

## Chapter 2

# Subjects or Citizens: Obstacles to the Exercise of Constitutional Sovereignty Rights in Contemporary Russia

Richard Sakwa

### **Introduction**

Although the Soviet system, following the adoption of the 1936 constitution, granted universal citizenship by removing formal class discrimination, the power monopoly exercised by the Communist Party of the Soviet Union (CPSU) rendered citizenship partial and unequal. Beginning with *perestroika*, the struggle for democracy entailed the attempt to achieve full and equal citizenship, that is, effective participation for all through the representative system in the management of public affairs and the ability to hold elites accountable. The Soviet legacy of displaced sovereignty, however, remains strong, although in contemporary Russia it takes new forms. The “democratization of democracy” today is in part the aspiration to achieve effective constitutionalism (the rule of law, the separation and limitation of powers) and accountability. It is also the attempt to develop the attributes of citizenship in individuals, including a sense of political efficacy and responsibility. This paper charts the contours of the process as identified above.

### **1. The Challenge of Citizenship**

The relations between citizens and the state in Russia remains a highly contested area of study, both in terms of the appropriate

methodology and in terms of substantive empirical data (Bahry 1999; Whitefield 2005a). The relationship is also in a constant process of adaptation and change, as evidenced in the different structure of participation in the various elections.<sup>1</sup> The fundamental question is the degree to which the institutional framework of contemporary Russia is an impediment to the exercise of effective popular sovereignty, or whether the sources of blockage arise from society itself, and in particular the weakness of civic consciousness among Russian citizens. Mikhail Krasnov (2007), for example, argues that the constitution itself acts as the source of pathological behavior, above all in promoting the excessive presidentialization of politics.

Stephen Whitefield (2005b) has examined the conundrum of Putin's popularity. If indeed Putin is responsible for the dismantlement of Russian democracy, then how can we explain his sustained popularity? Whitefield examines a number of hypotheses to explain this phenomenon: Putin's popularity reflects the illiberal and undemocratic sentiments of Russians; Putin's leadership has changed the views of his supporters *because* of the illiberal outcomes, while his opponents take a more negative view; this leads to a bifurcated system of supports, for and against Putin. Whitefield suggests that a "system performance" analysis is more convincing, in which Putin's popularity is based on perceived improved political and economic performance. His survey data discounts the growing illiberalism hypothesis, and the argument that Putin is supported by those with anti-democratic values is not sustained either. The data suggest that Russians on the whole do not hold the view that there has been significant democratic backsliding, while popular support for democratic norms and values has remained more or less constant. Opponents of democracy do not in the main support Putin, while those who seek the consolidation of government do not necessarily hold undemocratic views. In conclusion, Whitefield notes that "Putin's popularity does not appear to rest on an 'authoritarian' mass political culture" (Whitefield 2005b: 157).

---

<sup>1</sup> For an exemplary study that identifies the liminal situation in contemporary Russia, see Colton (2000).

In his Federal Assembly address of 5 November 2008, Dmitrii Medvedev (2008b) **quoted Pëtr Stolypin's famous formulation:** "First the citizen, then citizenship"; although he noted "But in our country we have often had the opposite." **In other words, the development of a civic sphere would allow the development of an engaged public based on free and responsible citizens.** In Medvedev's view, the appropriate institutional framework would allow Russians subjects to grow into citizens.

The problem, moreover, is not limited to problems of state development and polity building, or indeed popular subjectivity, but is also connected with various nation building projects. How can we document and analyze the attempt of the post-communist Russian state to create Russians out of "Soviets"; **and to transform comrades into citizens.**<sup>2</sup> What sort of "Russian people" are we talking about, in a state where the 2002 census identified 142 "nationalities"? **Although recognizing the national aspect, and indeed the social context, our focus in this paper is on the civic element.** Similarly, although the broader picture of a "weak state with a strong bureaucracy" is crucial,<sup>3</sup> the development of a state strong enough to ensure administrative coherence across the whole territory and the effective application of the rule of law, while balanced by institutions strong enough to ensure the state's own accountability to society, will not be the focus of this paper. While the state's role in securing the civic, political and social rights of its citizens is one part of the equation, the other is the citizenry's ability to establish institutions strong enough to hold the

---

2 The allusion to Eugen Weber's *Peasants into Frenchmen* is deliberate. Isaac (1998: 194) **describes the work as follows:** "...Weber details the complex and contingent processes whereby civic identity in a nation-state is constituted through human artifice."

