

LEGITIMACY ON THE FRONTLINE. PUBLIC POLICY IN UKRAINE BETWEEN PUBLIC GOOD AND PRIVATE INTERESTS

Liliya Yakovleva¹, Oleg Dubinskiy², Yaroslav Kotenko³

Abstract. *The purpose* of the article is to determine the legitimacy of public authorities under martial law in Ukraine. The oscillation of public policy in Ukraine between the private interests of representatives of oligarchic groups and the public good is noted. The need to direct public policy toward the realization of the public good was noted. *Methodology.* The study is based on the provisions of the theory of public choice concerning the two levels of interaction in the process of political exchange – constitutional and institutional. The dependence of the legitimacy of public power on constitutional conditions (which are a reflection of the social contract) and institutional interaction, designed to reduce the transaction costs of society, is defined. Rational choice institutionalism allows us to look at the legitimacy of public power as a result of the effectiveness of institutions for realizing the public good, reducing transaction costs and overcoming opportunistic behavior. *Results.* The emphasis is placed on the need to choose between democracy and dictatorship and to overcome oligarchy as a regime of political corruption. The limitation of electoral legitimacy, which in conditions of oligarchy entails a change in the personal composition of power, rather than its choice in favor of democracy, is noted. The innovative term "Institutes of Legitimacy" is proposed. It is defined that the institutions of legitimacy include the media, political parties and NGOs, which in a democracy provide and further support the legitimacy of public authority. Institutions of legitimacy evaluate the actions of public authorities and form public opinion. It is substantiated that for the post-Soviet ruling class, given the rutting effect, there remains a danger of following private interests rather than the public good. This is an oligarchic system of relations, identified as a system of political corruption. This applies in full measure to the Institutes of Legitimacy, which are now partially dependent on the oligarchs. Under martial law, public policy in Ukraine is aimed at protecting the country from large-scale armed aggression and attracting maximum international military and financial support. These are the main markers of legitimacy. The results of sociological research testify to the high level of legitimacy of the authorities in Ukraine: a growth of trust in individual political institutions and in the course of the state as a whole is being recorded. According to Sociological Group Rating in May 2022 the level of support for the actions of the Ukrainian government was 79%, and 54% of citizens recognized the actions of the state as quite effective. *Practical implications.* The legitimacy of the Ukrainian government depends on its effectiveness in two areas: winning the war and overcoming the oligarchy. It should take advantage of unprecedented international support for this. This will significantly reduce transaction costs and increase the efficiency of both individual institutions and institutional interaction, opening the way for Ukraine's European integration. *Value/originality.* This study of public policy in Ukraine as a balancing act between private and public interests allows for a better understanding of the economic factors of legitimacy formation under martial law and the impact of international support on the provision of legitimacy.

Key words: economic theory, public policy, public good, transaction costs, rational choice institutionalism, legitimacy of public power, institutions of legitimacy.

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¹ National University "Odesa Law Academy", Ukraine (*corresponding author*)

E-mail: yakovlevlilia2016@gmail.com

ORCID: <https://orcid.org/0000-0002-0942-485X>

² Admiral Makarov National University of Shipbuilding, Ukraine

E-mail: dubinskiy_oleg@ukr.net

³ Main Department of the National Police in Kirovohrad region,

Investigation Department, Ukraine

E-mail: kyv1994@ukr.net



1. Introduction

The legitimacy of government, in addition to its sociological and political dimensions, has a clear economic marker. Only a legitimate government is capable of ensuring economic growth, since it relies on the trust of citizens and has a margin of safety for implementing unpopular decisions. The implementation of rational economic policies requires legitimacy as a long-term relationship of trust between public authorities and citizens. Legitimacy is provided at two levels of political exchange, the constitutional and the institutional, and is respectively conceptualized at two levels of public choice theory: "(1) 'economic theory of the constitution' (legal enshrinement of the existing social contract) and (2) 'political institution theory' (which includes voting and voting rule theories, electoral and inter-party competition theories, and bureaucratic theories)." (Buchanan, 2003)

