

Rule of Law, Russian-Style

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Almost without exception, Russia languishes near the bottom of indexes that purport to measure elements of the “rule of law” in countries around the world. Assessing the extent to which this contempt is deserved depends on how rule of law is defined. As the term has become part of the global political lexicon, its precise meaning has become increasingly opaque. Even so, the principle that law should apply in equal measure to everyone, irrespective of wealth or political clout, is generally accepted as the foundational principle of the rule of law. By this standard, Russia falls short today. What is worse, the continuing behavior of Russia’s public officials, as well as deeply set attitudes among ordinary Russians, offers little promise of improvement any time soon.

Certainly Russia’s history provides little evidence of commitment to a universalistic view of law. Both the czars and the Communist Party leadership routinely used law as a blunt instrument to advance their interests, enforcing it strictly against the powerless, but stretching it beyond recognition to accommodate themselves and their favorites. Laws were often written in the broadest terms possible so as to give officials maximum flexibility.

Beginning with Soviet leader Mikhail Gorbachev’s endorsement of a “rule-of-law–based state” (*pravovoe gosudarstvo*) at the outset of perestroika, the Kremlin’s rhetoric shifted. The leaders who have followed Gorbachev have likewise committed themselves to the goal of universalistic law. Vladimir Putin and Dmitri Medvedev, who like Gorbachev are legally trained, have both spoken repeatedly of the importance of institutionalizing a “supremacy of law” (*gospodstvo zakona*). Sadly, their policies have often failed to match their rhetoric.

Much like their predecessors, these post-Soviet leaders have proved willing to counte-

nance the manipulation of law when it has been inconvenient to live up to the law. The Kremlin’s seemingly endless campaign against oil tycoon Mikhail Khodorkovsky and his company, Yukos, is only the most notorious example. Not only does such behavior demonstrate the shallowness of Russia’s commitment to the civil liberties embodied in the country’s constitution and criminal procedure code, but it also reveals the Kremlin’s lack of respect for the independence of the judicial branch.

The Kremlin’s brazen disregard of legal niceties whenever the law threatens to cramp its style contributes to an “anything goes” legal culture in Russia. Human rights activists and journalists have been murdered with seeming impunity. Business is riddled with corruption. To some extent, of course, this is nothing new. Finding creative ways to get around (*oboiti*) the law has long been the norm in Russia. Indeed, it was a critical coping mechanism in response to the perennial shortages of the Soviet era.

In a perfect world, skirting the law would have become unnecessary with the end of state socialism and, more importantly, unacceptable. But the chaotic nature of the transition only emboldened those who sought to circumvent legal constraints. The well-known adage in Russia, “It is forbidden, but if you really want to do it, then go ahead” (*eto nel’zya, no esli ochen’ khochetsya, to mozhno*), captures this sentiment perfectly. So long as those who engage in extralegal behavior stay out of the way of those more powerful, the state has turned a blind eye.

DUAL JUSTICE

Most outside observers have assumed that all of these shortcomings add up to a legal system that is dysfunctional and virtually unusable. As usual, Russia confounds expectations. Over the past two decades, with surprisingly little fanfare, the legislative base and institutional infrastructure of the Russian legal system have undergone a remarkable transformation. Citizens’ access

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to the legal system has been enhanced through the introduction of justice-of-the-peace courts (*mirovye sudy*), which have absorbed the bulk of simple cases, freeing up other courts to devote attention to more complicated cases. Thanks to the internet, information about the substance of law and the activities of courts at all levels is increasingly transparent.

Not coincidentally, Russians' use of the courts has grown dramatically. The number of civil (non-criminal) cases has doubled over the past decade. But people's use of the courts is savvy. Russians seek help from the courts when they encounter disputes with those who are similarly situated; they shy away from the courts when they tangle with anyone more powerful.

The dual legal system that has evolved in Russia—in which the courts can be relied on to handle mundane cases, but are likely to bow to the will of the powerful in touchier cases—is a far cry from the rule-of-law-based state that was the initial goal. At the same time, it does provide a small measure of the sort of predictability that lies at the heart of the rule of law. In Russia's legal system an uneasy equilibrium is at play, one that has eluded the media and even many legal analysts. Russians have an innate sense of when to use the courts and when to avoid them.

HOW THE FISH ROT

Even so, a more robust rule of law in Russia will require fundamental changes in attitudes and behavior on the part of both state and society. In my own research, when I have asked ordinary Russians how to fix their legal system, they often remind me of the proverb that “the fish rots from the head” (*ryba gniyot golovy*). To date, the political leadership has talked the talk, but has not walked the walk. The citizenry has grown weary of endless promises. The prescription for the Kremlin can be stated simply—the state and its bureaucrats need to obey the laws they impose on others. Ending the “anything goes” legal culture will not be easy. Solving problems by cutting corners and making side payments is deeply entrenched.

To outsiders, the anticorruption campaign announced by Medvedev when he became president may seem like a good first step toward reining in the state. But Russians have heard it all before. Those with long memories will recall that Putin likewise came to office with a pledge to break the stranglehold of corruption. To be fair, Medvedev has done more than pay lip service. He has acted to limit the discretion of local officials to demand repeated inspections of businesses (thereby giving them multiple opportunities to demand payoffs). He has ordered more oversight of the state procurement process. And he has pushed for fuller disclosure of state officials' incomes and assets.

However, the depth of the Kremlin's commitment to rooting out corruption remains to be seen. Public opinion polling suggests that Russians are unconvinced of that commitment. In a February 2009 survey conducted by the Levada Center, most (53 percent) felt that Medvedev's initiative had made no difference. Indeed, 21 percent believed corruption had worsened since his election.

Enhancing the rule of law in Russia is not entirely a matter of state action. Medvedev has famously railed against the “legal nihilism” of Russian society, but he has been slow

to recognize that society is taking its cues from its leaders in its disregard of the law. For anything to change, Russians have to shake off their traditional passivity vis-à-vis the state. Human rights groups have taken an important step in this regard through their use of the European Court of Human Rights. The Strasbourg court has been swamped by Russian claims, most of which allege a failure on the part of the state to live up to its obligations under the law.

But this is an elite strategy; ordinary Russians know little of the European court. In my research, I have been struck by the unwillingness of the ordinary Russians with whom I have spoken to take on any responsibility for the condition of the legal system. It does not seem to occur to them that they could demand more from their political leaders. The weakness of civil society in Russia does not augur well for the development of a more robust rule of law. ■

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