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'I've Seen This Before': What Failed Democratization Can Teach Us About Democratic Erosion

Rule of Law – The Spirit of Constitutionalism

By Lena Surzhko-Harned
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This is the third installment in a series, which was introduced [here](#). The first episode on Civil Society can be read [here](#), and the second episode on political society can be read [here](#).

In their seminal work “Problems of Democratic Transition and Consolidation,” Juan Linz and Alfred Stepan, two of the most influential scholars in comparative democratization, argue that “a rule of law embodied in the spirit of constitutionalism is an indispensable condition” of democratic governance.^[1] Interestingly, the appeals to the “rule of law” are often sounded by non-democratic leaders. In fact, some of the most egregious violations of the citizens’ rights occur under the banner of restoring the rule of law. For instance, following the failed coup in July 2016, Turkey’s President Erdoğan’s government declared a state of emergency, justifying extraordinary measures as necessary to restore the rule of law and protect democracy. As a result, the government hollowed out judicial independence, academic freedom, and press rights, consolidating authoritarian rule. Furthermore, after the August 2020 presidential elections, when Belarusian dictator Lukashenko claimed victory amid widespread accusations of fraud, massive protests broke out. The government responded to these peaceful protests with deployment of police and security forces, detentions and torture of protesters, censorship, and internet blackouts – all in the name of

restoring the rule of law. But no authoritarian perhaps is more protective of his brand of “law and order” than Russian president Vladimir Putin.

In this episode of “I’ve seen this before,” I will explore the rule of law and the ways in which authoritarian leaders subjugate this essential part of democratic governance. An important theme is willful manipulation of the term “rule of law” that ignores important elements of its democratic component. On the one hand, the appeal to law and order in the face of real, exaggerated, or manufactured crises often leads to the suppression of civil and political rights and freedom. On the other hand, the impunity to wield the power in the name of law-and-order rests on the authoritarians’ interpretation of their legitimacy to power. Both are interrelated and often go hand in hand. Thus, historically, there are plentiful examples of democratically elected future dictators.

As Linz and Stepan have argued, the rule of law as a spirit of constitutionalism requires “more than rule by majoritarianism.” This means that power given by a majority is not innately democratic. The power must be limited by “self-binding” procedure of governance, accepted and protected by the political society; a clear hierarchy of laws interpreted by independent judiciary; and vigilant eye from civil society responsible for building and sustaining a strong legal culture. Having discussed civil and political societies in a previous [installment](#), this episode turns to how constitutional limits on power are manipulated to serve the executive, reducing the judiciary to an instrument of authoritarian rule.

Constitutions and Presidential Powers

From early civics classes, most American learn that the U.S. Constitution outlines the political system of “checks and balances” with three co-equal and mutually independent branches of government. The Executive Branch, which oversees the function of the government, is associated with the office of the President. The Legislative Branch, which creates laws, is embodied by the House of Representatives and the Senate. The Judicial Branch, which interprets laws and ensures they are consistent with the Constitution, is headed by the Supreme Court. The three branches of government exist in other political systems as well, albeit they vary in terms of form their functions are largely similar. In the literature of comparative democratization, there is a common wisdom that constitutional arrangements that limit power and spell out the relationship between government branches can contribute to the success or failure of budding democracies. Transitioning societies, particularly those also burdened with economic or other types of crises, like secessionism, often prefer systems with directly elected presidents, like that of the U.S., due to the belief that a strong benevolent leader would be capable of steering the country to safe shores. While “checks and balances” of American presidentialism seem to be working in the U.S., it has been an empirical outlier.

