

# Subnational Government Reform in Ukraine: A Tangled Journey with a Polish Twist

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# Structure of the Talk

- I. The Origins of Ukraine's subnational constitutional dilemma.
- II. The Orange & Maidan Revolutions and War: Ukraine as a unitary state with 3 levels of local government, aka the 'Polish Model'?
- III. Full-scale Invasion, the creation of 'hromada', and the coming 'constitutional moment'.
- IV. Thoughts about facing this moment: Ukraine as a unitary state with one strong level of municipal self government.

# I. Origins of the Constitutional Dilemma

- March 1990, first partially free elections to Ukrainian Parliament, Verkhovna Rada (VH)
- August 20, 1991: Leonid Kravchuk, 1<sup>st</sup> Secretary of Ukrainian Communist Party, refuses to back coup against Gorbachev.
- Aug. 24, 1991: Verkhovna Rada declares Ukrainian Independence and invests Kravchuk with presidential powers.
- Dec. 5, 1991: Kravchuk elected president in first free elections.
- Territorial Structure of Soviet Ukraine (with exception of Crimea preserved) 24 oblasts, c. 1500 rayons, 2 republican cities, c. 250 Cities of Oblast Significance (CoS) & c. 10,000 tiny villages.

# I. The Origins of the Constitutional Dilemma

- President given the power to nominate the prime minister, and to appoint the heads of ‘local state administrations’ at the oblast and – by extension- rayon levels.
- “Hyper-presidentialism” concentrates many of the appointment powers of the bygone Communist Party in the President’s Office.
- ‘Decentralization’ debate driven more by struggles between the Presidency and regional interests than by thinking about which subnational governments should do what.
- ‘Decentralization’ debate is overshadowed by and intersects with a similar debate over the President’s power to appoint and dismiss the prime minister and other members of the cabinet.

# I. The Origins of the Constitutional Dilemma

- Two debates intersect in practice: Presidents need regional bosses to be elected; regional bosses become prime ministers; prime ministers often replace ‘their’ presidents.
  - Kuchma → Kravchuk; Yushchenko → Kuchma; Yanukovich → Yushchenko
- ‘Hyper presidentialism’ is fused in practice with regionally-based ‘competitive patrimonialism’ (Hale, Balint)
- Think: Oligarchic clans whose initial power lies in specific industries and oblasts (before moving into finance, media, and national politics).
- 1996 Constitution institutionalizes “hyper-presidential” appointment of prime ministers and oblast LSA heads.

# The Subnational Constitutional Dilemma

All subnational governments are defined as local self-governments because all are endowed with democratically elected authorities.

**BUT**

The executive power of the state runs from the President downward through all of them in a vertical chain of command.

- President appoints the heads of Oblast “Local State Administrations”
- Heads of Oblast LSAs appoint the heads rayon LSAs.
- Oblast LSAs appoint also the heads of key municipal departments (finance, education) in big cities (CoS) until the late 1990s.

Oblasts run rayons and try to runs CoS; rayons run the country-side; and the 10,000 villages are too small to run anything.

# Constitutional Consequences

- All public sector functions are delegated by the state.
- No clear separation of functions between levels of government.
- At each level, state appointed executive bodies coexist with democratically elected councils.
- They have separate legal personalities & powers: Loosely, LSAs --finance and management; Councils disposition of state assets and appoint of directors.
- In practice, the LSAs run the show because they control the money; and because the councils don't have their own administrations (executive bodies).
  - Big cities (CoS), with both democratically elected councils and (executive) presidents are the exception to the rule.
  - But here, the autonomy of CoS is limited by the central financing of most functions and the LSAs appointment powers with respect to key municipal departments.
- 'Shared' social sector functions are financed through centrally set indicators based on material or staffing inputs (X# of beds, Y# of teachers per class)

# Constitutional Consequences

- Complete legal, linguistic, and practical confusion about what a “local self-government” is.
  - None of Kulesza/Regulski’s three preconditions for self-governemtn are met: Independent legal identities, independent budgets, property rights
- Confusion about who should be responsible for adjusting public sector services to demographic decline in an economic tailspin.
  - By the end of 1990s, Ukraine has among the smallest schools and classes in the world; largest number of hospital beds/nurses per capita in Europe.
- CoS progressively gain greater control over their budgets and break out from under state tutelage.
  - 60% of PIT is allocated to them on basis of where people work.
  - Oblast LSAs loose appointment rights.
  - Central financial indicators break down.



## II. Orange/Maidan Revolutions, War1: Towards a 'Polish Model'?

- Yushchenko and the Orange Revolution (2004-5) put 'Western' rule of law reforms, alignment with EU norms, on the map.
- Reformers look to Poland's 'decentralization' and re-envision Ukraine as a unitary state with three levels of self-government.
- Bezsmertniy Plan (2005-7) calls for:
  - Consolidation of 10,000 villages (avg. pop. c.1000) into c 1,500 hromada (avg pop. c. 5000)
  - Granting hromada the same functions and revenues (transfers) as CoS
  - Constitutional amendments creating oblast and rayon self-governments by endowing them their own executive bodies.
  - Dividing functions between rump state LSAs and new self-governments at the oblast and rayon levels.

## II. Orange/Maidan Revolutions, War1: Towards a 'Polish Model'?

- But consolidating villages into “hromada’ is a problem from hell.
- The constitutional amendments needed to endow oblast and rayon councils with their own executive bodies/administrations fail twice.
- Reform *a la Polonaise* withers on the vine. The model is also arguably misunderstood.
- Kulesza & Co see local self governments as ‘state building from the bottom up’.
  - integral parts of a single system of public administration,
  - run by democratically accountable local elites
  - entrusted with providing own and shared public services,
  - designed to allow the national government to concentrate on law and regulation and not where schools should go, or whether the toilets flush.

