

THE IMPACT OF SEMI-PRESIDENTIALISM ON DEMOCRATIC CONSOLIDATION IN POLAND AND UKRAINE

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Abstract: This article compares the influence of two subtypes of semi-presidentialism, premier-presidentialism and president-parliamentarism, on democratic consolidation in post-communist Poland and Ukraine. It distinguishes several periods of institutional development in Poland and Ukraine and then juxtaposes them against each other. Doing this makes it possible to disaggregate the impact of various institutional features on democratic progress in the two countries and explain discrepancies in their paths toward consolidated democracy. Two additional explanatory factors are employed to better capture the causes behind the different democratic performance of Poland and Ukraine: the clarity of the division of executive power and the level of commitment among the main political actors to existing formal rules. The conclusion examines the relative significance of the semi-presidential frameworks and actors’ behavior in the democratic development of Poland and Ukraine.

Despite the growing popularity of semi-presidential models among constitution-designers in recent decades, scholars are not as enthusiastic about this regime type. Ever since debates on semi-presidentialism entered the wider discussion about the influence of regime types on democratic performance, the general consensus in the literature has been

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that semi-presidentialism is dangerous for young democracies. All of the many objections against this type of government can be reduced to two main points: (1) semi-presidentialism can produce intra-executive branch conflicts between the president and prime minister; and (2) it can lead to the unrestrained domination of the president. In either case, the chances of democratic survival are thin, as the first scenario could lead to the use of extra-constitutional means to resolve the deadlock and the second scenario could undermine the existing balance of power and result in the erosion of democracy. Juan Linz¹ popularized this way of thinking and his approach has gained significant support among other scholars.²

Still, there are students of semi-presidentialism who defend it on the basis that it can deal with the shortcomings of both presidential and parliamentary systems. For instance, Giovanni Sartori argued that semi-presidentialism could, first, avoid the rigidity of presidentialism by shifting the leadership of the executive between president and prime minister and, second, alleviate the majoritarian component of parliamentarism by mechanisms of executive power sharing.³ In a similar vein, Gianfranco Pasquino supported semi-presidential constitutional choices on the grounds of their flexibility and adaptability to changing circumstances.⁴

Regardless of which position seems to be more plausible, the issue of choosing an adequate explanatory variable remains. Noting the great variety of semi-presidential regimes, Robert Elgie insists that semi-presidentialism as such should not be used as an explanatory variable. Instead, it should be disaggregated into subtypes which are better suited to be utilized as factors that could influence democratic performance.⁵ The most common classification of semi-presidential systems was offered by Matthew Shugart and John Carey, who distinguished premier-presidential and president-parliamentary models. In the first, the cabinet is responsible to the parliament, while in the second, it is responsible to

¹ Juan J. Linz. 1994. "Presidential or Parliamentary Democracy: Does It Make a Difference". In Juan J. Linz, Alfredo Valenzuela, eds., *The Failure of Presidential Democracy. Volume 1: Comparative Perspectives*. Baltimore: Johns Hopkins University Press, pp. 48-60.

² See, for instance, Cindy Skach. 2005. *Borrowing Constitutional Designs. Constitutional Law in Weimar Germany and the French Fifth Republic*. Princeton: Princeton University Press, pp. 123-7; Robert Elgie and Sophia Moestrup. 2008. "The impact of semi-presidentialism on the performance of democracy in Central and Eastern Europe". In Robert Elgie, Sophia Moestrup, eds., *Semi-Presidentialism in Central and Eastern Europe*. Manchester: Manchester University Press, pp. 256-7.

³ Giovanni Sartori. 1997. *Comparative Constitutional Engineering. An Inquiry into Structures, Incentives and Outcomes*. London: Macmillan, p. 124-5.

⁴ Gianfranco Pasquino. 2007. "The advantages and disadvantages of semipresidentialism". In Robert Elgie, Sophia Moestrup, eds., *Semi-Presidentialism Outside Europe*. London: Routledge, pp. 24-8.

⁵ Robert Elgie. 2011. *Semi-Presidentialism: Sub-Types and Democratic Performance*. Oxford: Oxford University Press, pp. 27-8.

both the parliament and president.⁶ In this article, I will follow Elgie's logic and look at the influence of the two types of semi-presidentialism, premier-presidentialism and president-parliamentarism, on democratic consolidation in Poland and Ukraine.

The existing literature points to the considerable advantage of premier-presidentialism over president-parliamentarism. On the theoretical level, premier-presidential systems create incentives for both president and parliament to cooperate, because the former has no other channel of influence on the cabinet after its installation and the latter usually doesn't want to be solely responsible for possible cabinet failures. President-parliamentarism, by-turn, could lead to a situation in which both president and parliament calculate that blame for problems with cabinet formation will fall on the opposite side and thus are more likely to engage in confrontation.⁷ On the empirical level, premier-presidentialism has been shown to be more conducive to stable performance in young democracies than president-parliamentarism.⁸ Moreover, a strong president under all types of semi-presidentialism was also identified as a factor explaining poor democratic performance among regimes.⁹

In this article, I will apply Elgie's definition of semi-presidentialism as a situation "where a popularly elected fixed-term president exists alongside a prime minister and cabinet who are responsible to parliament,"¹⁰ but complement it with the criteria of a divided executive already elaborated by Sartori.¹¹ For me, this approach seems to better capture the essence of the two paradigmatic cases of semi-presidentialism, Weimar Germany and the French Fifth Republic.¹² Still, I agree with Elgie that semi-presidential should be defined on the basis of constitutional wording and not political practice,¹³ since the latter approach would inject an enormous dose of subjectivism into the classification procedure.

⁶ Matthew Soberg Shugart and John M. Carey. 1992. *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*. Cambridge: Cambridge University Press, p. 23-4.

⁷ Elgie, *Semi-Presidentialism...*, pp. 31-4.

⁸ Sophia Moestrup. 2007. "Semi-presidentialism in young democracies. Help or hindrance?" In Elgie, Moestrup, *Semi-Presidentialism Outside Europe*, pp. 43-4.

⁹ Robert Elgie and Iain McMenamin. 2008. "Semi-presidentialism and Democratic Performance." *Japanese Journal of Political Science* 9, p. 339.

¹⁰ Robert Elgie. 1999. "The Politics of Semi-Presidentialism". In Robert Elgie, ed. *Semi-Presidentialism in Europe*. Oxford: Oxford University Press, p. 13.

¹¹ Sartori, *Comparative Constitutional Engineering...*, pp. 131-2.

¹² While I am aware of Elgie's criticism of criteria of divided executive (Robert Elgie. 2004. "Varieties of Semi-Presidentialism and Their Impact on Nascent Democracies." *Taiwan Journal of Democracy* 3:2, p.60; Robert Elgie. 2011. *Semi-Presidentialism: Sub-Types and Democratic Performance*. Oxford: Oxford University Press, p. 22), it seems to me that it misses the point: division of executive power does not necessarily lead to conflict between the two "heads" of the executive, as the most obvious case of cohabitation in France confirms.

¹³ Elgie, "Politics of Semi-Presidentialism," p. 13.

The analysis draws on the results of interviews with Polish experts on constitutionalism and democratic transformations. The results of the expert interviews will be used to enrich the understanding of Polish post-communist institutional history and establish firmer ground for a comparison of the two countries. The experts surveyed included prominent specialists in the fields of constitutionalism and democratic consolidation, both from academic institutions and high profile non-governmental organizations, who observed and sometimes took part in the political development of Poland during the last 20 years.

The divergence between the similar institutional features and different outcomes of democratic development in Poland and Ukraine lies at the heart of this analysis. Poland and Ukraine had several remarkable similarities in the initial period of their democratic transition, including their choice of the semi-presidential form of government. However, democratic consolidation in the two cases took different forms. During the 1990s, Poland was able to overcome the starting difficulties of applying democratic rules to the previously undemocratic environment and eventually succeeded in institutionalizing these rules. Ukraine, on the other hand, not only did not overcome the inefficiencies of its main state institutions, but also proved to be vulnerable to attempts to monopolize power by different political actors. As a result, the current political situation in Ukraine suggests a gradual re-establishment of authoritarianism.

