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How “The State” Survived the Collapse of the Soviet Union

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A quarter century after the demise of the Soviet Union, the term “post-Soviet” continues to be used as a general tag for the remains of an empire. Russia often talks of reviving the Soviet space, even if its search for economic integration (the Eurasian Economic Union) and military partners (the Collective Security Treaty Organization) has failed to reach critical mass amongst the former Soviet republics. Yet outside the Baltic States, who eschewed ties with the former Soviet Union and definitively left for the European Union in 2004, the “post-Soviet” label retains its relevance in large part because the country’s former members still share a common political legacy: the unified state.

Historically, the Imperial/Soviet state encompassed more than just the bureaucracy and public administration; it also served as the sole source of political authority while retaining substantial law-creating powers for itself. The first article of Imperial Russia’s 1906 Fundamental Laws proudly declared that the “Russian State is one and indivisible.”¹ Meanwhile, the 1977 Soviet constitution began by addressing the essential features of the Soviet state, including democratic centralism, socialist law, and the exercise of “state power” through a single institution (the Soviet of People’s Deputies). The latter, of course, was a legal fiction. The Communist Party exercised monopoly

rights over state power as expressed in Article 6 of the 1977 Soviet constitution.

The failure to impose limitations – whether through natural law theory, civil society, private law, or an elected legislature – separates the tsarist/ Soviet state from its western counterparts. The state’s prominence in the post-Soviet space was not immediately evident in the respective constitutions drafted by the 12 former republics; in many instances, the state’s powers were not formally articulated. Other references appeared either benign or overly abstract. Nevertheless, the idea of the state – as the single and supreme governing institution – endures across the post-Soviet expanse. Russia has embraced the concept, Ukraine continues to challenge it, while Kazakhstan, Belarus, and other former republics have rallied around these core statist principles as the best means for preserving personal rule and the status quo. Attitudes may vary, but as this

article demonstrates, the traditional image of the unified state still links the diverse members of the former Soviet Union, to the direct detriment of any alternative notion of separation of powers.

The Rebirth of the Russian State

Russia serves as the prime example as to how the state emerged victorious during the transition process. The preamble to the 1993 Russian constitution speaks of the need to preserve Russia’s historic “state unity” and of renewing its “sovereign statehood.” Article 5, part 3 further declares that the federative make-up of the Russian Federation shall be based upon its “state integrity” and the “unity of the system of state power.”

The state occupies such a prominent place in the Russian constitution largely because it remains the only institution that traditionally has held the country – and empire – together. The state, however, is not



Fig. 1. May 9, 2016, military parade on Red Square.

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just a historic relic; it plays a central part in Russia's current system of government. This role may not be succinctly expressed in the Russian constitution; nevertheless, it is present and highly influential.

Ironically, it is the constitutional provision theoretically establishing a separation of powers that underscores the importance of the state. Article 10 declares that "state power (*gosudarstvennaia vlast'*) shall be exercised on the basis of a division (*razdelenie*) into legislative, executive, and judicial [power]." These bodies, the clause continues, "shall be independent."

"State power" is, in fact, a standard term under Russian legal theory that broadly corresponds to sovereignty. Some scholars view state power as a product of certain basic social interactions.² Alternatively, other commentators view it as a statement of rudimentary force; according to one definition, state power is a "system of relations of supremacy and subordination, a concentrated expression of will and force of the dominating social, national stratum (class, nation) or of the people, embodied in the state-legal institutions. [State power] guarantees stability and order in society, defends its citizens from external and internal encroachments by utilizing various methods and means, including state coercion and military force."³

Western commentators naturally gravitated to the second half of Article 10 and highlighted a notion of separation of powers as the essence of the provision and Russia's democratic reforms. For Russians, however, the clause remains much more ambiguous; it begins with a notion of state power, which historically is singular and supreme, and then

introduces a division of functions that operates as part of a constitutionally-endowed unified state system.⁴

Thus, instead of facilitating a radical transformation, Article 10 enshrined a fundamental contradiction at the heart of the Russian constitution that, as we will later see, would be replicated throughout the post-Soviet space. The provision incorporates the idea of a division of powers, but subordinates it to the principle of a single system of state power. As one prominent Russian jurist noted, a reasonable interpretation of Article 10 would be to refer to the judiciary as an "organ of state power" (i.e., a part of the state apparatus) as opposed to an equal and independent branch of government.⁵ Moreover, by its very title, state power is linked to, and exercised exclusively by, the state. And only one institution fully represents the interests of the state under the Russian constitution: the president. According to Article 80, part 2, the president serves as the guarantor of the sovereignty, independence, security, and state integrity of the Russian Federation while ensuring the coordination and integration of the organs of state power. The Russian president exercises this authority as head of state but conspicuously not as the chief of the executive branch; that title belongs to the prime minister, who leads the government.

