



**NAVAL
POSTGRADUATE
SCHOOL**

MONTEREY, CALIFORNIA

THESIS

**HAS UKRAINE'S PATH TO DEMOCRACY IMPROVED
FROM INDEPENDENCE TO THE ORANGE
REVOLUTION?**

by

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June 2006

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REPORT DOCUMENTATION PAGE			Form Approved OMB No. 0704-0188
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington DC 20503.			
1. AGENCY USE ONLY (Leave blank)	2. REPORT DATE June 2006	3. REPORT TYPE AND DATES COVERED Master's Thesis	
4. TITLE AND SUBTITLE Has Ukraine's path to democracy improved from Independence to the Orange Revolution?		5. FUNDING NUMBERS	
6. AUTHOR(S) John T. Vaughan			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000		8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A		10. SPONSORING/MONITORING AGENCY REPORT NUMBER	
11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government.			
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution is unlimited		12b. DISTRIBUTION CODE	
13. ABSTRACT (maximum 200 words) This thesis seeks to identify if Ukraine is transitioning to a democracy from an authoritarian regime after the breakup of the Soviet Union and if so, measure Ukraine's democratic progress using specific democratization criteria from the 1990 parliamentary elections to the 2004 Orange Revolution. A free and fair electoral process involving multiple political parties, genuine power resident with elected officials, and executive power both constrained constitutionally and held accountable by other government branches (i.e. the Verkhovna Rada and the judiciary), will be used to measure Ukraine's democratic transition. Historical analysis of democracy's progress will be examined during the presidencies of Leonid Kravchuk (1991-1994), Leonid Kuchma (1994-2004) and Viktor Yushchenko (2004-Present) discerning if democracy has progressed or diminished over the past fifteen years.			
14. SUBJECT TERMS Ukraine, democracy, executive power, constitution, judiciary, U.S.		15. NUMBER OF PAGES 77	
		16. PRICE CODE	
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified	20. LIMITATION OF ABSTRACT UL

NSN 7540-01-280-5500

Standard Form 298 (Rev. 2-89)

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**HAS UKRAINE'S PATH TO DEMOCRACY IMPROVED FROM
INDEPENDENCE TO THE ORANGE REVOLUTION?**

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Submitted in partial fulfillment of the
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MASTER OF ARTS IN NATIONAL SECURITY AFFAIRS

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ABSTRACT

This thesis seeks to identify if Ukraine is transitioning to a democracy from an authoritarian regime after the breakup of the Soviet Union, and if so, to measure Ukraine's democratic progress applying traits of democratization from the 1990 parliamentary elections to the 2004 Orange Revolution. A free and fair electoral process involving multiple political parties, representational power of elected officials, and executive power, both constrained constitutionally and held accountable by other government branches (i.e. the Verkhovna Rada and the judiciary), will be used to measure Ukraine's democratic transition. Historical analysis of democracy's progress will be examined during the presidencies of Leonid Kravchuk (1991-1994), Leonid Kuchma (1994-2004) and Viktor Yushchenko (2004-Present), respectively, to discern if democracy has progressed or diminished over the past fifteen years. Ukraine's democratic establishment could be the catalyst to spread democracy throughout the region.

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ACKNOWLEDGMENTS

I would like to thank my advisors Anne Clunan and Mikhail Tsykin. Dr. Clunan's guidance has considerably enhanced my analytical abilities and contributed greatly to this thesis's fruition. Additionally, Dr. Tsykin's wisdom and regional expertise helped me to focus my research. Finally, this project was directly dependent on the advice and "ground truth" provided by my Ukrainian colleagues Lieutenant Colonel Oleksiy Petrov and Major Roman Milesenko whose input helped me decipher the Ukrainian mentality and the deluge of academic publications regarding the political history of Ukraine.

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I. INTRODUCTION

In the early 1990's, Ukraine experienced a dramatic change in government after the collapse of the Soviet Union and Ukraine's pursuit of sovereignty. These events created a paradigm shift as Ukraine transformed from an authoritarian-style closed regime toward a democracy. Although Ukraine employed an electoral process, which allowed for the election of presidents and parliamentary members, was it a true democratic system containing participatory and publicly contested elections? The Orange Revolution in 2004 signaled a cathartic shift in the electoral process of Ukraine. For the first time in Ukraine's history, peaceful public protests overturned a fraudulent election resulting in the inauguration of the popular candidate. The Orange Revolution removed Viktor Yanukovich and placed the publicly chosen candidate, Viktor Yushchenko, in power as president. Yet many question whether democracy will rapidly advance in Ukraine according to popular expectations as so far Ukraine has experienced only a slow shift toward democratization since its sovereignty. This thesis seeks to answer the following questions:

Has the electoral process democratically evolved in Ukraine since the first Presidential election in 1991? Are elections becoming freer and fairer? Have Ukraine's elections become more democratic as the country moves toward a polyarchal system? Does the Ukrainian president have genuine power to act in his constituents' interests or does an outside actor, such as the oligarchs (corrupt billionaire Ukrainian business owners) or Russia, influence him? Does the constitution limit the powers of the president and hold him accountable to other branches of government, or does he have absolute power?

These are important questions gauging the progress of a democracy and need to be answered. Free and competitive elections involving multiple political parties are an important measure of democracy in that it places the power of choosing leaders in the hands of the peoples' majority vote. In addition, inherent power within the hands of the representatives of the people is a vital criterion of a democracy. This is because in a democracy, elected officials must have the power to act in the best interests of the

constituency. When elected leaders are pawns of other organizations (i.e. a foreign government, big business interests, or the country's military) they lack the ability to carry out the peoples' will and are often corrupt as they serve the agenda of the influencing organization. In addition, other branches of government must regulate elected officials' power, as in a checks and balances system. A functioning and effective constitution which regulates power between the branches of government is paramount, lest one branch become dominant over the others.

In answering these questions, this thesis will attempt to identify if a transition to democracy from an authoritarian regime truly occurred in Ukraine after the breakup of the Soviet Union in 1991. And if this happened, it will measure Ukraine's democratic progress using specific traits of democratization from the Kravchuk, Kuchma and the Yushchenko administrations respectively, following the Orange Revolution.

A. ARGUMENT

This thesis will argue that with the election of each new president, Ukraine has become more democratic, and that the electoral process has become freer and more competitive. In addition, this thesis will demonstrate that the executive power in Ukraine has been reduced from what is typically seen in former authoritarian regimes like Stalin's Russia and is now regulated by the constitution. An absolutist ruler who is not restricted by a constitution or laws characterizes former authoritarian regimes. In order to gauge these changes and Ukraine's progress toward a democracy, the core features of a democratic regime must first be identified. They are, as the following literature review suggests, the existence of free and fair multi-party elections, the true authority of elected officials who act in the interests of their constituency (i.e. they are not controlled by outside actors' interests), and an executive power who is held accountable by other governmental branches.

B. LITERATURE REVIEW: WHAT IS A DEMOCRACY?

In order to measure the transition to democracy, the concept of democracy must first be defined. Several definitions of democracy from leading theorists and non-profit organizations will be presented in this section to frame the author's tools used to measure democracy and specifically democracy's progress in Ukraine.

Joseph Schumpeter defined democracy as a system "...for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote."¹ Therefore, the electoral process can be an effective tool in which to measure democracy in that officials are elected by the majority vote of the citizens. The "competitive struggle" has occurred in Ukraine between the opposition candidates and incumbents in the electoral process since the 1991 presidential elections. Furthermore, Samuel Huntington, among other political experts, believed that Schumpeter's concept of competitive elections was implicitly necessary in an electoral democracy.²

Another noted expert, Robert Dahl, believes in the concept of a polyarchy, or a type of democracy that focuses on three characteristics: popular sovereignty, political equality and majority rule. A polyarchy is a democracy that has equal levels of public contestation and participation.³ In addition, Dahl's argument focuses heavily on two democratic traits: free and fair elections, and the ability of an opposition to engage in a contest against a regime.⁴ The right to vote in elections encompasses both of Dahl's spectrums of democratization. The first involves the availability of his "eight institutional characteristics" of contestation, and the other involves the proportion of the population who may take advantage of these characteristics. Dahl's characteristics are laid out in Table 1.1 in *Polyarchy* and include "...the right to vote, free and fair elections, and the development of institutions for making government policies depend on votes and other expressions of preference."⁵ A system becomes more democratic and polyarchal as elections become more participatory and public contestation becomes valid. On the other end of Dahl's spectrum, is the regime type known as closed hegemony. A closed hegemony regime is the least democratic regime according to Dahl.⁶ In this type of system, voter participation is practically nonexistent and there is little or no public contestation.

¹ Diamond, Larry J. 1999. *Developing Democracy: Toward Consolidation*. Baltimore: Johns Hopkins University Press. 8.

² Ibid.

³ Dahl, Robert A. 1971. *Polyarchy; participation and opposition*. New Haven: Yale University Press, 7.

⁴ Ibid, 5.

⁵ Ibid, 3.

⁶ Ibid.

Once the population elects officials, these officials must carry out the will of the people free from outside influences. Elected officials should have genuine power and they become civil servants who have pledged to serve the public within that democracy. A polyarchy is not a liberal democracy. A polyarchy is a democracy that focuses on equal levels of public contestation and participation while a liberal democracy entails much more than just electoral democracy. Diamond believed that a liberal democracy was comprised of three criteria, branches of government were held accountable to the people and by other branches, there were no hidden power bases in actor's that were not accountable to the electorate, and individual rights were protected.⁷ Additionally there are numerous definitions of what a democracy entails. Larry Diamond has described genuine power of elected officials in his definition of liberal democracy:

1. Control of the state and its key decisions and allocations lies with elected officials (and not democratically unaccountable actors or foreign powers); in particular, the military is subordinate to the authority of elected civilian officials.
2. Executive power is constrained constitutionally and held accountable by other government institutions (such as an independent judiciary, parliament, ombudsman, and other mechanisms of horizontal accountability).
3. Not only are electoral outcomes uncertain, with a significant opposition vote and the presumption of party alternation in government, but no group that adheres to constitutional principles is denied the right to form a party and contest elections (even if electoral thresholds and other rules prevent smaller parties from winning representation in parliament).⁸

As has been noted, public contestation is present in both a polyarchy and a liberal democracy. In addition, Diamond's principles are useful in defining democratization as his criteria for a liberal democracy depend on a functioning constitution that limits executive authority and balances power among the three branches of government. Moreover, in Diamond's democratic concept, presidential powers are constrained by the constitution, which reduces the chance for an authoritarianism to emerge.

⁷ Diamond, *Developing democracy*, 10.

⁸ *Ibid*, 11.

There are more elements that are important to share regarding democracy. For example, Steven Levitsky and Lucan Way in “The Rise of Competitive Authoritarianism,” give four requirements for a modern democracy:

1. Executives and legislatures are chosen through elections that are open, free, and fair.
2. Virtually all adults possess the right to vote.
3. Political rights and civil liberties, including freedom of the press, freedom of association, and freedom to criticize the government without reprisal, are broadly protected.
4. Elected authorities possess real authority to govern, in that they are not subject to the tutelary control of military or clerical leaders.⁹

For this study, I will define democracy using Dahl's concept of polyarchy and specific elements of Diamond's liberal democracy, including accountable elected officials to the citizenry and a constitution that limits executive authority and balances power among the three branches of government. Now that the most easily measured criteria of democracy have been stated, it is important to study the evolution of the presidential and parliamentary election processes in Ukraine. The Organization for Security and Cooperation in Europe (OSCE) election reports from the Ukrainian Parliament, the Verkhovna Rada, and presidential elections will aid in measuring the democratic progress of Ukraine's electoral process.¹⁰ Specifically the Office for Democratic Institutions and Human Rights (ODIHR), an agency of the OSCE, has produced a library of election reports covering elections in Ukraine. An examination of these reports for each president's election will help to show the success or failure of Ukraine's democratization with regard to a free and fair electoral process. ODIHR is committed to preserving democratic traditions and aids countries in developing a free and fair electoral elections process, and their data will prove to be valuable to this research.

Another independent source, Freedom House, will be used to further measure democratic progress. Its freedom scores, derived from a scoring system based on political rights and civil liberties, give a baseline for measuring democratic progress within each president's term and will provide more depth where OSCE reports are

⁹ Levitsky, Steven, and Lucan A. Way. "The Rise of Competitive Authoritarianism." *Journal of Democracy* 13, no. 2 (Apr, 2002): 51.

¹⁰ Office for Democratic Institutions and Human Rights - Elections. Internet on-line. Available from <http://www.osce.org/odihr-elections/13748.html>. (Accessed 20 March 2006).

unavailable.¹¹ This non-profit organization evaluates each country for their potential as an electoral democracy.¹² It measures political rights as the ability to participate in the electoral process- the right to vote, the right to run for office, and the right to elect representatives who are responsible to the people. Although Freedom House's list of civil liberties includes the freedoms of expression and belief, associational and organizational rights, rule of law and personal autonomy without interference from the state, these measurements will not be included in the author's democratization study as they fall outside the author's scope of measurement. The combined average of each country's political rights and civil liberties ratings determines an overall status of "Free", "Partly Free", or "Not Free". The Freedom House has published an annual assessment of the state of freedom in several countries known as *Freedom in the World* since 1972.¹³ Individual countries are evaluated based on questions of political rights and civil liberties derived in large measure from the Universal Declaration of Human Rights. Freedom House's requirements for an electoral democracy are as follows:

1. A competitive multiparty political system.
2. Universal adult suffrage for all citizens.
3. Regularly contested elections, conducted in conditions of ballot secrecy.
4. Significant public access of major political parties to the electorate through the media and through generally open political campaigning.¹⁴

In addition, the Bertelsmann Transformation Index (BTI) will be utilized. A publication of the Bertelsmann Foundation, it evaluates 115 countries for democracy. It has a checklist of eighteen indicators, measuring democracy through stateness, political participation, rule of law, institutional stability, and political and social integration. ¹⁵

¹¹ OSCE election reports are unavailable for the Kravchuk administration as the OSCE team was not present for Ukraine's first presidential election in 1991.

