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With a foreword by Oleg Rafalskiy

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Foreword

Conceptualizing the Ukrainian Political System

Oleg Rafalskiy

The problem of the quality of the Ukrainian political system is, without exaggeration, a key concern of scientists, politicians, foreign partners, and even foreign investors who want to put money into an understandable country, where their rights are guaranteed, and financial risks are minimized. Today, this topic is reaching a new level of discussion, because the full-scale Russian invasion, which has been going on for over 800 days, has radically changed Ukraine as a state and civil society. On the one hand, we have an incredible consolidation “around the flag,” when both politicians and citizens put aside political squabbles to win the Russian-Ukrainian war; on the other hand, the challenges of the country’s post-war recovery pose a different kind of task. We cannot rebuild the country, resolve the deepest demographic crisis since World War II, revive or even radically change the country’s economy, and integrate into the Euro-Atlantic political, economic, and security structures with a hybrid, inefficient political system.

Now it is obvious that Russia would hardly have dared to start armed aggression and unleash a big war if Ukraine had been a strong state with effective institutions, including the army. The weakness of state institutions, political strife, and sociopolitical schisms in society are definitely the reasons why the Russian Federation has been actively cultivating and promoting in its propaganda the idea of Ukraine as a failed state since 2014. Luckily, the confidence that Ukraine is an easy target turned out to be a misperception of reality, the Kremlin’s biggest illusion. Undoubtedly, the cost of this war for Ukraine would have been incomparably lower if the institutional capacity of our country had been better. Now Ukraine is offering worthy resistance to the aggressor. Ukraine has managed to form a pro-Ukrainian coalition, which includes the world’s most developed countries – from the USA, Canada, the UK,

and the EU to Japan and Australia, countries whose total GDP is about 60% of the world's GDP.

However, we should realize that, yes, the collective West can help with weapons, financially and technologically, but no one can build a strong Ukrainian state and state institutions except the Ukrainians themselves. These considerations on developing our own responsibility for the fate of the state inspired this study. It began shortly before the Russian Federation's full-scale invasion on February 24, 2022, and ended already at the height of the war. After martial law was introduced, the political process in Ukraine was put on hold for more than two years. However, these tragic circumstances create a certain "window of opportunity" to prudently assess the state of the country's political system as its basic institution, and, just as prudently, to determine the areas for change based on what is needed by the state and society, not by political forces.

The object of research in this book is the political system of Ukraine, including those institutional influences on which its further transformation depends most. The researchers focused on those institutions that are not political, but whose condition indicates the quality of the political system— institutions of civil society, media, financial and industrial groups, forms of political and public participation, etc. The study is based on the **hypothesis** that there is a wide gap between the political model enshrined in the Constitution of Ukraine and its actual state in Ukraine.

Hence, this monograph examines the political practices identified by the authors as they appear in the functioning of each component of the political system and in the actions of the actors that influence it: semi-presidentialism in its Ukrainian variant, formal and actual functions of parliament, other representative bodies, and executive authorities; real mechanisms of political class incorporation, actual functions of political parties and elections; institutional capacity of the non-governmental sector; the state of media and their role in political processes; political consequences of the current state of the judicial system. Finally, the activities of financial and industrial groups are examined because these groups are a phenomenon in Ukrainian politics that, to use the terminology of physicists, by the "law of refraction of light," significantly distorts the

theoretically quite high-quality democratic constitution by its very existence and influence. The research areas chosen by the authors' team made it possible to conduct a qualitative scholarly assessment of the consequences of introducing teleological constitutionalism and to reveal the domestic aspects of the *state capture phenomenon*. Of course, this study would be incomplete had we not attempted to analyze the nature of the challenges and tasks of post-war recovery.

The methodological approaches used in the study are based on the neo-institutionalist vision of how the political system and its institutions function. Several alternative approaches have been developed in political science to analyze institutional changes within the framework of new institutionalism. In their well-known essay, P. Hall and R. Taylor showed that neo-institutionalists try to justify three different positions and advance the following views: a) institutions are changed by particular political actors if there is a direct benefit in terms of the means spent and the results obtained (rational choice neo-institutionalism); b) it is possible to introduce new institutional practices if they contribute to increasing the social legitimization of their participants (sociological neo-institutionalism); c) institutions are established collectively, with political ideals taken into account, and the individual choice of political actors is not decisive (historical neo-institutionalism) (Hall and Taylor 1996). As this shows, the first approach narrows analysis to the transaction costs of actors, while the second actually reaches the interdisciplinary border with sociology. Therefore, historical institutionalism has become the most appropriate methodological tool for researchers to address the problem of institutional change fully.

One of the most recent examples of applying this methodology is a collective study headed by W. Streeck and K. Thelen, which summarized extensive experience of institutional changes in developed Western countries. Instead of discrete and sudden changes, the researchers discovered mainly gradual and incremental changes, often endogenous and even, in some cases, determined by the only possible behavior generated by the institution itself (Streeck and Thelen 2005); the concept of "institution" is defined as "a set of rules stipulating expected behavior and ruling out behav-