Accordingly, this article will examine the influence of the type of semi-presidential constitutional framework (premier-presidential or president-parliamentary) on the processes of democratic consolidation in post-communist Poland and Ukraine. Two complementary explanatory factors identified by Shugart and Carey will also be considered: the clarity of the division of executive power between the president and prime minister and the commitment to the existing formal rules regulating this division by both sides. Both conditions, according to Shugart and Carey, need to be met for the positive potential of divided executive systems to manifest itself.¹⁴ Moreover, conceptualizing the interplay of institutional and behavioral factors will contribute to a more adequate understanding of dynamics in the two types of semi-presidentialism in Poland and Ukraine.

Obviously, constitutional frameworks and their use by the main political actors are not the only variables which explain the democratic performance of regimes. In the cases of Poland and Ukraine, divergences in democratic consolidation could be said to be conditioned by other factors as well. For instance, Poland was recognized as a European country by the EU already in 1992, which resulted in stronger links between Poland and the EU and more solid consensus on European integration among

¹⁴ Shugart and Carey, *Presidents and Assemblies...*, p. 56.

Polish elites, while Ukraine was largely unaffected by EU instruments of democracy promotion until at least 2005 and many of its elites felt closer to Russia.¹⁵ Secondly, it could be argued that regional divisions were much sharper in Ukraine and could contribute to fragmentation of party system and, as a result, of parliament. However, while both factors could help to explain the different outcomes of the democratic consolidation in Poland and Ukraine, they go well beyond the scope of this analysis and need separate research to be fully elaborated.

The discussion is organized in chronological and comparative fashion. Several key periods of institutional development in the two countries are distinguished. Within these periods, I examine the impact of the institutional features of the existing constitutional frameworks on the consolidation of democracy and compare the results. Ultimately, the analysis makes it possible to draw general conclusions about the role of semi-presidential constitutional frameworks in the democratic consolidation of Poland and Ukraine. Specifically, it provides an empirical test of the general preference for premier-presidentialism over president-parliamentarism. More broadly, the article contributes to the growing literature on the influence of semi-presidentialism on democratic stability in young democracies.

The Turbulent Years of the Early Post-Communist Period

The first thing about the different paths towards democracy in Poland and Ukraine which catches one's eye is that Poland started its democratic transition two years earlier. In February 1989, members of the communist establishment and oppositional Solidarity trade union opened negotiations, which eventually resulted in the recognition of Solidarity, introduction of the presidential office, and elections to both lower and upper chambers of the Polish parliament (Sejm and Senate, respectively). However, only elections to the Senate were totally free, while 65% of the Sejm mandates were reserved for the members of the ruling Polish United Workers' Party (PZPR) and its allies. While initially this constitutional agreement was seen by communist elites as an institutional guarantee of their ability to preserve their power, events that followed quickly undermined their position.¹⁶ In the parliamentary elections, Solidarity won all the freely contested seats in the Sejm and 99 of the 100 seats in the Senate. According to another agreement reached during the round table talks, both

¹⁵ Iryna Solonenko. 2009. "External democracy promotion in Ukraine: the role of the European Union." *Democratization* 16:4, pp. 713-4.

¹⁶ Michael Bernhard. 1997. "Semipresidentialism, Charisma, and Democratic Institutions in Poland". In Kurt von Mettenheim, ed., *Presidential Institutions and Democratic Politics: Comparing Regional and National Contexts*. Baltimore: Johns Hopkins University Press, pp. 183-5.

chambers of the parliament elected communist leader Wojciech Jaruzelski as the first president. However, the communists were unable to secure enough votes to appoint their own prime minister, so many of them joined Solidarity deputies in voting for the first non-communist prime minister Tadeusz Mazowiecki. With the PZPR's support plummeting, Jaruzelski decided to resign, and the first direct presidential elections took place in December 1990. Solidarity leader Lech Wałęsa triumphed in the second round, becoming the first directly elected president of Poland. The first free elections in Poland quickly created a precedent which, complemented by the growing popularity of Solidarity and the general dissatisfaction with the "contract" Sejm, led to free parliamentary elections in October 1991, bringing 29 political parties into the legislature.

Ukraine, on the other hand, officially started its democratic transition with the declaration of its independence on August 24, 1991, though this announcement was preceded by partly free parliamentary elections in March 1990, the creation of a constitutional committee aimed at developing a new constitution in December 1990, and the introduction of the presidential office in July 1991. The first phase of democratic transition in Ukraine ended on December 1, 1991, with the simultaneous presidential election won by former communist Leonid Kravchuk and the national referendum which confirmed the willingness of Ukrainian citizens to live in an independent country.

While such temporal discrepancies could partially account for differences in the nature of the democratic transitions in the two countries, they do not tell us much about the different outcomes of their democratic consolidation. This conclusion is indirectly confirmed by the similar problems that the newly formed democratic institutions in Poland and Ukraine faced in the first half of the 1990s. In both countries, the process of developing the new constitution was inseparably connected with the political struggle among the main political actors and the institutions they represented. Both countries passed legislation which defined power relations in the president-parliament-cabinet triangle in 1992. In Poland, this agreement was called the "small constitution," while in Ukraine it was adopted as an ordinary legislative act. Both arrangements established a semi-presidential form of government, but in its two different sub-types.

The Polish system was premier-presidential in its nature. The president gained the right to nominate the prime minister, but parliament had the final say in his appointment. In cases where the parliament disapproved of the president's nominee, the small constitution envisaged several additional methods for appointing the prime minister, shifting initiative from president to parliament and back. Members of the Council of Ministers (cabinet) were appointed by the president on a motion of the prime minister, except for ministers of foreign affairs, defense, and interior whose

nominees the prime minister was obliged to discuss with the president before sending the motion to him. The Sejm could dismiss the cabinet by a vote of no confidence, while the president had no such right. Thus, the cabinet was responsible only to the parliament, which made the new constitutional framework premier-presidential. The president obtained the right of legislative initiative and the right of veto, which could be overturned by a two-thirds vote in parliament. The president could also dissolve parliament in three cases: (1) if the latter failed to pass a budget within three months following the submission of its draft, (2) if parliament passed a vote of no confidence in the cabinet, and (3) during the last stage of a potential complex cabinet appointment procedure.¹⁷

By contrast, Ukraine opted for the president-parliamentary model. The mode of cabinet designation was similar to the Polish one, with the president nominating the prime minister and parliament approving or rejecting him. However, there were no other possible scenarios if parliament turned down the president's nominee; in such a case, the process would start from scratch. The president then could appoint all ministers on a motion from the prime minister. The cabinet bore responsibility to both the parliament and president and could be dismissed by both of them, which is typical of president-parliamentarism. The Ukrainian president was also granted the rights of legislative initiative and a veto that required a two-third parliamentary majority to be overruled. However, the president could not dissolve parliament.¹⁸

The reasons behind the adoption of these two legislative acts were different. In the Polish case, it was largely conditioned by rather slow and ineffective process of cabinet formation in late 1991, when Wałęsa failed to win parliamentary support for his preferred prime ministerial candidate Waldemar Pawlak. The inability of the Sejm's numerous political forces to cooperate raised the need to alter the traditional parliamentary mechanism of cabinet appointment.¹⁹ Thus, a cabinet appointment model that gave both parliament and president leverage was introduced. In Ukraine, the 1992 constitutional amendments came as a result of the country's recent independence and the establishment of democratic institutions. The Ukrainian reforms did not refer back to previous experience of democratic political coexistence, but rather wanted to distinguish the new democratic system from the old communist one.

¹⁷ International Constitutional Law. *Constitution of the Republic of Poland 1992 [The Little Constitution]*. At http://www.servat.unibe.ch/icl/pl02000_.html.