Linz famously argued that countries with presidential systems, those that have a directly elected president, independent of directly elected legislature, have shown tendencies to fall to authoritarianism^[ii]. Interwar Spain and countries of Latin America, like Argentina, Brazil, and Venezuela were explored in his academic work. After the collapse of the USSR, Belarus, Kazakhstan, and Uzbekistan became textbook examples of Linz's warning. They adopted full presidential systems which quickly consolidated authoritarianism, concentrated in the hands of presidents. There are other cases, however, where presidents were able to restructure the political systems that elected them to office to strengthen the power of presidency. In 2018, after returning to office for the second term — having survived the coup and political crisis in 2016 — Turkish president Recep Tayyip Erdoğan replaced a nearly century-old parliamentary system with a ^[iii]

In Russia, the idea of the strong presidency took root with the election of President Boris Yeltsin in June of 1991 and was solidified in the constitution of 1994. Although the 1994 constitution envisioned a semi-presidential system, like that of France, it gave extraordinary powers to the office of the president. Yeltsin refused to form a political party and wielded his presidential powers without much respect for the legislature^[iv]. During his tenure, he averaged 1,000 presidential decrees per annum^[v] and went through six prime ministers. In December 1994, Yeltsin issued a presidential decree ordering Russian troops into Chechnya to “restore constitutional order,” effectively launching the First Chechen War. Vladimir Putin inherited this highly personalistic presidency and used the Second Chechen War to solidify his hold on power^[vi].

Appeals to rule of law are a regular feature of Putin's rule. In fact, most of my students are surprised to learn that both Putin and Medvedev have law degrees^[vii]. From the start, Putin appealed to the “rule of law” and constitution as guiding or justifying his actions. You will recall that in 2008 after serving two terms in office, Putin stepped aside and did not run for a third term, citing the constitutional limitation. The appeals to the rule of law are important for a couple of reasons. On the one hand, it creates a patina of legitimacy to all actions, even the illegal ones. Moreover, making “legal” changes institutionalizes the change, making any future changes impossible or difficult. Thus, as suspicious as the Putin-Medvedev stint of swapping places might have looked, it did not violate the constitution. Rather, it was a result of the careful work with creating a pet political society and party of power in control of Russian legislature, as discussed previously.

The first, most significant change to Russian constitution that expanded the presidential terms from four to six years occurred in 2008^[viii], under Medvedev's presidency. The amendment was justified as a necessary step to modernize the constitution and foster stability. Recall that during the first few years in office, Putin's regime undermined the legitimacy of free political competition and elections as destabilizing. Returning to the president's office in 2012, amid

electoral fraud allegations and opposition from civil society, Putin's next two consecutive terms gave him another 12 instead of eight years of power. During these years, Putin's regime has taken steps to eradicate civil and political societies, consolidating dictatorship at home and becoming more aggressive in its foreign policy. The 2014 constitutional amendment incorporating annexed Crimea and Sevastopol set a precedent by using legal changes to legitimize territorial annexation, a model the Kremlin repeated in 2022 when it amended the Constitution again to absorb Ukrainians Donetsk, Luhansk, Kherson, and Zaporizhzhia regions.

In 2020, during the global pandemic, Putin's dictatorship in Russia was enshrined into the constitution with a set of new amendments. The so-called "zero out" of presidential terms eliminated the two term limits^[ix], allowing Putin to run and (surprise surprise) win again in 2024. The amendments strengthened control over elites, banning people with dual citizenship or foreign residency from running for office, thus excluding anyone with foreign education or work experience^[x]. President's powers over regional and federal appointments, including federal prosecutors, expanded^[xi]. Additionally, the president received new powers to initiate dismissal of Constitutional and Supreme Court judges via Federation Council^[xii]. The Supreme Court found these amendments lawful, signaling the full subjugation of Judiciary to power of Presidency.

Puppet Judiciary

As we've seen in previous installments, since the early 2000s, Putin has turned Russia's judiciary into a tool for consolidating power and silencing dissent. The politically charged prosecution of oil magnate Mikhail Khodorkovsky and the dismantling of Yukos showed how courts could be weaponized to eliminate rivals and redistribute assets to state-aligned companies, a topic we will revisit under an economic society episode. The judiciary also legitimized constitutional changes, most notably the 2020 "zeroing out" of presidential terms, when the Constitutional Court swiftly approved amendments allowing Putin to remain in power beyond previous limits.

