

Strongmen in Weak States:

Reflections on Partlett, *Why the Russian Constitution Matters*

William Partlett, *Why The Russian Constitution Matters*, Hart Publishing, 2024.

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Of the three most powerful countries in the world, much constitutional scholarship focuses tightly, even myopically, on just one: America. Russia and China, in contrast, receive little attention, with the study of the governance of these states largely left to political scientists and area specialists. This reluctance is understandable. There is a fog that surrounds the Russian and Chinese systems, rendering their operation opaque, certainly to those looking in from outside, but often to insiders as well. These are states where, for the constitutional scholar, the cost of gaining an understanding of the constitutional order is high, and the risk of radically misunderstanding those systems, even once this cost has been paid, are considerable. The temptation is to look away, and to focus on constitutions that are more familiar, and better understood.

William Partlett's book *Why The Russian Constitution Matters* is a brilliant rebuff to this reticence. Partlett provides a clear and accessible account of Russia's recent constitutional history, showing the role played by the Constitution in the rise of Vladimir Putin and the establishment of what Partlett styles 'crown-presidentialism', a system that concentrates power in the hands of the leader. This story, in itself, would be enough to commend the book to constitutional scholars, but Partlett uses this account to evidence wider insights about the nature of constitutions, human rights instruments, the role of leaders, and the importance of the diffusion of power within states. As a result, this is a book that even those who are uninterested in Russia should read, it speaks to a range of important topics in constitutional scholarship and, by virtue of its focus on Russia, does so in novel and valuable ways.

One of the core arguments in the book is that Constitutions, with a capital 'c', matter. Constitutional lawyers often have high, sometimes unrealistically high, expectations for the efficacy and significance of these written constitutional instruments. These are understood as

documents that provide the foundational structures for the exercise of power within the state, with the courts enforcing their provisions, using the legal to regulate the political. In many states it is obvious that the Constitution does not play this role. In China, the Constitution is not a source of legal rights and duties, whilst in Russia the judges' ability to enforce the Constitution is patchy, and dependent upon the wishes of the governing elite. In China, the power structures set out in the Constitution have little connection to the realities of the small 'c' constitutional order, whilst in Russia the leadership of the state seems able to rewrite the Constitution at will. When the Constitution does not limit and regulate power effectively, there is a temptation to dismiss it, to exclude it from the category of objects suitable for constitutional scholarship. Constitutions like China's are then discounted as shams or façades, whilst those resembling Russia's are presented as nominalist Constitutions, documents that merely recount the realities of power rather than regulate it.¹

Through his examination of the Russian Constitution, Parlett shows the breadth of functions that Constitutions can perform, even if they have a radically limited capacity to constrain governmental power within the state. First, the Constitution can act as a statement of the balance of political power, a statement that does not merely reflect this balance but solidifies it. It amounts to a public declaration of the locations of power within the system that others within that system would be wise to heed.² Partlett does not press the point, perhaps because it goes beyond what can be shown on the evidence available to him, but the Constitution may serve as the public articulation, or even the formalisation, of compromises within the political elite. Though it is tempting to look on Xi Jinping's China and Vladimir Putin's Russia as states in which a single person holds total power, the reality is more complicated, and leaders such Putin are compelled to engage competing factions within the state, marginalising some, buying the acquiescence or support of others. So, that the provision in the Russian Constitution which placed term limits on the presidency, Article 81, led to Putin stepping back from the role in 2008, tells us more about the power balance in the Kremlin at that time than about Putin's respect for constitutional norms.³ And the subsequent changes to

¹ Giovanni Sartori, 'Constitutionalism: A preliminary discussion', (1962) 56 *American Political Science Review* 853; David Law and Mila Versteeg, 'Sham Constitutions' (2013) 101 *California Law Review* 863.

² William Partlett, *Why The Russian Constitution Matters* (Hart, 2024), 146. See also Zachery Elkins, Tom Ginsburg, and James Melton, 'The Content of Authoritarian Constitutions' in Tom Ginsburg and Alberto Simpser, *Constitutions in Authoritarian Regimes* (Cambridge University Press, 2014), 148-150.