¹⁸ Verkhovna Rada Ukrainy. 1992. *Zakon Ukrainy pro vnesennia zmin i dopovnen do Konstytutsiyi (Osnovnoho Zakonu) Ukrainy*. At <http://zakon1.rada.gov.ua/laws/show/2113-12/print1170493519320716>.

¹⁹ A. E. Dick Howard and Mark F. Brzezinski. 1998. "Development of Constitutionalism". In Richard F. Staar, ed., *Transition to Democracy in Poland*. Basigstoke: Macmillan, pp. 143-4.

At the same time, the problems in the two countries were quite similar. In Poland, Wałęsa adopted a confrontational style of relations with the prime minister and parliament. Wałęsa's behavior was driven both by his personal style of politics, which earned him the reputation as a "master of destabilization,"²⁰ and his dissatisfaction with the role of president described in the small constitution, which provided his office with considerable powers, but few mechanisms to implement them.²¹ His vision of a strong president often clashed with the preferences of both the parliamentary majorities and the prime ministers who naturally favored a stronger parliament. Wałęsa tried to "prevent a parliamentary system from being institutionalized,"²² which inevitably led to conflicts with parliament and cabinet. The problem was reinforced by Wałęsa's refusal to affiliate himself with any party and his desire to distance himself from party politics. While he must have thought that such a decision would reinforce his position, in fact, it often meant that he could not rely on the support of any political force in parliament during his conflicts with prime ministers.²³

Wałęsa's confrontational style became even more salient after the 1993 elections, which his opponents, the post-communists, won. Wałęsa continued using his direct electoral mandate to challenge prime ministers who had been appointed by parliament and, thus, in Wałęsa's view, lacked popular legitimacy. But, if before 1993 Wałęsa's struggle with prime ministers sometimes resulted in their defeat, his success rate after the new parliamentary elections significantly dropped. Prime ministers were, more than before, parliament's choices and Wałęsa had a hard time finding ways to push for their dismissal. As a result, Wałęsa's erstwhile favorite Pawlak was able to keep his prime minister's office from late 1993 up until the 1995 presidential elections with parliamentary support.

Wałęsa's changing fortunes can be explained by the different nature of the 1993 parliament, which was elected according to the amended electoral law, which raised the electoral threshold to 5 percent for parties and 8 percent for party coalitions, increased the number of districts, and changed the method of vote counting, all of which combined to reduce the proportionality of the final results. Thus, the 1993 elections resulted in fewer parliamentary parties (seven rather than 29) and their corresponding enlargement. The reduction in party numbers, in turn, created more favorable conditions for their cooperation and structuring along

²⁰ Professor Wiktor Osiatyński. 2012. Interviewed by Oleksii Sydoruk, Warsaw, March 12.

²¹ Howard and Brzezinski, "Development of Constitutionalism", pp. 141-2.

²² Raymond Taras. 1998. "Voters, Parties, and Leaders". In Staar, *Transition to Democracy...*, p. 66.

²³ Francis Millard. 2000. "Presidents and democratization in Poland: The roles of Lech Wałęsa and Aleksander Kwaśniewski in building a new polity." *Journal of Communist Studies and Transition Politics* 16:3, pp. 39-62.

the majority-opposition divide. A more stable coalition was formed, and it provided greater support for the cabinet. As a result, the position of the prime minister vis-à-vis the president was strengthened, which made Wałęsa's attempts to bring the former down much less successful. As the new electoral system provided for the formation of a stable coalition able to exercise effectively its main functions, i.e. manage the legislative process and provide support for the cabinet, many observers assessed the 1993 elections as one of the main turning points in the successful democratic consolidation of Poland.²⁴ The basis for the future stabilization of the political system was laid, although the conflict-ridden political environment lasted for two more years, only coming to an end with the 1995 presidential elections, when former communist Aleksander Kwaśniewski won.

In Ukraine, the alignment of forces was different, but the problems of institutional development were similar. Former-communist-turned-national-democrat Kravchuk had to coexist with the communist majority elected to the parliament (Verkhovna Rada) in 1990. Like Wałęsa, Kravchuk favored stronger presidential power, but had little understanding of how to use his constitutional powers. Novelty and the lack of tradition in the presidential office pushed Kravchuk to emphasize informal methods of ruling, as he drew heavily on his experience as a communist party functionary during the Soviet era.²⁵ Moreover, Kravchuk's approach was considerably more compromising in nature, as he was trying to maintain good relations with all key players in the political system while keeping in mind his ultimate aim of controlling the executive. In the early days of his presidency, he achieved considerable success in this task by effectively controlling then-Prime Minister Vitold Fokin. However, Kravchuk's methods came back to haunt him after he secured parliamentary support for the supposedly loyal Leonid Kuchma, a representative of the former communist *nomenklatura* (communist party-backed large entrepreneurs). The new prime minister quickly revealed his unwillingness to stay in the president's shadow and started gathering support among both members of parliament and the population. The uneasy relations between the president and parliament finally ended with the political decision to hold simultaneous pre-term presidential and parliamentary elections in 1994. Unlike in Poland, the new legislative elections did not lead to a better structured parliament, as they were conducted on the basis of the majoritarian electoral system, which brought to the new parliament a large number of independent candidates. Kuchma won the presidential elections.

²⁴ Iain MacMenamin. 2008. "Semi-presidentialism and democratisation in Poland." In Robert Elgie and Sophia Moestrup, eds., *Semi-presidentialism in Central and Eastern Europe*. Manchester: Manchester University Press, p. 37.

²⁵ Sarah Birch. 2008. "Ukraine: presidential power, veto strategies and democratization." In Elgie and Moestrup, *Semi-presidentialism...*, p. 225.

Therefore, both in Poland and Ukraine, early periods of independence were plagued by conflicts between the main institutional actors: president, on the one hand, versus prime minister and parliament, on the other. However, differences between the countries were also visible. While the methods of cabinet formation were similar, the influence of the president on this process was not. In Poland, the premier-presidential system deprived the president of the right to dismiss the cabinet, which made the eventual choice of the prime minister and ordinary ministers much closer to parliament's preferences. The president could hope to secure only three loyal ministers, which provided little basis for the president to compete with the prime minister. Thus, while Wałęsa repeatedly demonstrated his desire to control the executive, he lacked the constitutional mechanisms to achieve this goal. This, in turn, prompted him to generally accept parliament's leading role in designating and controlling the cabinet. On the flip side, the presence of three "presidential" ministers definitely created grounds for institutional confrontations, as confirmed by several cases of prolonged conflicts between parliament and president over filling these posts during the second premiership of Pawlak.²⁶ Moreover, the constitution did not outline all zones of executive powers and responsibility sufficiently well. As a result, the president had a chance to exploit this vagueness to his advantage, as in the case of the constitutionally dubious dismissal of the head of the National Broadcasting Council in 1994.²⁷ Thus, the importance of a maximally clear division of executive power manifested itself.

All in all, the premier-presidential system had a mixed effect on the institutional development of post-communist Poland in its early years. It did not prevent stalemate and conflicts between the president and parliament during cohabitation periods and created additional and unnecessary areas of confusion over control of three ministers. However, it did help to avoid the intrusion of the president into the prime minister's domain by depriving him of the right to dismiss the cabinet or the authority to issue decrees. In other words, while the young Polish democracy certainly lacked stability, it was protected from sliding into either autocratic rule or constitutional chaos.

Ukraine's president-parliamentary model also created some room for institutional conflicts by providing two institutions with a popular mandate, parliament and president, both with mechanisms of control over the cabinet. Another potentially dangerous feature of the system was that it gave certain initiative in controlling the cabinet to the president, since the latter had the right to dismiss the prime minister and any minister at

²⁶ Krzysztof Jasiewicz. 1997. "Poland: Wałęsa's legacy to presidency". In Ray Taras, ed., *Postcommunist Presidents*. Cambridge: Cambridge University Press, p. 152.

