

# The Quest for a Unified Legal and Political Space in Russia: Editors' Introduction

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"There is a widespread feeling in the country that central authority was badly eroded in the 1990s." (Donald D. Barry)<sup>1</sup>

For over a decade the Russian Federation has been in pursuit of political democracy and the rule of law. It has been a hard and difficult journey for a country emerging from centuries of autocratic government. Much progress toward these goals has been made, but a great deal remains to be accomplished.

When the Russian federal state staggered into the 21st century intact and at least the nominal bearer of considerable constitutional powers, most of its 89 constituent units, called variously republics or provinces (*oblasti*), had gone off in different directions and were largely unresponsive to Moscow's authority. In effect, the unity of political and legal space in Russia, so necessary to fully realize democracy and a rule of law society, was severely fractured, resembling a mosaic rather than an integrated political and legal system.

It is probably too early to reach a balanced judgment concerning the nine-and-a-half years of the El'tsin presidency, marked by a series of fundamental political and constitutional upheavals: the August putsch of 1991, the dissolution of the USSR in December 1991, the constitutional showdown between president and parliament in September/October 1993, and the adoption of an entirely new Russian Constitution in December 1993. Nobody, however, would contest that when President El'tsin left office on 31 December 1999, the unified national political and legal system outlined in the Constitution, was in fact a realm in disarray. Provincial executives regularly exercised effective control over federal officers within their jurisdiction; internal tariff barriers would occasionally be erected against neighboring territories in order to protect scarce commodities. In many instances, foreign policy would be conducted independently of Moscow, witness the republics of Tatarstan and Bashkortostan which signed agreements with Abkhazia, a breakaway entity of Georgia not diplomatically recognized by the Russian Federation.

El'tsin's successor, not surprisingly, made the re-unification of Russia's legal and political space his foremost priority, relying heavily on law as well as on

1. D.D. Barry, *Russian Politics: The Post-Soviet Phase*, New York 2002, 182.

politics, on what could be called “the politics of law”. The governing themes guiding president Vladimir Putin since taking office have been the strengthening of the Russian state and the enforcement of the “dictatorship of law”, by ensuring compliance with federal law by all, especially the federation subjects. These two broad principles represent Putin’s response to the legacy of a dysfunctional state and legal process, inherited from the El’tsin administration.

Putin’s point of departure has been the Constitution of 1993. Under El’tsin, there had been several abortive efforts to amend the fundamental law in order to rectify the imbalance between the powers of the executive and legislative branches. His successor, however, insisted from the outset that the Constitution did not need revision, but full implementation. In particular, he had in mind fulfilling the somewhat tattered mandates of Article 4, the State Sovereignty clause. With minimal ambiguity, the clause contains three declarations, to wit, (1) The indivisible sovereignty of the Russian Federation shall extend to its entire territory, (2) The Constitution and federal laws shall reign supreme in the land, and (3) The obligation to maintain the integrity or the unified space of the Russian Federation rests with the federal state.

The Putin administration has concentrated on restoring and strengthening the essential functions of the state necessary for implementing public policies. These include the state’s Extractive capacity for raising revenue, its Administrative capacity for administering public programs, the Regulatory capacity for ensuring compliance with society’s legal rules, and, finally, its Adjudicative capacity for the orderly resolution of disputes. In various ways, all four functions were in need of urgent repair and reinforcement at the end of the El’tsin era.

Beyond the problem of runaway provinces, Putin’s public policies and ensuing legislation have aimed not only at correcting problems left behind by El’tsin, but also at building on the legacy of Russia’s first president in clearing the ground and laying the foundations for democratic institutions, a liberal legal process, and pre-conditions for a market economy. This has meant carrying forward the extensive program of law reform and judicial development initiated under El’tsin, encouraging the still slow and incremental realization of individual rights and freedoms inscribed in the Constitution’s Chapter Two (although of late there has been regression regarding press freedom as well as the due process principle of equality before the law), and finally, continuing the uneven course of asserting Russia’s role as a constructive and responsible actor in the international legal community. The policies that have driven these developments represented different aspects of the search for the unification of political and legal space in Russia.

By far the most dramatic policy changes to date were directed at the federal/confederal problem plaguing the Russian Federation. In spring 2000, the president decreed the division of Russia into seven federal districts to which he appointed his personal plenipotentiaries, mostly senior military and

paramilitary men. As Putin's field commanders, these presidential envoys led a vigorous, two-pronged campaign to harmonize all constitutions and charters with the Russian Constitution as well as repeal those power-sharing compacts in collision with the fundamental law, and standardize all subnational legislation in accordance with the reigning federal legal standard. Legislation was also pushed through the Federal Assembly to curb the governors and presidents as national political players, and to empower the president to dismiss willfully unlawful provincial chief executives, as well as dissolve local assemblies that persisted in defying the Constitution and federal law.

Neither Putin nor his advisers had any illusions that campaigns and new laws would produce a perfect unity of political and legal space, an ideal-type construct. It was implicitly understood that the notion of unification was a fiction,<sup>2</sup> albeit a necessary legal fiction around which the Kremlin could marshal civil forces for the recapture of central state authority which had been excessively devolved from above and unlawfully appropriated from below. In essence, Moscow understood unification as a code word for mobilizing for legal and political change to help the center regain lost ground in the provinces before it turned in the longer run to the problem any successful federation must face:

one of balance: how to promote the economic and political benefits that inhere in federal union—and are facilitated by a unified legal system—without destroying the diversity and local autonomy of its constituent parts.<sup>3</sup>

The authors—law professors, political scientists and criminologists from North America, Western Europe and Russia—collectively discuss major legal and political changes bearing on the quest for unity toward the end of the El'tsin era and, especially, during Putin's first four years in office. The discussion encompasses the Constitution; power-sharing compacts; judicial practice at all levels across Russia's tripartite court system, including the federal Constitutional Court; the bar and the Procuracy; new codes of criminal procedure and law; the jurisprudence of human rights; center-periphery relations doctrinally, politically and legally; and Russia's experience on the interface between domestic policies and international law.

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2. J. Priban, *Dissidents of Law*, Aldershot, U.K. 2002, 212-13.

3. J. Kahn, "Moscow vs. Kazan: Constitutions on Trial", *RFE/RL Russian Political Weekly*, 3, 20 June 2003, no. 24.