Legitimization or delegitimization of power is the result of a clash of public and private interests in the implementation of public policy. In Ukraine, the mutual dependence of the level of legitimacy of government and economic policy was manifested throughout the years of independence, from attempts by the communist nomenklatura to retain power and property to the oligarchization of the economy, politics and the mass media. The foundation of the legitimacy of public authority in Ukraine was laid on December 1, 1991, when more than 90% of citizens supported the "Act of Declaration of Independence of Ukraine" in a referendum. Subsequent legitimacy crises showed that electoral legitimacy is a necessary but not sufficient condition for economic growth and development of the "welfare state". Given the experience of Ukraine, it should be emphasized that "electoral democracy alone cannot be a source of legitimacy and guarantee the stability of the political order. Crises of legitimacy accompanying the activity of institutions of power in Ukraine, leading to early parliamentary elections (1994, 2007, 2014), presidential elections (1994, 2014), as well as with some periodicity creating revolutionary situations (2004, 2013, 2014) and even unprecedented re-vote the second round of the presidential campaign in 2004, is a prime example and confirmation." (Yakovleva, 2019)

Widespread armed aggression has exacerbated the problem of the legitimacy of power in Ukraine. On the one hand, international aid is growing thanks to the striking level of domestic support for the government (especially compared to prewar times). On the other hand, the post-Soviet bureaucracy and oligarchy remain well-organized, powerful groups that have always put private interest ahead of public interest, hindering democratization, the rule of law, and anti-corruption policies.

2. Legitimacy in the focus of economic theory

The focus of research on public choice theory and rational choice institutionalism is a wide range of problems related to the institutional legitimacy of public power, as it has been written about before (Yakovleva, 2021). The following aspects, which are important in determining the role of the legitimacy of power for economic growth and societal development, are highlighted: 1) the meaning of the constitution as a social contract (J.M. Buchanan, G. Tullock, G. Brennan, J. Elster, R. Hardin, B. Weingast); 2) the role of the legislature (G. Cox, M. McCubbins, M. Fiorina, D.R. Kiewiet); 3) the role of the bureaucracy (R. Noll, T. Moe); 4) the role of elections (F. Rosenbluth, D. Baron, G. Snyder).

In the context of the study of the legitimacy of public power in Ukraine, interpretations of democratic transitions using the theory of public choice and elements of game theory deserve special attention (A. Przeworski, B. Geddes, G. Marks, Y. Cohen).

Rational Choice Institutionalism remains an influential theory of the neoclassical paradigm in the study of the legitimacy of power, even though the concept of "Homo economicus" has been revised and supplemented. Some authors consider it inadequate and incomplete, while others emphasize that even theories guided by methodological individualism are forced to construct the "social" and the "political. Especially in times of war (Cramer, 2002). At the same time, the assumption that government agents act in accordance with scheme of individualistic rational optimization (Urbina, 2019), as well as the definition of transaction costs, opportunistic behavior, etc. allows to discuss the possibilities of rational collective action as a basis for the legitimacy of public power. Institutional interaction is important for the legitimacy of public power, capable of reducing transaction costs, overcoming the opportunism of certain individuals and well-organized groups, and defining and implementing the public good (Yakovleva & Yakovlev, 2020).

Under wartime conditions, Ukrainian society cannot afford the luxury of ineffective institutions. Also, according to the current legislation (Law of Ukraine "On the legal regime of martial law", 2015, 2022) it is impossible to conduct extraordinary election campaigns under martial law. That is why representatives of the Ukrainian government have to solve existing problems by going beyond the limits of electoral legitimacy. For the ambitious project of European integration of Ukraine to be realized, it is necessary to finally overcome the pathologies of post-Soviet society and choose the path of real reforms, not the half-hearted "flight from choice"

model of "restructuring," to which post-Soviet elites are so accustomed (Yakovlev, 2015).

The heart of the legitimacy of public power in Ukraine is the "big" choice between democracy and dictatorship. It is really big, because Ukrainians have to choose not only between forms of government, but also come out of a long submission to imperial and Soviet dictatorship, choosing European integration. In this regard, the threats of dictatorship and anarchy, which always arise during wars, can be significantly reduced by international assistance from democratic countries. First of all, it is about granting EU candidate status to Ukraine. It is a natural process when democratic countries build up support for a country that is on the border with the EU and suffers from widespread military aggression. It should be noted: "In the context of globalization and the development of information technology, the importance of external sources of legitimacy of power is growing dramatically. Ukraine has become a field for searching and testing relatively new for the post-Soviet space technologies of legitimization/delegitimation of power – from color revolutions and strengthening of foreign policy factors of political regime legitimization to purposeful information campaigns (with the construction of media scandals) and military aggression to delegitimize the political regime." (Yakovleva, 2019)