²⁷ *Ibid*, p. 151.

his will. However, this threat did not actualize itself during the first years of independent Ukraine due to the low level of institutionalization of the new constitutional rules. Both President Kravchuk and the Verkhovna Rada usually preferred informal methods of reaching their political aims, often leaving constitutional mechanisms aside. As a result, control over the executive switched from one institution to another, being conditioned not by existing constitutional rules, but by regular fluctuations in the constellation of power among the main actors. Thus, the influence of the president-parliamentary form of government on the early development of Ukraine was marginal at best.

Two Different Ways to Adopt the Constitution

The newly established political institutions in the two countries were entrusted with the task of adopting full-blown constitutions and managed to do so in relatively short terms. However, the nature of the constitution-making processes differed considerably. In Poland, drafting the new basic law was concentrated in the Sejm that was then controlled by the Democratic Left Alliance (SLD), while newly elected President Kwaśniewski, a former member of the SLD, took a constructive stance toward parliament and restricted his activities to offering several punctuated changes to the draft of the constitution. Naturally, his suggestions sought to increase the president's powers, but nevertheless demonstrated Kwaśniewski's unwillingness to push for a strong presidential model. Most of his proposals were accepted by the parliament, as they did not disrupt its preferred balance of power.²⁸ Furthermore, Kwaśniewski succeeded in creating a broad coalition of support for the constitutional draft, which included not only the post-communist majority in the Sejm but also some members of the post-Solidarity opposition.²⁹ As a result, both president and parliament supported the final constitutional draft, which was put to a referendum in early 1997. The voters approved the constitution, and it came into force the same year.

The final document did not radically change the system of power distribution in Poland, but did curtail the president's powers in controlling the executive branch. For instance, he lost his right to provide advice on the candidates for ministers of interior, foreign affairs, and defense to the prime minister. Moreover, the new constitution explicitly stated that all powers not reserved to any other state or local institution were granted to the Council of Ministers. Otherwise, the process of cabinet appointment was simplified, but remained unchanged in essence. The cabinet

²⁸ Ania van der Meer Krok-Paszowska. 1999. "Poland". In Elgie, Moestrup, *Semi-Presidentialism in Europe*, p. 189.

²⁹ Dr. Jacek Kucharczyk. 2012. Interviewed by Oleksii Sydorchuk, Warsaw, February 22.

and ministers were, as before, responsible only to the parliament. The president retained the right of veto, but it could be overturned by three fifths instead of two thirds of the deputies' votes. Moreover, the president could no longer dissolve parliament if it voted the cabinet out of office, while two other possibilities remained.³⁰ Thus, Poland remained within the domain of premier-presidentialism, although evolving into an even less presidentialized version.³¹

Things were radically different in Ukraine. Notwithstanding parliament's exclusive prerogative to adopt the constitution, the newly elected President Kuchma, from his first days in office, demonstrated his willingness to be the leading actor in this process. Already in late 1994, the presidential administration introduced a constitutional bill to parliament, which, if it had been adopted, would have created a presidential system. Naturally, parliament blocked it. Using his high popularity and direct mandate, Kuchma, nevertheless, continued to be the driver of the constitution-making process and did not refrain from blackmailing parliament, threatening two times to initiate a nation-wide referendum on constitutional issues. The conflict finally ended in June 1996, when after working non-stop for 24 hours, parliament adopted a modified presidential bill.

Quite surprisingly, the eventual result in many regards resembled the previous president-parliamentary system. The president retained the right to nominate the premier and appoint all ministers on a motion from the latter, as well as dismiss them at will. Parliament had final say in appointing the prime minister and could also terminate the cabinet and fire any minister. Thus, the cabinet remained responsible to both parliament and president, which is characteristic for president-parliamentarism. The president's rights of legislative initiative and veto remained intact, and he was granted the prerogative of dissolving parliament if the latter could not open session for 30 consecutive days.³²

The process of adopting constitutions in Poland and Ukraine highlighted the importance of the third explanatory factor – the commitment of the political actors to the existing formal rules. In Poland, President Kwaśniewski agreed to the dominant role of the parliamentary deputies in the process of designing the new basic law, as was explicitly stated in the acting constitution. As a result, parliament was able to concentrate its efforts on the proper design of the future mode of power distribution. Constitution-writing in Ukraine, at the same time, was marked by the open unwillingness of Kuchma to strictly follow the formal rules and let the

³⁰ Sejm Rzeczypospolitej Polskiej. 1997. *The Constitution of the Republic of Poland of 2nd April, 1997*. At <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

³¹ Professor Piotr Winczorek, 2012. Interviewed by Oleksii Sydorchuk, Warsaw, February 29.

³² Verkhovna Rada Ukrainy. 1996. *Konstyutsiaya Ukrainy*. At <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

Verkhovna Rada consider different drafts of the constitution in a stable and peaceful environment. Instead, Ukraine's second president tried to coerce deputies into accepting his draft by threatening to call a referendum on highly dubious legal grounds. In order to prevent the referendum, parliament was forced to rush the whole process of constitution-making and accept some of the president's demands.

Not surprisingly, the difference in the level of commitment of the main political actors to the existing formal rules led to different horizons of available constitutional choices. In Poland, parliament was relatively free from the need to pay attention to the interests of, and constraints imposed by, other actors, thus having greater flexibility in choosing among a wider range of constitutional variations. The Ukrainian parliament worked under strong pressure from the president and, therefore, was more restricted in the choices that it could consider.³³ Moreover, the politicization of the constitutional process, which came as a result of Kuchma's active involvement, altered the incentives of the parliamentary deputies. Faced with the active efforts of the president to expand his powers in the new constitution, they reacted with attempts to curtail the president's role and strengthen parliament instead. As a result, all relevant actors in the constitution-building process became more interested in designing institutions to serve their own needs instead of setting up a balanced system to which they would adjust in the future.³⁴

The different incentives faced by the dominant players thus determined the content of the future constitutions. In Poland, the drafters were more concerned about the challenges that the current constitutional system was facing at that time and could rely on lessons learned from past institutional experience. The first lesson learned concerned the destabilizing potential of the three "presidential" ministers in the cabinet. As a result, the 1997 constitution relieved the prime minister of the necessity of consulting with the president before nominating them. Second, the frequent change of cabinets during the early post-communist years led the constitution designers to introduce a full-blown constructive vote of no confidence, which meant that the parliament couldn't dismiss the prime minister without at the same time nominating a new one. Third, potential competition for unforeseen zones of vaguely defined executive power was addressed by reserving all such powers to the cabinet. Finally, frequent legal disputes between different institutions prompted the constitution-makers to strengthen the Constitutional Tribunal. According to the new provisions, its decisions could no longer be overruled by parliament.

³³ Paul Kubicek. 2009. "Problems of post-postcommunism: Ukraine after the Orange Revolution". *Democratization* 16:2, p. 33.

³⁴ Oleh Protsyk. 2003. "Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet in Ukraine." *Europe-Asia studies* 55:7, p. 1092.

Since control over future institutions lay at the heart of the constitution-making process in Ukraine, it was to a much greater extent determined by the relative bargaining and resource power of the political actors.³⁵ In this regard, the advantage was clearly on the side of the president who bore fresher popular legitimacy and was able to speak with a single voice. Parliament, by-turn, was divided between ideological opponents – communists and national democrats – and had a hard time reaching internal consensus. That the resulting constitutional document was situated closer to the ideal point of the president than parliament, thus, should be of little surprise.

The last observation points to the importance of another institutional factor responsible for the different outcomes in the constitution-making process. As was already mentioned, Poland modified its electoral law in 1993, raising the electoral threshold, but retaining the proportional model, which resulted in a more structured parliament that was able to produce a stable coalition. Ukraine's majoritarian system, instead, paved the way for numerous independent candidates with no ideological or programmatic commitments who fragmented parliament to a great extent and aggravated the existing right-left cleavage. Naturally, while the Sejm succeeded in consolidating the opinions of different deputies into one coherent document, the Verkhovna Rada was plagued by conflicts and misunderstandings, which damaged its ability to counteract the president's offensives. Thus, the different constitutional outcomes were also – albeit indirectly – influenced by the different electoral systems.

