

# The Ukraine crisis represents a clash between a post-Soviet model of governance and one based on the rule of law

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*The Ukraine crisis has regularly been described in terms of the ethnic and linguistic divisions which exist within Ukraine's population. **Marc P. Berenson** writes that while ethnic, linguistic and religious factors have frequently been mentioned in coverage of the crisis, the conflict is a fundamentally political one, framed around a clash between two different governance approaches: a post-Soviet model and a western 'rule of law' model with institutional checks and balances. He argues that this conflict between governance approaches ensures that Russia, keen to avoid similar pressures developing over the legitimacy of its own regime, is unlikely to accept any long-term solution that allows Ukraine to become a stable 'rule of law' state.*



This spring, the crisis in Ukraine has become much more geopolitical, but it is worth recalling the heart of the crisis – a clash between two different governance approaches on Europe's eastern edge and an uncertain West that still struggles to balance its interests.

While a complicated story, Ukraine over the past half-year has been the centre of a struggle over which form of governance the state should take up – a post-Soviet model, founded on coercion and corruption and where the rules of the game are changed to suit those in office, or a rule-of-law model, which the winter's protesters on Kyiv's Maidan Square believed was exemplified by the West and which is founded on trust and compliance, as well as institutional checks and balances.

Since February, the temporary, pro-reform (but not national unity) government, led by Prime Minister Arseniy Yatseniuk, has been taking on the tremendous challenge of re-creating the Ukrainian state along the rule-of-law model while under unprecedented hefty constraints. These include the lack of real economic reforms under the previous two presidents, a state that needs some tens of billions of US dollars to avoid default, forthcoming IMF-mandated austerity measures that will likely encounter social discontent in the country, and the world's worst performing currency in 2014.

Other constraints include police and security forces that are said to be riddled with Russian spies, the lack of a viable military, the absence of Western military support (save for non-lethal aid like US ready-to-eat meals), oligarchs and political leaders in eastern Ukraine out for their own long-term financial interests, and a history of long-term distrust of government coupled with high levels of tax avoidance, even by the standards of the region. All of these factors have combined to make the country vulnerable to the recent Russian annexation of Crimea and meddling in eastern Ukraine. In short, Ukraine has a long, hard road ahead – harder than any other Eastern bloc country currently in the EU.

Within Ukraine, the winter's dispute and the current governance challenge has not been and is not an internal



US Vice President Joe Biden and Ukraine Prime Minister Arseniy Yatsenyuk on 22 April, Credit: US Embassy in Kyiv (CC-BY-SA-3.0)

disagreement dividing East from West. Divisions have been political, not ethnic, religious, or linguistic. Most of the country is bilingual, comfortable conversing in both Russian and Ukrainian. Ukrainians in both East and West have been unanimous in their support for independence. Even the Institute for Social Research and Policy Analysis recently found that 65.7 per cent of people in the eastern region of Donetsk want to remain part of Ukraine, while only 18.2 per cent want to join Russia. Finally, the current crisis is not yet a civil war, as civilians are not fighting civilians, but separatists against the government.

While Russia is very much concerned with the status of the Russian language in Ukraine, whether Ukraine signs a trade pact with Europe or Russia's Eurasian Customs Union, and whether Ukraine becomes part of the EU or NATO; the Kremlin can ill afford to have Ukraine, a large – and, perhaps, the freest – Russian-speaking country, transition from a state based on the post-Soviet model of rule to a state governed by a Western-style rule-of-law. Since the Orange Revolution in 2004, the Kremlin has been focused on ensuring that a Ukrainian-style uprising does not occur in Russia. The dirtiest word for an authoritarian government is "revolution," and President Vladimir Putin is likely to do all he can to discredit, de-legitimise, and dismiss February's ouster of President Viktor Yanukovich in the eyes of the West, of Ukrainians, and most of all Russians.

The context in Russia ensures that there are few options for the Russian leadership to escape accountability other than to make both the elite and the public together dependent on the regime's leadership through provoked nationalism that may only be satisfied with increased territorial acquisition. This context includes the nature of the uniquely intertwined government-business entity geared towards consolidating wealth that is "Russia, Inc.," a rise in capital flight that former Finance Minister Alexei Kudrin has projected will be USD \$160 billion this year, a faltering economy overly dependent on oil exports and one that the World Bank predicts will shrink by some 2 per cent this year, a business elite many of which did not want Putin to return to the presidency, and a memorable Moscow protest movement in 2012. Hence, to survive in power, the Kremlin may well have to act externally.

The strategy for maintaining rule in Moscow, therefore, is nullifying Ukraine's path towards the rule of law. If Russia successfully reverses Ukraine's transition or if it successfully delegitimises Ukraine such that Ukraine becomes ungovernable, the West may well give up on paying for Ukraine's bail out, and the prospect of the rule-of-law ever becoming grounded in the entire post-Soviet region (minus the Baltic states) will be greatly diminished. Most recently, Russia has been seeking to do this by encouraging and backing anti-Kyiv protests on the ground in Ukraine's east (that mimic the Maidan protests, calling into question whether ordinary citizens really spontaneously took part in the original and much larger demonstrations this winter) as well as by pushing in diplomatic circles for "federalisation" of Ukraine, which, in reality, will lead to the division of the country.

At the same time, by failing to provide Ukraine with badly needed military assistance or advice and by failing to come up with a meaningful package of economic sanctions, the West has been seeking to "de-escalate" the crisis through talk and diplomacy, neglecting all the while to grasp that talk can't work if the Kremlin views controlling Ukraine as *the route* to maintaining power domestically. Warnings of further sanctions if Russia did not get its operatives and supporters to back down in Eastern Ukraine have come and gone. And, as if more concerned about placating a domestic, war-weary party base than in maintaining leverage against Putin, President Obama has announced publicly that the United States will not get involved militarily.

Meanwhile, Europe is very much concerned about short-term profits and avoiding the required significant economic costs for curtailing Moscow. London has long avoided calls from Russian anti-corruption advocates to check whether money inflows from the former Soviet Union have originated from stolen government assets, reinforcing the status quo. Despite two major gas transit crises in 2006 and 2009, the European Union has also been slow in reducing its dependency on Gazprom.

All of this uncertainty and hesitation on the part of the West was perhaps in evidence on April 17 in Geneva when the EU, US and Ukraine made an agreement with Russia that did not mention Crimea (as if the West already has "written that off") or Ukraine's "territorial integrity," did not seek to safeguard the upcoming May 25<sup>th</sup> presidential

election to ensure electoral legitimacy to the outcome of an anti-corruption revolution, and did not secure the removal of Russian forces, but did provide for a path for Russia to re-write constitutionally the rules of the game in Ukraine.

So, which path of governance will survive in the East? The stability of Ukraine may well be at risk for a long while as Putin will not cease until he makes it either under the Kremlin's control or ungovernable. Russia's undermining of Ukraine's attempt to build a new rule-of-law state won't end ultimately until there is either a change in regime in Moscow, the West gives up on Ukraine as being too costly, or events on the ground overtake Putin, including, quite possibly, a war started by mistake.

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*Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.*

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#### **About the author**

**Marc P. Berenson – King's College London**

Marc P. Berenson is Senior Lecturer in the Russia Institute at King's College London.

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