¹² Freedom House evaluations use a scale of 1-7 with 1 representing the highest degree of freedom present, and 7 being the least amount of freedom. Freedom in the World Survey Methodology. Database on-line. Available from Freedom House,

<http://www.freedomhouse.org/template.cfm?page=35&year=2005>. (Accessed 4 Dec 2005).

¹³ Freedom in the World Comparative Rankings 1972-2004. Database on-line. Available from Freedom House. <http://www.freedomhouse.org/template.cfm?page=15&year=2005>. (Accessed 1 May 2006).

¹⁴ Freedom in the World Survey Methodology. Database on-line. Available from Freedom House, <http://www.freedomhouse.org/template.cfm?page=35&year=2005>. (Accessed 4 Dec 2005).

¹⁵ BTI Table and Indicators. Internet on-line. Available from Available from Bertelsmann Stiftung, Shaping Change: Strategies of Development and Transformation, http://bti2003.bertelsmann-transformation-index.de/fileadmin/pdf/BERT_Criteria_Indicato_ENGL.pdf. (Accessed 21 June 2006)

Therefore, an expanded concept of democracy is expressed by assessing the strength of civil society and participatory behavior. Finally, transparency and accountability indicate the actual functioning of formal democratic structures. BTI's overall score is based on the average of the scores obtained from the political transformation study, and the BTI amplifies Ukraine's participation in the free and fair electoral process¹⁶. Unfortunately, the BTI will only apply in 2003, toward President Kuchma's second term, as it only published one study in 2003, and there were no earlier BTI surveys conducted.

C. METHODOLOGY AND SOURCES

The three indicators of a democracy for the purpose of this study (i.e. the existence of free and fair multi-party elections, the true authority of elected officials who act in the interests of their constituency and an executive power who is held accountable by other governmental branches) have been in question throughout Ukraine's post-Soviet history. They are relevant because the electoral process has undergone changes as far as the degree of its freedom and fairness, because there have been allegations of Ukrainian big business and Russian influence over elected officials and because the Constitution of Ukraine has been amended several times over the past fifteen years.

While other measures exist that could evaluate progress toward democracy in Ukraine, such as universal adult suffrage, free press, and rule of law, they are not included in this study for several reasons. First, universal suffrage within Ukraine has been consistent throughout the country's existence. Both men and women have been afforded the opportunity to vote in past elections. Second, in Ukraine there has been limited freedom of the press to report objectively as demonstrated during the Kravchuk presidential campaign and during the Kuchma administration. Leonid Kravchuk received massive countrywide exposure and support largely due to the additional television coverage that was not afforded to the other presidential candidates. Moreover, the Ukrainian press was silenced during the "Cassette scandal" when President Kuchma was accused of involvement in the abduction and murder of journalist Georgiy Gongadze.

¹⁶ The score for "Political Transformation" is obtained by calculating the mean value of the ratings for the following criteria: stateness, political participation, rule of law, stability of democratic institutions, and political and social integration. A score of 10 is awarded for the best progress toward a market-based democracy while a 1 represents the lowest performance. Internet on-line. Available from Bertelsmann Stiftung, Shaping Change: Strategies of Development and Transformation, <http://www.bertelsmann-transformation-index.de/37.0.html?&L=1>. (Accessed 5 December 2005).

Finally, rule of law is a questionable measure of democracy for Ukraine, as there is still a "secret police" mentality, which resides within Ukrainian society from its former Soviet Union membership. There is undue interference in personal lives by the state, and mafia corruption exists within Ukraine.

Therefore, this thesis will support the argument by using a process-tracing method. This method will provide a historical analysis and examine the degree to which free competitive elections involving multiple political parties occurred, establish if elected officials truly represented their constituents, and establish whether executive power is held accountable by other government branches during each President's term. Chapters II through IV will examine the administrations of Leonid Kravchuk, Leonid Kuchma, and Victor Yushchenko respectively, and determine if the author's measures of democratization were absent, developing, or present. OSCE election reports from Ukraine's presidential and parliamentary elections will measure the democratic progress of Ukraine's electoral process.¹⁷ ODIHR has produced extensive detailed election reports covering Ukraine's presidential and parliamentary elections, and this data is paramount to the argument. The conclusions of these reports compiled during each presidential and parliamentary election will confirm or deny Ukraine's democratization with regard to free and fair elections. In addition, each president's term will be examined for the presence of democratic traits, mainly increasing participation in elections as well as formation of opposition. Furthermore, Freedom House scores will be used at various points in each president's term to provide additional information on the status of political rights. Finally, Chapter V will provide a compilation of results and provide a spectrum measuring Ukraine's progress toward democracy following each President's term. The end state of the study is to gauge the progress of democracy in Ukraine.

¹⁷ Office for Democratic Institutions and Human Rights - Elections. Internet on-line. Available from <http://www.osce.org/odihr-elections/13748.html>. (Accessed 20 March 2006).

II. UKRAINE'S BEGINNING UNDER LEONID KRAVCHUK

This chapter will address the criteria of democracy previously established under the Kravchuk Administration. This will provide a baseline for Ukraine and determine if Ukraine was making progress towards becoming a democracy during this administration. Prior to Kravchuk's election, Ukraine was still very much under a fake parliamentary system of government that was controlled by the Communist Party of Ukraine (CPU). It was hardly democratic as there were no differing branches of government and no substantial opposition to the CPU. The Kravchuk era was significant as several developments occurred changing the political fabric of Ukraine as it became a sovereign republic. Most importantly, the system of government was changing from a fake parliamentary style of government that had existed under the communist party to a presidential system. In May 1991, the Verkhovna Rada, Ukraine's parliament, "...took the initial decision to establish a presidential form of government for the republic of Ukraine."¹⁸ This was initiated with changes to the Constitution of Ukraine, including revisions and amendments, specifically the 1991 Law of the Presidency. This created the office of president and delineated powers between the branches of government.¹⁹ Another change occurred in the parliament. Despite the fact that the Communist Party of Ukraine (CPU) dominated the Verkhovna Rada, *Rukh*, a strongly democratic political force, united smaller political parties under the mantle of the Democratic Bloc and gained a foothold. As a result, voter participation increased and public contestation emerged for the first time in the electoral process.²⁰ The parliamentary elections of 1990 Ukraine indeed involved multiple political parties. These new political parties signaled a move toward public contestation as the Communist Party of Ukraine splintered. The 1991 Presidential election involving Leonid Kravchuk was the first democratic election since Ukraine declared sovereignty from the Soviet Union in August 1991. Although this was a step toward democracy, according to Dahl's definition, the legislation defining executive powers was vague, which later contributed to problems within this office.

¹⁸ Kuzio, Taras, and Andrew Wilson. 1994. *Ukraine: perestroika to independence*. New York: St. Martin's Press, 166.

¹⁹ Taras, Ray. 1997. *Postcommunist presidents*. Cambridge; New York: Cambridge University Press, 69.

²⁰ Kuzio and Wilson, *Ukraine: perestroika to independence*, 125 and 187.

Unfortunately, Ukraine suffered from an ineffective Constitution during the Kravchuk administration, and despite several additional amendments, the constitution failed to constrain executive and parliamentary power.

A. LEONID KRAVCHUK: FROM SUPREME COUNCIL TO PRESIDENT (1990-1994)

Balance of power aside, Leonid Kravchuk's actions during his presidency were a symbol of Ukraine's journey toward democracy. In addition, Ukraine's Declaration of Sovereignty was the first instance of Ukrainian citizens guiding their country's future by the voting process. The parliamentary elections of 1990 as well as the first presidential election in 1991 were democratic: free and fair and involving several parties. As Prime Minister in 1990, Kravchuk had mobilized the population behind him with the promise of Ukrainian independence from the Soviet Union. This platform of independence would carry him to victory in the December 1991 presidential election. Conservatives and reformists viewed Kravchuk as a compromise figure, avoiding confrontation from both sides while adeptly mediating concerns of the leftist communists and the new Ukrainian nationalists. His belief in Ukrainian independence trumped his belief in his own party, eventually causing his departure from CPU in August 1991.

Although President Kravchuk was able to mobilize the population with 83 percent support for Ukrainian sovereignty, he was unable to implement reforms needed to further Ukraine's democratization, specifically a working Constitution that effectively defined his office as president and established a functional judiciary.²¹ While the 1991 Law of the Presidency established basic operating procedures for the office of president, it did little to delineate the executive powers between the president and parliament. More importantly, article seven of the law afforded Leonid Kravchuk the power to issue decrees and reorganize the government.²² Unfortunately, in tying himself so closely to Ukraine's independence to win the presidential election, Kravchuk left himself little room to maneuver politically and was unable to implement reforms. His platform, advocating an independent Ukraine, actually contributed to his downfall. He had won the election by a sizeable margin of 62 percent, but "...the corps of his support was essentially the same

²¹ Taras, *Postcommunist presidents*, 78.

²² Kuzio and Wilson, *Ukraine: perestroika to independence*, 166.

people who had voted for the Communists in 1990."²³ And, if he had attempted implementation of reform he would have betrayed his leftwing electorate. As if that were not enough, his administration was marred with economic failure as hyperinflation reached staggering levels, upwards of 5,371 percent in 1993.²⁴

B. FREEDOM SCORES MEASURING UKRAINE'S DEMOCRACY UNDER LEONID KRAVCHUK

During the Kravchuk Administration, Freedom House awarded Ukraine the following scores:

	PR	CL	Status
1991	3	3	PF
1992	3	3	PF
1993	4	4	PF

Table 1 Freedom House scores during the Kravchuk Presidency. (From Ref 25)

"PR" stands for Political Rights, "CL" stands for Civil Liberties, and "PF" stands for partly free. Freedom House evaluations use a scale of 1-7 with 1 representing the highest degree of freedom present, and 7 being the lowest level.²⁵

As noted, Ukraine's PR scores moved from three to four during the Kravchuk's presidential term signifying that exercise of political rights became less free.

1. Rising Public Participation and Contestation as Political Parties Form

Although the actions of the president could be viewed as less than ideal, one of the most notable results was in the electoral process itself. The Ukraine was able to evolve from corrupt Soviet electoral practices to free and fair electoral practices. This was mainly evident in the Verkhovna Rada elections of 1990 and the Presidential elections of 1991.

²³ Wilson, Andrew. 2002. *The Ukrainians: Unexpected nation*. New Haven: Yale University Press. 183.

²⁴ Wilson, *The Ukrainians: Unexpected nation*, 254.

²⁵ Freedom in the World Comparative Rankings 1972-2004. Database on-line. Available from Freedom House. <http://www.freedomhouse.org/template.cfm?page=15&year=2005>. (Accessed 1 May 2006).

a. Emergence of the Democratic Bloc

The 1990 Verkhovna Rada elections were pivotal to the development of public contestation as the CPU opposing Democratic Bloc (DB) emerged and gained support in Galicia and L'viv, as well as other areas of Ukraine. The People's Movement of Ukraine, or *Rukh*, was widely popular and drove the agenda of the DB. Additionally "...the activities of *Rukh* have led to the creation of a number of other opposition political parties."²⁶ Even though the Democratic Bloc was composed of several different political parties, they all shared common goals of the pursuit of Ukrainian sovereignty, reform, independence, and a market economy.²⁷ Political parties opposing the CPU were the People's Movement of Ukraine (*Rukh*), Ukrainian Democratic Party (UDP), Ukrainian Republican Party (URP), Ukrainian Helsinki Union (UHU), Ukrainian Green Party (UPZ), and the Party of Democratic Revival of Ukraine (PDRU). These emerging political parties would not sweep the country in the 1990 Verkhovna elections as most of the seats went to the CPU.²⁸ However, their mere presence signaled a growing opposition to the CPU. Although the opposition was confined to 25-33 percent of the vote, its existence demonstrated the presence of a functioning multiparty election process.²⁹ Anatoli Pohribnyi, *Rukh* organizer, noted that the sheer presence of so many candidates for the Verkhovna Rada elections of 1990 was a step toward democracy. "The fact that there are so many candidates is a colossal achievement. In some districts, it is unbelievable, they're bursting with democracy. In my electoral district, there are twenty-four candidates."³⁰ Moreover, the Verkhovna Rada elections of 1990 were far more democratic than the previous year's elections "...as there were no slots in parliament that

²⁶ Fishel, Gene, "Radicalization of Independence in Ukraine," *Perspective*, Volume 1, No 4 (April 1991). Journal on-line. Available from the Institute for the Study of Conflict, Ideology & Policy, <http://www.bu.edu/iscip/vol1/Fishel.html>. (Accessed 9 May 2006).

²⁷ Ibid.

²⁸ Election Watch . *Journal of Democracy*, Volume 4 (October 1990). Internet on-line. Available from the Journal of Democracy, http://muse.jhu.edu/journals/journal_of_democracy/election_watch/v001/index.html#1.3special report. (Accessed 8 May 2006).

²⁹ Kuzio and Wilson, *Ukraine: Perestroika to Independence*, 14.

³⁰ Solchanyk, Roman. 1992. Interview with Anatoli Pohribnyi, *Rukh* organizer. *Ukraine, from Chernobyl' to sovereignty: A collection of interviews*. New York: St. Martin's Press, 73-74.

had been previously assigned to specific political parties and the district committees automatically disqualified no candidates."³¹

Political party	Election seats won in 1990 Verkhovna Rada Elections (450 seats total)
PRDU	43
UDP	20
URP	12
UPZ	5
CPU	370

Table 2 Results of 1990 Verkhovna Rada Elections³²

While *Rukh* enjoyed the widest exposure and was popular within all regions of Ukraine, the smaller parties were unsuccessful in mobilizing against the CPU as each had its own particular agenda and refused to form a coalition party. For example, "...the URP wished to preserve its distinctive profile while the PRDU saw itself as centrist and distrusted *Rukh's* growing nationalism."³³ *Rukh* sought to pull the other parties together, but failed in this endeavor making enemies on both sides of Ukrainian political society. Eventually, the CPU felt threatened by *Rukh's* popularity, and targeted it with obstacles to impede its inevitable success. Government authorities went against Prime Minister Kravchuk's promise to *Rukh* leaders and failed to register the *Rukh* party in time for the first round parliamentary elections in 1990.³⁴ Unfortunately, the parliamentary elections were not entirely free as the CPU still wielded a fair amount of control in parliament (See Table 2, Results of 1990 Verkhovna Rada Elections). The CPU unduly influenced the election process by controlling the electoral committee,

³¹ Arel, Dominique, "The Parliamentary Blocks in the Ukrainian Supreme Soviet: Who and What do they Represent?" *Journal of Soviet Nationalities*, Vol I, no. 4 (Winter 1990-91), 115

³² Fishel, "Radicalization of Independence in Ukraine."