Moving in Opposite Directions

The impact of the constitution-making process on the democratic performance of the two countries was quickly visible. The Polish political system, for instance, immediately faced a period of cohabitation: the former Solidarity political forces, which had united in the Solidarity Electoral Action (AWS) coalition, won the 1997 parliamentary elections. Thus, the right-wing parliamentary majority was forced to coexist with the leftist president. However, such cohabitation proved to be quite peaceful. On the one hand, the AWS-led coalition was able to quickly install the cabinet of Jerzy Buzek, which lasted until the next parliamentary elections despite losing its majority status after the departure of AWS's partner, the Freedom Union (UW), in 2000. This stability clearly indicated the serious maturation of the Polish party system, as well as an improvement in the cabinet's ability to secure support for its policies in parliament. On the other hand, President Kwaśniewski chose not to confront the coalition

³⁵ Timothy Frye. 1997. "A Politics of Institutional Choice: Post-Communist Presidencies". *Comparative Political Studies* 30, pp. 532-533.

and government as much as Wałęsa did. His approach to policy-making was to moderate what he saw as extremes, i.e., in his relations with parliament and the cabinet, he mostly used his constraining powers, such as the right to veto and refer bills to the Constitutional Tribunal. In doing so, he demonstrated his willingness not to compete with the cabinet for executive power, but rather to correct its possible mistakes. As a result, while relations between the president and members of the cabinet and coalition were far from friendly, they never erupted into serious conflicts which could damage the institutional balance of the Polish political system. Moreover, a mutually acceptable division of responsibilities between the president and prime minister was reached during that period. While the cabinet dealt mostly with domestic policy, the president took an active stance on the international arena, resisting attempts by the cabinet to curtail his powers in the sphere of foreign policy.³⁶

The situation did not change much after the 2001 parliamentary elections, which again brought the left-wing SLD to power. Relations between Kwaśniewski and the two cabinets of Leszek Miller and Marek Belka in many regards were characterized by similar features of divided responsibilities. Maybe even more important, the political tranquility of the Polish form of government proved resistant to the turbulent economic situation which plagued the country from the end of the 1990s onward. In 2003, for instance, Miller repeated Buzek's fate after expelling one of his coalition partners, the Polish Peasant Party (PSL), for voting against its own government. Thus, Miller had to endure his remaining days in the premier's chair as the head of a minority government. Moreover, he resigned on the very next day after Poland's accession to the European Union (EU), and parliament was able to install the new government of Belka only in its second attempt. Yet, SLD proved able to maintain control over the cabinet and secure the parliament's support of most of its policies until the next parliamentary elections of 2005. The Polish political system's ability to resist the exogenous shocks of economic troubles was a clear indicator of success in its democratic consolidation.

Democratic consolidation in Ukraine during the two-term presidency of Kuchma, instead, suffered a serious blow. During his time in office, Kuchma did his best to expand his executive and legislative powers. In order to reach this aim, he used different strategies and, unlike Kravchuk, tried to squeeze as much as possible from his formal power. In his relations with prime ministers, he extensively used his constitutional powers to appoint loyal members of the cabinet, thus eroding the prime ministers' leadership, and quickly dismissed heads of cabinet if the latter challenged the president's dominance (the best example being the corruption scandal

³⁶ Millard, *Presidents and democratization...*, p. 55.

which brought down Prime Minister Pavlo Lazarenko). Moreover, he tried to diminish the cabinet's control over policy-making by using his own administration and creating numerous bodies filled with loyalists which mirrored the cabinet's activities and served as a de facto "shadow government." In his relations with parliament, Kuchma created an extensive clientelistic network, which allowed him to secure the loyalty of many deputies, stimulating their support by political and economic benefits and threatening to embarrass them with compromising materials if they did not comply.³⁷ However, Kuchma's dominance over parliament was limited by his inability to secure a stable coalition. In order to compensate for this lack of effective control, he sometimes resorted to violating the constitution, such as by refusing to sign legislative acts after the parliament had overridden his veto with a constitutional majority.

Kuchma's main institutional rivals, for their part, were unable to effectively resist his attempts to monopolize power. Parliament was filled with numerous factions and non-party deputies who had no clear ideological or programmatic commitments. Therefore, the process of coalition-formation was doomed from the beginning: no stable parliamentary majority was formed in Ukraine until 2006. Not surprisingly, members of the Verkhovna Rada were unable to speak in one voice and counteract President Kuchma's offensives. The cabinet had even fewer chances to act as a strong political actor. In many regards, its weak position was conditioned by the constitutional provisions which granted both parliament and president the right to dismiss it. Permanently in the crossfire, the cabinet and its members, therefore, concentrated their efforts more on the task of survival than on policy-making duties. Moreover, Kuchma extensively used the cabinet as a shield against popular dissatisfaction, blaming the latter for policy failures and, thus, diminishing the cabinet's image in the public eye.³⁸ As a result, President Kuchma generally succeeded in dominating the executive and marginalizing parliament, which severely disrupted the logic of a divided executive model and hindered the process of democratic consolidation.

Again, differences between premier-presidentialism and president-parliamentarism identified in the literature prove to be useful in explaining differences in the democratic consolidation of Poland and Ukraine. The logic of Polish premier-presidentialism gave clear prerogative in forming and controlling the cabinet to parliament while restricting the president in his willingness to interrupt the cabinet's affairs. Moreover, the 1997 constitution was a clear step forward in terms of increased clarity in the

³⁷ Oleh Protsyk. 2003. "Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet in Ukraine." *Europe-Asia studies* 55:7, pp. 1077-1095.

³⁸ Thomas Sedelius. 2006. *The Tug-of-War between Presidents and Prime Ministers: Semi-Presidentialism in Central and Eastern Europe*. Örebro: Örebro Universitetsbibliotek, p. 166.

division of power and responsibility between the president and premier. Having been deprived of the right to choose the ministers of interior, defense, and foreign affairs, the president could no longer provoke internal cabinet instability and clashes with parliament. The reservation of all unspecified power to the cabinet was another move in the right direction, which prevented the president from exploiting vagueness in Poland's legal norms and provoking conflicts on these grounds. Stripping the president of such powers meant that he had little incentive to challenge the prime minister in his control over the executive branch. All in all, the Polish form of government, according to the 1997 constitution, proved to be closer to the ideal type of premier-presidentialism, which allowed this model to more fully develop its propitious influence.

President-parliamentarism of Ukrainian origin, instead, proved prone to consolidating power in the president's hands. The combination of a popular mandate with considerable executive powers in the president's office turned out to be the Achilles' heel of this system. Such a configuration created incentives for the president to expand his powers at the expense of the prime minister by trying to control the cabinet and diminish the latter's political role by all means possible. Moreover, the president had to worry about the political orientation of the parliament, since the latter also possessed the right to dismiss the cabinet. This situation prompted the head of state to undermine the parliament's internal cohesion and ability to act as a consolidated political actor. The double subordination of the cabinet was another considerable flaw of Ukrainian president-parliamentarism, since it seriously hindered the cabinet's ability to independently exercise executive powers and made it vulnerable to the president's blame games. Parliament's ability to resist the president's expansion was undermined by another aspect of president-parliamentarism – the absence of any meaningful institutionalized connection with cabinet, be it a mechanism of coalition formation or the cabinet's obligation to get its program approved in order to be inaugurated. As a result, parliament's control over the cabinet was restricted to votes of (no) confidence. Under such unfavorable institutional conditions, clarity in power divisions seemed to be of little importance, as it was already undermined by strong incentives to break them, predominantly by the president.