But to make a choice between the dichotomous types of political regime – democracy and dictatorship, given the challenges of wartime, has only the Ukrainian ruling class (Yakovlev, & Yermenko, 2020). As José Antonio Cheibub, Jennifer Gandhi & James Raymond Vreeland proved in their study "Democracy and dictatorship revisited", the choice of regime matters (Cheibub, Gandhi & Vreeland, 2010). After all, it is not just a question of the presence or absence of elections. Election campaigns, as Ukraine's experience shows, can regularly take place under conditions of competitive or electoral authoritarianism. The authors believe that dictatorships are divided into monarchical, military, and civilian ones (Cheibub, Gandhi & Vreeland, 2010). Among the reasons for the delegitimation of democratic public power are the inability of the democratic government to ensure a high level of economic growth and investment, the conflict of elites (the inability to form a "pact of elites"), the lack of prospects for representatives of certain social groups under democracy, the insufficient level of democratic consolidation of society, etc.

Obviously, with the war in Ukraine, the influence of the military is growing, and the majority of society relies on and trusts them. This could potentially create a danger of establishing a military dictatorship regime.

According to the proposed classification, democratic regimes are divided into presidential (if the govern-

ment is not accountable to parliament), semi-presidential (if the head of state is elected in national elections for a fixed term) and parliamentary (the government is elected in parliament and is accountable to it).

In a democracy, an important role is played not only by the institutions of public authority, which ensure the reduction of transactional costs for society. The importance of civil society institutions – NGOs, mass media, political parties – is growing. Consider them "Institutes of legitimacy".

It should be noted that "The institutions of public power are created to reduce the transactional costs of society, but because they follow the selfish interests of individual politicians and civil servants, they can on the contrary increase public costs. Then institutions lose effectiveness, and their activity is directed towards the achievement of individual or narrow group interests, rather than the public good. The same research optics can be applied to analyze not only the legitimacy of institutions of public authority, but also modern institutions of legitimacy – civil society, mass media, political parties. Private and public interests also clash in them. It is the latter that is aimed at securing the public good." (Yakovleva, 2021)

The institutions of legitimacy (mass media, parties and NGOs) in Ukraine have also partially become an element of "virtual" or facade democracy, embedded in an oligarchic system of political corruption and distribution of public goods among several oligarchic clans. Oligarchic television supported oligarchic parties, and conflicts over shady financial flows and means of production between oligarchs in public space looked like inter-party competitions for public opinion and pluralism in the mass media. Now let us imagine that, under the influence of exogenous and endogenous factors, the oligarchic system of political corruption has been overcome. In the conditions of war or the post-war situation of Ukrainian society, the expansion of the military elite into the institutions of public power and the full-fledged entry of the military into the ruling class seems most likely. This can be accomplished either through changes to the Constitution of Ukraine or through elections.

The legitimacy of public power in Ukraine is determined by economic markers. In conditions of war, these economic markers are divided into external and internal. External ones include the amount of financial aid attracted from international donors and foreign investors. Internal markers of economic efficiency are more diverse, ranging from the exchange rate to the level of social protection of the population and the state's fulfillment of its social obligations. Legitimacy of public power requires economic efficiency: reduction of transaction costs, orientation of public policy to serve the public

interest, overcoming opportunistic behavior, etc. Consider this in more detail. First of all, increasing the efficiency of public authority institutions is associated with the reduction of the state apparatus. A certain optimization of the bureaucracy in post-Soviet Ukraine is certainly necessary. It should take place on two fronts: integration into the EU and the focus of administrative reform on military needs. At the same time, studies by N. Berggren, C. Bjørnskov, D. Lipka "Legitimacy and the cost of government" convincingly demonstrates that the reduction of the apparatus does not always lead to a reduction in transaction costs (Berggren, Bjørnskov & Lipka, 2015). "Great government" can better ensure economic growth on one condition: it must be legitimate. Consequently, it is not about the number of officials, but about the legitimacy of public power. In order to define the effectiveness of government as serving the public interest, it is necessary to shift the focus from methodological individualism to collective behavior, public choice, and the public interest. Here there is a synthesis of macro- and micro-approaches: individual and collective action. Collective action, however, is more complex, requiring appropriate preconditions – the legality of actors and institutions and a constitutionally defined framework for their interaction. According to the "post-constitutional" collective interaction, the boundaries of state regulation are defined – from the developmental state to the night watchdog state.