³³ Kuzio and Wilson, *Ukraine: Perestroika to Independence*, 157.

³⁴ Ibid, 124.

"...which often refused to investigate electoral law violations."³⁵ Even with the electoral law violations, there was still an obvious and growing opposition emerging in Ukraine.

Fortunately, the Democratic Bloc (DB) fared better in the larger cities of Ukraine and their support signaled a break from the Communist party control. Analysis of the breakdown of elected deputies in the 1990 parliamentary elections yields interesting results regarding a lessening of CPU dominance. "The CPU obtained 25 and 30 percent of its seats from rural constituencies, seats in the big towns were split roughly equally - 50 going to the CPU, 36 to the uncommitted, and 66 to the DB."³⁶ This increased support for the DB signaled that public contestation against the CPU was rising.

Slowly, the Democratic Bloc was beginning to wrest power from the CPU. Despite its strength in the urban areas, the DB had considerable problems gaining support in the rural areas because of the CPU's control of the media. In any case, the parliamentary elections "...signaled the end of end of the CPU monopoly in Ukraine and therefore represented a watershed in the development of the opposition."³⁷ The elections were a victory for the multiparty election process representative of Dahl's concept of polyarchal democracy. The opposition, with its nationalistic agenda, would eventually champion Ukraine's Declaration of Sovereignty the following year. Additionally voter participation increased considerably as the population's voting percentage was 84.69 percent in the first round and 78.80 percent.³⁸

b. Ukraine's First Presidential Election

The 1991 Ukrainian presidential elections were pivotal to the emergence of democracy in two regards: voter participation was on the rise and contestation emerged in the form of multiple political parties that had contrary views to the CPU. Ukraine's 1991 Declaration of Sovereignty, overwhelmingly approved by the Verkhovna Rada, defined the sovereignty of Ukraine as "...supremacy, independence, fullness and indivisibility of the republic's authority within the boundaries of its territory, and its

³⁵ Kuzio and Wilson, *Ukraine: Perestroika to Independence*, 125.

³⁶ *Ibid.*

³⁷ *Ibid.*, 126.

³⁸ *Ibid.*, 125.

independence and equality in external relations."³⁹ This would be the foundation of Leonid Kravchuk's presidential campaign and generate the necessary public support to win Ukraine's first Presidential election of 1991.

The 1991 Presidential election in Ukraine ended up being a multiparty election involving six candidates of differing political affiliations. Primary contenders included Leonid Kravchuk (Communist Party of Ukraine), Levko Lukianenko (Ukrainian Republican Party), Ihor Iukhnovskiy and Vladimir Grinev (both from the Party of Democratic Revival of Ukraine), Leopold Taburianskyi (People's Party), and Viacheslav Chornovil (Rukh).⁴⁰ Unfortunately, organization of legitimate political parties was problematic during this period and only the most organized parties could actually generate the required 100,000 signatures to put forth a candidate, which reduced the original number of ninety-five candidates down to six.⁴¹ Despite the fact that the majority of the political parties within the DB actually shared similar interests and goals toward Ukrainian sovereignty they continued to have organizational problems. . Additionally, the smaller parties, notably the People's Party, were structurally weak and not well known. In the end, the real competition for the Presidency was between Kravchuk and Chornovil. Kravchuk won with a landslide victory with 61.6 percent of the vote. He triumphed in five of eight major regions of Ukraine while Chornovil swept the regions of Galicia and Kyiv.⁴² Although this was a seemingly one-sided election for Kravchuk, the votes for Chornovil in major urban centers signaled an emergence of support for Ukrainian nationalism and a break from the CPU. The once strong Communist hold on Ukraine was beginning to diminish as democracy emerged.

While the emergence of multiple political parties is paramount to the success of a fledgling democracy as it signifies the emergence of an opposition, other factors also need to be explored. For example, although voter participation was relatively high in this election (84.2 percent of those eligible to vote turned out) there is some

³⁹ "Ukraine proclaims sovereignty," *The Ukrainian Weekly*, 22 July 1990. Internet on-line. Available from the Ukrainian Weekly, <http://www.ukrweekly.com/Archive/1990/299001.shtml>. (Accessed 16 May 2006).

⁴⁰ Kuzio and Wilson, *Ukraine: Perestroika to Independence*, 185.

⁴¹ Ibid.

⁴² Ibid, 187.

question as to a media that was biased toward Kravchuk.⁴³ Because the CPU backed Kravchuk, he secured the lion's share of media coverage during his campaign, and as mentioned earlier, the smaller parties were relatively unknown in Ukraine's outlying areas, predominantly the rural South and East. Therefore, these elections lacked a degree of fairness as all six candidates did not receive equal media coverage and public exposure.

2. Kravchuk Sheds USSR Influence but not CPU's

There is a question as to whether President Kravchuk genuinely represented his constituency's interests and was not influenced by outside actors, and if he was controlled by the Communist Party of the Soviet Union during his term as president. To recall the definition of democracy from Larry Diamond, independent power lies with elected officials and their appointees, rather than with unaccountable internal actors (e.g., the military or foreign powers). Way and Levitsky also stated that elected authorities possess legitimate power to govern, in that they are not subject to the control of military or clerical leaders. The 1991 Law of Ukrainian Presidency defined President Kravchuk's executive powers and enabled him to stand against the existing USSR. In fact, the law actually established the position of the president and article seven of the law gave him powers "...to suspend the actions of the USSR if those actions conflicted with the best interests of the Ukrainian Soviet Socialist Republic (SSR)."⁴⁴ Furthermore, internal actors such as the military did not control Kravchuk. In early 1992, Ukraine had no military. One of Kravchuk's first acts in office was to establish Ukraine's military and name himself as Commander in Chief of the Ukrainian Armed Forces.

As to whether Kravchuk acted in the national interests of the citizenry, this was indicated by his actions at the 1991 referendum. Gorbachev called this referendum in 1991 and posed a central question to the USSR citizenry to determine the future of the Soviet Union. Additionally, Kravchuk and the Galician oppositionists seized this opportunity to pose additional questions to the Verkhovna Rada concerning Ukraine's future in the USSR and complete independence, known respectively as the Ukrainian

⁴³ Kuzio and Wilson, *Ukraine: Perestroika to Independence*, 186.

⁴⁴ Taras, Ray. 1997. *Postcommunist presidents*. Cambridge; New York: Cambridge University Press, 69.

questions and the Galician question.⁴⁵ The March 1991 referendum posed three central questions to the population pertaining to the future of the Soviet Union. Citizens were then required to vote on these in order of importance. These were known as the Gorbachev question, the Ukrainian question, and the Galician question. They are as follows:

Gorbachev question: Do you consider it necessary to preserve the USSR as a renewed federation of equal sovereign republics?

Ukrainian question: Do you agree that Ukraine should be part of a Union of Soviet Sovereign States based on the Declaration of State Sovereignty of Ukraine?

Galician question: Do you want Ukraine to become an independent state which independently decides its domestic and foreign policies?⁴⁶

The Gorbachev question received support from 70.5 percent of those who cast the votes, the Ukrainian question 80.2 percent, and the Galicia question 88.4 percent (however, this third question was only voted upon in Galicia).⁴⁷ As the Ukrainian option reflected the will of a majority of all of the people, Kravchuk acted upon it by pursuing the negotiation of a commonwealth of sovereign states, which would later become the Commonwealth of Independent States (CIS).

While Kravchuk might have been successful in making decisions on behalf of a majority of his constituents regarding their independence, Kravchuk's independent presidential power according to Diamond's democratic requirements was questionable. Although he acted in his constituency's interest for sovereignty, the CPU still largely influenced him. Even though Kravchuk was able to mobilize the populace toward support of Ukrainian sovereignty, he still faced considerable opposition in the inherently corrupt Verkhovna Rada. The entrenched CPU within the Verkhovna Rada was not receptive to necessary democratic institutional reforms. Kravchuk saw himself as a bridge between the communist left and the Ukrainian nationalists. Unfortunately, he acquiesced in implementing economic reforms and did not use his decrees to influence Ukraine's economy; he did not press for the implementation of privatization laws passed

⁴⁵ Kuzio and Wilson, *Ukraine: Perestroika to Independence*, 159.

⁴⁶ Ibid.

⁴⁷ Ibid.

in 1992-1993.⁴⁸ Understanding that he was placed in office by the center-left, many of his decrees were anti-market in spirit, which would later prove to hinder Ukraine's future implementation of economic reforms.

3. Executive Power Undefined and Shared Among Branches

According to the 1978 Constitution of the Ukrainian Soviet Socialist Republic, which was still in effect during Kravchuk's term as president, all power was vested in the people, which meant, until 1990, exclusively the communist party. The citizenry elected the parliamentarians, known as deputies, to legislatures at various levels of the territorial-administrative divisions of the republics, from the village level all the way to the Verkhovna Rada of Ukraine, and the Verkhovna Rada had absolute power to govern the state, according to Articles 80, 82, and 97 of the SSR Constitution. Of course, this power had been on paper only until the communist system began to disintegrate in the 1990s – and then suddenly the articles of the Constitution acquired real political meaning and power. Article 80 stated that the Verkhovna Rada created the structures of the state and managed the legislative and other branches of government through regional levels of control. Article 82 professed that deputies, through the created branches, manage all fields of state, social and cultural developments, make the decisions and conduct a strict control to perform them. Finally, Article 97 cited the Verkhovna Rada as the supreme governing body in Ukraine.⁴⁹ Although the 1991 Law of the Presidency attempted to divide the Verkhovna Rada's legislative power base among branches of power, implementation of the law still faced resistance from the CPU within the Verkhovna Rada.

While the 1991 Law of the Presidency established basic operating procedures for the office of President, it did little to delineate power between the President and Verkhovna Rada. The Law did give some modicum of executive power to Kravchuk, as Article 7 gave the president the power to issue decrees and to reorganize the Cabinet of Ministers, but he still had no veto power over the Verkhovna Rada's legislative ability as

⁴⁸ Taras, *Postcommunist presidents*, 78.

⁴⁹ See Article 80, 82, and 97 of 1978 SSR Constitution. Internet on-line, Available from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=888%2D09>. (Accessed 10 June 2006).

prescribed by Article 5.⁵⁰ Under Kravchuk, the executive was substantially weaker than the Verkhovna Rada.

The Constitution was in need of reconstruction after Ukrainian independence in 1991, since it was still plagued with Soviet holdover articles. For example, in order to resemble a true democratic constitution, it would need to divide power among the executive, parliamentary and judicial branches of government. President Kravchuk organized a constitutional commission in October 1990 designed to overhaul Ukraine's constitution, but it was unsuccessful in building an effective checks and balances system among the three branches of government due to resistance from the CPU within the Verkhovna Rada. Unfortunately, the Verkhovna Rada was corrupt and the entrenched CPU was not receptive to necessary democratic institutional reforms. Later, the 1993 revision of the Constitution was more concerned with reversing Prime Minister Kuchma's liberalizing economic programs as President Kravchuk attempted to consolidate power. As a result, Ukraine's system of governance was transforming into the classic model of a mixed presidential-parliamentary system that was unable to resolve disputes between the two main branches of state. The Ukrainian Constitution did not set precedent for regulation of power between branches, and the judicial branch was completely ineffective. "Even with dozens of amendments, it failed to define either the separation of powers between the legislature and the executive branches or their responsibilities."⁵¹

After the collapse of the Soviet Union, Kravchuk continued to work with the constitutional commission to revise Ukraine's constitution and provide more power to the office of the President. In 1992, he created articles that established cabinet positions, declared himself head of state and of executive power. Additional constitutional amendments granted him the power to issue decrees on questions of economic reforms not regulated by Ukrainian law. Issuing decrees and gaining the ability to manage the cabinet were sweeping changes that broadened the powers of the President, however two reforms passed in 1992 extended his powers to the oblast level, which hindered democratic contestation and conflicted with Kravchuk's character as a coalition builder.

⁵⁰ Kuzio and Wilson, *Ukraine: Perestroika to Independence*, 166.

⁵¹ Dawisha, Karen, and Bruce Parrott. 1997. *The consolidation of democracy in east-central Europe*. Cambridge, U.K. ; New York, NY, USA: Cambridge University Press, 358.

The 1992 reforms created the Presidential Advisory Council (Duma) and the system of presidential prefects (*predstavnyky*) in the Ukrainian provinces.⁵² Each of these organizations was created as an advising body to the President, yet each one evolved into a personal implementation committee of the President's decrees in the oblasts. Moreover, the Duma and *predstavnyky* usurped the power of provincial leaders who were not in line with Kravchuk's views, seemingly in a return to authoritarianism. Both of these organizations were "soon being denounced, particularly on the left as unelected unconstitutional and unaccountable."⁵³ In this regard, Ukraine experienced a regression in democracy under Kravchuk. Although the 1991 Law of the Presidency afforded Leonid Kravchuk the power to issue decrees and reorganize the government, it did not allow him the ability to dissolve the Verkhovna Rada, thus his powers were limited by the constitution and heavily constrained by the Verkhovna Rada.⁵⁴

If Kravchuk would not use his executive power to reform Ukraine, then Leonid Kuchma, as Ukraine's Prime Minister in September 1992, surely would. Eventually Kuchma would enact several measures to empower himself as Prime Minister and wean power away from the President. As Prime Minister, Kuchma "... asked for and obtained the abolition of the Duma... the transfer of Kravchuk's emergency powers of decree to regulate the economy to himself for a six-month period."⁵⁵ Kuchma resigned a year later and Kravchuk tried to consolidate power and implement market reforms through the cabinet of ministers. He would prove to be unsuccessful in those exploits.