The same could not be said about another explanatory factor – the level of commitment of the main political actors to the formal rules. While premier-presidentialism in Poland was a safety valve against the intrusion of the president into the cabinet's affairs, any president other than Kwaśniewski could have exerted a more destabilizing influence even in such conditions. After all, notwithstanding changes made in the 1997 constitution, Wałęsa demonstrated more flexibility in interpreting his formal powers, which naturally resulted in a more conflict-ridden

environment. Kwaśniewski, however, demonstrated his willingness to strictly adhere to constitutional limits during his two terms and, thus, was able to keep relatively peaceful relations even with the ideologically hostile parliament. This situation also helped him to reach a durable division of executive competences with prime ministers, with domestic policy being under the cabinet's control and foreign affairs under the supervision of the president. Thus, the combination of the premier-presidential framework, a clear division of executive powers, and a high level of commitment by key political actors to the formal rules contributed to the democratic stability of the Polish political system after 1997.

Kuchma's behavior, by-turn, clearly pointed to his low commitment to existing formal rules. Instead of following them, he exploited them in order to expand his control over the executive and legislature. The heavy use of informal practices, such as clientelism and blackmail, was another confirmation of his less-than-respectful attitude towards institutional constraints. In this regard, Kuchma's commitment to formal rules proved to be weaker not only than that of Kwaśniewski but of Wałęsa as well. While Kravchuk was also skeptical of formal rules, he nevertheless did not abuse informal means as heavy as Kuchma did and certainly was more inclined toward consensual politics. As a result, Kuchma succeeded in exploiting the shortcomings of the president-parliamentary system and invading domains of other institutions which, for their part, lacked the mechanisms necessary to constrain such actions.

At the same time, the influence of the two semi-presidential systems in Poland and Ukraine was also clearly mediated by the different party systems of the two countries. The Polish party system was able to consolidate following the creation of a restricted proportional system in 1993. As a result, the 1993, 1997, and 2001 parliaments all were able to produce majority coalitions, even if, in the two latter cases, they subsequently collapsed. Ukraine opted for a majoritarian system. This system, however, didn't result in a two-party system as one could have expected according to Maurice Duverger's well-known assumption.³⁹ First, this electoral system allowed independent candidates to run, which strongly undermined the consolidation of the yet underdeveloped party system. Second, it created favorable conditions for local officials and businessmen to strongly influence electoral processes. Since the country's power base was still regionally scattered, parliament also became fragmented – the 1994 parliament had 15 parties, not counting independent MPs. The introduction of a parallel proportional element to the electoral system on the eve of the 1998 elections wasn't sufficient to completely neutralize the proliferating nature of the majoritarian component – there were 21 parties in the 1998

³⁹ William H. Riker. 1982. "The Two-Party System and Duverger's Law: An Essay on the History of Political Science." *American Political Science Review* 76:4, p. 754.

parliament and 10 parties in the 2002 parliament

The nature of the party-building also contributed to the different levels of fragmentation in the Polish and Ukrainian parliaments. Most Ukrainian parties were created with an eye toward elections and often lost their rationale after the electoral campaigns ended. As a result of the large-scale and convulsed processes of fractionalization which naturally followed, parliamentary factions greatly outnumbered electoral parties.⁴⁰ In Poland, fragmentation of electoral blocs was also typical but stemmed more from ideological and programmatic differences than from the inherent frailty of such blocs. The different fates of the new parliamentary factions serves as a useful illustration: none of the non-electoral factions created in the Verkhovna Rada during this time managed to make it to the next elections, while the two currently largest Polish parties, Civic Platform (PO) and Law and Justice (PiS), were both created as factions that splintered off from AWS.⁴¹

Straying from the Path

Further political developments in the two countries could have created the impression that they started to move toward each other. In Poland, parliamentary and presidential elections conducted in 2005 brought to power the right-wing Jarosław Kaczyński-led PiS and his twin brother Lech Kaczyński as president. During two years of PiS governance, both the president and the parliamentary majority used different tactics to concentrate state power in their hands and marginalize their political opponents. This power grab was evident, for instance, in the deformation of the legislative process, which was often characterized by a lack of debates, little respect for procedural norms, and the neglect of the opposition's point of view. As a result, during 2005-2007, the Polish parliament came dangerously close to becoming a rubber stamp for political decisions imposed by the cabinet and president.⁴² PiS members' idiosyncratic understanding of democracy as a winner-take-all system was confirmed by their personal attacks on opposing or independent political actors, including the judges of the Constitutional Tribunal.⁴³

Yet, the power appetite of the ruling coalition was constrained by

⁴⁰ Paul D'Anieri. 2007. *Understanding Ukrainian Politics*. London: M. E. Sharpe, pp. 172-173.

⁴¹ Ewa Nalewajko and Włodzimierz Wesołowski. 2007. "Five Terms of the Polish Parliament, 1989-2005." *The Journal of Legislative Studies* 13:1, p. 76.

⁴² Wiesław Staśkiewicz. 2008. "The Legislative Process". In Lena Kolarska-Bobińska, Jacek Kucharczyk, and Jarosław Zbieranek, eds., *Democracy in Poland 2005-2007*. Warsaw: Institute of Public Affairs, pp. 35-7.

⁴³ Mirosław Wyrzykowski. 2011. "Ten Lessons in Constitutional Resilience." *European-Asian Journal of Law and Governance* 1:2, pp. 174-86.

the limited constitutional powers of the president. Lacking a constitutional parliamentary majority, the Kaczyński brothers were not able to change the basic law, although from time to time they expressed their desire to do so. Interestingly though, they tried instead to raise the president's political role by creating artificial conditions for him to look more powerful than he actually was. For instance, in 2005, both the parliamentary speaker and coalition members deliberately dragged out the work on the state budget, which pushed the date of its adoption dangerously close to the constitutional limits. This allowed Lech Kaczyński to credibly threaten to dissolve Sejm, raising his political profile in the eyes of citizens. However, such tricks could be more likely explained by the Kaczyńskis' awareness that increasing formal presidential powers under existing circumstances would be a virtually impossible task.⁴⁴

This became even more obvious after the 2007 pre-term parliamentary elections caused by the PiS-led coalition split, which saw electoral victory go to PiS's main opponent, the liberal PO. Kaczyński had no other choice but to ask PO leader Donald Tusk to form a government, thus again putting the Polish system in the phase of cohabitation. This time, though, it was less peaceful than during the coexistence of Kwaśniewski and Buzek. Kaczyński did not give up his desire to increase his power, thus from time to time challenging Prime Minister Tusk. A glaring example was Kaczyński's attempts to join Tusk at the EU summit in October 2008, which provoked a complaint on the part of the latter and resulted in an appeal to the Constitutional Tribunal. The Tribunal decided that the president could represent Poland abroad, but only as a spokesman for the position adopted by the cabinet.⁴⁵ Thus, this personal conflict was prevented from transforming into an institutional crisis. Kaczyński also heavily employed – to various degrees of success – his veto right; but, on the whole, the prime minister was able to retain his leading role in executive matters.

Ukraine, for its part, faced significant institutional changes after the end of Kuchma's tenure. His desire to secure the victory of his designated successor Victor Yanukovich during the 2004 presidential elections led to a mass protest known as the Orange Revolution and eventually resulted in the victory of opposition candidate Victor Yushchenko. However, negotiations between the authorities and the opposition, conducted amidst the popular uprising, led to the adoption of constitutional amendments and changes to the electoral law. Changes to the basic law put parliament in charge of the cabinet designation process while obliging it to form a coalition in order to nominate the prime minister. All other ministers were to be

⁴⁴ Dr. Jarosław Zbieranek. 2012. Interviewed by Oleksii Sydorчук, Warsaw, February 17.