3 As a recent OECD (2005: 51–52) **report put it, "The Russian state is often, and accurately, described as a 'weak' state, but its capacity for coercion is great – greater, indeed, than its capacity for providing effective regulation or delivering public services. The strongest political institutions in Russia are those best equipped for coercive action, while the weakest are those that are supposed to regulate the state's exercise of its coercive power. The state, therefore, cannot easily make a credible commitment to rule-governed behavior."**

state accountable, and that will be the subject of this discussion.<sup>4</sup> In the context of a weak state, para-political processes come to the fore, notably clientelism and lack of regime accountability. Administrative processes tend to subvert the operation of formal political institutions.

The constitutional granting of politics rights is not the same as the ability effectively to exercise them. In an important work Mancur Olson (1995: 458) draws attention to the ancient Roman distinction between *possessio* and *dominium* when applied to property rights:

Though individuals may have possessions without government, the way a dog possesses a bone, there is no private property without government. Property is a socially protected claim on an asset – a bundle of rights enforceable in courts backed by the coercive power of government.

The distinction can be applied not only to physical things but also to the ability to exercise political rights. Russians may today have become citizens, but how effectively can they exercise these rights? More than that, how willing are they to use the privileges of citizenship? The argument has long been made that the Russian electoral system has undergone an “authoritarian adaptation” and democratic procedures have been bolted on to neo-Soviet practices (Afanas’ev 2000: 17). Political disengagement can be seen in falling turnout figures in national elections, falling to just over half in the 2003 Duma elections, accompanied by the rise in the proportion of votes cast “against all.” Despite Vladimir Putin’s enduring popularity, there was little trust in the institutions on which his regime was built (White 2005).

Citizenship is an individual attribute but can only be exercised in collective forms. It is quite possible to conceive of a system in which

---

4 The OECD report is blunt in its analysis of the problem: “Establishing the rule of law will require more than just the reform of the judicial system. It will need a strong state, capable of protecting individual rights, of interpreting the law impartially and of enforcing it effectively. But a state strong enough to perform these functions might succumb to the temptation to act arbitrarily itself. So the establishment of the rule of law will require not only a strong state but also strong institutions capable of constraining it. Russia lacks such institutions” (OECD 2005: 51).

individuals have developed as proto-citizens but are unable to exercise political judgment and choices because of the absence of politics in the social order, accompanied by the lack of effective instruments in which political preferences can be given collective form. This was certainly the case in the Soviet period, and to an extent applies today. As Parry and Moran (1994: 272) note, **“The major task facing democratic theory is to investigate the nature of citizenship and, consequently, the institutions through which citizenship may express itself...”** The concept of citizenship, however, traditionally assumes a stable individual at its core, with a relatively fixed set of orientations combined with a fairly narrow band of preferences balancing interests and values (Heater 2004). In the post-communist world this assumption can be questioned, and requires a deeper study of the social being at the heart of the transformative process. The exercise of citizenship also presumes a stable political community with which the individual can identify and expect justice and administrative impartiality.<sup>5</sup> **Recent renewed interest in the concept of republicanism, given a neo-Roman turn by Pettit (1997) and Skinner (1998), is an attempt to theorise the nature of a political community in which active citizenship can be exercised.**

The patrimonial elements in the definition of public power inherited from the Soviet system still exercise a profound effect. If liberalism assumes a “pre-political” sphere of social activity, then managed democracy extends this to major areas of public policy; they become, as it were, “apolitical.” **The tradition of depoliticizing the policy making process is certainly far from new.** Richard Pipes (1974 and 1991) argues that the roots of patrimonialism reach back into the Tsarist era. In the Soviet era everything was politicized, **but nothing was political.** The struggle to build communism under the presidency of Boris Yeltsin in the 1990s gave way to “the transition” to capitalism and liberal democracy. Rather than organic development, Russia in the 1990s embarked on yet another state-sponsored re-modernization project. Under Putin in the 2000s the reassertion of state authority appeared to signal the re-establishment of

---

5 For a recent analysis of the evolution of the relationship based on the West European experience, see Bellamy, Castiglione and Santoro (2004), and in particular “Introduction” by Richard Bellamy.

a patrimonial state that blurred once again the distinction between the public and the private. To this day the state remains the largest employer, and the government does not easily restrain its hegemonic ambitions even in the economic sphere.<sup>6</sup>

The reassertion of state patrimonialism, however, is tempered by the development of a peculiar type of societal neo-patrimonialism. There has been much discussion of the way that the state was “stolen” in the exit from communism (Solnick 1998). **The logic of the neo-patrimonial model of politics** is that the state itself is privatized and turned to the advantage of a narrow elite group who undermine formal political institutions. These informal relationships were particularly strong in the regions, and they have been influential in other post-Soviet countries, notably Ukraine (Zon 2001). **The weakness of the regulatory and legal system** has allowed whole swathes of the Russian economy to become part of a system of “fragmented clientelism:” **“Sectoral governance is largely shaped by political markets dominated by a number of parallel agencies more clientelistic than collective in character”** (Lambrusch 1999: 239). In these circumstances it is difficult to tell what is legal or illegal, and indeed what is public and private.