C. CONCLUSIONS

There were some successful moves toward democracy during Kravchuk's presidency as the country moved away from a fake parliamentary system of government and the CPU lost influence to the emerging DB. For the first time there were free and competitive elections involving multiple political parties during the 1990 Verkhovna Rada elections and the presidential election of 1991. A large percentage of voters participated in the election and there were many candidates of varying political affiliations besides the CPU. This showed an increase in polyarchal characteristics. A

⁵² Taras, *Postcommunist presidents*, 75-76.

⁵³ Ibid.

⁵⁴ Kuzio and Wilson, *Ukraine: Perestroika to Independence*, 166.

⁵⁵ Taras, *Postcommunist presidents*, 79.

polyarchy is a specific type of democracy in that it is concerned more with the electoral process, particularly increasing voter participation as well as the presence of an opposition to the majority. More importantly, increased voter participation in these elections showed that the population was interested in a democratic future for Ukraine. In both of these election proceedings, there was an emergence of the opposition to the CPU as the Democratic Bloc parties represented Ukrainian nationalism. The split within the Verkhovna Rada did yield a push toward the democratic end of the spectrum with the emergence of the Democratic Bloc as *Rukh* caused a tremor within the Rada as it gained support and chipped away at the entrenched CPU majority. While the DB still represented a minority within the Verkhovna Rada, its very existence signaled the presence of a growing opposition.

According to Diamond's elements of a liberal democracy, elected officials accountable to the citizenry and a constitution that regulated power amongst government branches, Ukraine did not fare so well under Kravchuk in either criterion. President Kravchuk's independent power as an elected official was questionable as certain outside actors influenced his decision-making process while others did not. While he acted in the national interests of his constituency, specifically in the pursuit of Ukrainian sovereignty, the CPU in the Verkhovna Rada was able to curb him. Kravchuk bowed neither to the Ukrainian military nor to the desires of the USSR. Furthermore, his declaration that the President was also Commander in Chief of the Ukrainian military assured that he controlled the military, and not vice versa. In addition, his nationalistic platform was contrary to the desires of the USSR, which sought to keep Ukraine within the Russian sphere of influence as posed by the Gorbachev question.

Executive power was not constrained constitutionally, but it was held accountable by other government branches. The Verkhovna Rada was largely in control of the Ukrainian political system much as it was under the SSR Constitution of 1978. Kravchuk could not check the power of the Verkhovna Rada, as he had no veto power or ability to dissolve the Rada. The Constitution of Ukraine under Kravchuk was still representative of the leftover 1978 Soviet Constitution in several regards because it still did not clearly differentiate power between executive, judicial and legislative branches. "There was no centralized political power, and parliament, the government, and the president all shared

and contested executive and legislative power."⁵⁶ Further, the constitution "...preserved the main elements of the 'system of Soviets' with its 'unity of power' and its lack of the separation of competencies between branches of government."⁵⁷ Under Kravchuk, the document was amended to define more clearly the status and powers of the President, but it remained inadequate for the task of constructing a democratic state.

During the Kravchuk administration from 1991-1994, Ukraine satisfactorily met one of the three democratization criteria outlined in Chapter I. The author's most important criteria of democracy was achieved, that of a free and fair electoral process as greater participation and contestation were observed in both the 1990 Verkhovna Rada elections and the 1991 Presidential elections. President Kravchuk's power as an elected official was genuine in that he tried to act in the national interest; however he was still influenced by the CPU. Finally, Ukraine's weak constitution did not effectively develop a checks and balances system between the branches of government. Additionally, the Verkhovna Rada was still largely in control of the Ukrainian political system and was not limited by the president. Finally, Ukraine was considered as only "partly free" as assessed by the Freedom House.

⁵⁶ Van Zon, Hans, "Political Culture and Neo-Patrimonialism under Leonid Kuchma," *Problems of Post Communism* 52, no. 5. (September/October 2005): 13.

⁵⁷ Protsyk, Oleh, "Constitutional Politics and Presidential power in Kuchma's Ukraine," *Problems of Post Communism* 52, no. 5 (September/October 2005): 24.

III. MATURITY OF DEMOCRACY UNDER LEONID KUCHMA

A. LEONID KUCHMA: FROM PRIME MINISTER TO PRESIDENT (1994-2004)

This chapter addresses the development of democracy under Leonid Kuchma's administration. As Ukraine's second president, his period in office was dramatically different from that of Leonid Kravchuk, as the Kuchma era represented a return to state control, corruptive practices, and authoritarianism. The free and fair electoral process was consistently biased and influenced by the state seen in both the Verkhovna Rada and presidential elections, and Kuchma later lost popularity in his second term largely due to his involvement in the "cassette scandals" allegedly implicating him in the murder of the opposition reporter Heorhiy Gongadze. Unlike President Kravchuk, Kuchma actually implemented presidential power and was effective in using it. During this period, there was a distinct power transfer between the executive and legislative branches of government, and the power base shifted to the presidency, as the Verkhovna Rada grew weaker and more factionalized. The Rada's factious nature stemmed from the ailing CPU as it lost dominance in the 2002 elections. Kuchma attempted to dramatically expand executive power beyond constitutional limits and quell the opposition. He was overly consumed with control, and often circumvented the Verkhovna Rada's legislative authority with decree power. He used this to implement reforms he deemed necessary to remain in power, in particular , amending the constitution.

As to be expected, the Constitution of Ukraine still required revisions to create an effective system of checks and balances between the branches of government. The Constitutional Agreement in 1995 began implementation of a checks and balances system between the executive and legislative branches, and it provided the president with veto power and the Verkhovna Rada with the power to approve or deny the president's council of ministers prior to implementation.⁵⁸ However, "...the division of power between the

⁵⁸ Taras, *Post Communist Presidents*, 86

president and parliament remained unresolved until the new Constitution of Ukraine was adopted on June 28, 1996."⁵⁹

B. FREEDOM SCORES MEASURING UKRAINE'S DEMOCRACY UNDER LEONID KUCHMA

Now it is important to look at the Freedom House scores awarded to the Kuchma Administration:

	PR	CL	Status
1993	4	4	PF
1994	3	4	PF
1995	3	4	PF
1996	3	4	PF
1997	3	4	PF
1998	3	4	PF
1999	3	4	PF
2000	4	4	PF
2001	4	4	PF
2002	4	4	PF
2003	4	4	PF
2004	4	4	PF

Table 3 Freedom House scores during the Kuchma Presidency. (From Ref 60)

"PR" stands for Political Rights, "CL" stands for Civil Liberties, and "PF" stands for partly free. Freedom House evaluations use a scale of 1-7 with 1 representing the highest degree of freedom present, and 7 being the lowest level.⁶⁰

As is evident from Table 1, the rating of political rights for Ukraine decreased from four to three after President Kuchma had succeeded President Kravchuk in 1994. Political rights as defined by Freedom House "...enable people to participate freely in the political process, including the right to vote, compete for public office, and elect representatives who have a decisive impact on public policies and are accountable to the

⁵⁹ Bertelsmann Transformation Index Country Report: Ukraine. 2004. <http://www.bertelsmann-transformation-index.de/158.0.html?L=1>. (Accessed 5 December 2005).

⁶⁰ Freedom in the World Comparative Rankings 1972-2004. Database on-line. Available from Freedom House. <http://www.freedomhouse.org/template.cfm?page=15&year=2005>. (Accessed 1 May 2006).

electorate."⁶¹ A lower PR score means that exercise of political rights is becoming freer and hence more democratic. As noted during Kuchma's second term, the PR score rose from three to four, thus Ukraine became less free. Overall, political rights became more democratic from Kravchuk to Kuchma in Kuchma's first term, but became less democratic in Kuchma's second term.

C. BERTELSMANN TRANSFORMATION INDEX COMPARISON

Another tool of measurement used to examine Ukraine's democratic progress is the Bertelsmann Foundation Index. This is used to discern Ukraine's position in the democratic spectrum. BTI has a checklist of eighteen indicators for democracy. Transparency and accountability indicate the actual functioning of formal democratic structures. BTI's overall score is based on the average of the scores obtained from the political transformation study, and will amplify Ukraine's participation in the free and fair electoral process.⁶² For evaluation purposes, the BTI compares Ukraine's democratic transition with three other countries: Hungary, Poland, and Belarus. These countries were chosen as they represent several points of progress on the road to democracy. For example, Hungary held the top ranking country in BTI's Political Transformation index in 2003. Furthermore, Poland was considered a successful democratically transitioning country according to Bertelsmann as well as Taras Kuzio in *Ukraine under Kuchma*.⁶³ On the other hand, Belarus represents the authoritarian end of the spectrum as the country has unfavorable pre-conditions for a market-based democracy according to Bertelsmann.

⁶¹ Freedom of the World Survey Methodology. Internet on-line. Available from Freedom House, <http://www.freedomhouse.org/template.cfm?page=35&year=2005>. (Accessed 4 December 2005).

⁶² The score for "Political Transformation" is obtained by calculating the mean value of the ratings for the following criteria: stateness, political participation, rule of law, stability of democratic institutions, and political and social integration. A score of 10 is awarded for the best progress toward a market-based democracy while a 1 represents the lowest performance. Internet on-line. Available from Bertelsmann Stiftung, Shaping Change: Strategies of Development and Transformation, <http://www.bertelsmann-transformation-index.de/37.0.html?&L=1>. (Accessed 5 December 2005).

⁶³ Kuzio, Taras. 1997. *Ukraine under Kuchma*. New York: St Martin's Press, 3.

Country	BTI	Ranking
Hungary	9.4	1
Poland	9.2	7
Ukraine	7.1	44
Belarus	3.97	85

Table 4 BTI Political Transformation Indices for Selected Countries⁶⁴

From Table 4 it is obvious that Ukraine has not completed its transition to democracy, but is making substantial progress towards democracy as compared to authoritarian Belarus.

D. ELECTION PITFALLS CLOUDING DEMOCRATIC TRANSITION

Although BTI scores from 2003 paint an optimistic picture for a transitioning democratic Ukraine, certain electoral process maladies affected the earlier Verkhovna Rada and presidential elections. Most importantly, contestation declined as state influence in elections prevailed, which reduced freedom and fairness in the electoral process.

1. Contestation Declines as Free Elections Dissolve

Political parties lacked a substantial citizen support base during the 1994 Verkhovna Rada and Presidential elections, as many voters were unaware of individual party programs. Parties' support bases was regional and varied in strength throughout the country. "Political parties during this period were divided into four main groups consisting of the radical leftist (communist ideologues), center-left/liberal parties, national democrats, and the radical right groups (extreme nationalists)."⁶⁵ The leftist political parties were strongly communist, oligarch affiliated and anti-reform. The center left/liberal parties touted genuine political and economic sovereignty for Ukraine. The national democrats advocated statist and anti-communist reform. Finally, the radical

⁶⁴ 2003 Bertelsmann Transformation Index. Database on-line. Available from Bertelsmann Stiftung, Shaping Change: Strategies of Development and Transformation, <http://www.bertelsmann-transformation-index.de/37.0.html?&L=1>. (Accessed 7 June 2006).

⁶⁵ Kuzio, *Ukraine under Kuchma*, 8.

right advocated that Ukraine remain autonomous and not revert to Russian control and influence. The radical rightist parties were the least successful, as they could not unify, and promoted blatant anti-Semitic and racial programs.⁶⁶

Ideology	Political Party
Leftist (pro-communist/anti-reform)	Communist Party of Ukraine (CPU) Socialist Party of Ukraine (SPU) Peasant Party of Ukraine (SelPU).
Center Left/Liberal	The Social Democratic Party of Ukraine (SDPU) Green Party of Ukraine (UPZ) Labor Congress of Ukraine (TKU), Liberal Democratic Party of Ukraine (LDPU) Liberal Party of Ukraine (LPU, The Party of Democratic Revival (PDRU) Hromada
National Democrats	<i>Rukh</i> Ukrainian Republican Party (URP) Democratic Party of Ukraine (DPU).
Radical Right (extreme nationalist)	Ukrainian National Assembly (UNA) Congress of Ukrainian Nationalists (KUN) Ukrainian State Independence (DSU).

Table 5 Political Parties during the 1994 Verkhovna Elections⁶⁷

a. *The Left Remains Dominant in the Verkhovna Rada in 1994/1998 Elections*

Not surprisingly, as leftist support increased, the results of the 1994 Verkhovna Rada elections showed a decrease in the seats occupied by the opposition. Of the 338 seats available, the leftist parties prevailed, gaining 119 seats, the centrist parties won 12 seats, the national democrats - 31 seats, and the extreme right secured eight seats. The remaining 168 seats were won by independent candidates. With this shift in power,

⁶⁶ Kuzio, *Ukraine under Kuchma*, 10.

⁶⁷ Birch, Sarah. 2000. *Elections and Democratization in Ukraine*. New York: St Martin's Press, 84.

Communist views dominated over 50% of the Verkhovna Rada.⁶⁸ The situation remained largely unchanged in the 1998 Verkhovna Rada elections with the leftist parties (CPU and SPU) gaining 173 seats, the center left/liberal parties (Hromada, SDPU, and UPZ) gaining 102 seats, and the total right (*Rukh*) gaining 59 seats.⁶⁹ Additionally, there were several instances of abuse of power by public officials in the campaign process. The most obvious was described in the OSCE election report covering the 1998 Verkhovna Rada elections when President Kuchma changed electoral law and appointed his Cabinet Minister Volodymyr Marchenko, thus replacing the opposition backed Yalta Mayor, Oleksandr Kaylus.⁷⁰ Also observed was media bias, as state television was used to promote the oligarchic 'parties of power', chiefly the CPU and SPU. This strong oligarchic party professed nationalist, non-reformist views. When factoring the pre-election television coverage, the OSCE reported that "...the party in power received the greatest amount of television coverage with 102 minutes. Other parties received from 56 minutes to only 7 minutes of coverage."⁷¹ Similar media favoritism and state control prevailed in the 1994 presidential elections as well.

b. 1994 Presidential Elections

The 1994 Presidential election was somewhat different from the 1991 elections in that candidates did not readily identify with a particular political party, yet did represent certain interest groups. Leonid Kravchuk remained a proponent of nationalism, while Leonid Kuchma was affiliated with the Inter Regional Bloc of Reforms (MRBR), a bloc of liberal democrats who were strongly anti-communist and pro-reform. Oleksandr Moroz was associated with the SPU and Volodymyr Lanovyi and Valeri Babych were both staunch reformists. Finally, Ivan Plyushch and Petro Talanchuk were backed by the 'party of power', which dominated the Verkhovna Rada. "Of the seven candidates who stood only one- Moroz- was a member of a political party." ⁷²

In the 1991 election, Kravchuk received tremendous support due to his nationalistic platform, but after mismanaging the economy, Ukrainians desired greater

⁶⁸ Birch, *Elections and Democratization in Ukraine*, 84.