³ Partlett (ft 2) ch. 6.

that Article in 2020 that enabled Putin to hold the presidency effectively indefinitely, are the product of a change in that balance: behind the scenes, the relative power and the identity of the players in the political elite has shifted, a new bargain has been struck.⁴ When Constitutions are used in this way by authoritarian states these provisions, though not enforceable by independent courts, have a certain stickiness. That the Constitution is used as a signal, and is known to be used as such by others in the system, means that a decision to change or to leave unchanged its language has consequences. Until the text changes, others in the system may assume that the old settlement stands, and act on that basis. So, for example, the modification of the legal relationship between the Russian Prime Minister and President, with the weight of power shifting to the President, in the 2020 amendments probably had little immediate impact in the context of that political relationship.⁵ It was already the case that Putin's position had strengthened relative to that of the Prime Minister, but it still mattered to him and his supporters that this was formalised in the text of the Constitution. The act of formalisation showed to all within the system that Putin possessed the political capacity and will to render this reality public.

A second, related, function of the Constitution is to provide a formal articulation of the ideology of the state.⁶ The Constitution is not the only way in which this ideology is expounded, other legal instruments and extra-legal statements and actions are also significant, but the written Constitution has particular prominence. In some states this may be little more than window-dressing, but in authoritarian states these ideological statements carry additional weight. That the Constitution is under the control of the governing elites enables the Constitution to act as an expression by the powerful of the beliefs that others in the system are expected to hold. Both the Russian and, even more lavishly, the Chinese Constitutions play this role, loaded up with claims about how their people should understand their states. As part of the same set of 2020 amendments that extended Putin's tenure, the Constitution was modified to include statements presenting Russia as the successor to the Soviet Union, as responsible for ensuring patriotism and historical truth, and as claiming that the state was

⁴ Ibid at 145.

⁵ Ibid at 145.

⁶ Nick Barber, 'What is Constitutional Ideology?' (2024) 22 International Journal of Constitutional Law 653.

grounded in the Russian nation.⁷ Though the Constitution claims not to establish a state ideology, it does include ideological claims and, moreover, creates powers which can be used to further expound ideological structures.⁸ In short, the Constitution presents what Partlett terms a ‘neo-imperial version’ of Russian identity.⁹ Though these are not, or are rarely, the type of provisions that can be enforced by courts, they amount to a deliberative framework provided by the state for its people, setting the boundaries of what can and cannot be said, providing a collection of concepts that its people are expected to use to interpret and understand the world around them. It might be objected that a Constitution cannot tell people how to think, but this underestimates the impact that ideological provisions of this type can have, especially in authoritarian and totalitarian states. The formal statement of ideology provides a safe path for state members to tread, with this offer of ideological safety having broad consequences in both the public and private realms. In the public realm, these ideological provisions shape the deliberation of legislators, civil servants, and judges, but also the way in which children are taught and the types of activities that occur in the public sphere.¹⁰ In authoritarian systems this ideology can also shape how people interact in private, even conditioning discussion of the state between friends and within families.

As part of its articulation of constitutional ideology, the Constitution can provide, or imply, claims about the legitimation of the state, providing a story about the justification of the system of government. One of the most powerful arguments in Partlett’s book turns on this justificatory story, and on the mistakes made in the 1990s during the formulation of the modern Russian Constitution. After the fall of the Soviet Empire, it seems that there was broad international agreement that Russia needed a strong and highly centralised leadership, with power vested in the office of the President.¹¹ As so often in Russia’s history, it was thought that a strong leader was needed to bring stability to Russia’s institutions. The risks of establishing a powerful office were countered by its democratic nature – after all, the people would be able to choose and remove officeholders – and by a rich array of commitments to

⁷ Partlett (ft 2) 142-148.

⁸ Russian Constitution, Article 13.

⁹ Ibid at 143.