ior” (Streeck and Thelen 2005, 14). Given the general public’s involvement in 2014 in demanding institutional changes, and subsequently the 2019 “electoral revolution” and the unprecedented self-organization of Ukrainian society observed for a year and a half since the beginning of the full-scale Russian invasion of Ukraine, another feature of the neo-institutionalist model of W. Streeck and K. Thelen is useful for studying Ukrainian specifics. The scholars propose considering institutions as a kind of social regime for regulating behavior toward social ideals: “Defining institutions as regimes has the advantage for us that it directs attention to important sources of institutional change. They all have to do with the fact that the enactment of the social rule is never perfect and that there always is a gap between the ideal pattern of a rule and the real pattern of life under it.” (Streeck and Thelen 2005, 14). Thus, in addition to addressing the ideological factors of institutional changes, historical institutionalism also accounts for informal institutions. E. Roller’s monograph, which was published, like the above-mentioned work in 2005 and was done as part of the research program “Institutions and social changes,” in our opinion, very clearly indicates the most characteristic features of informal structures (as E. Roller calls them) and the methodological side of their analysis: “Informal structures are guided by rules that emerge from the interaction between actors and can be recorded empirically. Informal structures differ from actions as such by being relatively durable groups of participants’ ideas (ongoing interaction) to which individual actors can or must adapt when acting” (Roller 2005, 94). Based on this approach, the research focuses on the following three aspects: 1) informal institutions are not identical to reality, they, like formal institutions, are only sets of certain rules, ideas, schemes of interaction; 2) the emergence of informal institutions is produced by current interaction participants; 3) not all individual actors agree to such rules voluntarily, some of them, as E. Roller notes, have to accept them if they wish to participate in the interaction. Therefore, the presence and list of these informal rules depend on who exactly the dominant participants in interaction are: the acceptability of informal practices for them dictates the need for all other participants to accept them. This understanding of informal institutions leaves

room for considering ideals as drivers of institutional change. Another important characteristic is the “shadow” nature of informal institutions, since these are, as G. Helmke and S. Levitsky note, “usually unwritten rules” (Helmke and Levitsky 2004, 727). Instead, normative legal acts are public and recorded in material form (documents registered in the prescribed manner), which makes the creators of these rules accountable to society. In further analysis, and especially when interpreting the established facts, the authors were guided by the above ideas.

I would like to emphasize that the topic of the quality of the political system in Ukraine is a matter of regular attention at our institute – Kuras Institute of Political and Ethnic Studies of the National Academy of Sciences of Ukraine. Therefore, this book continues the scientific monitoring embodied in our previous studies, the most important of which are: “The political process in independent Ukraine: summaries and problems” (Rafalskiy 2021); “Crises of political development in Ukraine: causes, content, and ways of leveling” (Zelenko 2022); “The political field of Ukraine in a situation of social crisis: authority, opposition, political parties, non-governmental organizations” (Mayboroda 2020); “Thirty years of Ukrainian multipartyism (end of 1990–beginning of 2020)” (Karmazina 2020); “Democratization of political institutions and social development in Ukraine” (Rafalskiy 2019); “The policy of social reforms: strategy, mechanisms, resources” (Rafalskiy 2018); “Institutional changes of political system of Ukraine: assessment of the state, development trends” (Zelenko 2014); “National unity in a competitive society” (Mayboroda 2018); “State and political government and national unity” (Mayboroda 2017); “State and civil society in Ukraine: searching for the concept of cooperation” (Mayboroda 2013); “Political system for Ukraine: the historical practices and current challenges” (Arkusha 2008).

I would like to note that the authors’ team conducted this study with a deep conviction that debasement and dilettantism, combined with the irresponsibility and elementary procrastination of many politicians and officials, are an impermissible luxury or even a crime against Ukrainian society, given the cost of our de-

mocracy and the challenges of post-war recovery. Ukraine desperately needs an inventory of the functions of public authorities and their rehabilitation, and in some institutional structures, their complete reboot. We hope that the “diagnosis” of the political system of Ukraine and its causes, as presented in this book, will contribute to its systemic recovery.

I

**The Structural-Functional
Dimension of the
Political System of Ukraine**

The Semi-Presidential Form of Government in Ukraine

Oleksandr Mayboroda

Scientific debates on the form of government that has been established and evolved in Ukraine since it declared its state independence until today have been conducted in both theoretical and applied formats. A considerable part of the bibliography on this issue concerns the institution of the presidency in Ukraine, its nature and evolution (Lytvak and Rybalka 2010; Lytvyn Vitaliy 2014–1 and 2014–2; Yakovlev 2017; Dmytrenko 2008; Demyanenko 2010, 24–38; Demyanenko B. and Demyanenko V. 2011, 82–97), the state of research as a political institution (Zelenko 2016), the legal status and constitutional powers of the head of the Ukrainian state (Todyka and Yavorsky 1999; Malyshko 2003; Seryogina 1998; Shatilo 2005; Kokhanovskyi 2011; Bernaziuk 2013), including his political and legal responsibility (Kresina, Kovalenko, and Balan 2004; Zelinska 2010; Malkina 2014). The conceptual political analysis of Ukrainian presidentialism is limited to one monograph (Karmazina 2007), a number of articles (Kasyanov 2007, 948–952; Karmazina 2010; Demyanenko 2011; Zelenko 2017; Yarema 2014) and a collection of materials of a special scientific conference (Huberskyi 2014). A rather large body of other publications on this topic mainly offers situational analyses of changes in the status of each successive head of state and assumptions about the political consequences of these changes.

Political science and legal studies debate over the terminological definition of Ukrainian presidentialism have resulted in defining the Ukrainian system of government as semi-presidentialism. The introduction of this term into Ukrainian academic discourse was rightly accompanied by warnings about the challenges of choosing criteria for characterizing Ukrainian semi-presidentialism – to base this characterization either on institutional provisions