

The Dictatorship of Law in Russia: Neither Dictatorship, Nor Rule of Law

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During the course of the 2000 presidential campaign, Vladimir Putin announced the idea of a "dictatorship of law" as a core part of his presidency. His pre-electoral message and state of the nation presidential address in July emphasized a stable and predictable legal environment, and the key role of the state as a guarantor of law enforcement. While optimists openly associate their hopes for a revival of the Russian economy and society with the emergence of a law-bound state, pessimists fear the rise of a police state in Russia, bearing in mind Russia's autocratic traditions and Putin's KGB background.

Russia's reality, nevertheless, is far from people's greatest hopes and worst fears. The early period of "dictatorship of law" in Russia has shown neither clear signs of establishing the rule of law, nor clear signs of dictatorship. Despite the fact that some institutional reforms have been launched or planned, the Kremlin has been unable (or perhaps unwilling) to impose the rule of law in practice, both in Moscow and in the regions.

Yet legal norms have been used (and sometimes abused) by the Kremlin--under Putin thus far, primarily to divide and rule "oligarchs" and regional leaders. But even under pressure, the administration never employed unilateral strategies, preferring behind-the-scenes deals. Two clear examples of this include the punishment of tycoon Boris Berezovsky (who was forced to sell his shares of the ORT TV channel for his disloyalty to the Kremlin), and the reward of Tatarstan President Mintimer Shaimiev (who was given the right to be reelected to a third term of office for his loyalty).

The Sources of Russia's "Dictatorship of Law"

One could consider this intermediate state between the two extremes (dictatorship and the rule of law) a result of policy failures by Russia's rulers. One could further try and trace the impact of the unseen influence of "right" or "wrong" groups or individuals on the decision-making process. I would argue, however, that the "dictatorship of law" is embedded in the political regime and society of post-Communist Russia, and has a good chance of survival as a mode of Russian politics, at least in the short term. The frequent evaluations of Russia in the 1990s as a "weak state" have two different but overlapping dimensions. First, state weakness is related to the declining administrative capacity of the

Russian state; second, but no less important, the weak Russian state cannot enforce the principle of the rule of law.

The rule of law as such could be defined as the dominance of formal institutions: universal rules and norms serve as significant constraints on major actors and their strategies within the given polity. Meanwhile, the nonexistence of the rule of law means the dominance of informal institutions based on particularistic rules and norms, like clientelism and corruption. Thus, in opposition to the rule of law is the principle of arbitrary rule, where formal institutions either serve as a "facade" for informal dominance, or simply do not matter at all.

But the relation between formal and informal institutions is not entirely adversarial; they often substitute for each other. In practice, this institutional dimension is a kind of continuum: if the rule of law is weak or nonexistent (say, in the case of total regime breakdown), it is replaced by arbitrary rule. Alternatively, if courts are unable to execute their decisions on legal matters, these disputes are resolved through the use of private protection. If the government is not accountable to the parliament, the decision-making process depends not on the people's representatives, but on narrow circles (the "family" or "court") around a leader. If political parties are unable to link elites with the masses, these functions are then realized by clientelist-based "political machines." In terms of Russian politics, the 1990s have shown multiple examples of this kind of substitution, including Yeltsin's electoral campaign in 1996, the very beginning of the first Chechen war in 1994, and the illicit transfer of campaign funds in xerox-paper boxes rather than through bank transactions.

Given this substitution of formal and informal institutions, there are two alternative solutions to the problem of state weakness in Russia:

- the simultaneous revival of the administrative capacity of the state and the dominance of formal institutions--in other words, the strong rule of law; or
- the restoration of the administrative capacity of the state without the emergence of the rule of law--that is, strong arbitrary rule.

Both of these solutions, however, seem unlikely for contemporary Russia.

