be realized - conditions are created so that people can buy, procure as property, build housing. "Conditions are created" - this is all right. This is market terminology (Interview #13).

However, as one Western commentator has pointed out, "a Constitution that gives rights that cannot be enforced (cannot) be considered a serious legal document" (Futey, 1996:28). Social rights are positive rights that, when enforced, oblige the state to act in some way. Human rights on the other hand, are considered negative rights in that they prohibit intrusions by the state into the private sphere. Their enforcement is therefore a fluent derivation of the responsibilities of the judiciary.

Thus, regardless of the noble goals of the Constitution's framers, the declaration of social rights in the document is extremely dangerous: "constitutional social rights provisions help to perpetuate the inherited status quo, including inefficient state socialist institutional and organizational arrangements." (Sajo, 1996:1) Furthermore, the experiences of Hungary and Poland have shown that an activist Constitutional Court can use such provisions to overturn legislation designed to develop neonate markets, and reduce burgeoning government deficits. The most obvious example of the possibility of such an occurrence in Ukraine in the very near future is provided by the third clause of Article 49:

The State creates conditions for effective medical service accessible to all citizens. State and communal health protection institutions provide medical care free of charge; *the existing network of such institutions shall not be reduced.*

As one Centrist deputy pointed out, the inclusion of social rights provisions in the Constitution was a conscious decision: "...in order to obligate future Parliaments to ensure, enact, strengthen, guarantee, and protect these rights" (Interview #6). By doing so however, while fully aware that in Ukraine's present economic condition

there was no way to realize the type of social protection that that the Constitution supposedly guarantees, deputies have ensured that the Soviet tradition of legal nihilism and disregard for promulgated legislation persists. Furthermore, reforming the current inefficient welfare system has become virtually impossible, now that the status quo has been constitutionalized (Interview #1). Had the current Constitution not included a declaration of social rights, forcing their inclusion in the future would have required a mass grassroots movement organized specifically for this purpose, and would have occurred only in an economy that could realistically support a welfare state (as occurred in the West). Now that socio-economic rights have been codified, fundamental control over their fulfilment and over the economic transition process as a whole, has passed to the Constitutional Court which may act on the initiative of a single disgruntled citizen.

The Field of Social Policy Contestation

According to Esping-Andersen (1990), in Western states, consensual attitudes towards state intervention in the economy and in the provision of socio-economic welfare benefits, can be categorized according to a threefold typology. The first model is that of the "liberal" welfare state, where absolute primacy is given to the individual economic actor in the market, yet for reasons of expediency, and for the preservation of a stable economic order, some measure of state relief for the poor has been instituted. Thus, the provision of economic assistance to the disadvantaged is seen as a politically determined policy objective, not founded on doctrine (ideology), but rather originating in "struggle and arbitrary compromises between competing interests" (Dean, 1996:11). In such countries, welfare benefits usually take the form of means-tested social assistance and/or modest state insurance plans for pensioners and the unemployed.

The second model is the corporatist-statist version which predominates in continental Europe. Here, the motivation for the institution of social rights has historically been shaped by a Christian (most notably Catholic) moral philosophy that emphasizes community duty to less fortunate members, and to the institutional significance of the traditional family. In contrast to "liberal" welfare countries, the provision of social assistance is seen as the exclusive duty of the state (making private insurance schemes

almost anathema), but such provision is not necessarily universal, but rather is targeted at those deemed most in need.

The third, broadly termed 'social-democratic' model, embraces full universality (regardless of means) of state provided social assistance. In such states, the emphasis is placed on full equality, and welfare benefits are genuinely rights inherently held by all citizens (equal to human rights). Here, government policies stress economic equality of the highest standards, rather than an equality of minimal needs, but conversely taxes on those whose income exceeds socially acceptable norms is extraordinarily high.

The philosophical discrepancy between these three models holds significant consequences for post-Soviet states undergoing transitions to market economies. Under Soviet rule, social rights were universal. However, given the current political transformations, the continuation of such policies as a matter of doctrine, is unnecessary unless it is explicitly seen as desirable. Although there are significant economic and structural justifications for the continuation of welfare policies in these states, there is no philosophical reason 'per se' to see such policies as a reflection of inherent rights. Any provisions for social rights as rights, must therefore be treated as a matter of ideological consensus within the elite.

