

Why the Russian Constitution Matters

William Partlett

2024-02-16T03:12:07

30 years later, the Russian Constitution is generally thought to be a failure. This conventional wisdom is grounded in the constitution's early chapters, which guarantee individual rights, the rule of law, and democracy. The failure of these provisions, the conventional view goes, shows that the Russian constitution is a sham that has been unable to resist the return of Russian authoritarianism.

My [forthcoming book](#) on the Russian Constitution challenges this conventional view. It describes how the Russian Constitution is more than its early chapters. In fact, the later structural chapters of the Russian Constitution centralise vast power in the office of the president. These structural provisions have played a central role in the construction of presidential dictatorship over the last 30 years.

The Russian Constitution is therefore the product of what I call the 'constitutional dark arts,' a neglected constitutional practice that seeks to guarantee democracy and rights in a highly centralised constitutional system.

I call this practice the 'constitutional dark arts' because it intentionally uses a non-democratic technique – constitutional centralisation – as an expedient to guarantee democracy and individual rights. This constitutional practice has become increasingly common since the 1980s and produces a hybrid written constitution that guarantees democracy and rights in its early chapters while centralising power in one office in the later structural chapters.

Russia's hybrid constitution

The [Russian constitution](#) is a concrete example of this kind of hybrid constitution. The preamble and early foundational chapters of the Russian Constitution guarantee democracy and rights protection. The preamble affirms the commitment of the 'multi-national Russian people' to individual rights and freedoms and the 'inviolability of the democratic foundations of Russian statehood.' Chapter 1 outlining the 'Fundamentals of the Constitutional Structure' declares that Russia is a 'is a democratic federal law-bound State with a republican form of government.' It also states that 'the individual and his rights and freedoms' have the 'highest value'¹⁾ in a constitutional order grounded on 'ideological and political pluralism'.²⁾ Finally, it states that the constitution has supreme juridical force and that the 'universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system.' (Art 15)

Chapter 2 lists dozens of political and social rights, including the right to freedom of speech, movement, conscience as well as the right to life, housing, and a pension.³⁾

Rights are tied to international law norms and judicial enforcement. For instance,

Article 17.1 states that '[i]n the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law and according to the present Constitution.' Finally, these rights can only be limited by federal law when it is 'necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State.' (Article 55)

The later chapters of the Russian Constitution, by contrast, centralise vast power in the office of the Russian President. These structural provisions create a [crown-presidential system](#) that centralises power in the Russian President in two ways.

First, it elevates the president above the system of separated powers, giving the president pseudo-monarchical *guardian* authority as 'guarantor' of the entire Russian constitutional system. This includes power to issue decrees, control the legislature, and appoint members of the judiciary and other accountability institutions. Second, it simultaneously makes the president the chief executive officer (CEO) of the state with vast *management authority* to formulate and oversee the implementation of policy. This includes a vertical of power to control the prime minister and executive ministry and bureaucracy as well as regional executives.

The constitutional dark arts

The hybrid constitutions of the constitutional dark arts have increased markedly in constitution-making around the world since the late 1980s. Robert Gargarella describes how rights have increasingly been inserted into Latin American constitutions but in the context of a 'distinctively presidentialist organization of power based on the concentration of functions in the hands of the president' (156-157, *Latin American Constitutionalism 1810-2010: The Engine Room of the Constitution*).

Two factors have driven the increasing use of the constitutional dark arts. First, since the end of the Cold War, constitutions guaranteeing democratic institutions, principles, and rights have become important generators of legitimacy. Second, despite the growing influence of democratic ideas and institutions, centralisation has remained an attractive form of governance.

The constitutional dark arts argue that centralisation can effectively ensure democracy and rights protection on two main grounds. *First*, the claim is made on the ground that the all-powerful office is elected and therefore represents popular sovereignty. This *populist justification* relies on the assumption that the people can actively hold the sovereign representative to account. *Second*, this claim is made on the basis that the democratic and rights guarantees in the foundational chapters will enable courts to limit any potential abuse of power by the state or the all-powerful sovereign leader. This *legalist justification* views constitutions as primarily juristic texts that create legal checks on the abuse of power.⁴⁾

Over time, however, these claims are likely to fail. Russia's constitutional experience shows why. Neither elections nor courts have been able to control the powerful Russian President. Instead, vast presidential authority has allowed the president to

transform elections and judicial review into institutions that enable—rather than limit—Russian authoritarianism. Russian authoritarianism has therefore not been built in opposition to the Russian Constitution but on the basis of its later structural chapters. This Russian experience matters for three reasons.

1. *First*, this analysis revises our understanding of Russia by showing the *constitutional system* that underpins Russian authoritarianism. The later chapters of the Russian Constitution centralise vast power in the office of the president and enable that institution to dominate politics and win elections. Russian authoritarianism is therefore far more than the personal project of Vladimir Putin. Instead, the constitution plays a [foundational role](#) in putting the ‘authority’ in Russian authoritarianism.

This insight carries important implications. First, it shows that Russia’s failure to become a democracy after the collapse of the Soviet Union is not an inevitable product of its history. On the contrary, it has been shaped by the adoption of a constitutional system of centralised power in the office of the president. Second, it shows that long term democratic reform will require more than just Putin leaving the office of the presidency. Avoiding a system of ‘Putinism without Putin’ will also require a new Russian constitutional foundation that breaks with centralisation and reshapes the later structural chapters of the constitution to balance power between institutions. My forthcoming [book](#) will explore these questions in more detail.

2. *Second*, Russia’s constitutional development adds to our understanding of the role of constitutions in authoritarianism. The hybrid constitutional texts at the centre of the constitutional dark arts frequently become central to authoritarian governance. They [provide key tools](#) to the leader to dominate politics. They also allow the centralised power of the sovereign dictator to be legitimised in democratic language. In this way, the constitutional dark arts provide two bases for authoritarian resilience.

But this system of constitutional authoritarianism does, however, have weaknesses: over time, it is prone to rights abuse, instability, and state weakness. My forthcoming [book](#) details the weaknesses of this system of authoritarianism.

3. *Third*, the fact that constitutional centralisation is likely to undermine rights protection and democratic accountability over time teaches us an important lesson about democratic constitutions. To promote accountable democratic governance and rights protections, constitutions must do more than guarantee individual rights and elected institutions. They must also include structural provisions that [disperse power](#) between the public institutions of the state in a way that allows the political foundations for achieving these democratic goals.

This is an important insight for established democracies. Elected politicians like Donald Trump are increasingly making claims that unmediated representation and centralisation is the best way to ensure democracy. Combatting this trend requires turning to a long tradition of constitutional thought that opposes centralisation. My forthcoming [book](#) will explore how this tradition views a *balanced* constitutional system not just as a method for avoiding tyranny but also one that is more likely to produce effective and stable public governance.

In conclusion, Russia continues to pose a challenge to the democratic West. This challenge is no longer grounded on class and economics as it was during the Cold War. Instead, the challenge today is that a centralised constitutional system can better achieve democratic goals and rights protection. Defeating this challenge requires remembering an older tradition that demonstrates not just the problems of centralised power but also the benefits of a balanced constitutional system of power.

References

- Constitution of the Russian Federation (1993), available at < <http://constitution.kremlin.ru/>>. Art 2.
- Id. Art 13.
- Id. Chapter 2.
- Loughlin, Against Constitutionalism.