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Therefore, it is the president who de facto presides over the highest level of government and oversees the implementation of state power under the 1993 constitution. The separation of powers, as it turns out, is more of a matter of internal organization rather than a defining political principle. The 1993 constitution provided additional privileges to the president as head of state. Article 104 granted the Russian president (amongst several non-legislative institutions) the formal right to propose legislation before the Duma.⁶ The president further received the right to issue decrees and directives that possess the force of law, provided that they do not contradict prevailing federal law. The president, with the approval of the Federation Council, appoints the Prosecutor-General pursuant to Article 129, thereby removing this critical law enforcement agency from the executive branch and placing it under direct presidential control. Finally, the Constitutional Court, in a controversial 2005 decision, concluded that the president essentially possessed the right to appoint regional governors as part of a constitutionally-mandated (although not actually defined) unified system of executive power.⁷

Admittedly, other competing theories can be found in the Russian constitution, including federalism, the ascendancy of civil liberties, and the social state. The constitution further assigns ultimate sovereignty to the Russian people, providing it with a democratic veneer. None of the above concepts, however, outranks the inherent powers of the unified state, even if the realization of this ideal is still far from complete; indeed, the Russian state – while robust when defending its own interests – historically has been ruled through weak, arbitrary, underfunded, and often corrupt institutions.⁸

Moreover, the theoretical aspiration for state unity does not mean that the Russian government, from a purely policy standpoint, consistently pursues this objective. Vladimir Putin has followed a centuries-long tradition of supporting, and then backing away from, “modernization” depending on how it impacts his ability to maintain state control.

While many political scientists have dubbed the Russian political system super-presidential, it could just as well be described as traditionally statist. Fiona Hill and Clifford Gaddy, in their insightful biography of Vladimir Putin, list his belief in state power as one of his essential core identities.⁹ This underlying faith in the state as a positive – and indeed only – unifying political force can be found in other post-Soviet constitutions as well. For Ukraine, the struggle to extract itself from this statist ideology, and introduce a genuine separation of powers, has dominated its post-Soviet existence.

The Post-Soviet Model of Statehood

Few western commentators were naïve enough to believe that democracy would immediately flourish in the post-Soviet space. The former republics had lived under autocratic and authoritarian rule for so long that they lacked any national institutions that could facilitate such a transition. Not surprisingly, these new nations turned to what they knew best, which could be found in their common understanding of Soviet law and the pre-eminence of the state.

Thus, with the exception of Moldova, 11 out of the 12 post-Soviet constitutions linked “state power” with the concept of separation of powers. Most



Fig. 2. February 26, 2014, Anti-government protests in Kiev
Photo courtesy of: Sasha Maksymenko, Creative Commons

notably, Ukraine, despite all its efforts to distinguish itself from the Russian Federation, contained a similar expression of separation of powers as set forth in the Russian constitution. Article 6 of the Ukrainian constitution proclaims that “state power in Ukraine is exercised on the principles of its division into legislative, executive, and judicial [power].”

Therefore, just as in Russia, state power precedes any notion of separation of powers as the defining governing principle in Ukraine. The constitution further describes Ukraine as a unitary state, attributing almost mystical powers to the institution; according to Article 11, “The state promotes the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions and culture, and also the development of the ethnic, linguistic and religious identity of all indigenous

peoples and national minorities of Ukraine.” On a more practical level, the Ukrainian president, as head of state, enjoys similar executive privileges as his Russian counterpart, including the right to exercise legislative initiative, issue presidential decrees, and control over the appointment of the Ukrainian Prosecutor-General.

Ukraine, of course, is currently undergoing a difficult transition process that ideally will lead to a more open and democratic society. A recent round of constitutional amendments, for example, seeks to raise the professional standards of judges with the direct intent of promoting a more independent judiciary. Yet Ukraine’s recent history testifies to the resiliency of the state-centric model some 25 years after the collapse of the Soviet Union. Former President Viktor Yanukovich relied on the centralized power of the unitary state for his own

autocratic purposes until even he overstepped the boundaries between state and society. President Petro Poroshenko was elected vowing to change the state, yet his commitment to legal reform, decentralization, and fighting corruption continues to be called into question.¹⁰ Ukraine's attempt to address the inherent tensions between state power and the separation of powers – without necessarily writing a new constitution – represents one of its greatest challenges today.

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That state power precedes and in effect trumps any nascent concept of separation of powers remains one of the consistent features of post-Soviet constitutional thought. In Kazakhstan, for example, Article 2 declares that the state “ensures the integrity, inviolability and inalienability of its territory.” Moreover, the articulation of state power follows the same formula as set forth in the Russian and Ukrainian constitutions. According to Article 3, part 4, “The state power in the Republic of Kazakhstan is unified and executed on the basis of the Constitution and laws in accordance with the principle of its division into the legislative, executive and judicial branches and a system of checks and balances that governs their interaction.” Finally, the Kazakh president serves pursuant to Article 40 as “the symbol and guarantor of the unity of the

people and state power.”