Opposition leader Alexei Navalny was repeatedly targeted with criminal convictions and his organizations branded "extremist" in closed proceedings, while courts upheld bans on independent candidates and imposed harsh sentences on peaceful protesters. The 2012 conviction of the punk collective Pussy Riot for "hooliganism" after an anti-Putin performance in Moscow's Cathedral of Christ the Savior underscored the use of the judiciary to stifle even cultural-political dissent. Similarly, the 2013 posthumous trial of lawyer Sergei Magnitsky, who exposed corruption and died in custody after being denied medical care in 2009, revealed the courts' willingness to serve as cover for state abuses.

Since the start of Russian full-scale invasion of Ukraine in 2022, the abuse and misuse of judiciary to imprison opponents of Putin and war have increased precipitously. Among thousands of those arrested were notable figures like politicians Illya Yashin and Vladimir Kara-Murza and young teenagers like Masha Moskaleva, who was taken from her father and placed in a state orphanage after she drew an anti-war picture at school in March 2023; her father, Alexei Moskalev, was sentenced to two years for “discrediting the army.”

On the flip side, the Russian judicial system has refused to pursue those at the top for politically motivated crimes like the murders of Anna Politkovskaya and Boris Nemtsov. It showed complicity in shielding corrupt officials and state forces, like those responsible for war crimes in Chechnya or deaths of hostages in Beslan in 2001, from accountability.

For checks and balances to work properly, the independence of the three branches must be respected and maintained. While chiding the opposition for “weaponizing the justice system” since taking office, President Donald Trump has used the judicial system to reward and shield the loyal and attack those opposed to his politics. On several occasions, he challenged the Constitution, including the limitations on presidential power, while getting several favorable rulings from the Supreme Court. As we have seen elsewhere, personalization of politics that expects and rewards loyalty to the president over the constitutional duties can be a dangerous and slippery slope indeed.

In discussion of rule of law, it is also important to note the use of criminal justice instruments and coercive power of the state that are often deployed to enforce the will of authoritarians. However, that is the topic of the next installment.

In the next episode, I will turn to one of the more interesting functions of modern democracies, which enables them to actually govern — functioning state and state bureaucracy. As I often joke with my undergraduates: While revolutions can be exciting, the dreaded question of who will pick up the garbage can make or break the most spirited revolutionaries. Government’s monopoly on the legitimate use of force, the essential duty to extract and command determine its success.

[i] Linz, J.J. and A.C. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. 1996, Baltimore: Johns Hopkins University Press.

[ii] Linz, J.J. “The Perils of Presidentialism,” *Journal of Democracy*. 1990.

[iii] “Turkey’s new presidential system” The International Institute for Strategic Studies. August 2018. <https://www.iiss.org/publications/strategic-comments/2018/turkeys-new-presidential-system/>

[iv] In the standoff with the parliament in 1993, Yeltsin deployed military to shell and storm the building of the parliament, killing upward of 150 people.

[v] Mishler, W John P. Willerton & Gordon B. Smith, 'Hegemony or Rivalry? Laws, Decrees and the Dynamics of Legislative–Executive Relations in the Russian Federation', revised version of a paper presented at the 1998 Annual Meeting of the American Association for the Advancement of Slavic Studies, June 2001.

[vi] Dawisha, Karen, *Putin's Kleptocracy: Who Owns Russia?* Simon & Schuster, 2014.

[vii] Both graduated from Leningrad State University. While Putin went on to work for the KGB after graduation, Medvedev continued his study of law and even taught law in the LSE in 1990's.

[viii] Art. 81 of Russian Constitution.

[ix] Art. 81

[x] The Atlantic Council. 2020. <https://www.atlanticcouncil.org/blogs/belarusalert/putins-new-constitution-spells-out-modern-russias-imperial-ambitions/>

[xi] Art. 83 and others

[xii] Art. 83 and Art. 102



ABOUT THE AUTHOR

Lena Surzhko-Harned, Ph.D., is a JES Scholar-in-Residence focusing on international affairs and foreign relations. A native of Ukraine, she is an expert in Ukrainian and Russian politics. She is also an Associate Teaching Professor of Political Science and an Associate Director of the Public Policy Initiative at Penn State Behrend, where her primary research interests are in the field of comparative politics and international relations.

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