From this perspective the fundamental problem in post-communist Russia has not so much been the lack of the associational life associated with the concept of civil society (*grazhdanskoe obshchestvo*), as the weak development of what could be called a society of citizens (*soobshchestvo grazhdanin*). This is a point that Max Weber grasped in arguing that only some forms of associative life promote a more vibrant democracy, and certainly not all enhance, trust, sociability and co-operation. According to a recent study, Weber considered that a vibrant civil society would be characterized by the “cultivation of the defiant individual autonomy ... Weber’s politics of civil society in the end cannot accept a simple celebration of associational life for its own sake” (Kim 2004: 189). The values and operative codes of many of even the most progressive civic associations remain deeply Soviet, and the very ideology of civil soci-

---

<sup>6</sup> The purchase of Sibneft by Gazprom in September 2005 brought the state’s share of the energy sector to a hegemonic 57.4%.

ety development perpetuates the gulf between society and state, where the state remains something alien, imposed and patrimonial, while at the same time protective, comforting and primordially powerful.<sup>7</sup>

A society of citizens is not the same as a civil society, where the group is the key unit of measurement. As Per Mouritsen (2003: 652) notes, “The idea of civil society was part of the slow eclipse of the more classical republican ideology of self-governing citizens, kept together by common action and patriotic identification.” **Thus the emphasis in much** of the democratic transition literature on civil society may be misguided; not because associational life in itself is antithetical to the fostering of civic values, but because it is value neutral. Civil society without a republican spirit of civic responsibility and restraint becomes, as we have seen in much of the former Yugoslavia and at the close of the Weimar republic earlier, deeply uncivil and disruptive of politics itself. The emphasis on the group rather than individual subjectivity has occluded the third leg of our triangle, the relationship between the individual and the state based on responsibility and civic awareness.

A citizenry is born only when people identify with a larger community, and this is achieved when the notion of a single people is born subject to the same rules and accepting the same grounds for recognizing legitimate authority. In that case individuals are then ready, if not willing, to pay taxes for a project that sustains the public good. In the Soviet Union the welfare state was funded in an abstract way, and thus the consciousness of the daily necessity to dig deep in individual pockets was not nurtured. Public goods were provided by an alien public authority and appeared costless to the beneficiaries. The monetization of benefits in contemporary Russia through Law 122, and implemented in early 2005 accompanied by widespread social protests, is a salutary reminder of the costs involved, and that in part was the point of the exercise. The nation building efforts of the late nineteenth century in France and Italy are being reprised in Russia today, but the core institutions that created patriotic subjectivities in the earlier period, the church, the army and the

---

7 On the lack on democracy among Russian “democrats,” see Lukin (2000).

schools, have lost much of their authority.<sup>8</sup> Mouritsen (2003: 658) notes in this context about Eastern Europe:

Civil society did not just need *liberation* [italics in original] from totalitarian states, but also something else and better instead. There must be reasonable and operative laws before people will learn to respect them, working institutions before national solidarity, and rights before anyone would wish to be a citizen. The first step towards civil society is a civil state – difficult as this is. In the absence of such a state or the relatively recent memory of one, instead of citizens there will be alienated individuals, fending for themselves, instead of market capitalism there will be mafia economies, and instead of velvet revolutions there will be more stolen ones.

It is not surprising that civic commitment remains lacking when the focus of identification for the development of citizen affiliations, the civil state, is itself fragmented and exercised too often in a partial and instrumental manner to serve one elite faction or another retreating. The administrative regime interposes itself between the constitutional state and the effective participation of civic representative institutions.

## **2. The “Regime” Problem in Contemporary Politics**

A government becomes a regime when some fundamental aspects of effective accountability are missing. The regime tends to colonize the institutions of the state, and thus undermines the autonomy of its practices. Democratic transition is all about the shift from regime to government. A government is the arena for decision-making on the basis of political

---

<sup>8</sup> Numerous studies reveal the low level of popular trust in civic institutions except the church and Putin. Russian political parties, parliament, the militia, regional leaders and the like all habitually score in the low single figures. An interesting finding of a recent study on this question is that there has been a leveling in the opinions of various age groups, thus the “moral values of younger and older generations have practically evened out.” The study found that all generations demanded that a strong leader govern society. Evgeny Krikin of Romir polling agency, quoted in *Pravda.ru*, 6 January 2004.

choices and policy debate. Government in typical democracies is characterized by the presence of an institutionalized opposition and thus a political process. The government is constrained by a variety of *ex ante* and *post facto* accountability mechanisms, above all through a constitution enforced by law and independent courts from above, and by representative institutions and political movements from below. Intra-governmental relations remain the subject of considerable debate, focusing in particular on the most effective mechanisms to ensure accountability. The distinction between state and government is maintained, even if by a variety of legal fictions, although in practice they have an enormous affective significance. In Russia, the gulf between *Regierung* and *Verwaltung*, or between “politics” and “administration,” remains as wide as ever. Executive authority has become ever more independent of parliament, though it remains constrained by law and regulated by parliament within the framework of “delegated legislation.”