## II. Orange/Maidan Revolutions, War1: Towards a 'Polish Model'?

- Ukrainian reformers see the creation of self-governing oblasts and rayons (more than hromada) as tools to break the vertical power of the center –and particularly the President-- over subnational matters.
- And waiting for constitutional reform distracts from thinking about how to best parse functions between levels of government.
- But either way, 'decentralization' grounds to a halt.
- Maidan and Russia's 1st invasion (2014) 'resuscitate' reform agendas including the Bezsmertniy plan.
- While the world calls for 'federalization' to end the conflict (Minsk) Ukraine announces a new 'The Concept of Local Self Government and Territorial Reform' reaffirming the Bezsmertniy plan.

## II. Orange/Maidan Revolutions, War1: Towards a 'Polish Model'?

- While at war, remarkably Ukraine succeeds in getting 10,000 villages to 'voluntarily' consolidate into 1,500 hromada (2016-2021)
- But constitutional amendments to create of self- governing oblasts and rayons fail again.
- Instead, rayons are stripped of most of their functions and property, and their number is reduced from 1500 to 500.
- For the first time towns –not rayon LSAs-- rule the countryside. They take over schools, other social sector institutions, basic local services.
- But they are underfinanced because the PIT share (60%) is allocated by place work, not place of residence –radically overfunding big cities.
- The constitutional question about what to do with oblast and rayon councils is left unresolved.

### III. Full scale invasion and the coming 'constitutional moment'

- Just as Ukraine completes 'municipalization', Russian launches its full-scale invasion (February 2022)
- Much of Ukraine's initial resilience is attributed to its new hromada.
- And ironically, the first years of the war improve their financial position vis-à-vis the national government and the oblasts –particularly the positions of big cities in western and central Ukraine
  - PIT share prophylactically increased to 64% in 2022.
  - Military recruitment boost employment and increases the yield of PIT.
  - People and business move to central and western cities.
- Big cities pull functions from the oblasts because they can finance them (e.g. vocational education, veteran and specialized medical services)
- But inevitably, Martial Law and the length and brutality of the war leads to the militarization of oblast and rayon LSAs and the recentralization of power.

### III. Full scale invasion and the coming 'constitutional moment'

- War has produced unthinkable death, dismemberment, displacement and destruction. (Tragically, resilience and trauma travel together)
- There is no official data on how many Ukrainians remain in the country. But reasonable estimates put the resident population at c. 32 million, down from c. 52 million in 1990 (last Soviet census).
- Neither the end of the war, nor its possible terms, are in sight or easy to imagine.
- Harder still with Trump coming to power and European support faltering on its own.
- Nonetheless, Ukraine must think about its post war subnational order because --at a minimum-- recovery, reconstruction, repatriation, and EU membership will require massive public administration reforms.

### III. Full scale invasion and the coming ‘constitutional moment’

- For the moment, the unspoken assumption of both Ukraine’s decentralization reformers and the EU –if not the Office of the President-- is that the ‘Polish Model’ remains the goal.
- Indeed, EU reform conditionalities –even with the war-- are still based on the 2014 ‘Concept of Territorial Reform’.
- But ‘Polish Model’ or not, peace will force Ukraine to once again face its unresolved constitutional dilemma:
  - Should oblasts --maybe rayons-- be transformed into self-governments by endowing their councils with executive bodies of their own, and separating state from local functions at both levels.
  - Or should oblasts --maybe rayons-- be transformed into arms of the national government by clearly transforming their councils into advisory bodies.

## IV: Thoughts on the coming 'constitutional moment'

My feeling is that Ukraine should abandon the 'Polish Model' and envision itself as unitary state with single, strong level of municipal self-government, and that the EU should openly support this shift.

- Politically, it is unlikely that the VH will amend the constitution to create self-governing oblasts (rayons) without NATO membership.
- Dividing functions between the national government and two or three levels of self government will be much harder, than dividing them between the national government and hromada.
- Demographic problems and the shortage of trained civil servants will make it very difficult for Ukraine to staff both new self-governments and the rump LSAs at the oblast and/or rayon levels while meeting EU requirements for subnational planning and financial probity.



## IV: Thoughts on the coming 'constitutional moment'

- As in Poland, it has been assumed that one of the primary functions of self-governing oblasts would be the programming of EU funds.
- But wartime destruction will render moot the difference between national reconstruction and regional development: Separating the two is likely to generate conflicts between the national government and self-governing oblasts.
- Housing shortages and new services for veterans will require concerted state action at the oblast level, as well as effective coordination of with hromada.
- Big cities and hromada have little interest in the creation of self-governing oblasts and will likely prefer direct negotiations with the national government over contested competencies.

## IV: Thoughts on the coming 'constitutional moment'

Instead, the key subnational reforms of a post-war Ukraine should focus on:

- Strengthening the governance and planning capacities of oblasts and rayons that have been constitutional defined as territorial arms of the national government.
- Putting the PIT sharing system on a residency basis to improve the finances of rural/suburban hromada, and to strengthen the linkage between taxpayment and voting that is crucial for accountability.
- Eliminating the dualism that runs through all subnational governments, and which arises from the fact that executive bodies and councils are separate legal entities (with councils the holder of property rights)
- Developing institutional mechanisms to provide public services in areas where hromada remain too small to provide them for themselves.

## IV: Thoughts on the coming 'constitutional moment'

- Politically, Ukrainian's 'decentralizers' should be pushing for the creation of strong, state-run oblasts in return for their clear subordination to the government (not to the President).
- The EU should embrace this shift in perspective