The First Alternative: Strong Rule of Law

First, Russia's current leaders have few incentives to make the dominance of formal institutions their political goal. The existing legal framework of Russia is such that the president's constitutional powers are almost unlimited, and he or she is not accountable to any other actors and/or institutions. Having firm control over other political actors--both chambers of parliament, major political parties, regional and business elites, as well as military and security--the Kremlin has also increased its non-constitutional powers. In these circumstances, there are few incentives for Russia's rulers to seek out and implement policies that would curb the powers of their offices, since this would undermine their status as the dominant actors in Russian politics. At the same time, subordinated actors who are involved in bargaining with the Kremlin can gain more

benefits (or lose fewer resources) through these informal deals, and thus no longer pursue formal rules and norms as weapons in their struggle for political survival. In the absence of visible opposition (both among elites and the masses), Russia's major political actors would rather agree on the very existence of a status quo than risk the uncertainty of institutional changes.

The other possible scenario of institutional reforms that could be used by the Kremlin would be the installation of a biased set of formal institutions that serves as a facade for arbitrary rule. The federal reform initiated by Putin immediately upon his election is a typical example. As Putin himself noted during the parliamentary debates on these proposals, his major goal here was the opportunity to impose sanctions against regional governors, rather than the actual imposition. One would expect that the imposing of these formal sanctions as a tool of the Kremlin's regional policy would depend upon informal center-region relations. This kind of legal innovation has little in common with the dominance of formal institutions; rather, it undermines the foundations of the rule of law in Russia. In sum, the rule of law can be established only within a competitive political environment. Since the degree of political contestation in Russia seems to be limited (both on the national and regional level), we can hardly expect the dominance of formal institutions.

The Second Alternative: Strong Arbitrary Rule

Second, the installation of strong arbitrary rule is only possible in the event that the Kremlin turns from bargaining to the use of force in dealing with political and economic actors. Choosing to use force unilaterally, however, could be quite costly in terms of power resources. Russia's rulers could be faced with two threats. On the one hand, strong arbitrary rule does not necessarily solve policy problems. Indeed, as the Chechen wars of 1994-96 and 1999-2000 clearly demonstrated, such a policy excludes any durable solution without significant losses for the Russian political regime and society as a whole. On the other hand, the use of force by the Kremlin against its political rivals could meet with opposition. Pending further development of the rule of law, however, those political and economic actors who benefited from the decline of state capacity (such as the "oligarchs" and regional leaders) might use their resources to prevent a dangerous turn toward dictatorship. This was the case with transgressions against "Media-Most," which had expressed dissent with Kremlin policies. Despite (or thanks to) the combination of economic pressures from state-owned "Gazprom" and the imprisoning of Vladimir Gusinsky, the owner of Media-Most, the latter was able to mobilize public support within and outside Russia, and Media-Most seemed to escape (at least, as of yet) the loss of its independent political position. Given this, it is not surprising that Boris Berezovsky responded to the Kremlin's attacks by claiming to establish political opposition (though without visible results).

Conclusion

The possible rewards for the pursuit of strong arbitrary rule for the Kremlin are very unclear, while the potential costs are obvious. Therefore, given the background of recent economic growth in Russia, *bargaining* is a more attractive option than the use of force for politicians. In these circumstances, the Kremlin has occasionally even retreated from its initial claims and desisted from the imposition of direct control over other actors.

Last but not least, the "dictatorship of law" as an inconsistent oscillation between strong, arbitrary rule and the "facade" of legal innovations corresponds closely with mass legal consciousness in Russia. According to a nationwide poll recently conducted by Russian scholars, public orientations toward the rule of law in Russia are quite controversial. On the one hand, the majority of Russian citizens (including entrepreneurs) are quite keen about the rise of tough punishments and security powers as a tool against increasing crime and illegality in Russia. On the other hand, they are tolerant enough toward underpayment or nonpayment of individual (and, to a lesser degree, corporate) taxes, and toward a shadow economy as such. Moreover, almost half of Russian voters are ready to vote for candidates who are openly involved in criminal affairs, if they promise to improve their living conditions. In this sense, the supply of the "dictatorship of law" meets demand on Russia's legal market.

In the short term, the politics of the "dictatorship of law" in Russia might be successful as long as the economy goes well (thanks to high oil prices). In the long term, however, such a process--combining manipulations, arbitrary decisions, and frequent and visible (but not meaningful) institutional changes--might preclude Russia's prospects for democracy. It could undermine incentives for the emergence of political competitiveness within the framework of formal institutions *and* the rule of law, leaving a political vacuum in Russia's future.