### ***2-1. Administrative Regime versus the Constitutional State***

The contrast between the informal relations of power established within the framework of regime politics, on the one hand, based on administrative and bureaucratic power, and the institutionalized politics characteristic of a genuinely constitutional state, is characteristic of many democracies in the post-communist era. Informal practices are in tension with the attempt to assert the prerogatives of the constitutional state. Under Yeltsin personalized leadership came to the fore, with the political regime and its oligarchical allies operating largely independently from the formal rules of the political system, whose main structural features were outlined in the constitution. Behind the formal façade of democratic politics conducted at the level of the state, the regime considered itself largely free from genuine democratic accountability and popular oversight. These features, as Hahn (2002) stresses, were accentuated by the high degree of institutional and personal continuity between the Soviet and “democratic” political systems. While a party-state ruled up to 1991, the emergence of a presidential-state by the mid-1990s had given way to a regime-state that perpetuated in new forms much of the arbitrariness of the old system. Both the administrative regime and the constitutional state succumbed to clientelist pressures exerted by powerful interests

in society, some of whom (above all the so-called oligarchs) had been spawned by the regime itself (Mukhin and Kozlov 2003).

A number of terms have been devised to try to capture this gulf between formal and informal practices, which is in effect the practice of displaced sovereignty (for example, delegative democracy, O'Donnell 1994). Instead of government being accountable to the representative institutions of the people and constrained by the constitutional state and its legal instruments, the government assumes an independent political existence.<sup>9</sup> It is at this point that a politically responsible and accountable government becomes a regime; formal institutions are unable to constrain political actors and informal practices predominate (North 1990: 3 and passim). A regime here is defined as the network of governing institutions that is broader than the government and reflects formal and informal ways of governing and is usually accompanied by a particular ideology, often defined in terms of advancing or defending some sort of substantive goal (for the Turkish military it was the secular nature of the state; for many ex-colonial states it was development and modernization, for the Soviet regime it was the building of socialism, and for Yeltsin's regime it was building capitalism). The administrative regime can thus be contrasted with the constitutional state. The notion of regime in this sense has a long pedigree in political science, and is used to contrast an under-institutionalized power system in contrast with a government, which sits firmly in some sort of legal-constitutional regulation of power relations. A regime is inadequately constrained by the constitutional state from above and lacks effective accountability to the institutions of mass representation from below (parliament, political parties, civil society generally) (Sakwa 1997; 2008a: 466–70 and 2008b: chapter 5). The outward forms of the constitutional state are preserved, but legality and accountability are subverted (cf. Lawson 1994).

## ***2-2. Para-Constitutionalism and the Presidency***

In the administrative regime a set of para-constitutional behavioral norms predominate (dubbed by Machiavelli extra-constitutional

---

<sup>9</sup> For an analysis of the problem, see Sajó (1999). For a recent overview applied to the post-communist world, see Gönenc (2002).

measures) that while not formally violating the letter of the constitution undermine the spirit of constitutionalism (cf. Riggs 1988). As in America, para-constitutional behavior gets things done, but ultimately proved counter-productive because they rely on the mechanical armory of stability politics rather than the self-sustaining practices of the politics of order. As Rumiantsev (1994) has argued, there is a clear difference between having a constitution and the practices of constitutionalism. During Putin's presidency the practices of para-constitutionalism were sharply accentuated. His regime was careful not overtly to overstep the bounds of the letter of the constitution, but the ability of the system of "managed democracy" to conduct itself with relative impunity and lack of effective accountability means that it was firmly located in the grey area of para-constitutionalism. This was most marked in his reform of the federal system in 2000, and then in the reorganization of regional administration in the wake of the Beslan massacre of 1–3 September 2004.

From the above discussion we can derive a concept of displaced sovereignty, whereby the principals (in this case the allegedly sovereign Russian people and its representatives) are unable to exercise effective means of control over its agents (the administrative regime with the presidency at its centre). Thus it would appear that the behaviorists of an earlier generation were vindicated. As Vile (1967: 7) puts it, writing in 1967, "There was a diminution of belief in the efficacy of constitutional barriers to the exercise of political power, and students of politics demonstrated how legal rules could be evaded or employed to produce an effect directly opposite to that intended."