⁴⁵ Professor Mirosław Wyrzykowski. 2012. Interviewed by Oleksii Sydorчук, Warsaw, March 8.

appointed by the Verkhovna Rada on a motion of the prime minister. The president lost the great bulk of his powers, for instance the right to appoint ministers and deputies thereof, except for the nomination of the ministers of defense and foreign affairs, and – most notably – to dismiss the cabinet or its members. Thus, a premier-presidential system was established. The legislative powers of the president were left mostly untouched, and he additionally obtained the right to dissolve parliament if (1) parliament wasn't able to form a coalition during one month or (2) parliament wasn't able to nominate a prime minister during two months.⁴⁶

Changes in the democratic development of Ukraine after the constitutional reform seemed profound. Newly elected President Yushchenko was able to effectively interfere in the prime minister's affairs only in 2005, before the new constitution entered into force. Afterwards, the balance of power shifted to the next heads of government, Yanukovych and Yuliya Tymoshenko. However, none of them was able to dominate both executive and legislative branches. As Yanukovych sought to reach this goal by enticing away opposition deputies in order to gain the majority needed to increase the constitutional powers of the premier, his attempt failed when Yushchenko dissolved parliament and ordered pre-term elections in April 2007. Yanukovych's misfortune could be traced, first, to the absence of a direct mandate, which could have justified his attempts to consolidate power in the eyes of the population and, second, the very presence of another independent actor within the executive branch.

In other words, while the premier-presidential system clearly favored the premier's leading role, it also provided for a stronger division of the executive than the previous president-parliamentarism. This split was primarily confirmed by fluctuations in power between the president and prime minister. The Yanukovych-Yushchenko clash was one example, while Yushchenko's second attempt to dissolve parliament by first extracting his Our Ukraine party from Tymoshenko's coalition government in late 2008 provides another. In the latter case, the coalition disintegrated, but the cabinet effectively blocked funding new elections. Again, the relative powers of Yushenko and Tymoshenko during this period were in flux. However, the cabinet possessed at least one advantage – control of the parliamentary majority. This, again, was the result of the new constitutional model which created the institution of coalition and, thus, stimulated deputies to improve their culture of negotiation and consensus-seeking. While the two processes of coalition formation during this time were too protracted and not transparent enough, they nevertheless resulted in the creation of the first stable majorities in Ukrainian history which were able to support cabinets on a long-term basis.

⁴⁶ Verkhovna Rada Ukrainy. 2004. *Zakon Ukrainy pro vnesennia zmin do Konstytutsiyi Ukrainy*. At <http://zakon2.rada.gov.ua/laws/show/2222-15>.

This development, again, was conditioned not only by the modified constitutional framework, but by the new electoral law as well. The establishment of a fully proportional system, even with a low 3 percent barrier and single nation-wide party list, decreased the number of parliamentary parties to five. Thus, while the proportional system in Ukraine, in accordance with Duverger's assumption, did produce a multiparty system, the number of parties was much lower than under previous majoritarian and mixed systems. In addition, the introduction of the imperative mandate in the new constitution ensured that deputies could not leave their factions and form new ones anymore. While the latter norm was criticized by some observers as a reflection of Ukrainian provincialism,⁴⁷ it nevertheless played a significant role in disciplining members of parliament.

Thus, while institutional developments in Ukraine and Poland during 2004/2005-2010 were quite different in nature, they both pointed to the positive potential of premier-presidentialism as compared to president-parliamentarism. In both cases, the division of executive power between a relatively weak president and a relatively strong premier able to command a parliamentary majority created enough mechanisms to prevent the monopolization of power by any one actor. This inability to monopolize power was especially important considering the lack of full commitment to existing formal rules on the part of many political actors. In Poland, President Kaczyński wasn't satisfied with his formal powers, but limited himself to discursive and symbolic acts aimed largely at raising his profile in the public eye. He at times stretched the president's constitutional powers, but still remained within the legal limits, as evidenced by his threats to dissolve the Sejm for the latter's inability to pass the budget on time. In Ukraine, the formal division of power also wasn't embraced by all political actors who, however, considered making moves to change it which sometimes went beyond legal limits. President Yushchenko tried to undermine the first cabinet of Tymoshenko by using the National Defense and Security Council in a continuation of Kuchma's practice of "shadow governments," but abandoned these attempts after the premier-presidential constitution entered into force. Prime Minister Yanukovych wanted to create a constitutional majority by breaching the constitutional requirement that coalitions be formed purely on the basis of existing factions (which prohibited the inclusion of individual deputies), but was stopped when Yushchenko issued a decree dissolving parliament. In all cases, the relatively effective division of power under premier-presidentialism prevented actors from working unilaterally and undermining the present constitutional order.

⁴⁷ Kimitaka Matsuzato. 2011. "Disintegrated Semi-Presidentialism and Parliamentary Oligarchy in Post-Orange Ukraine." In Robert Elgie, Sophia Moestrup, Yu-shan Wu, eds., *Semi-Presidentialism and Democracy*. London: Palgrave Macmillan, p. 201.

At the same time, the Ukrainian incarnation of premier-presidentialism indicated problems with another factor – the lack of clarity in the division of executive power. A clear division of power was disrupted, firstly, by the existence of the two “presidential” ministers, which resembled pre-1997 Polish situation, and, secondly, the absence of a comprehensible delineation of responsibility for some policy spheres, especially foreign, law-enforcement, and security policies. As a result, intra-executive conflicts were rather frequent. During one of them, members of Yanukovych’s party tried to prevent new Minister of Foreign Affairs Borys Tarasiuk from physically entering his office. During another, ministry of interior troops stormed into the general prosecutor’s building in order to clear the way for the supposedly genuine general prosecutor. That such conflicts didn’t disappear when former allies, Yushchenko and Tymoshenko, occupied the two highest executive offices greatly damaged their image and eventually led to Yanukovych’s victory during the 2010 presidential elections.

On Different Poles of Democratic Consolidation

Poland also held presidential elections in 2010. This election was held even earlier than was defined by the constitution due to the tragic death of Lech Kaczyński and numerous Polish high officials in a plane crash near Smolensk in April 2010. Bronisław Komorowski, a member of the prime minister’s party, won this pre-term election. The Polish system, thus, returned to a phase in which the president and prime minister represented the same political camp. Since Tusk was the undisputed leader of the PO and decided not to run for the presidency, Komorowski was beforehand granted a secondary role in executive matters. Relations between the two executives proved to be quite peaceful, with Tusk retaining his leading role in shaping both domestic and foreign policies. While Komorowski sometimes criticized the actions of the cabinet and used his veto right on occasion, he, nevertheless, didn’t demonstrate any desire to increase the powers of the presidency, like his predecessor did. This lack of institutional angst not only keeps the Polish form of government in a rather comfortable balance, but also contributes to the lack of any serious discussions about the need to change the constitution. The future of relations between the president and prime minister in Poland is yet to be seen – another period of cohabitation will inevitably come – but for now the whole system of state power distribution looks stable and resistant to any serious institutional or personal challenge.

Political developments in Ukraine after 2010 took radically a different turn. Relying on his “fresher” legitimacy⁴⁸, newly elected President

⁴⁸ According to Oleh Protsyk, political actors embodied in the institutions that were elected more recently possess higher legitimacy in the eyes of the population. In Ukraine, the Verk-

Yanukovych was able to quickly create a loyal parliamentary coalition by employing familiar methods of coercion, blackmail, and bribery. Although this process again infringed on constitutional provisions requiring a faction-based coalition, the Constitutional Court hastily legitimated the new majority in a reversal of its decision on a similar matter in 2008. The new coalition installed the government of Mykola Azarov, who docilely agreed to follow Yanukovych's lead. Parliament soon transformed into a rubber stamp for decisions imposed by the presidential administration to a much greater degree than seen in Poland during 2005-2007, while the opposition since then was totally ignored when it came to important legislative acts. The president was also able to reinforce his control over the judiciary system with the help of new legislation and strong political pressure on judges. The political dependence of Ukrainian courts became obvious with the confusing and highly dubious decision of the Constitutional Court in September 2010, which declared that the 2004 constitutional reform had been adopted with procedural violations and thus ordered all state organs to bring their acts into conformity with the 1996 constitution. The court's decision was widely seen as the direct result of a presidential instruction and breaching fundamental constitutional principles, such as the parliament's exclusive right to change the constitution. Nevertheless, the dominant bargaining position of the president and the absence of any relevant veto players at the time secured the quick re-establishment of the previous president-parliamentary system.⁴⁹

Moreover, after September 2010, Ukraine transitioned to the super-presidential model, which is very dangerous for young democracies.⁵⁰ The president further expanded his powers by reducing the prime ministers' appointment competences with the new law "On the Cabinet of Ministers of Ukraine," which was rushed through parliament, and his edict on the re-organization of the executive system. With the criminal prosecutions of his main political opponents and the curtailment of basic rights and freedoms, Yanukovych's activities in the institutional sphere allowed him to monopolize political power during the first two years of his presidency. The 2012 parliamentary elections were tilted in favor of the ruling party and included instances of electoral fraud in several single-member districts, all of which prevented opposition parties from gaining a majority in the new parliament. All in all, Yanukovych succeeded in embedding the

hovna Rada was already three years old when Yanukovych took presidential office in 2010 (Oleh Protsyk. 2005. "Prime ministers' identity in semi-presidential regimes: Constitutional norms and cabinet formation outcomes." *European Journal of Political Research* 44, pp. 738-9).