¹⁰ Ibid at 156.

¹¹ Ibid at 70-74.

human rights norms. The result was a form of constitutional order that Partlett dubs ‘crown-presidentialism’, with the office of president combining elements characteristic of the French and American models.¹² From France, the office took the idea of the president as ‘guardian’, a figure resembling that of a monarch, able to step in to control and regulate other state institutions to ensure they functioned successfully within the constitutional order.¹³ From America, the office took the idea of president as ‘manager’, able to set the broad policy direction of the state, and exercising control over the executive branch.¹⁴ Partlett argues that whilst each of these two forms of presidency function fairly well in isolation, their combination produced, in Kim Lane Schepple’s term, a ‘Frankenstate’, a phenomenon where the combination of two reasonable constitutional forms produces a monster.¹⁵ Having established this model of presidency, the system itself then generates a demand for a certain brand of ideological justification. As one of the key offices of the state, perhaps the key office, is grounded in the need to counter threats to the state caused by its weakness, the maintenance of this office requires a continued belief in the vulnerability of the state. Those holding that office, and those in the constitutional order reliant on, or in fear of, that officeholder, have a strong incentive to present the people with a picture of their state as beleaguered, under threat from outside and within. No matter how strong and powerful such states become, the need to justify this constitutional form will remain, requiring that they present themselves to their people as weak, vulnerable, and unable to indulge the types of disagreement and dispute found in liberal democratic orders.

Partlett criticises Western states, and, indeed, many constitutional scholars of the time, for their toleration, or even their support, of the establishment of crown-presidentialism.¹⁶ The focus of many of these external actors was on the protection of human rights in Russia. Crown-

¹² Ibid at 60-62.

¹³ Ibid at 63-67.

¹⁴ Ibid at 67-70.

¹⁵ Ibid at 25. Kim Lane Schepple, ‘The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work’ (2013) 26 *Governance* 559, discussed further in Mark Tushnet and Bojan Bugarcic, *Power to the People: Constitutionalism in the Age of Populism* (Oxford University Press, 2022), ch.5. It could be argued that some of the problems Partlett identifies are found in the presidential model more generally: see Juan José Linz, ‘The Perils of Presidentialism’ (1990) 1 *Journal of Democracy* 50.

¹⁶ Partlett (ft 2) 5-6.

presidentialism was seen as bringing the stability needed to ground rights or, perhaps, as the price worth paying for a Constitution that included rights protections. Partlett argues that this concentration on rights led to a failure to push for the diffusion of public power within the Russian state. There is, of course, no logical connection between these two, and it is possible to have a constitutional order that both protects rights and ensures the diffusion of public power, but Parlett's charge that the importance of effective democratic structures was underestimated by those involved in the constitutional reform processes of the 1990s seems well-grounded, and, indeed, may have force beyond the Russian example he discusses. For a generation of scholars and politicians brought up on visions of Constitutions in which rights were the most important part of the package, confidently trusting the judges to act as regulators of the political process and as the protectors of their people, the inclusion of rights in the Russian Constitution must have seemed a huge victory. It would be radically unfair to ascribe the collapse of democracy in Russia and the rise of Putin to the work of Ronald Dworkin, but there may be a link to be drawn to the academic culture of that period of which Dworkin was an exemplar. Dworkin's Judge Hercules, the principal character in *Law's Empire*, did not just enjoy a complete knowledge of law and of rights, he was also unfettered by institutional limitations and free from political vulnerabilities.¹⁷ Though Hercules was explicitly presented as a thought-experiment, there was no acknowledgment in *Law's Empire* of the reliance of judges on the executive branch. It is the executive that builds the courts, that enforces their judgments, and that gathers taxes and pays out their salaries. Ultimately, the rights that are documented in the Constitution depend for their effectiveness on the willingness of the executive to back the courts. As Partlett argues, the independence of the courts, and, relatedly, their capacity to enforce rights protections against the state, depends, to a significant extent, on effective democratic structures and the diffusion of power. It is through these structures that the potential for the regulation of the executive is established. The toleration of crown-presidentialism undermined the foundations of the rights protections in the Russian Constitution; the weaknesses that would lead to Putin's rise and to the collapse of rights in Russia were there from the start.