In pursuing a policy of reconstitution by reasserting state autonomy from societal actors, Putin at the same time sought to reassert the political independence of the presidency from the informal practices of the administrative regime. This two-fold struggle for autonomy was intended to be mutually reinforcing: a constitutional state would be crowned by a free president defending the universal application of constitutional norms. However, things did not quite turn out as intended. In a constitutional state the activist presidency would itself be constrained, and all history demonstrates that such an act of subordination is not normally voluntary but derives from the constraining effect of conflicts within the

political elite or from the pressure of social forces. Putin's state building project followed in the French Jacobin tradition of establishing a homogeneous legal space and the universal application of governmental norms, but the associated development of the republican concept of an active citizenry was neglected (Pettit 1997). **Putin's system was legalistic**, but it often acted in a spirit contrary to that of constitutionalism. Putin's sovereignty games – restoring the autonomy of the constitutional state, challenging the autonomy of regional bosses, weakening the ability of the oligarchs to impose their preferences on the government, and freeing the presidency from the administrative regime – neglected one important element: the sovereignty of the people in a federal state.

### **2-3. *The dual state***

The interaction of genuine constitutionalism and nominal para-constitutionalism in Russia can be compared with the development of the dual state in Germany in the 1930s. Ernest Fraenkel (1941) **described** how in Nazi Germany the prerogative state acted as separate law system of its own, although the formal constitutional state was not dismantled. Two parallel systems of law operated, where the “normative state” operated according to sanctioned principles of rationality and impartial legal norms; while the “prerogative state” exercised power arbitrarily and without constraints, unrestrained by law. The Nazi regime breached the formal rules with impunity, but where the authorities chose not to assert their prerogatives, “private and public life are regulated either by the traditionally prevailing or newly enacted law” (Frankel 1941: 57). The normative state was largely concerned with regulating the capitalist economy, while the prerogative state dealt with the regime's enemies and controlled political activity. Court records studied by Fraenkel (1941: 241–44) **demonstrated that as time passed the prerogative state** encroached ever more on the impartial rules of the normative state. Gordon Smith (1996: 34) **notes that in the Soviet period the duality** was strongly developed as well, and in particular “The legal system in the USSR under Stalin clearly resembled Fraenkel's ‘dual state’.”

This clearly has something in common with developments in post-communist Russia. Robert Amsterdam, international defense council for Khodorkovskii, **has drawn attention to the parallels, and his analysis con-**

tains many fruitful insights on the way that the rule of law was subverted in the Yukos case to drive through the requisite convictions. Amsterdam (2008: 2) notes that “The prerogative state accepted that the courts were necessary to assure entrepreneurial liberty, the sanctity of contracts, private property rights and competition, but this did not mean that the courts or the law were inviolable.” For Fraenkel (1941: 24), the destruction of legal independence was the central feature of the prerogative state. As Knoops and Amsterdam (2007: 263) put it, “... the concept of the Dual State implies that, despite the normative value and safeguards of certain legal mechanisms in terms of checks and balances, the entire legal system can become or de facto function as an instrument at the disposal of the political authorities.”

There are obvious limits, recognized by Amsterdam, to the applicability of the model to Russia, above all because of the “uniquely horrific” way in which it was applied by the Nazis. Even within the realm of political practices there are stark differences, making the German model of the dual state not quite appropriate for post-communist Russia. In Germany the regime openly proclaimed the priority of non-constitutional imperatives as the guiding principles of the state, above all the word and will of the Führer, whereas in Russia the fundamental legitimacy of the regime is derived from its embeddedness in a constitutional order which it is sworn to defend. In Germany the constitutional and prerogative states coexisted, whereas in Russia their interaction is the defining feature of the regime. Although the rule of law in Russia remains fragile and, as the Yukos affair amply demonstrated, was susceptible to manipulation by the political authorities, no fully-fledged prerogative state has emerged. Neither, however, has a fully-fledged rule of law state, and thus Russia remains trapped in the grey area between a prerogative and a genuine constitutional state.

Two political systems operate in parallel. On the one hand, there is the system of open public politics, with all of the relevant institutions described in the constitution and conducted with pedantic regulation in formal terms. At this level parties are formed, elections fought and parliamentary politics conducted. However, at another level a second para-political world exists based on informal groups, factions, and operating within the framework of court politics. This Byzantine level never

openly challenged the leader, but sought to influence the decisions of the supreme ruler. This second level is more than simply “virtual” politics, the attempt to manipulate public opinion and shape electoral outcomes through the pure exercise of manipulative techniques, although by permitting the para-politics of the second system Putin ensured that the formal side of political life was liable to become little more than “show-politics,” **a spectacle to satisfy the formal demands of the system and the international community**, but lacking the efficacy that, however limited, is one of the characteristics of modern democracies.