One can go down the list of post-Soviet constitutions and identify variations on the above theme, where any theoretical separation of powers is subordinated to an assertion of state power. Each successor republic must somehow reconcile the inconsistency of such thinking. Belarus, for example, has emphasized state power in introducing strict presidential rule, while Georgia, like Ukraine, has tried to re-interpret these competing principles along more democratic grounds. Moldova represents the main outlier, as Article 2 of its constitution exclusively links state power to the people's right to exercise their national sovereignty. Nevertheless, Moldova remains connected to the post-Soviet space, since its primary constitutional dysfunction – a divided territory within a self-proclaimed unitary state – traces its origins directly back to the Soviet Union's demise.

The Persistence of the Unified State

While no single sentence necessarily is determinative of a nation's fate, state power has proven to be a remarkably durable concept. In the 1990s, Russia possessed a lively – and highly oppositional – Duma as well as an emerging vertical division of powers between Moscow and the regions. Both were eventually snuffed out by Vladimir Putin and his vision of the unified state, as elucidated in the 1993 constitution and in Russian history. Meanwhile, Ukraine is in the midst of a political transformation that fundamentally seeks to alter the relationship between the state and the other branches of government. Yet this experiment has already been tried once in Ukraine, with less than satisfactory results. In 2004, the Ukrainian

parliament passed a series of constitutional amendments that substantially altered the balance of power between the president and the legislature, only to see these changes declared unconstitutional by the Ukrainian Constitutional Court in 2010. The latter decision paved the way for Yanukovich's revanchist state policies while seriously undermining public confidence in an independent judiciary.

Ukraine received a rare second chance in 2014 and, despite multiple ongoing crises, the possibility still exists to rethink its understanding of separation of powers. To succeed, however, the Ukrainian constitution must continue to evolve, stay open to interpretation, and be actively defended by civil society. Failure most likely would result in a return to the statist system that paradoxically also finds considerable support in the Ukrainian constitution.



Fig. 3. March 20, 2016. Kazakhstan's President Nursultan Nazarbayev casts his ballot at a polling station during a snap parliamentary election in Astana, Kazakhstan. REUTERS/Mukhtar Kholdorbekov.

The unified state consistently has defeated attempts at democratic reform in the post-Soviet space. The established state impedes change in other ways as well. Corrupt patron networks are a common feature throughout the former Soviet Union, yet despite broad public recognition of this problem, exposing and punishing high level corruption has proven to be almost impossible.¹¹ The state naturally is reluctant to go after its own, other than to send periodic warnings to potential rivals. Bureaucrats, however, have an additional advantage; as servants of a highly powerful – and over-idealized – state, they also conveniently are representatives of the highest public good and therefore virtually unassailable.

Thus, despite various democratic trappings, the state quickly re-established itself as the dominant political actor in the former Soviet Union. The basic constitutional underpinnings of the statist system include: (1) the notion of a single and unified state as the highest political goal; (2) the supremacy of state power over all other branches of government; and (3) a president assigned the exclusive right to represent and to defend the state. But even this system already has experienced a unique institutional twist. From 2008-2012, Vladimir Putin served as prime minister to President Dmitrii Medvedev. There was little doubt that Putin remained in charge, as his unilateral decision to return to the presidency later confirmed. Nevertheless, Putin demonstrated that one does not even need to be president to exercise control of the state, and that the latter remains the highest source of power in the post-Soviet space.

Conclusion

The veneration of the state has deep roots in tsarist and Soviet thought. Therefore, it comes as little surprise that, 25 years after the collapse, the former Soviet republics still share a common political outlook even if other factors – language, economics, demographics, religion – are slowly pushing them apart. What is particularly compelling is that while commentators focused attention on the new branches of government described in the post-Soviet constitutions, they consistently overlooked how the state managed to preserve its institutional powers over the other branches. The state did not wither away after 74 years of Marxism, and it is still going strong a quarter century after the end of the Soviet Union. Indeed, no matter what

adjective one places in front of the term “state” in Imperial, Soviet, and post-Soviet history – absolutist, autocratic, socialist, totalitarian, secular, democratic – it is the state that always manages to survive. The supremacy of the unified state – as the highest governing principle and ultimate source of political authority – remains a defining feature of the post-Soviet space and, as it turns out, the most difficult one to overcome.

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Endnotes

- 1 The “unified state”; and how it functioned in a multi-ethnic empire, featured prominently in the works of the tsarist legal commentator Baron Boris Nolde. For an overview of Nolde’s writings, see Peter Holquist, “Dilemmas of a Progressive Administrator: Baron Boris Nolde,” *Kritika: Explorations in Russian and Eurasian History* 7, 2 (2006), 241-73.
- 2 T.N. Rad’ko, V.V. Lazarev, L.A. Morozova, *Teoriia gosudarstva i prava* (Moscow: Prospect, 2014), 443-47.
- 3 V.D. Perevalov et al., *Teoriia gosudarstva i prava* (Moscow: NORMA, 2008), 53.
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- 5 Anatolii Lyskov, “Sud – eto organ gosudarstvennoi vlasti,” *Kommersant Vlast’* 27 (July 13, 2009), 23-25.
- 6 Under Article 104, the right of legislative initiative belongs to the president, both houses of the federal legislature, the government, the Supreme Court, the Constitutional Court, and legislative bodies of subjects of the Russian Federation.

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