When asked if they regarded the inclusion of social rights in the Ukrainian Constitution as a reflection of the state's moral responsibility to its citizens, or simply as a matter of inertia from the Soviet era accentuated by poor economic conditions and the demands of the Left,³⁰ respondents almost universally objected to the implication that social protection could be anything other than a basic ethical axiom. In their view, provision of health, education, and welfare benefits by the state was clearly a matter of moral responsibility: "What is the state? What is it composed of? Without a population, a state is not a state. In other words the *socium* is the foundation of the state. So obviously the primary obligation of the state should be the protection of its population" (Interview #2).

³⁰ Respondents were asked: Do you believe that the provision of social protection is the state's moral responsibility or rather a matter of political necessity because people have grown to expect it from Soviet times?

In the US, legitimate demands for state activism in the economy do not exceed the boundaries of calls for an increase in poor relief, and antimonopoly legislation. In many European countries (except Scandinavia), this field of legitimacy extends to social democratic values also, including compulsory state social insurance with fairly strong, but not necessarily universal entitlements (Esping-Andersen, 1990:22). In Ukraine, the boundaries of the social policy field are shifted even further towards de-commodification, with the European corporatist model representing the most right-wing point of the political spectrum. In Ukraine, unlike in Poland and other East European states (Szacki, 1995), marketization has not led to the development of a significant liberal-capitalist political movement (at least not in Parliament).³¹

On the contrary, Ukraine's economic decline since independence has resulted in a revival of popular support for the Communist and Socialist Parties. The nucleus of the Left's demands are a renewed emphasis on equality in the drafting of government social policies, and an increase in state intervention in the economy. As one CPU respondent declared, commenting on the provisions of the Constitution as a whole: "Let's say tomorrow the Communist Party or the Left-bloc comes to power. We can build, well maybe not socialism, but some sort of transitional society to that state of affairs that is envisioned in our party program" (Interview #16). The goals of the CPU no longer include total public ownership of the means of production, but according to their vision, private enterprise would not extend much beyond the petty bourgeoisie (e.g.: comparison to the NEP period in Soviet history as the ideal balance - Interview #10).

Even Right-wing deputies who characterized their own positions as 'liberal,' do not seem far removed from the policy aims of the CPU. As several explained, their vision was for Ukraine to be a "socially oriented market economy" (Interview #7, also 3 & 8), that guaranteed state sponsored welfare for the poor only, but also included universal free education, health services, and progressive taxation (Hol. Ukr. 30/01/96), much like the statist-corporatist example of Western Europe (Interview #8).

³¹ The Liberal Party of Ukraine currently does not have any parliamentary representation. Its membership consists primarily of Russophone business people from eastern Ukraine, and its position on social policies is thus far unknown.

When asked if they viewed their preferences as leaning more towards social-democratic values, most Rightist and Centrist interviewees explained that social-democracy was a phenomenon associated with nations that are rich and can afford to distribute national incomes according to a principle of equality. In Ukraine, there is nothing to distribute (Interviews 2 & 10). On the other hand, liberalism was associated with an individualist philosophy that most agree is foreign to Ukrainian culture. Thus for the moment, it would seem that right-wing Thatcherite conceptions of a minimalist state find no quarter in Ukraine's elite.

This overall corporatist-socialist consensus within the Parliamentary elite seems to contradict the findings of Rose & Makkai (1995), which show significant differences in attitudes to welfare in all post-communist states. On the basis of 1992-93 survey data from the New Democracies Barometer, they concluded that in Eastern Europe, as in Western European societies, socio-economic differences are the primary determinants of attitudes to income redistribution and welfare, and not specifically national cultural factors. According to their findings, attitudes in Ukraine conform to the overall average measured throughout nine East European states, with a slight edge towards liberal individualist values over collectivism, but with a distribution that did not suggest homogeneous cultural consensus. The authors deduced therefore, that within particular socio-economic groups (those that have managed to survive and thrive in the chaos of marketization), the legacy of state socialist inefficiency and inequity has led to the development of a degree of distrust in the institutions traditionally responsible for the provision of social protection. Accordingly dissensus on welfare values indicates the development of a more liberal orientation within a portion of society, and is therefore a sign of transition to a West European style of social stratification.

However, as has been noted, the attitude of the Ukrainian Parliamentary elite to the new economic class is predominantly negative. Furthermore, as the moral protector of disadvantaged social groups, it would be difficult for the political elite to embrace liberal (Anglo-Saxon style) welfare state models. A 19th century Tory orientation might be more acceptable, but given the lack of a tradition of charity evident in all post-communist societies (Sajo, 1996), this too is unlikely. Statist corporatism or

more radically egalitarian alternatives of social protection models are therefore preferred.