⁶⁹ Ibid, 106.

⁷⁰ *Republic of Ukraine Parliamentary Elections 29 March 1998, Final Report*. Office for Democratic Institutions and Human Rights. (Warsaw, Poland: OSCE, 1999), 17.

⁷¹ Ibid, 19.

⁷² Birch, *Elections and Democratization in Ukraine*, 93.

stability. Polarization deepened in the 1994 Presidential election when Kravchuk won central and Western oblasts while Kuchma succeeded in the southern and eastern areas of Ukraine in the runoff. In the end, Kuchma won with 52.1% of the popular vote.⁷³ This was the first freely contested presidential election. Kuchma's victory was considered a true measure of democracy, according to Dahl. Previous Soviet elections usually had predetermined results and Kuchma had not been expected to win over Kravchuk.⁷⁴

Candidate	First Round (%)	Second Round (%)
Leonid Kravchuk	37.72	45.06
Leonid Kuchma	31.27	52.14
Oleksandr Moroz	13.04	
Volodymyr Lanovyi	9.32	
Valeri Babych	2.39	
Ivan Plyushch	1.29	
Petro Talanchuk	0.54	

Table 6 Results of the 1994 presidential election⁷⁵

While successes were noted in the 1994 elections, the 1999 Presidential election deteriorated from free and fair in the first round to coercion and bias in the second round. In this regard, the 1999 presidential election demonstrated a shift away from democratic electoral practices seen in the 1994 presidential election. Several discrepancies noted by OSCE observers during the 31 October and 14 November election runoffs included: intimidation of state employees by their superiors to vote for the incumbent, Leonid Kuchma; unfair campaigning practices displayed by the media, giving Kuchma an unfair advantage over opposition candidates; multiple voting; and incompetence by election committees.⁷⁶ The Central Election Committee (CEC), which oversaw the entire electoral process, had weak authority and failed to enforce election campaign regulations.

In order to understand where the breakdown occurred in the 1999 elections, it is important to understand the workings of elections in Ukraine. Presidential

⁷³ Arel, Dominique and Andrew Wilson, "Ukraine under Kuchma: Back to Eurasia," *RFE/RL Research Report* 3, no. 32 (1994), 1.

⁷⁴ Van Zon, "Political Culture and Neo-Patrimonialism under Leonid Kuchma," 13.

⁷⁵ Birch, *Elections and Democratization in Ukraine*, 96.

⁷⁶ *Ukraine Presidential Elections 31 October and 14 November 1999, Final Report*. Office for Democratic Institutions and Human Rights. (Warsaw, Poland: OSCE, 2000), 1.

elections in Ukraine are conducted by a three-layered hierarchy within the Electoral Administration. It is composed of the Central Election Committee (CEC), Territorial Election Committee (TEC) and the Polling Station Committee (PSC), in federal to local order. Parliament or other local bodies appoint members to establish these organizations. CEC members are nominated by the President and appointed by the Verkhovna Rada. Then, the committees at each level oversee the administration and ensure the electoral rights of citizens are followed via the protocol established by the Constitution and Laws of Ukraine. Unfortunately, during the 1999 Presidential elections, there was some measure of corruption at each level that prevented accurate election processes. One example was at the CEC, which was unable to enforce campaign regulations.⁷⁷

As the CEC was grossly incompetent in enforcing campaign regulations, problems occurred at the lower echelons as well, particularly the TEC. The TEC is an integral part of the election process as the commission is responsible for "...administering elections within respective territories, hearing complaints, and appeals regarding the actions at lower election commissions."⁷⁸ President Kuchma had disproportionate TEC representation at each oblast, specifically a 35 % share of the chairs. His closest competition was Petro Simonenko of the CPU with 8.7% representation of TEC chairs.⁷⁹ Having a pro-Kuchma TEC violated protocol of what the optimal TEC structure should entail and gave the perception that electoral hierarchy at the TEC level was biased. Kuchma had substantially more TEC Chairmen than any other candidate. Moreover, his TECs dominated areas where he had lost popular support previously in the 1998 parliamentary elections.⁸⁰ It was obvious that Kuchma was weighting the districts in his favor to ensure electoral victory, a technique that manifested his personal desire for state control.

The TEC was not the only corrupt level of the Electoral Administration. Kuchma also orchestrated representation majority at the PSC level increasing perceptions that the vote count could be manipulated in local settlements. He secured the highest number of representatives, 58,904 (14.9%) and Moroz a distant second with 48,577

⁷⁷ *Ukraine Presidential Elections 31 October and 14 November 1999, Final Report*, 5.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, 6.

⁸⁰ *Ibid.*

(12.3%).⁸¹ Across the country, President Kuchma achieved plurality of the PSC's leading positions, which was clearly visible to OSCE observers on election day.

Besides gaining the majority of support within the electoral administration, the state strongly backed Kuchma, as evidenced by the conduct displayed toward the opposition. The opposition bank of candidates was restricted during their respective campaigns. "The OSCE Election Observer Mission (EOM) received 90 complaints from opposition candidates and activists that their ability to campaign freely was restricted through personal threats, removal of campaign material, and obstruction of campaign meetings. State institutions and their employees were deemed the cause." ⁸²

In addition to bullying the opposition, the citizenry also felt pressure from the state. Coercion was a tactic used by the state to keep President Kuchma in office by guaranteeing him the election. For example, during the election proceedings, teachers supervised their voting students and hospital administrators supervised their employees. In addition, teachers were required to disseminate pro-Kuchma campaign material and were dismissed if they refused.⁸³

Another example of corruption included electronic media coverage. The 1999 Presidential election was biased from a media perspective in that Kuchma received a majority of television coverage, and the opposition received far less exposure. Meetings conducted by the EOM from September through November with local television senior executives revealed that Kuchma received 70 minutes of coverage on Ukraine Television 1 (UT 1) with his opponent Petro Symonenko (CPU) "...receiving only 11 minutes in two weeks. The content was overwhelming positive for the President and negative for Symonenko."⁸⁴ Kuchma was able to manipulate UT 1 as it was a state run television channel. It was obvious that free media in the democratic elections were subordinate to Kuchma's political goals.

The 1999 elections were corrupt for several reasons, including intervention of the state in election proceedings and media bias. Despite the fact that the

⁸¹ *Ukraine Presidential Elections 31 October and 14 November 1999, Final Report* , 7.

⁸² *Ibid* , 15.

⁸³ *Ibid*, 17.

⁸⁴ *Ukraine Presidential Elections 31 October and 14 November 1999, Final Report* , 17.

Verkhovna Rada formed the electoral commission, the presidential incumbent still manipulated it. Free and fair voting practices were non-existent as citizens were coerced by the state. Additionally, the media did not favorably portray opposition candidates. Ukrainians had fewer political rights under Kuchma according to Freedom House, an evaluation reinforced by ODIHR election findings. Elections were moving away from a free and fair environment to one of state bias and control. Finally, voter confidence in the electoral process plummeted "...with over two-thirds (68%) expecting the elections to be fraudulent."⁸⁵ The electoral process was migrating away from this democratic criterion under the Kuchma administration.

2. Kuchma's Political Agenda and Return to Authoritarianism

Under Kuchma, Ukraine was moving towards authoritarianism in that Kuchma did not act in the constituency's interests and he was overly consumed with circumventing the Verkhovna Rada's legislative power. Kuchma's motives were driven by his desire to remain in power rather than the desires of the citizenry. In fact, Kuchma often changed his campaign strategy to remain in office by tailoring his platform to the popular interests of the people at that specific point in time. A considerable portion of the electorate believed that Ukraine's economy could be saved only through stronger Russian relations after independence in 1991.⁸⁶ Thus, the national interest was somewhat divided between Ukrainian nationalism and improved relations with Russia. Therefore, his platform in 1994 was based on closer economic relations with Russia and intentions to implement economic reforms. These views were hardly within the constituency's views in the Western and the Northern oblasts of Ukraine, which viewed a return to Russia as a threat to Ukrainian sovereignty. Moreover, Kuchma was not easily influenced by outside actor's interests, specifically the Russian Federation or the Ukrainian oligarchs. Kuchma did seek a return to Russia purely for economic salvation as Kravchuk's visions of nationalism and economic mismanagement had eroded Russian-Ukrainian relations and sent the country into economic ruin and staggering hyperinflation. Kuchma's personal relations with Russian President Boris Yeltsin were sour during his first term, but later thawed as the two leaders agreed upon the final status

⁸⁵ *Ukraine Presidential Elections 31 October and 14 November 1999, Final Report*, 24.

⁸⁶ Birch, *Elections and Democratization in Ukraine*, 93.

of the Black Sea Fleet and were able to sign the Friendship and Cooperation Treaty in May 1997.⁸⁷ Kuchma was not susceptible either to Russian influence or the emerging Ukrainian oligarchs. .

President Kuchma was initially hard on the oligarchic clans of Donetsk (coal industry), Donbas (media industry), and Dnipropetrovsk (steel/gas/defense industry). Kuchma later acted as more of a mediator between them, and did not side with one in particular. In the mid 1990s, Kuchma prosecuted Ihor Baikai, a successful commodities trader in the gas industry and media oligarch Vadim Rabinovich. The third oligarch of the period, Yukhum Zviahilskiy, of the Donetsk clan, fell out of favor with the Kuchma regime. After a year of energy reforms, the old oligarchs returned to Kuchma's favor allowing newer oligarchs to emerge, the owners of steel mills, with the aid of the Prime Minister Viktor Yushchenko's legislative reform. Enacting legislation that reduced subsidies to Ukrainian gas traders by Russia and holding Ukrainian gas oligarchs accountable to pay for their deliveries, Yushchenko had effectively neutralized the old oligarchic system.⁸⁸ Yushchenko had "...transformed the oligarchs from rent seekers to producers."⁸⁹ These actions would eventually cost Yushchenko as he was ousted as Prime Minister in 2001 by oligarchic influence. The oligarchs' influence at the end of the Kuchma era increased dramatically from their meager beginnings in 1994.

The newly emerging oligarchs of the steel industry were equally as influential as the old gas oligarchs. Rinat Akhmetov, leader of Ukraine's Donbas regional clan, was Ukraine's richest oligarch with an estimated fortune of \$2.4 billion gained through his company, Systems Capital Management (SCM). SCM controlled large steel and mining companies in Eastern Ukraine. Viktor Pinchuk, head of the Dnipropetrovsk clan, was the second richest businessman in Ukraine, member of the Verkhovna Rada, and owned the ICTV television company. Pavlo Lasarenko, Dnipropetrovsk governor and head of Unified Energy System of Ukraine, traded heavily in the gas industry with his close business partner, Yulia Tymoshenko. Despite the fact that Yulia Tymoshenko was a

⁸⁷ "Russia and the CIS; Russia's Non-Strategy for Relations with Ukraine," *Johnson's Russia List*, 15 January 2002. <http://www.cdi.org/russia/johnson/6022-10.cfm>. (Accessed 3 April 2006).

⁸⁸ Åslund, Anders, and Michael McFaul. 2006. *Revolution in orange: The origins of Ukraine's democratic breakthrough*. Washington, D.C.: Carnegie endowment for international peace, 14.

⁸⁹ *Ibid.*

powerful oligarch in the gas industry in the early 1990s, she was later appointed as deputy prime minister in 1999 and became a formidable opponent to the remaining oligarchs.⁹⁰

Initially the oligarchs were relatively weak in the mid 1990s, but later grew increasingly powerful once they were back in Kuchma's good graces. During Kuchma's second term, the oligarchs became more established and sought to prevent democratic reform and economic liberalization because transparency would endanger their profits and power. The oligarchs did not influence Kuchma because they were still a relatively weak political entity. The centrists were too unorganized to transform themselves into oligarchs during Kuchma's first term; therefore, this class did not influence Kuchma's presidential power.⁹¹ In addition, the oligarchs' goals aligned with Kuchma's goals--to avoid becoming the weaker opposition. Kuchma never really saw the oligarchs as a true threat; otherwise, he would have enacted legislation to protect himself if he feared he were being usurped.⁹² As President Kuchma drove his own agenda and was not influenced by internal domestic politics, the oligarchs, he fell short in Diamond's trait of a liberal democracy--elected officials who represent their respective constituents. Although outside actors did not influence Kuchma, he did not necessarily represent the will of the majority in Ukraine.

3. Executive Power Circumvents the Constitution

During a period known for democratic regression and a shift toward authoritarianism, Leonid Kuchma went to great lengths to strengthen the powers of the president and wrest power away from the Verkhovna Rada. Kuchma certainly used his power of decrees more than Kravchuk to execute economic and government reforms. For example, Kuchma averaged 1200 decrees per year during his presidency, while Kravchuk averaged 600.⁹³ In addition to Kuchma's flagrant use of decree power, the Constitution was amended granting him additional powers.

⁹⁰ Åslund and McFaul, *Revolution in orange: The origins of Ukraine's democratic breakthrough*, 13-14..

⁹¹ Kuzio, Taras, "Regime Type and Politics in Ukraine under Kuchma," *Communist and Post-Communist Studies* 38 (2005): 176.

⁹² Ibid.

⁹³ Protsyk, Oleh, "Constitutional Politics and Presidential power in Kuchma's Ukraine," 29.