Crown-presidentialism presents itself as a solution to vulnerability, as a constitutional form that is necessitated by the fragility of the state.¹⁸ It is a constitutional form that is, though,

¹⁷ Ronald Dworkin, *Law's Empire* (Fontana Press, 1986), esp. ch. 7.

¹⁸ Partlett (ft 2) 70-73.

likely to encourage the rise of the type of leader willing to use the powers it confers to preserve his (and it does seem to be generally his) position in power. Though it is possible that the role could be occupied by a leader who would exercise their powers with restraint and concern for constitutional principle, sooner or later the role will be occupied by someone who uses the powers it confers to solidify their position and to make their removal difficult. Indeed, we might speculate, the nature of the office may shape the type of person likely to be successful in competitions for its occupancy. Factions within the system may tend to coalesce around candidates who are likely to use their powers to extend their hold on office, rather than support candidates who will exercise restraint. Picking a candidate who will exercise restraint runs the risk that this will be the only time the faction will control the presidency; given the incentives to officeholders to abuse their powers, their chance may not come around again. Drawing together these thoughts, crown-presidentialism presents itself to the state's people as a cure for weakness, and so encourages the holder of the office to present themselves as uniquely equipped to act as defender of the state. In addition, the powers it confers are likely to reward and attract those candidates who will use them to stifle political opposition to strengthen and extend their occupancy of office. In consequence, crown-presidentialism is likely to lead to the presidency being held by a strongman-style leader, one who looks on disagreement and opposition within the state as a form of weakness, and who takes steps to prevent the articulation of dissent.

Though crown-presidentialism encourages the emergence of strongmen leaders like Putin, the apparent strength of the leaders it generates may serve to weaken the state as a whole. Three interlinked considerations, each grounded in the institutional form of the strongman leader, combine to build fragility into the state. Though it is not inevitable that strongman leadership will lead to a weakened state, there are powerful reasons to suppose such leadership will tend to render the constitutional order, and the state, brittle.

First, and most obviously, there is the problem of succession. The ideological justification underpinning the crown-presidential leader is one of crisis and vulnerability: the state is under threat from outside and within, and a strong leader is necessary to protect the state from these threats. Given this rationale, it is hard for the strongman leader to acknowledge that there is a viable alternative available, and harder still to acknowledge that someone with a

differing political agenda could take over as leader. In terms of recognised successors, the strongman leader who permits the presence of a successor within his ranks is not only enabling the emergence of a potential challenger but is also admitting, implicitly, that someone else could successfully occupy their role. This admission runs against the ideological underpinnings of the office; it permits the diffusion of power at the top of the state, as the strongman and his successor occupy a pair of competitive executive offices, with the balance of political power shifting between them. The apparent capacity of the leader to act quickly and decisively, a supposed need underpinning their occupancy of office, is impaired by this public recognition of a possible successor: people can see that there is a choice, and see the shifting balance of power. A strongman leader, such as Putin, strengthens his own position by making succession harder and, by so doing, may appear successful within the ideological form of his role, but, by so doing, builds a fragility into the state: the transference of power is made harder.¹⁹

Second, there is the ‘dictator’s dilemma’, a phenomenon illuminated by the rational choice theorist, Ronald Wintrobe.²⁰ As Wintrobe argues, the greater the power of the dictator over his subjects, the less willing those subjects are to express dissent and disagreement. But this does not mean that dissent is not present, just that it becomes decreasingly likely that dissent will be communicated to the leader. The dictator then faces a series of linked problems. The most immediate worry is that he cannot know the extent of dissatisfaction with his leadership. The thoughtful dictator, and those who rise to the position are unlikely to be fools, will be aware that all of those with whom he engages are motivated to lie to him about their support. Recalling the discussion of the previous paragraph, the absence of viable rivals in the system may make the leader appear more secure, but their absence also makes it harder for the leader to gauge the security of their position. As Wintrobe writes, ‘on perfectly rational grounds, the characteristic personality trait of dictators is paranoia’.²¹ The strongman leader knows there is opposition in the system and knows that this is being concealed from him. The dictator’s dilemma also cuts against successful decision-making, with those around the

¹⁹ Ibid at 161-164.