The system is characterized by a contradictory dual adaptation. Political leaders and parties adapt to constitutional and democratic mass politics, largely renouncing street politics of the early post-communist years and focus on electoral campaigns. Democratic forms and constitutional norms, however, adapted to the needs of the political leadership (the regime), thus undermining the real impact that organized political interests can have on the conduct of government and the shaping of policy. The role of political parties has now been formalized and the policy process broadened, but popular representation remains constrained by the dominance of the regime and its associated practices of “managed democracy.” **The hybrid nature of the regime, drawing its legitimacy from pluralist democracy while suborning the electoral process**, endowed the system with numerous contradictions and provoked conflicting evaluations of the nature of the new system.

By seeking to reduce the inevitable contradictions that accompany public politics into a matter of technocratic management, Putin inevitably exacerbated the contradictions between the groups within the regime itself. Putin placed a high value on civil peace, and thus opposed a return to the antagonistic politics that was typical of the 1990s, but this reinforced the pseudo politics typical of court systems. For Putin, democracy was less a set of institutions but, to paraphrase Michael Mann, “an ideology of equality, one that legitimates itself through a claim to represent the people and aims at a popular redistribution of social power.”<sup>10</sup> The suffocation of public politics intensified factional processes within the regime.

---

10 The paraphrase is by Riley (2007: 125), reviewing Mann (2005).

### 3. From Para-Politics to Citizenship Politics

The Medvedev presidency offers the opportunity to close the gap between the formal constitutional order and the covert battle of the factions. As we have argued, these two systems exist in parallel, with the informal factional networks subverting the autonomous operation of the open system of public politics. If the two systems could be integrated, with the emphasis in favor of public politics, then we can begin to talk of the transcendence of regime politics in Russia and the onset of an era of constitutional governance. There is a long way to go before this can be achieved, and there is no guarantee that Medvedev will be able to do this. The condition of his success is to move gradually, and thus we should not anticipate any rapid dramatic changes.

A number of countries can be described as “para-states,” where real power lies not with the constitutionally vested authorities but with groups outside the formal power system operating through a parallel system of para-politics. This was the case, for example, of Greece following the end of the civil war in 1949 up to the military coup of 1967. In these years authoritarian right wingers were the effective power in the land, with the formal democratic procedures vulnerable to interference by forces not subservient to the democratic process. This system of controlled democracy was characterized by weak political parties, which were based on personalities rather than coherent programs, and with the system susceptible to repeated interventions by the military and the monarchy. Local bosses were able to carve out fiefdoms, and central government was prey to endless crises, with more than 30 governments between the end of the German occupation and 1967. At all levels patronage relations prevailed. A controlled democracy will be a low-quality democracy, and this was certainly the case with Greece at this time. The discrediting of the previous order, intensified by the failures of the military junta, meant that when the authoritarian regime collapsed in 1974 the way was open for rapid political modernization, encouraged by the prospect of membership in the EU. The monarchy was abolished and the military kept out of politics, and although some features of the old order remain, as in the prevalence of patronage relations and a prickly ethnically-defined nationalism, Greece has effectively made the breakthrough

to political modernity.

In Russia the intervention comes not from such a visible force as the military, or even a coherent single force such as the notorious *siloviki*, but from factions within the regime itself. Medvedev was well aware of this. In his Civic Forum speech on 22 January 2008 Medvedev called for the struggle against corruption to become a “national program,” noting that “legal nihilism” took the form of “corruption in the power bodies.” He returned to this idea in his 29 January speech to the Association of Russian Lawyers, of which he was chair of the board of trustees, when he called on his fellow lawyers to take a higher profile in society and to battle “legal nihilism.” **He clearly had two evils in mind: corruption in the traditional venal sense, characterized by the abuse of public office for private gain; and meta-corruption, where the judicial process is undermined by political interference, known in Russia as “telephone law,” and which had been most prominently in evidence during the Yukos case, which itself had given rise to the term “Basmanny justice” (Melikova 2008).**

In a keynote speech to the Fifth Krasnoyarsk Economic Forum on 15 February 2008 Medvedev (2008a) **outlined not only his economic program but also his broad view of the challenges facing Russia.** He focused on an unwieldy bureaucracy, corruption and lack of respect for the law as the main challenges facing Russia. In a decisive tone he insisted that “Freedom is better than lack of freedom – this principle should be at the core of our politics. I mean freedom in all of its manifestations – personal freedom, economic freedom and, finally, freedom of expression.” He repeated earlier promises to ensure personal freedoms and independent and free press. He repeatedly returned to the theme about “the need to ensure the independence of the legal system from the executive and legislative branches of power,” and once again condemned the country’s “legal nihilism” and stressed the need to “humanize” **the country’s judicial system.** Medvedev’s plans for economic modernization **focused on the four “Is”: institutions, infrastructure, innovation and investment.”**

However, there was not much here about the need to modernize the political sphere. The reduction in “legal nihilism” would be step forward, but the development of a society of citizens was only tangentially discussed in the context of the “freedom being better than unfreedom.”