Perhaps as one deputy explained, a change of mentalities is currently occurring in Ukraine, with the older generation incapable of accepting economic deregulation, and the young thriving in their new freedom (Interview #12). If this is in fact true, then the elite's consensual paternalism is disturbing in that it represents the views of only a portion of the population. The Right-wing's concern for the plight of the disadvantaged, though admirable, may reflect a degree of detachment from a significant sector of the Ukrainian population. As Rose (1995:55) has shown, "the distinctiveness of Ukraine is apparent in the much greater reliance upon an enterprising portfolio, one combining income from a regular job with income from an uncivil economy." Ukraine's population may be notoriously pessimistic, and its cultural discourse may emphasize tragedy and victimization (Stepanenko, 1995), but there are elements within it that have proven to be extremely resilient and adaptive to economic change. Whether Ukraine's elite would like to admit it or not, this young 'new rich' class holds the key to the country's future prosperity, and its values are likely to emphasize state intervention much less than those that currently fall within the elite established legitimate field of socio-economic policy contestation.

Conclusion

Prior to the adoption of the Constitution, the deep-seated cleavages evident in Ukraine's political elite made it fractured and divided. Its Left-wing did not accept the legitimacy of the existence of Ukraine as an independent state, nor did it concur with the planned introduction of new socio-economic and structural reforms that would represent a decisive break with the Soviet past. The leadership of the largely Western Ukrainian Right on the other hand, socialized by decades of struggle for statehood, and accustomed to campaigning for the destruction of all remnants of the Soviet era, was belligerent in its opposition to its conservative opponents. Nestled between these two groups were members of the political Centre whose vision of Ukraine's future, though rejecting the extremes of the nationalist Right and Communist Left wings, had not yet sufficiently crystallized into an unambiguous program of action. President Kuchma, upon election to Ukraine's highest office as a representative of such Centrist feelings, quickly found himself alienated from the Parliamentary mainstream, effectively constituting himself and his administration as a fourth political force within an already heavily fractured elite.

Given such a fundamentally divided political context, it is perhaps surprising that the Constitution was passed at all. Credit must be given to Kuchma for his skilful orchestration of the political atmosphere that forced Parliament to unite or become irrelevant to the transition process. The President's reward for his political savvy is a Constitution that gives him significant powers to enact further reforms without undue encumbrance. However, the legislative branch remains a powerful voice on the political scene with a corps of deputies committed by a paternalistic ethic to protect their constituents from the excesses of the reform process. Although not considered an ideal document by anyone, the Constitution seems to have provided an acceptable institutional framework within which all political actors can pursue their respective visions of Ukraine's future. The Right has been placated by the adoption of distinctly Ukrainian state attributes (symbols, language), while the Left has been satisfied that its vision of a socialist (or at least not radical capitalist) future has found expression in the text.

In transitional societies, socialization to a stable democratic political culture is an elite-led phenomenon that must be derived from a fundamental agreement within the elite itself, on the basic elements of that culture. Such agreement is embodied in the elite compact, formalized in the Constitution, and consisting of three distinct components: system culture, including state legitimacy and the definition of the polity; process culture, which involves positioning of the self and others in the sphere of politics, and recognition of the legitimacy of the expressive (institutional) framework for each; policy culture, which defines the parameters and function of economic policy as it affects members of the polity.

Through the process of adopting the Constitution, the Ukrainian political elite seems to have reached fundamental agreement on each of these elements. Formerly anti-national Leftists have acknowledged (though not universally) the legitimacy of Ukraine's existence as an independent nation-state in a European context, with all the trappings and attributes (both mythical and substantial) that this entails. Conversely, nationalist Right-wing politicians have accepted that ethnic minorities have rights equal to those of the titular nationality, and it is the responsibility of the latter to ensure and protect linguistic and cultural diversity within an inclusive Ukrainian state. Although Ukrainians' expression of national identity continues to follow a predominantly ethnic model, the overall consensus of the political elite to extend citizenship rights exclusively on a territorial basis regardless of ethnic background, points to a possible future transformation of the concept of Ukrainian nationality to a more institutional statist model.

In the domain of process culture, compromise by all political actors has led to the establishment of stable state institutions that allow for inclusive participation by all significant parties, while effectively balancing the powers of each branch of government. Internally, the political elite seems to have accepted the validity and equality of competing views - fundamental to democratic contestation - and has constitutionally protected the privileges accorded to actors within a governance model of political culture.

