Russia’s Constitutional Project and Prospects for the Future

Gordon B. Smith

Constitutions and constitutional arrangements for distribution of power in democratic systems—whether among the executive, legislative, and judicial branches, or among national, regional and local bodies, or between all of the above and the citizens and the various interests groups and parties with whom they affiliate to pursue their common interests—are by nature organic and marked by evolutionary change.

The analysis of Russia’s progress in instituting constitutional democracy offered by the distinguished contributors to this volume provides ample fodder for both: optimists and pessimists. This should not surprise us; “constitutional democracy” and “rule of law” are both abstract principles, but also simultaneously, works in progress that inevitably fall short of perfection embodied in the abstract ideal in all countries.

The challenges, compromises and setbacks experienced in the Russian constitutional project, some of which were elaborated in the preceding pages, are not unique. Other democratic states have struggled with perhaps not identical, but no less daunting challenges, especially in the early stages of their democratic development. The only perspective by which one can fairly analyze and assess Russia’s progress is by adopting a comparative developmental approach—not comparing Russia’s performance with an abstract ideal and not comparing it with standards in the most advanced democratic systems that have evolved legal and constitutional cultures over the span of hundreds of years. We would do well to remember the mixed track record of some of today’s democracies and emerging democracies to gain greater perspective on Russia’s constitutional development.

The American Experience

Drafters of the US Constitution confronted strong sectional differences over slavery, the clash of large versus small states, and federal versus state jurisdictions. The constitution that emerged was the product of a protracted, sometimes conflict-ridden process. Some of the most sharply divisive issues were ignored entirely or masked in vaguely-worded provisions. No issue divided the drafters more than slavery.

African-Americans, approximately twenty percent of the population in 1789, were not accorded any rights whatsoever in the Constitution, and were only covered under property provisions in Article 4. For purposes of determining the number of representatives in the House of Representatives, however, the Southern states wished to include slaves in their official
population totals. A compromise worked out in 1787 held that each slave counted as three-fifths of a person. This provision was repealed by the XVI Amendment in 1868.

On the political front, the development of democratic institutions in the early history of the United States was also slow and troubled. George Washington ran unopposed for both terms as president and without a party affiliation, since political parties only emerged during his presidency. He viewed parties as fractious and dangerous groups that seek to undermine domestic tranquility and national unity. In his “Farewell Address” in 1796, Washington warned:

“The unity of government which constitutes you one people is also now dear to you. It is justly so, for it is a main pillar in the edifice of your real independence, the support of your tranquillity at home, your peace abroad, of your safety, of your prosperity, of that very liberty which you so highly prize. But as it is easy to foresee that from different causes and from different quarters much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth.”

Initially, only white males were entitled to vote. In most states there were additional provisions for excluding non-owners of property, Catholics and non-Christians. These restrictions were eliminated in most states during the 1840s, one-half century after the adoption of the Constitution. The XV Amendment, adopted in 1870, extended the vote to black males, but numerous impediments effectively limited African-Americans in exercising their right to vote in many states up to the 1950s and 1960s. Women were only granted the right to vote in 1920 with the passage of the XIX Amendment.

The Supreme Court was a woefully weak third branch of the federal government that did not enjoy the power of judicial review until 1803. It was dependent on the Executive to enforce its decisions and the justices were aware that the Congress could effectively reverse their decisions by legislative action, thus, marginalizing the Court and undermining its legitimacy. As a consequence the justices avoided taking on the most controversial cases for more than fifty years, when they waded into the Dred Scott case in 1857.

Serious breaches of due process—whether racially motivated lynching, vigilante justice, selective prosecution, official corruption and racketeering, forced confessions, and jury tampering—continued to exist in the United States well into the twentieth century, while racial profiling in police checks continues today. The landmark case Miranda v. Arizona, which established the rights of suspects to be informed of their right to an attorney and that any statements they make can be used in court against

---

1 The text of Washington’s Farewell Address is available at <http://usinfo.state.gov/usa/infousa/facts/democrac/49.htm>.