It was not clear what would be the political form of freedom. The normative state is the source of constitutional renewal, but this cannot take place in isolation. Color revolutions are one mechanism whereby a passive population asserts its citizenship rights, but the only colored revolution liable to take place in Russia is a “grey” one, as when pensioners and allied groups protested against the monetization of benefits in 2005. The more likely source of civic renewal would be an activation of the latent power of the nascent bourgeoisie (big business) as was already attempted by Mikhail Khodorkovskii, but his attempt to assert the independent class power of the bourgeoisie ended in a major defeat orchestrated through the “Yukos affair.” However, if the bourgeoisie can ally with the politically dissatisfied middle class, especially if their expectations of ever-rising living standards are challenged by an economic downturn, and at the same time mobilize the language of independent citizenship, then the regime would have to make concessions and open up political space for greater independent contestation and competitiveness. There may even be scope for working class mobilization, but it remains doubtful whether a program of conscious mobilization on class principles to achieve a humane, democratic *capitalism* (to paraphrase Gorbachev’s plans to achieve a “humane, democratic *socialism*”) is possible in post-communist Russian conditions.

There are many paths from subjecthood to citizenship, and the journey in Russia has been a long one and is still far from over. The present constitutional order provides the normative framework for the evolutionary transformation of subjects into citizens, whereas a new revolution and the attempt to impose a new constitutional structure would set Russia back by decades. The major challenge is to overcome the dual state to achieve genuine constitutionalism in which regime governance is transcended to allow the free exercise of citizenship rights.

## References

- Afanas’ev, Mikhail N. (2000), *Klientelizm i rossiiskaia gosudarstvennost’* (Moscow: MONF).
- Amsterdam, Robert R. (2008), *The Dual State Takes Hold in Russia*, Royal Institute for International Affairs (7 February).
- Bahry, Donna (1999), “Comrades into Citizens? Russian Political Culture and Public Support for the Transition,” *Slavic Review*, 58 (4): 841–853.
- Bellamy, Richard, Dario Castiglione and Emilio Santoro (2004), *Lineages of*

- European Citizenship: Rights, Belonging and Participation in Eleven Nation-States* (Basingstoke: **Palgrave Macmillan**).
- Colton, Timothy J. (2000), *Transitional Citizens: Voters and What Influences Them in the New Russia* (Cambridge, MA.: **Harvard University Press**).
- Fraenkel, Ernst (1941), *The Dual State: A Contribution to the Theory of Dictatorship*, translated from the German by E. A. Shils, in collaboration with Edith Lowenstein and Klaus Knorr (New York: **Oxford University Press**); reprinted by The Lawbook Exchange, Ltd, 2006.
- Gönenc, Levent (2002), *Prospects for Constitutionalism in Post-Communist Countries* (The Hague: **Martinus Nijhoff Publishers**).
- Hahn, Gordon M. (2002), *Russia's Revolution from Above, 1985–2000: Reform, Transition, and Revolution in the Fall of the Soviet Communist Regime* (New Brunswick, NJ.: **Transaction Publishers**).
- Heater, Derek (2004), *A Brief History of Citizenship* (Edinburgh: **Edinburgh University Press**).
- Isaac, Jeffrey C. (1998), *Democracy in Dark Times*, (Ithaca and London: **Cornell University Press**).
- Kim, Sung Ho (2004), *Max Weber's Politics of Civil Society* (Cambridge: **Cambridge University Press**).
- Knoops, Geert-Jan Alexander and Robert R. Amsterdam (2007), "The Duality of State Cooperation Within International and National Criminal Cases," *Fordham International Law Journal*, 30 (2): 260–295
- Krasnov, Mikhail (2007), "Konstitutsiia v nashei zhizni," *Pro et Contra*, 11 (4–5): 30–42.
- Lawson, Gary (1994), "The Rise and Rise of the Administrative State," *Harvard Law Review*, 107: 1231–1254.
- Lembrusch, Barbara (1999), "Fragmented Clientelism: The Transformation of Sectoral Economic Governance in the Russian Timber Industry," in Vladimir Tikhomirov (ed.), *Anatomy of the 1998 Russian Crisis* (Melbourne: University of Melbourne, Contemporary Europe Research Centre), 238–258.
- Lukin, Alexander (2000), *The Political Culture of the Russian "Democrats"* (Oxford: **Oxford University Press**).
- Mann, Michael (2005), *The Dark Side of Democracy: Explaining Ethnic Cleansing* (Cambridge: **Cambridge University Press**).
- Medvedev, Domitrii (2008a), "Vystuplenie na V Krasnoiar'skom ekonomicheskom forume 'Rossiia 2008–2020: Upravlenie rostom'" <[http://www.medvedev2008.ru/live\\_press\\_15\\_02.htm](http://www.medvedev2008.ru/live_press_15_02.htm)>.
- Medvedev, Dmitrii (2008b), "Poslanie Federal'nomu Sobraniuu Rossiiskoi Federatsii," 5 November 2008 <<http://www.kremlin.ru/text/ap->