In social policy, the field of legitimate contestation has been established, and though significantly skewed towards the traditional Left, seems to coincide with the social

justice values of the political elite, and with its perception of its own role as protector of the collective will and rights of the citizenry.

Despite such widespread agreement however, it would be unwise to argue that the 1996 Constitution of Ukraine represents the permanent establishment of a stable compact that includes all members of the new state's political elite. Ideological and regional cleavages of the type manifest throughout the constitutional process, rarely disappear overnight. A significant anti-systemic faction within Ukraine's Parliamentary elite continues to reject the adopted consensual model of national identity. However, today, proposals that question Ukraine's right to independent statehood have become delegitimized - a claim that could not have reasonably been made a mere two years ago. Demonstrative of this change are the comments of one Left-wing deputy who was asked about his vision of Ukraine's future:

You know, if you had asked about that three years ago when I was just starting my political career as a Parliamentarian, I would have said without hesitation that I would like to see Ukraine as a socialist republic, a member of the Soviet Union... Well, much of that I can repeat today. With reference to Ukraine being socialist, I think this term is correct - depending on how you understand it. In other words, a Ukraine in which society would be socially just... Let this be called socialism, let it be called something else... As for Ukraine being part of the Union or not, I believe that Ukraine has correctly chosen its course: the course of independence; the course of independently solving its own problems (Interview #18).

As time progresses, the relative strength of the remaining marginal groups who question the legitimacy of the Ukrainian state is likely to fade. So long as the consensual inclusive and tolerant expression of national ideals adopted by the current elite is maintained, the process of socialization within the context of an independent Ukraine will eventually remove the electoral base of such marginal groups. Ukraine's Left will become a statist political force that works to achieve its goals within the legitimate institutional framework of the established system.

More worrying for the long term, is the Parliamentary elite's preference for enacting reforms using a top-down legislative approach, and the elitist political culture prevalent in its midst. Such paternalism may serve to create a mass-elite divide leading to social instability, and should such a divide become evident, the intra-elite compact embodied in the Constitutional document, would become irrelevant. However, if one accepts the views expressed by interviewees which characterize the Ukrainian population as essentially inert and suffering from anomie (an image supported empirically by Golovakha & Panina, 1995), then such destabilization is as yet a distant future possibility. Nevertheless, some scope within the established field of social policy contestation will need to be provided soon, for new entrants onto the political scene from Ukraine's more liberal-minded entrepreneurial class.

In the immediate future, the values inherent in the Constitution (i.e. the consensual inclusionary concept of national identity, and the legitimacy of democratic contestation through the established state institutions), will begin to be instilled in the population as a whole through a top-down process of socialization. By virtue of their position as members of a political elite, Parliamentarians act as identity-makers with powers to implant new meanings into the consciousness of the masses, and therefore to mobilize them to a common goal (Stepanenko, 1995). Socialization of this type can only be accomplished if consensus is achieved within the elite itself as to the values that it fosters. With the adoption of the new Constitution, a level of imperfect unity within the elite seems to have been achieved. The key to Ukraine's continued future stability lies in this elite's ability to project that unified vision onto the identity and culture of its citizenry.

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- 30/05/96 "Ideolohiya derzhavy chy ideolohiya peremozhciv?" (Ideology of the state or ideology of the victors?) - S. Nikolayenko, Socialist Party.
- 30/05/96 "Mayemo proekt yakyj slid doopraciuvaty" (We have a draft that needs to be reworked) - V. Butkevych, Centre faction.
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- 13/06/96 "Sytuaciyna bil'shist' pohody ne zrobyt'. Prynaymni soniachnoyi" (A situational majority will not create agreement. At least not a beneficial one) - O. Lavrynovych, Rukh.
- 18/06/96 "Khay bude sorom tomu xto pohano pro ce podumaye" (Let it be shameful to him who thinks ill of this) - V. Yablonsky, Rukh.
- 18/06/96 "Chy polamaye zlyj viter dereva nadiyi?" (Will an ill wind break the trees of hope?) - M. Zhulynsky, Centre faction.
- 18/06/96 "Ne bachyty - oznachaye viddaliaty perspektivu" (Not to see - means to retract one's perspective) - O. Moroz, non-aligned, Chairman of Parliament.
- 21/06/96 "Dozvoleno vse shcho ne zaboroneno. Zaboroneno vse shcho ne dozvoleno" (Everything that is not forbidden is permitted. Everything that is not permitted is forbidden) - O. Karpov, non-aligned, leader of the People's Democratic Party.