²⁰ Ronald Wintrobe, *The Political Economy of Dictatorship* (Cambridge University Press, 1998), ch. 2.

²¹ Ibid at 39.

strongman leader telling him what he wants to hear.²² As Parlett notes, Putin's 2022 invasion of the Ukraine may be an example of this: Putin appeared to believe that the Russian army was significantly better prepared for the invasion than turned out to be the case.²³ The strongman leader, by making disagreement harder to express within the system will, as a result, weaken the processes of policy formation.

Third, this distortion of openly expressed preferences creates a peculiarly volatile political environment, one in which not only is the dictator deceived as to the strength of his support, the population, too, can be unaware of the magnitude of dissent. Once again drawing on rational choice theory, Timur Kuran provides an explanation for the surprising quality of revolutions, that is, their capacity to ignite without warning.²⁴ Kuran argues that this is caused by the way in which people's preferences about their regime turn on their understanding of the preferences of others. An individual's willingness to join a revolution will depend on their dislike of the regime and, in addition, on their beliefs about the strength of public opposition to it. The lower the perceived level of public opposition to the regime, their higher personal dislike of it must be to lead them to oppose it publicly. In an oppressive regime which punishes dissent, they may decide it is better to give the appearance of support, to lie about their preferences, rather than risk public opposition. Revolutions can occur when some event tips this balance, and an individual's hostility towards the regime is increased to the point at which they decide to make a public stand. Their public opposition fractionally alters the assessment of others, making the expression of opposition look slightly less risky and slightly more likely to generate change. For a small number of people, this tiny change will be enough to shift their personal calculation, and, as a result, they also publicly oppose the regime, a gesture which, in its turn, then tips the balance of others. The effect snowballs, with public opposition become increasingly attractive to a rapidly growing group. Kuran's argument shows how, on the back of a small incident, a regime can move very rapidly from the appearance of broad popular support to revolution. The phenomenon Kuran describes could arise in any system, but strongman regimes are peculiarly vulnerable to its operation. Strongman regimes set out to discourage dissent, making it costly to express opposition both in public and in private. This

²² See also Partlett (ft 2) 151, on Russia's weak response to the Covid pandemic.

²³ Ibid at 196-7.

²⁴ Timur Kuran, *Private Truths, Public Lies* (Harvard University Press, 1995), ch. 15.

may generate the appearance of a strong state, with widespread and voluble public expressions of support, but this support can prove exceptionally fragile.

Partlett's crown-presidential form, grounded in a fear of vulnerability, encourages the emergence of a strongman leader but, perversely, this form of leadership serves to weaken rather than strengthen the state. By diminishing the capacity of the constitutional order to process and contain disagreement it generates the appearance of strength, but by stripping the constitution of this function it renders the state weak and brittle.²⁵ It may push dissent out of the constitution's structures, but it does not eradicate this dissent. That it ceases to be possible to publicly articulate disagreement with the state's policies and leaders does not mean that the state's policies are correct or that the leaders enjoy the stable support of their people. Quite the contrary: the failure of the constitution to process disagreement is likely to lead to poor decision-making, as the decisions will be made without challenge, and paranoid and fragile leadership, as revolution becomes the only effective path to change. Constitutions that avoid strongman leadership and continue to process disagreement make the state look weaker, as this disagreement is on show, but render the state stronger, as conflict is contained within the constitutional order rather than set against it. As Partlett's important book shows, a strongman leader is purchased at the price of a weakened state.

²⁵ Partlett (ft 2) 108-109.