⁴⁹ Serhiy Kudelia. 2013. "If Tomorrow Comes: Power Balance and Time Horizons in Ukraine's Constitutional Politics." *Demokratyzatsiya* 21:2.

⁵⁰ Dr. Bartłomiej Nowotarski. 2012. Interviewed by Oleksii Sydorчук, Warsaw, March 7.

cabinet into a rigid executive hierarchy under his domination and turning the parliamentary majority into a humble executor of his will. None of these aims were ever fully accomplished in the Kuchma era, which had been the highest level of authoritarian consolidation in independent Ukraine until Yanukovych's presidency.

At first glance, given the similar starting conditions of premier-presidentialism, the subsequent polarization of Poland and Ukraine in terms of democratic consolidation during this period presents a puzzle. However, the previous institutional developments of the two countries give some insights into explaining such outcomes. The converging executive phase of premier-presidentialism in Poland after 2010 reinforced the positive influence of the constitutional framework by enabling the president and prime minister to crystallize a mutually acceptable distribution of power by using intra-party instruments. Again, both president and prime minister demonstrated willingness to strictly adhere to formal rules, preventing the appearance of any destabilizing impulses. Moreover, the prolonged period of the premier's domination, exercised according to existing formal rules, will most likely produce path dependency effects, which will diminish the possibility of any constitutional upheavals in the future.

Premier-presidentialism in Ukraine, on the contrary, proved vulnerable to the destructive impulses of the newly elected president. The most obvious explanation would be that in order to realize itself the positive potential of premier-presidentialism needs to be supplemented by the two above-mentioned factors, a clear division of power and strict commitment by all political actors to formal rules. Indeed, among all key political actors active in independent Ukraine, Yanukovych turned out to be the one most neglectful of existing rules. Applying the useful distinction made by Gretchen Helmke and Steven Levitsky,⁵¹ instead of just utilizing informal practices, Yanukovych heavily engaged in non-institutional behavior by directly destroying existing institutional norms. Constitutional changes provide a good example of the difference between Kuchma and Yanukovych: while the former tried to amend the basic law by exerting various forms of informal pressure on deputies in order to secure their support, the latter undermined the very base of constitutionalism in Ukraine by violating its main principle – the exclusive constitution-making role of Verkhovna Rada.

However, another question arises: Why did Yanukovych succeed in 2010 but not in 2007? His different institutional positions, which produced different possibilities and constraints, provide the answer. In this regard, the president's position was better suited for the task of concentrating power at least for two reasons. Firstly, the direct mandate owned by the

⁵¹ Gretchen Helmke and Steven Levitsky. 2006. *Informal Institutions and Democracy. Lessons from Latin America*. Baltimore: Johns Hopkins University Press, p. 6.

president but not by prime minister was helpful in justifying such activities before the broader public. Secondly, the survival of the president was independent of any political factors, while the prime minister needed to be aware of the constellation of forces in the parliament and the possibility that the president could dissolve it in order to stay in office. Overall, in circumstances of low commitment to formal rules on the part of most political actors, premier-presidentialism in Ukraine could exert its positive influence only under a certain constellation of power. Capture of the presidential post by a political actor inclined to disregard formal rules and engage in non-institutional behavior, thus, resulted in the establishment of autocratic rule.

Conclusions

Post-communist development in Poland and Ukraine provides yet another proof that constitutional frameworks matter. However, these two examples at the same time demonstrated that the influence of the form of government on democratic performance is strongly mediated by the commitment of political actors to existing formal rules. Polish premier-presidentialism exerted a relatively positive influence on democratic consolidation by sharing executive power between president and prime minister, while, at the same time, entrusting the prime minister with a dominant position in shaping public policies and anchoring his survival in parliament alone. This, in turn, created the potential for the appearance of a strong cabinet and prevented the president from attempting to undermine the prime minister's role. As a result, while relations between the two heads of the executive were not always harmonious, both actors faced stronger incentives to adapt to the existing division of power than to try to change it. Yet, the influence of premier-presidentialism could have been wasted if the two other factors were not in force. First, there was relatively little clarity in the division of executive power until 1997, which resulted in the more conflictual nature of Polish state politics before the adoption of the constitution. Second, all relevant political actors demonstrated a willingness to act within existing legal norms. While Wałęsa and Kaczyński sometimes interpreted their formal powers rather loosely, they never attempted to increase them outside existing legal boundaries. Thus, the premier-presidential model, functioning in a generally favorable behavioral environment, contributed to the democratic consolidation of Poland.

President-parliamentarism in Ukraine, on the contrary, created serious obstacles for democratic consolidation which were only exacerbated by the low commitment of the main political actors to formal rules. More specifically, this constitutional framework endowed the president with extensive executive power, including the right to dismiss

the cabinet, while also giving him the possibility to transfer responsibility onto the prime minister. Such institutional features combined with a popular mandate created strong incentives for president to intrude into the cabinet's domain and disable parliament from effectively controlling the government. At the same time, the double subordination of the cabinet and the lack of an institutionalized connection between the cabinet and parliament considerably weakened these institutions in their attempts to resist the president's offensives. Lack of respect for formal rules on the part of Kuchma and Yanukovych aggravated the existing problems, with both of them undermining formal institutions – albeit to different degrees – by relying heavily on informal practices and, in the latter case, non-institutional behavior.

Premier-presidentialism, which functioned in Ukraine during 2006-2010, for some time prevented the monopolization of power in the hands of any political actor by effectively dividing the executive and maintaining just enough veto players to block any attempts at unilateral rule. However, it proved to be susceptible to Yanukovych's attempts at consolidating power after the 2010 presidential elections. Two factors contributed to the failure of premier-presidentialism in Ukraine: (1) the generally low commitment of the main political actors to formal rules during the independence period which naturally resulted in a weak institutionalization of these rules and (2) the particular constellation of power which emerged at that time, i.e., the capture of the presidential post by a political actor with a strong propensity for non-institutional behavior. The vagueness of the division of executive power in the premier-presidential constitution was part of the problem before 2010, but contributed to the erosion of democracy afterwards only indirectly – by creating loci of conflicts between Yushchenko and Tymoshenko which, by turn, were among the main reasons behind the latter's defeat to Yanukovych.

All in all, institutional developments in Poland and Ukraine generally confirm the relative advantage of premier-presidentialism over president-parliamentarism in terms of their influence on democratic performance. However, they also indicate that the positive potential of premier-presidentialism needs a high level of commitment from all political actors to existing formal rules in order to fully realize itself. Clarity in the division of executive power could also contribute to more effective democratic performance, but seems to be more of a supplementary factor, which cannot alone explain either democratic consolidation or authoritarian reversal. This article also confirms the well-known problem of a strong president under semi-presidentialism, which is a potential recipe for abuse of power. The Ukrainian case only reinforced existing evidence by demonstrating that even a constitutionally weak president facing an opposing parliamentary majority could become the source of autocratic rule. This outcome, again,

points to the need for a more comprehensive examination of the reasons behind the destructive potential of the presidential office, which can manifest itself under myriads of constitutional and political variations.