The Constitution of Ukraine would undergo several sweeping changes during the Kuchma administration until the final approved version in June 1996. The previous Constitution under Kravchuk was still representative of the leftover Soviet Constitution from 1978 in several regards because it still did not clearly differentiate power between executive, judicial and legislative branches. As a result, the Verkhovna Rada and the president still "...shared and contested executive and legislative power."⁹⁴ Leonid Kuchma would press the Verkhovna Rada continually for a draft constitution defining the powers of the legislative and the executive branches of government, but the factionalized parliament was unable to come to terms quickly. Conflicts arose concerning the issues of separation of power, state symbols and national language. In the end, the Verkhovna Rada could not agree on several aspects of the constitutional framework, one of which was defining the powers of the president.⁹⁵

The Constitutional Agreement of 1995 was an interim Constitution, which governed the branches of government until an actual constitution could be signed. Under this agreement, Kuchma received greater power over the Verkhovna Rada in the areas of Cabinet of Ministers organization and management (Article 24), presidential representatives at each successive Rada level (Article 19), and veto power over the Verkhovna Rada laws (Article 23).⁹⁶ Under this agreement, Kuchma gained control over the Prime Minister and Cabinet of Ministers. Formerly, under the SSR Constitution of 1978, the Verkhovna Rada held this function. Additionally, Kuchma gained veto power. Although the Verkhovna Rada could overrule Kuchma's veto with two-thirds majority, this was rarely achieved in the highly factionalized Rada.⁹⁷ The Constitutional Agreement of 1995 would set the stage for Kuchma's brand of authoritarianism to flourish, leading Ukraine away from democracy. During the Kuchma administration, presidential powers were increased and the Verkhovna Rada powers lessened as the legislative branch became subordinate to the executive branch. Kuchma gained power using his system of presidential appointment to rule by decree, "...allowing him control

⁹⁴ Van Zon, "Political Culture and Neo-Patrimonialism under Leonid Kuchma," 13.

⁹⁵ Ibid.

⁹⁶ See Articles in the Constitutional Agreement of 1995. Internet on-line. Available from Verkhovna Rada website, <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1%EA%2F95%2D%E2%F0>. (Accessed 4 May 2006).

⁹⁷ Constitutional Agreement of 1995, Article 23,

over lucrative positions that provided access to state resources. Kuchma used blackmail and bribes in manipulating parliament and the government." ⁹⁸ In addition, as the judiciary was expected to follow the orders of the politicians in power, it was unable to check and balance the legislative and executive branches. Often used in a functioning and successful democracy, the judiciary was minimized under Kuchma. As a result policymakers in the presidential administration "...increasingly interfered in the work of the judiciary during the Kuchma presidency."⁹⁹

Surprisingly, democratic progress was attained with the ratification of the 1996 Constitution, under Kuchma. Providing for a complete separation of powers between the executive and legislative branches of government, it allowed the president "...to issue decrees, veto laws passed by parliament, and introduce draft laws that would have priority status for the Verkhovna Rada's consideration."¹⁰⁰ However, enforcing the constitution would prove difficult for the parliament. Extensive use of the veto characterized Kuchma's presidency, and was rarely overridden by the Verkhovna Rada. Only when Kuchma attempted to increase his executive power through further constitutional amendments in 2000 and 2003 did the Verkhovna Rada achieve solidarity and block his pursuits.¹⁰¹ Additional Constitutional amendments passed in December 2004 granted the Verkhovna Rada extended powers, and balanced powers between the executive and legislative branches. Critics believe Kuchma enacted these amendments not because he wanted Ukraine to become more democratic but because he could not find a successor who would carry on his initiatives; obviously he feared personal and political repercussions.¹⁰² Regardless of Kuchma's intent, the constitutional amendments passed in 2004 balanced power between the executive and legislative branches and were a step in the right direction toward democratic transition.

E. CONCLUSIONS

Ukraine had the potential to continue transitioning forward to democracy at the beginning of Kuchma's first term, yet his actions during his second term regressed the

⁹⁸ Van Zon, "Political Culture and Neo-Patrimonialism under Leonid Kuchma," 13-14.

⁹⁹ Ibid, 16.

¹⁰⁰ Prostyk, "Constitutional Politics and Presidential Power under Leonid Kuchma," 25.

¹⁰¹ Whitmore, Sarah, "State and Institution Building under Kuchma," *Problems of Post Communism* 52, no. 5 (September/October 2005), 8.

¹⁰² Prostyk, "Constitutional Politics and Presidential Power under Leonid Kuchma," 26.

country along the democratic spectrum. According to Freedom House scores, Ukraine became freer under Kuchma in his first term, yet later regressed to less free during his second term.

Ukraine became less of a polyarchy under Kuchma than Kravchuk. A polyarchy is a specific type of democracy in that it is concerned more with the electoral process, particularly increasing voter participation as well as the presence of an opposition to the majority. Although the 1994 presidential elections showed a greater level of public contestation signifying potential progress toward democracy, the 1999 elections were grossly corrupt and biased towards the incumbent. Moreover, public contestation degraded in the 1994 and 1999 Verkhovna Rada elections as the CPU retained parliamentary dominance. Ukraine became "less free" in political rights, as the ODIHR evaluation noted. Voters were coerced, the opposition was not given the same media coverage as the incumbent, and Kuchma heavily influenced the electoral process in his favor.

According to Diamond's first element of a liberal democracy where elected officials are accountable to the citizenry, Ukraine regressed in the democratic spectrum under Kuchma. President Kuchma's power as an elected official was not authentic and reflective of his constituency's interests, yet he was not controlled by the whims of the oligarchs or Russian President Yeltsin. The oligarchs were too weak to oppose him and infiltrated the Verkhovna Rada merely to protect their own business interests. Kuchma developed closer ties to Russia during his terms merely to protect the interests of Ukraine, and he played outside actors against one another. Although he was not influenced by outside actors' interests, as was former President Kravchuk, Kuchma's intentions were driven by his desires to remain in office. According to this criterion of democracy, Ukraine was not making forward progress as its elected leaders did not act in the interests of the citizenry.

In Diamond's second criteria of a liberal democracy where the constitution regulated power amongst government branches, Ukraine ultimately improved in the democratic spectrum under Kuchma than under Kravchuk. While executive power was neither constrained constitutionally nor held accountable by other government branches

under Kuchma in his first term, later constitutional amendments restored equilibrium between the branches of government in his second term. The 1996 Constitution was a step towards democracy in that it provided for a complete separation of powers between president and parliament and clearly defined presidential powers. .

Ultimately, Ukraine seemed to be sliding backward to authoritarianism under Kuchma. Under Kuchma, the most important criterion of democracy, that of a free and fair electoral process, was absent in all elections during this period. Elected officials' power grew consistently less genuine both in the presidency with Kuchma's quest for legislative power and decree abuse as well as in the Verkhovna Rada with the infiltrating oligarchs. Conversely, there was a positive move toward democracy, as the 1996 Constitution of Ukraine eventually curtailed executive power. Further amendments in 2004 granted some presidential powers to the Verkhovna Rada.

IV. THE ORANGE REVOLUTION AND VIKTOR YUSHCHENKO'S VISION

As the Orange Revolution reminds us, elections are critical to democracy's existence not because they affirm it, but because they call it into question.¹⁰³

A. VIKTOR YUSHCHENKO (DECEMBER 2004-PRESENT)

Within the past two years, there has been a shift in the electoral process of Ukraine after the Orange Revolution towards free and fair elections. Taking the form of a series of peaceful protests across Ukraine, the Orange Revolution took place in response to the perceived electoral fraud that occurred in the 2004 presidential election between Viktor Yanukovich and the opposition candidate Viktor Yushchenko. Yushchenko's party, "Our Ukraine," mobilized peaceful popular protests against perceived election fraud culminating in the Supreme Court's decision that the second election round was invalid and must be repeated. The political majority's will prevailed in the Orange Revolution and has set Ukraine on the path toward a free and fair election process indicative of a democracy.

The election of Viktor Yanukovich after the second round of elections on 21 November raised questions regarding Ukraine's free and fair electoral process. If Ukraine was a democracy, proclaiming it had free and fair elections, why did the Orange Revolution occur, removing Viktor Yanukovich from the office of President? Can democracy be sustained in Ukraine? This chapter seeks answers to these questions. Although the Orange Revolution was successful in reversing state-biased elections, Ukraine must avoid the tendency to default to its past corrupt electoral practices and suppression of the opposition. Furthermore, the dominance in the Verkhovna Rada of Viktor Yanukovich's Regions Party in March 2006 has the potential to further galvanize the rift between the east and the west. Regrettably, Ukraine has fallen short on democratic reforms evident with past electoral fraud, the attempted assassination of Yushchenko, and leftist views in Southern and Eastern Ukraine.

¹⁰³ Ascher, Ivan, "Deciding on the Borderland: The Ukrainian Elections of 2004," *Theory & Event* 8, no. 2, (2005), 8.

B. FREEDOM SCORES MEASURING UKRAINE'S DEMOCRACY UNDER VIKTOR YUSHCHENKO

When analyzing Yushchenko's administration, it is important to study on the Freedom House scores regarding democracy in Ukraine:

2005			2006		
PR	CL	Status	PR	CL	Status
4	3	PF	3	2	F

Table 7 Freedom House scores during the Yushchenko presidency. (From Ref 104)

"PR" stands for Political Rights, "CL" stands for Civil Liberties, and "PF" stands for partly free. Freedom House evaluations use a scale of 1-7 with 1 representing the highest degree of freedom present, and 7 being the lowest level.¹⁰⁴

Comparing Tables 1 and 7, it is evident that Ukraine's PR scores move from four to three during Yushchenko's presidential term, signifying that Ukrainians had more political rights. This shift occurred because many citizens throughout the country mobilized against the fraudulent second round in the 2004 presidential election. Additionally the country's freedom status improved from "partly free" in 2005 to "free" in 2006. Unfair electoral practices were neutralized with the Orange Revolution. Prior to the Orange Revolution, elections had followed the same dismal trends they had in the past, including the state's coercion of voters, a biased media and corrupt electoral accounting procedures, as evidenced by the OSCE evaluation of the 1999 presidential election.

1. Presidential election of 2004 and the Verkhovna Rada Elections in 2006: Different Beginnings, Similar Outcomes

Freedom House statistics depict an increase in political rights from Kuchma's to Yushchenko's presidency, due in part to the successful outcome of the Orange Revolution. This is illustrated by OSCE election results as well as the democratic Verkhovna Rada elections in 2006. While the ODIHR findings painted a bleak picture after the first presidential election round in 2004, substantial progress was made toward democracy after the influence of nonviolent peaceful protest. Inefficient and corrupt

¹⁰⁴ Freedom in the World Rankings. 2006. Database on-line. Available from Freedom House. <http://www.freedomhouse.org/template.cfm?page=15&year=2005>. (Accessed 1 May 2006).

election committees were replaced, and control of the media relaxed, creating a more competitive political environment. In addition, state bias and control faded, as the repeat second round runoff occurred. For example, during the 2006 Verkhovna Rada elections, contestants actually received equal coverage on the state run television channel, UT1.¹⁰⁵ Moreover, the Supreme Court was more effective than in previous presidential elections, as it annulled fraudulent election results. For instance, "...on 3 December 2004, the Supreme Court decided to invalidate the decision of the CEC... and ruled that in order to restore the rights of the election participants, the second round must be repeated."¹⁰⁶ Finally, elections were moving toward a freer and fairer climate.

a. Unfair Second Round Presidential Elections Mobilize Opposition

While multiple political parties were represented during the 2004 presidential election, it was not equitable. The lineup consisted of Viktor Yanukovich (Party of Regions), Viktor Yushchenko (Our Ukraine/Yulia Tymoshenko bloc), Petro Symonenko (Communist Party), and Oleksandr Moroz (Socialist Party). In addition, although there were a variety of political parties represented, the first round of elections was controlled by state intervention and media bias.

Ideology	Political Party
Leftist (pro-communist/anti-reform)	Communist Party of Ukraine (CPU) Party of Regions Socialist Party of Ukraine (SPU)
Liberal/Nationalist (pro-west, pro democracy)	Our Ukraine Bloc Yulia Tymoshenko Bloc

Table 8 Dominant Political Parties in the 2004 Presidential Elections¹⁰⁷

Both rounds of the 2004 presidential election mirrored the 1999 presidential election, yielding similar ODIHR findings of Central Election Committee (CEC) ineptitude and apathy, media bias, and state intervention. In review, a three-

¹⁰⁵ *Report of the International Election Observation Mission, Parliamentary Elections, Ukraine-26 March 2006*. Office of Democratic Institutions and Human Rights, (Warsaw, Poland: OSCE, 2006), 10.

¹⁰⁶ *Ukraine Presidential Election 31 October, 21 November, and 26 December 2004, OSCE/ODIHR Election Observation Mission Final Report*. Office for Democratic Institutions and Human Rights, (Warsaw, Poland: OSCE, 2005). Database on-line. Available from OSCE, <http://www.osce.org/odihr-elections/14667.html>. (Accessed 19 May 2006), 3.

¹⁰⁷ Central Election Commission. Internet on-line, Available from www.cvk.gov.ua. (Accessed 9 June 2006).

layered hierarchy within the Electoral Administration composed of the Central Election Committee (CEC), Territorial Election Committee (TEC) and the Polling Station Committee (PSC), conducted presidential elections in Ukraine. Unfortunately, the electoral hierarchy was biased and incompetent, especially at the CEC level. The state often levied support toward the incumbent's choice, Viktor Yanukovich, while reducing support to the opposition candidates. One example was that the media coverage focused on the state's candidate while the opposition received minimal or unfavorable coverage. Additionally, the state influenced Ukrainian citizens to support Yanukovich. All of the above transgressions were the catalyst for the Orange Revolution. The citizens of Ukraine were incensed by the perceived fraudulent second round election results in the 2004 presidential elections. "International observers roundly denounced the election as rigged; and when Yanukovich emerged as the official winner with a lead of three percentage points, hundreds of thousands of people descended onto the streets to contest the election's official results."¹⁰⁸

	Yushchenko	Yanukovich
First Round (31 October)	39.9 %	39.26%
Second Round (21 November)	46.61%	49.46%
Repeat Second Round (26 December)	51.99%	44.20%

Table 9 2004 Ukraine Presidential election results¹⁰⁹

The election hierarchy of 2004 remained inefficient, much as it did during the 1999 presidential elections, greatly hindering the concept of a free and fair electoral process. In the first round, the CEC performed as dismally in 2004 as it did during the 1999 elections. For instance, the 2004 CEC was not transparent or politically neutral in the electoral process and was reluctant to enforce electoral law or take action against improper administrative decisions. The CEC failed to properly maintain order and supervise the Territorial Election Committee (TEC), resulting in the TEC's inconsistent and selective application of election law. Furthermore, the CEC failed to establish transparent and accountable procedures for use of Absentee Voter Certificates (AVCs),

¹⁰⁸ Ascher, "Deciding on the Borderland: The Ukrainian Elections of 2004," 2.