3. Legitimacy of public power in Ukraine: challenges of martial law

Under martial law there is a mutual dependence between the legitimacy of public authority and the effectiveness of public policy. The effectiveness of power during martial law depends entirely on its legitimacy. Only legitimate authorities are able to decisively implement public policies necessary for victory. Conversely, effectiveness (i.e., the ability of power to solve specific problems with measurable results in time of war) becomes one of the main criteria of legitimacy. The paradox of public good arises in divided societies during war. Under the pressure of an external threat, the public good is realized by all of society, regardless of existing divisions along economic, cultural, regional lines. These divisions persist, but temporarily recede into the background. The effectiveness of public policy is measured by the military criteria of defeat/victory, offensive/retreat, and the ability to sustain the economy by attracting international support.

Beginning February 24, 2022, the Ukrainian government and society are taking a test of legitimacy in a time of war. Thanks to the actions of the "governmental triangle" (parliament, president,

government), the AFU, the self-organization of the population and the use of unprecedented international financial, political and military support, the public authorities in Ukraine, led by President Volodymyr Zelenskyy, were able not only to fight back the aggressor country in the battlefield, but also to consolidate society around resisting anger and supporting European and Euro-Atlantic integration.

Only a legitimate government that turns the trust of its citizens into a powerful resource for fighting, attracting international aid, and ensuring economic growth can win a war. According to sociological research, as of May 2022 the level of support for the actions of the Ukrainian government is 79 percent, and 54 percent of Ukrainian citizens recognize the government's actions as quite effective (Sociological Group "Rating", 2022). By comparison, at the end of 2021, it was only 5% (Sociological Group "Rating", 2022). As a comparison, here are the data of sociological research on trust in the President of Ukraine for 2019 and 2020. Trust in the President of Ukraine was expressed in 2019 – 70% (Razumkov Centre, 2019), and in 2020 already 59% of respondents (Razumkov Centre, 2020). V. Zelenskyy was trusted by 70.5% of respondents in 2019 (Razumkov Centre, 2019), and in April 2020 it was already 57% (Razumkov Centre, 2020). In June 2020, according to the sociological survey of the Razumkov Center, the majority or relative majority of respondents assessed the fulfillment of V. Zelenskyy pre-election promises as "not fulfilled at all", and the general situation in the country during his year as a president worsened in the opinion of 33% of respondents (Razumkov Centre, 2020).

Despite the martial law, the majority of Ukrainians are optimistic about the future. The correlation of optimists and pessimists about the development of the Ukrainian state in May 2022 was approximately ten to one: respectively 76% believe that the situation will improve and 7% think that it will get worse. In the process of sociological research four indicators (effectiveness of the state, achievements and failures, living conditions, social expectations) were determined, which allowed to build a generalized image of the Ukrainian state (GSR-5 methodology), to which respondents are inclined (Sociological Group "Rating", 2022). For comparison, here is the data for the year 2021. Thus, in November 2021, 41% of respondents were inclined to a definitely negative image, and another 22% – to a moderately negative one. About a third (32%) were intermediate (neither good nor bad), and only 5% were moderately or definitely positive. As of May 2022, the situation has changed significantly. More than half of citizens report a distinctly (32%) or moderately (21%) positive image of the state (Sociological Group "Rating", 2022). The number of respondents inclined

toward an intermediate image was almost unchanged (29%). Correspondingly, the number of those observing a moderately (14%) or distinctly negative image (4%) decreased significantly (Sociological Group "Rating", 2022).

The situation with the assessment of the actions of the authorities has changed dramatically. In the eyes of citizens, the image of a legitimate government has been formed, confidently attracting international support and resolutely defending the country, fighting back against the aggressor.

This state of legitimacy "on the frontline" proves that creating legitimacy under martial law requires that public authorities act rationally and calculate reasonably. This implies a functional understanding of the institutions of public authority, a rational calculation of the benefit-cost ratio. The legitimacy of public authorities in time of war is not only the level of support from citizens and the absence of mass protests. Unfortunately, public opinion in mediatized and virtualized politics in divided societies with a high concentration of media ownership by the oligarchy can be subject to manipulation. The legitimacy of public power "on the frontline" is a question of the effectiveness of its actions for the public good. In Ukrainian realities, given the "post-Soviet path effect," legitimacy implies a significant restriction of narrow-group or private interests of the oligarchy and bureaucracy. Since the 1990s, the institutional design of the Ukrainian political system has been the embodiment of the worst nightmares of rational choice institutionalists. All institutions and the interactions between them have contributed to limiting or "shutting down" access for citizens (North, Wallis, Webb & Weingast, 2007) to the distribution of public goods, increasing the transaction costs of society, working for the corrupt interests of bureaucracy and oligarchy, and illustrating M. Olson's thesis regarding "rational individuals" and "irrational societies" (Olson, 2009).