- pears/2008/11/208749.shtml>.
- Melikova, Natal'ia (2008), "Ni slova o pravke Konstitutsii," *Nezavisimaia gazeta*, 20 January: 1, 3.
- Mouritsen, Per (2003), "What's the Civil in Civil Society? Robert Putnam, Italy and the Republican Tradition," *Political Studies*, 51 (4): 650–668.
- Mukhin, A. A. and P. A. Kozlov (2003), "*Semeinye*" *tainy ili neofitsial'nyi lob-bizm v Rossii* (Moscow: Centre for Political Information).
- North, Douglass (1990), *Institutions, Institutional Changes and Economic Performance* (Cambridge: Cambridge University Press).
- O'Donnell, Guillermo (1994), "Delegative Democracy," *Journal of Democracy*, 5 (1): 55–69.
- OECD (2005), *Russia: Building Rules for the Marke: Reviews of Regulatory Reform* (Paris: OECD).
- Olson, Mancur (1995), "Why the Transition from Communism is so Difficult," *Eastern Economic Journal*, 21 (4): 437–461.
- Parry, Geraint and Michael Moran (1994), "Democracy and Democratization," in Geraint Parry and Michael Moran (eds), *Democracy and Democratization* (London: Routledge), 152–173.
- Pettit, Philip (1997), *Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon Press).
- Pipes, Richard (1974), *Russia under the Old Regime* (Harmondsworth: Penguin).
- Pipes, Richard (1991), *The Russian Revolution* (New York: Random House).
- Riggs, Fred W. (1988) "The Survival of Presidentialism in America: Para-Constitutional Practices," *International Political Science Review*, 9 (4): 247–278.
- Riley, Dylan (2007), "Democracy's Graveyards?" *New Left Review*, 48: 125–136.
- Rumiantsev, Oleg G. (1994), *Osnovy konstitutsionnogo stroia Rossii* (Moscow: Iurist).
- Sajó, András (1999), *Limiting Government: An Introduction to Constitutionalism* (Budapest: Central European University Press).
- Sakwa, Richard (1997), "The Regime System in Russia," *Contemporary Politics*, 3 (1): 7–25.
- Sakwa, Richard (2008a), *Russian Politics and Society* (4th ed.) (London/New York: Routledge).
- Sakwa, Richard (2008b), *Putin: Russia's Choice* (2nd ed.) (London/New York: Routledge).
- Skinner, Quentin (1998): *Liberty before Liberalism* (Cambridge: Cambridge

- University Press).
- Smith, Gordon B. (1996), *Reforming the Russian Legal System* (Cambridge: Cambridge University Press).
- Solnick, Steven L. (1998), *Stealing the Soviet State: Control and Collapse in Soviet Institutions* (Cambridge, MA.: Harvard University Press).
- Vile, M. J. C. (1967), *Constitutionalism and the Separation of Powers* (Oxford: Clarendon Press).
- White, Stephen (2005), "Political Disengagement in Post-communist Russia: A Qualitative Survey," *Europe-Asia Studies*, 57 (8): 1121–1142.
- Whitefield, Stephen (ed.) (2005a), *Political Culture and Post-Communism* (Basingstoke: Palgrave Macmillan).
- Whitefield, Stephen (2005b) "Putin's Popularity and its Implications for Democracy in Russia," in Alex Pravda (ed.), *Leading Russia: Putin in Perspective* (Oxford: Oxford University Press), 139–160.
- Zon, Hans van (2001), "Neo-Patrimonialism as an Impediment to Economic Development: The Case of Ukraine," *Journal of Communist Studies and Transition Politics*, 17 (3): 71–95.