¹⁰⁹ *Ukraine Presidential Election 31 October, 21 November, and 26 December 2004, OSCE/ODIHR Election Observation Mission Final Report*, 45.

which lead to instances of multiple voting.¹¹⁰ Finally, the CEC did not take any punitive action against filed complaints. Due to these flagrant violations and the mismanagement of lower echelons in the first election round, the Verkhovna Rada dismissed the first round CEC and appointed a new committee. "This newly appointed CEC addressed previous OSCE Election Observer Mission (EOM) recommendations and administered the repeat second round runoff of the 2004 presidential election in a more transparent and accountable fashion."¹¹¹ Slowly the electoral process was repaired through the ODIHR's heavy handedness, but deeply rooted bias and state control within the system impeded the democratic election process in early 2004.

Unfortunately, actions at the lower echelons of the electoral committee, specifically the (TEC) and Polling Station Committee (PSC), were equally abysmal. There were reports of unfair support in favor of Yanukovych, as the TEC selection was prejudicial, much as it was during the 1999 presidential election. The TEC's lacked independence from local government structures, which were influenced by the incumbent Prime Minister, Yanukovych. In the end, Yushchenko's TEC representatives experienced a high degree of discrimination and were often shut out of TEC meetings.¹¹²

The PSC faced several hurdles simply in conducting the business of decision-making. "According to the law, an election commission can function only when two-thirds of its appointed members are present at a session."¹¹³ Because of this stipulation, many PSC members, regardless of political affiliation, simply chose resignation or absence to stifle the committee's actions. One instance was in early October when a large number of appointed PSC members resigned or failed to take up their duties, thus hamstringing the PSC's ability to tally first-round election results.¹¹⁴ Additionally, PSC selection was biased and favored Yanukovych in several districts. Local government structures favored Yanukovych and dismissed many PSC members appointed by the opposition prior to the first and second election rounds.

¹¹⁰ *Ukraine Presidential Election 31 October, 21 November, and 26 December 2004, OSCE/ODIHR Election Observation Mission Final Report*, 9.

¹¹¹ *Ibid*, 2.

¹¹² *Ibid*, 12.

¹¹³ *Ibid*, 13.

¹¹⁴ *Ibid*, 2.

The first round of the 2004 presidential elections were not considered "free" in terms of either equal media coverage or lack of state control. The incumbent president, Leonid Kuchma largely controlled the State-run national television channel UT1, and regularly used the channel's extensive coverage to influence voters toward the Yanukovich camp. In addition, UT1 openly promoted Mr. Yanukovich and reported critically on Mr. Yushchenko.¹¹⁵ During the second round runoff, the state enforced media guidelines, known as *temnyky*, were removed which had a balancing effect on the candidates' media coverage.¹¹⁶ Ukrainian media actually became fair, no doubt due to the effects of the successful peaceful protests. Citizens became more confident in asserting their rights after the Orange Revolution prevailed over election fraud.

Despite the fact that state control of the media loosened following the Orange Revolution, there was still coercive backlash from the top levels of government in the first election round, harkening back to the 1999 presidential election. For instance, the state enacted measures to quell voter support of the opposition and channel it toward Yanukovich. Leading up to the first election round on 31 October 2004, the state ordered students and public sector employees to sign Yanukovich's candidate petition and vote in his favor or face adverse consequences. Additionally, the state exerted pressure on citizens to cease their political activity for opposition candidates. "In Zhytomyr, OSCE observers reported that senior university staff instructed teachers and students that an upcoming international peace function event was mandatory; when students arrived however, the event turned out to be a Yanukovich campaign rally."¹¹⁷

b. *The Verkhovna Rada Elections in 2006 Earn ODIHR Accolades*

The 2006 Verkhovna Rada elections were vastly different from past elections in Ukraine in that there was a competent CEC to execute free and fair electoral practices and an absence of state intervention and media bias. There was wide participation of parties and blocs representative of the entire political spectrum of Ukraine. These positive characteristics of Ukraine's electoral process had been largely absent in past elections. Yushchenko conducted himself far differently than Kuchma

¹¹⁵ *Ukraine Presidential Election 31 October, 21 November, and 26 December 2004, OSCE/ODIHR Election Observation Mission Final Report*, 13.

¹¹⁶ *Ibid*, 2.

¹¹⁷ *Ukraine Presidential Election 31 October, 21 November, and 26 December 2004, OSCE/ODIHR Election Observation Mission Final Report*, 18.

concerning media bias and party coverage. "The State-funded television channel, UT1, complied with its legal obligation to provide free time for all contestants ... and devoted a significant portion of its main news program to activities of the president which were largely neutral and positive in tone." ¹¹⁸ These elections appeared to be truly democratic and unhindered by the state, a dramatic transformation from previous elections.

Political Party	Gained seats	Vote (%)
Party of Regions	186	32.1
Yulia Tymoshenko Bloc	129	22.9
Our Ukraine Bloc	81	13.9
Socialist Party of Ukraine	33	5.6
Communist Party of Ukraine	21	3.66

Table 10 Results of the 2006 Verkhovna Rada elections.¹¹⁹

2. The Oligarch's Occasional Hand of Influence

There has been a certain degree of variation in each Ukrainian president's use of power. Kravchuk was wary of using it lest he incite a rift between himself and the opposition or the majority. On the other hand, Kuchma thirsted for power and compromised ethical governing practices to acquire it. And current President Viktor Yushchenko uses his constitutionally diminished powers cautiously, as the oligarchs ousted him as Prime Minister in 2001.¹²⁰ He has attempted a hard-line stance towards the oligarchs and has had considerable success in limiting oligarchic capitalism, yet Yushchenko appears to be influenced by oligarchs on other issues. President Kuchma was largely responsible for the rise of the oligarchs, as they were allowed economic freedom in Ukraine under Kuchma's second term. Kuchma did little to stifle them and allowed questionable privatization ventures to proceed. Eventually the oligarchs infiltrated the Verkhovna Rada where they were eventually able to influence

¹¹⁸ *Report of the International Election Observation Mission, Parliamentary Elections, Ukraine-26 March 2006*, 10.

¹¹⁹ The election of people's deputies. 2006. Database on line. Available from the Central Election Commission of Ukraine. <http://www.cvk.gov.ua/vnd2006/w6p001e.html>. (Accessed 15 May 2006).

¹²⁰ Åslund and McFaul, *Revolution in orange: The origins of Ukraine's democratic breakthrough*, 14.

government.¹²¹ Dmitri Vydrin, the director of the European Integration and Development Institute in Kyiv was quoted as saying, "When you look at what is happening in Parliament, you see too many factions, which are still being influenced by big business. Yushchenko's Ukraine is a pseudo-democracy much as it was when he took office, where the rules of political competition are not transparent, and still influenced by oligarch interests."¹²² In the aftermath of the Orange Revolution, the oligarchs have continued to reign supreme within the Verkhovna Rada.

President Yushchenko promises fair market practices and has shown an ability to curb the oligarchs and set a precedent. Yet, he has acted differently in two separate issues concerning Kryvorizhstal and the murder case of Heorhiy Gongadze. This is perhaps due to the assassination attempt on his life by dioxin poisoning in 2004 by anti-oppositionists.¹²³ Yushchenko was successful in reversing the 2004 Kryvorizhstal steel mill privatization venture by System Capital Management, a company owned by Ukrainian billionaire Rinat Akhmetov, and Interpipe, a company of Viktor Pinchuk (oligarch and brother-in-law of former President Kuchma). Kryvorizhstal Steel was privatized by these two oligarchs in 2004 for the bargain price of \$800 million USD in 2004. This low price caused a scandal as Kryvorizhstal Steel's market value was six times as much as SCM and Interpipe paid for it. ¹²⁴ "Court rulings later struck down the 2004 sale, and the steel mill was returned to the state in June 2005."¹²⁵ Although this was a victory for Yushchenko over the oligarchs, he has acted far differently in the murder trial of opposition journalist Heorhiy Gongadze.

There has been little progress in the murder case of opposition journalist leader Heorhiy Gongadze, where former president Kuchma was allegedly involved. "The

¹²¹ Dempsey, Judy, "Ukraine's dance of the oligarchs," *International Herald Tribune*, 23 December 2005. Internet on-line. Available from International Herald Tribune/Business, <http://www.iht.com/articles/2005/12/23/business/wbolig.php>. (Accessed 10 May 2006).

¹²² Steele, Jonathan, "Orange Revolution oligarchs reveal their true colors.", *The Guardian*, 14 October 2005. Internet on-line. Available from Guardian Unlimited, <http://www.guardian.co.uk/comment/story/0,,1591775,00.html>. (Accessed 6 May 2006), 2.

¹²³ Loof, Susanna, "Yushchenko Poisoned With Dioxin," *Associated Press Online*, 11 December 2004. Available from Associated Press, <http://www.mindfully.org/Pesticide/2004/Ukrainian-Yushchenko-Dioxin11dec04.htm>. (Accessed 12 Jun 2006).

¹²⁴ "Ukraine: Country's Largest Steel Mill Sold At Auction," *Radio Free Europe Radio Liberty Online*, 24 October 2005. Available from RFE/RL, <http://www.rferl.org/featuresarticle/2005/10/b87465a5-eb07-48b0-baea-5e60f46f54a8.html>. (Accessed 2 June 2006).

¹²⁵ "Ukraine: Country's Largest Steel Mill Sold At Auction."

alleged killers, three police officers, are in jail, but the trial is not going forward. Senior figures from the Kuchma days who are alleged to have ordered the crime and are still useful in shoring up Yushchenko's power, remain at large."¹²⁶ If President Yushchenko truly held genuine power reflective of the citizenry, he would act decisively on this issue. Although Yushchenko acted in the middle-class business owners' interests with his action in Kryvorizhstal, Yushchenko's inaction in the Gongadze murder trial discredits the interests of the opposition. Yushchenko has been reluctant to wholly attack the oligarchs, fearing that aggressive "search and destroy" tactics will trigger a return to authoritarianism. His hesitance only incites oligarchic capitalism and corruption in Ukraine.

3. Constitution of Ukraine Retains Yushchenko's Executive Power

President Yushchenko's political aims are far different from former President Kuchma's in that Yushchenko is not consumed with retaining presidential power. In contrast to Kuchma's return to authoritarianism, Yushchenko genuinely favors democratic change and political reform. Nearing the end of his presidency in 2004, Kuchma proposed several amendments to the Constitution of Ukraine limiting his power as president and granting more power to the Verkhovna Rada. Most likely Kuchma proposed these amendments because he was unable to ensure the succession of a candidate who would continue his policies.¹²⁷ Kuchma saw the future of Ukraine leaning toward an opposition majority. However, whatever Kuchma's intentions, they produced a sense of democracy within Ukraine with the reduction of the president's power. Viktor Yushchenko has done nothing to reverse the constitutional amendments that have limited his power, and stated in a television interview that he would do nothing destructive to the constitutional initiative adopted by the Verkhovna Rada, referring to the constitutional changes approved late last year.¹²⁸ .

Interestingly, presidential power under Viktor Yushchenko has diminished. In his term, Yushchenko has seen much of his presidential powers passed to the Verkhovna Rada, signifying a balance of power among the governmental branches, indicative of

¹²⁶ Steele, Jonathan. "Orange Revolution oligarchs reveal their true colors", 3.

¹²⁷ Prostyk, "Constitutional Politics and Presidential Power under Leonid Kuchma," 26.

¹²⁸ "Ukraine head promises reform move," *British Broadcasting Corporation*, 4 October 2005. Internet on-line. Available from BBC, <http://news.bbc.co.uk/2/hi/europe/4310568.stm>. (Accessed 15 May 2006).

democratic governments. ¹²⁹ As Yushchenko has relinquished certain powers of the office of president, there is growing evidence that the Verkhovna Rada is now as power hungry as Kuchma. For example, the constitutional amendments agreed upon during the Orange Revolution, effective 1 January 2006, stripped the president of the power to nominate the Prime Minister and form the cabinet. These changes were hidden from the people--instituted without a national referendum--and Yushchenko believed them to be unconstitutional. ¹³⁰ Yushchenko has weakly challenged these constitutional changes and seeks to overcome a potential rebellion in the Verkhovna Rada. No longer a highly divided body, as during the Kuchma administration, the Verkhovna Rada has become united and a potential obstacle to Viktor Yushchenko's initiatives in the aftermath of the 2006 Verkhovna Rada elections. Election results pushed Yushchenko's party, "Our Ukraine," into the minority while former presidential candidate Yanukovich's Party of Regions achieved a parliamentary majority.¹³¹ The relationship between the president and the Verkhovna Rada has democratically evolved as power has shifted until equilibrium was finally reached due to the terms set in the present constitution. The ratification of the post-Orange Revolution Constitution in January 2006 constrained presidential power and held it accountable to other government branches, successfully meeting specific democratic criteria.

C. CONCLUSIONS

Yushchenko's actions during his presidency have moved Ukraine further along the spectrum towards democracy than under Kuchma. According to Freedom House scores, Ukraine became freer under Yushchenko and achieved the most democratic scores thus far (See Table 7).