The choice of the Ukrainian post-Soviet ruling class in favor of a "soft" dictatorship meant that the institutions of power were directed toward protecting private and corporate interests, when the "guarantor of the constitution" created and protected the oligarchs, and the oligarchic mass media were completely loyal to the President. Thanks to the support of oligarchic money and media, each successive President of Ukraine received a credit of trust from voters – electoral legitimacy. However, electoral legitimacy never turned into effective public policy, and trust was quickly lost. This was fully true of L. Kuchma after 1999, V. Yushchenko, V. Yanukovych, and P. Poroshenko. Their electoral legitimacy (Poroshenko won the first round of the early presidential election in 2014 with 54.7% of the vote

(The Central Election Commission of Ukraine, 2014), almost never converted into legitimate governance.

Note that "Electoral campaigns (especially early and extraordinary ones) allow the authorities to gain new credibility, reload certain political institutions and/or get rid of leaders who have lost the trust of society. Electoral legitimacy is a direct consequence of the obvious, recognized by the majority of participants in the electoral process and officially approved election result, which is expressed in numbers of support for individual (candidate) or collective (party, bloc) political actors. Through voting (electoral participation) the shaky political trust and rather ephemeral support of citizens turns into a concrete result – the electoral legitimacy of power democratically obtained. However, this does not cancel other types of conventional participation of citizens and risks of further delegitimization of power... Thus, for all the differences in the political and economic situation, unscheduled presidential elections (or a runoff, as in the Orange Revolution) in Ukraine were needed to restore legitimacy to power in 1994, 2004 and 2014." (Yakovleva, 2019)

The formation of public power institutions "from above" in the interests of a relatively small group and the establishment of artificial restrictions for the majority of citizens was a sign of the post-Soviet state of the Ukrainian political system. Legitimacy crises resulting from the implementation of the oligarchic model were solved by holding snap elections or resulted in revolutionary outbursts. A special information-manipulative system of legitimization/delegitimization of public power, characterized by the domination of private interests over the public good, was established. A fragmentation of legitimacy took place. Under martial law, the opportunistic behavior of the oligarchy must be overcome. It is not only a question of direct investment in defense, but also of changing institutional design. Public confidence in public power, which creates a space of legitimacy that allows the necessary rational decisions to be made in favor of the public good and, accordingly, against the private interests of the oligarchs.

Thus, ensuring the legitimacy of public authority requires a clear definition of the public interest (for modern Ukraine it is obviously the victory over the aggressor and continuation of European integration) and its consolidation in the text of the social contract – the constitution. In the process of interacting to define the essence of the social and to achieve it, individuals and communities, having a fixed set of preferences, require mutual assurances of the behavior of others. After all, one of the main obstacles to the legitimization of public power and the rationalization of public policy is the absence of

democratic institutions: "As a rule, what prevents actors from performing collective actions is the absence of institutions (rules) that guarantee the behavior of others." (Hall & Taylor, 1996)

4. Conclusions

The legitimacy of public authorities is defined on two levels – constitutional (enshrining in the legal field the social contract between the government and citizens) and institutional (facilitating political and economic exchange by reducing transaction costs). The legitimacy of public authorities allows decisions to be made quickly and confidently, to implement effective and rational public policies.

For Ukraine, which is at war, legitimacy means the power's ability to define the public good as defending the country against widespread military aggression and attracting international military and financial support. Legitimacy crises in Ukraine, caused by the ineffective institutions of the oligarchic system, have been solved by holding snap elections, both presidential and parliamentary. Electoral legitimacy in war is important, but not sufficient.

In times of war one of the main choices is between democracy and dictatorship. It is determined that this choice in favor of democracy, ensuring and supporting the legitimacy of public authority in modern conditions is carried out by the Institutes of Legitimacy. They include the media, political parties and NGOs in Ukraine. They assess the actions of public authorities, form public opinion. At the same time, for the post-Soviet ruling class, given the "path effect," there remains the danger of following private interests rather than the public good. This danger is called "oligarchy" as a system of political corruption. This applies in full measure to the Institutes of Legitimacy, which are now partially dependent on the oligarchs.

The legitimate Ukrainian authorities must take advantage of unprecedented international support to win on the front lines and in the fight against the oligarchy. This will significantly reduce transaction costs and increase the efficiency of both individual institutions and institutional interaction. Only this will open the way for Ukraine's European integration.

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