Ukraine became more of a polyarchy under Yushchenko than under Kuchma. A polyarchy is a specific type of democracy in that it is concerned more with the electoral process, particularly increasing voter participation as well as the presence of an opposition to the majority. While Ukraine's first round of presidential elections in 2004 appeared as fraudulent as the 1999 election fiasco with the free-election process

¹²⁹ Lavelle, "Analysis: Viktor Yushchenko's agenda," 2.

¹³⁰ Warner, Tom, "Yushchenko promises more democratic constitution." *Financial Times*, 13 January 2006.

¹³¹ The election of people's deputies. 2006. Database on line. Available from the Central Election Commission of Ukraine. <http://www.cvk.gov.ua/vnd2006/w6p001e.html>. (Accessed 15 May 2006).

effectively stifled by the incumbent administration, the success of a mobilized populace in the Orange Revolution was truly a positive move toward democracy. Such an occurrence would have been impossible six years ago in Ukraine with a divided opposition effectively neutralized by Kuchma. The opposition's influence in 2004, which caused the Supreme Court to invalidate the results of the second round of presidential election results and hold a subsequent election, showed that the majority voice of the people prevailed, much as it does in a functioning democracy. In that regard, Ukraine's electoral process has moved more toward freer and fairer elections, earning a Freedom House status of "free." In all cases, the data suggests that under President Kuchma, elections in Ukraine were not democratic, whereas under President Yushchenko, elections have become substantially more democratic.

Furthermore, the opposition emerged and triumphed during the 2004 presidential elections, something clearly stifled during the 1999 presidential elections. Viktor Yushchenko's "Our Ukraine" party prevailed and peaceful protest reversed fraudulent election results. Although it would appear that Ukraine became "less free" in political rights, a finding reinforced by ODIHR's evaluation of the 2004 first presidential election round, the fact that the CEC was reorganized, becoming more accountable in the election process and ensuring fair TEC proceedings, implies that fair elections were attainable and Ukrainians had more political rights. Instances of voter coercion and state intervention were also present during the first round of presidential elections, reminiscent of the corrupt 1999 elections; however, the successful Orange Revolution overcame this corruption as the majority rule dwarfed the influence of the state. Moreover, under Yushchenko media bias and state intervention subsided as noted during the 2006 Verkhovna Rada elections.

According to Diamond's first element of a liberal democracy where elected officials are accountable to the citizenry, Ukraine sustained its position in the democratic spectrum under Yushchenko. Yushchenko's actions towards the oligarchs in the reprivatization of Kriyvorizhstal Steel in 2004 showed that he was intent on reducing oligarchic capitalism in Ukraine. Although this was a telling case in that Yushchenko acted in the interests of the citizenry, particularly the middle class business owners, his inaction in the Gongadze murder trial have not well represented the interests of the

opposition. His lack of action during the Gongadze trial conflicts with his zeal to rid Ukraine of oligarchic capitalism, which may indicate that he is soft on corruption and may be controlled by the whims of the oligarchs in the future.

In Diamond's second criteria of a liberal democracy where the constitution regulated power amongst government branches, Ukraine ultimately progressed along the democratic spectrum under Yushchenko when compared to Kuchma. Yushchenko's executive power has been constrained constitutionally and held accountable by other government branches, yet it is perhaps a little too constrained by the increasingly powerful Verkhovna Rada. In his term thus far, regulation of presidential power is more evident than in the past as the Verkhovna Rada received some presidential powers.¹³² The 1996 Constitution provided for a complete separation of powers between the president and the Verkhovna Rada and clearly defined the legislative powers of the president.

Overall, there is there is considerable improvement in two of the three criteria of democratic measurement, specifically the emergence of a free and fair electoral process and the constitution, but some work remains to be done in the criterion of elected officials accountable to the citizenry. Ultimately, Ukraine became more of a democracy under Yushchenko than Kuchma.

¹³² Fawkes, Helen, "Yushchenko urges new constitution," *British Broadcasting Corporation*, 14 February 2006. Internet on-line. Available from , <http://news.bbc.co.uk/2/hi/europe/4697576.stm>. (Accessed 12 May 2006).

V. CONCLUSION

In the early 1990's, Ukraine experienced a dramatic change in governance with the collapse of the Soviet Union and Ukraine's pursuit of sovereignty. These events created a shift in governance as Ukraine underwent varying degrees of political transition, from nationalism under Kravchuk to authoritarianism under Kuchma to a fledgling democracy under Yushchenko. Fortunately, Ukraine has made some progress in its transformation from a fake parliamentary style of government in the early 1990s to a democratic system of government. Within the past year, there has been a shift in the electoral process of Ukraine noted with the outcome of the Orange Revolution and the Verkhovna Rada elections of 2006. For the first time in Ukraine's history, peaceful public protest overturned a fraudulent election, resulting in the inauguration of the popular candidate. The Orange Revolution resulted in a fair and free election process that removed Viktor Yanukovich and placed the publicly chosen candidate, Viktor Yushchenko, in power as Ukraine's president. Following independence from USSR and the aftermath of the Orange Revolution, Ukraine has experienced a slow shift toward democratization. This independence has a relative chance to flourish, as long as elections continue on their present course and the country's elected officials respect the will of the citizenry.

A. HOW HAS UKRAINE TRANSITIONED DEMOCRATICALLY?

1. Democratic Evolution of the Ukrainian Election Process Since 1991

The electoral process in Ukraine has shifted back and forth between democratic freedom and authoritarian-control tendencies within the last fifteen years. First, under President Kravchuk, democratic criteria of voter participation and public contestation were considerable, signifying a move toward polyarchal democracy. A polyarchy is a specific type of democracy in that it is concerned more with the electoral process, particularly increasing voter participation as well as the presence of an opposition to the majority. Elections were competitive at the presidential and the Verkhovna Rada level. Rukh and the Democratic Bloc parties represented Ukrainian nationalism in opposition to the CPU. Next, free and fair contestation seemed equally prevalent in the 1994 presidential elections with an emerging opposition, but faded once Leonid Kuchma

assumed control of the presidency, and subdued the opposition candidates. Free and fair contestation decreased in the 1999 elections, which were grossly corrupt and biased towards the incumbent via OSCE reporting criteria. Voters were coerced, media coverage sensationalized the incumbent and tarnished the opposition, and Kuchma greatly influenced the electoral process in his favor. Not surprisingly, the survival of democracy seemed unlikely in the twenty-first century. Presidential elections in 2004 initially were as biased and corrupt as in 1999, but democracy emerged as a result of the 2004 Orange Revolution. The opposition's nonviolent public protest pressed the Supreme Court to invalidate the second-round election results and showed that the will of the majority prevailed, as it does in a functioning democracy. Ultimately, Ukraine's electoral process has become considerably more democratic than it was in 1990, as the 2006 Verkhovna Rada elections suggest.

2. Genuine Power or Outside Actor's Influence?

During each administration, the representational power vested with elected officials has remained consistently poor. When balancing his constituents' interest with outside actor influence, Kravchuk acted in the national interest, but was subservient to the CPU. A coalition builder by nature, Kravchuk was hesitant to wield his power as the President of Ukraine. On the other hand, Leonid Kuchma was not controlled by the whims of the oligarchs. His political adeptness, circumvention of the Verkhovna Rada, and abuse of his decree power kept the weaker oligarchic clans from influencing him as he consolidated power. However, Kuchma did not act in the national interest of the populace, and his initial platform strategy in 1994 went against the majority who supported Ukrainian sovereignty. Current president Yushchenko's representative power as an elected official is questionable, and his actions, or lack of thereof, reveal that he may be influenced by the oligarchs. While he acted decisively in reducing oligarchic capitalism in the reprivatization venture of Kriyvorizhstal steel, he has not achieved closure in the murder trial of opposition journalist Heorhiy Gongadze. According to this criterion of democracy, Ukraine has not progressed along the democratic spectrum in this measurement. Its elected officials have acted inconsistently over the years in the citizenry's interest and have been influenced by either the CPU or the oligarchs.

3. Executive Power Regulated by the Constitution and Held Accountable by Other Government Branches?

The Constitution of Ukraine has undergone sweeping changes over the years, but has generally progressed towards democracy. Initially, under Kravchuk, the Law of the Presidency in 1991 vaguely described the powers of the president. The old SSR Constitution of 1978 had ineffectively established a separation of powers between the executive, legislative, and judicial branches of the Ukrainian government. As a result, the Verkhovna Rada and the president shared legislative and executive power, which was not truly addressed until the 1996 Constitution of Ukraine. Consequently, Kravchuk's presidential powers were poorly defined, as executive power was not constrained constitutionally but was held accountable by the Verkhovna Rada. Under Kuchma, the 1995 Constitutional Agreement enabled the president to increase his influence as it dismantled the deputy system of the 1978 SSR Constitution and gave Kuchma distinctive leverage over the Verkhovna Rada. The 1995 Constitutional Agreement gave Kuchma veto powers and the ability to form and dismiss the Cabinet of Ministers. Finally an effective checks and balances system was in place. The 1996 Constitution was a positive move toward democratic transition in that it provided for a complete separation of powers between the executive and legislative branches of government, clearly defined the legislative powers of the president, and restored equilibrium between the branches of government. In this regard, Ukraine has become more democratic and has shifted away from authoritarianism as presidential power has become constrained constitutionally and branches of Ukraine's government are held accountable by one another.

B. FREEDOM SCORE COMPARISON OF PRESIDENTIAL ADMINISTRATIONS

Ukraine has become more of a democracy when examining political rights transformation from 1991 to 2006. Under Kravchuk, political rights achieved a freedom score of three, which falls into the partly-free category according to Freedom House.¹³³ Freedom House political rights scores became less free under Kuchma, and were awarded a score of four, due most likely to Kuchma's manipulation of the electoral commission and control of the media. Eventually, Ukraine scored a three in 2006, becoming freer.

¹³³ Freedom in the World Comparative Rankings 1972-2004 and 2006 Freedom in the World Rankings. Database on-line. Available from Freedom House.
<http://www.freedomhouse.org/template.cfm?page=15&year=2005> (Accessed 1 May 2006).

This was largely due to the opposition's growing support and the Orange Revolution's ability to overcome fraudulent elections and the positive democratic traits observed by ODIHR during the 2006 Verkhovna Rada elections.

	PR	CL	Status
1991	3	3	PF
1994	3	4	PF
1999	3	4	PF
2004	4	3	PF
2006	3	2	F

Table 11 Freedom Scores comparison from Ukraine's independence to Post Orange Revolution. (From Ref 134)

"PR" stands for Political Rights, "CL" stands for Civil Liberties, and "PF" stands for partly free. Freedom House evaluations use a scale of 1-7 with 1 representing the highest degree of freedom present, and 7 being the lowest level.¹³⁴

According to Dahl's model, Ukraine is somewhere in the middle of the democratic spectrum, between a closed hegemony and a polyarchy.¹³⁵ A closed hegemony regime is the least democratic regime according to Dahl.¹³⁶ In this type of system, voter participation is practically nonexistent and there is little or no public contestation. A polyarchy is on the other end of the spectrum and is a specific type of democracy that is more concerned more with the electoral process, particularly increasing voter participation as well as the presence of an opposition to the majority. Ukraine's elections have become more participatory and free, as evidenced by OSCE election reports, and public contestation has increased as a result of the Orange Revolution. However, elected officials' power which is truly representative of its constituents has not progressed.. Political figures have more or less tried to act in the interests of the citizenry, but have time and again been influenced by the CPU and the Ukrainian oligarchs. On the other hand, the evolution of Ukraine's Constitution has made positive progress toward the country's democratic transition. The Constitution of Ukraine has transformed

¹³⁴ Freedom in the World Comparative Rankings 1972-2004 and 2006 Freedom in the World Rankings. Database on-line. Available from Freedom House.

<http://www.freedomhouse.org/template.cfm?page=15&year=2005> (Accessed 1 May 2006).

¹³⁵ Dahl, *Polyarchy; participation and opposition*, 7.

¹³⁶ Ibid.

tremendously from the democratically ineffective SSR Constitution of 1978, and now regulates the power between the executive and legislative branches of the government. Although the previous three presidencies have had a lack of continuity and questionable agendas, incremental progress toward a democratic Ukraine has continued with its election practices and constitutional revisions. The future of a complete democratic reform within Ukraine may rest on the vision of the next parliament, as the Verkhovna Rada is more powerful than the president and subject to oligarchic influence.

C. U.S. POLICY IMPLICATIONS

While some may argue that Ukraine's progress toward democracy is of little importance to the United States, the opposite is true. The democratization of Ukraine could hinder future relations between the United States and Russia. Interestingly, both countries backed different presidential leaders in the 2004 presidential elections, channeling substantial funds into each candidate's campaign fund to ensure victory. "Viktor Yanukovich was openly backed by the Vladimir Putin, and Russian money was said to account for half of his campaign funds."¹³⁷ On the other hand, "...the Bush administration alone was said to have channeled sixty-five million dollars to aid political organization in Ukraine in the last two years."¹³⁸ Evidently, both the U.S. and Russia had far different intentions for the future of Ukraine. The West focused on the electoral process and supported free and fair elections intent on spreading democracy throughout the region. Russia clearly had a different agenda for Ukraine; a return to the Russian sphere of influence. "The Kremlin's goal was to recreate a regime in Ukraine that was not favorable to the West. It would therefore be more dependent on Russia."¹³⁹

Despite the fact that Ukraine's transition to democracy has the potential to damage U.S.-Russian relations, the Orange Revolution brought the United States and the European Union closer. Both believe in promoting democracy in Ukraine and Eastern Europe, and Ukraine's democratic transition contributed to Western unity between the EU and United States; two actors who have had frequent disputes in the past regarding the

¹³⁷ Ascher, "Deciding on the Borderland: The Ukrainian Elections of 2004," 3

¹³⁸ Ibid.

¹³⁹ Åslund and McFaul, *Revolution in orange: The origins of Ukraine's democratic breakthrough*, 161.

level of political intervention.¹⁴⁰ However, promotion of democracy in this region is not achieved without some degree of cost. U.S. foreign policy toward this region needs to consider the cost of propagating democracy and discern if they are willing to endure potential Russian repercussions.

¹⁴⁰ Ibid, 141.

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